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[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Art. I, 3-6-1995 as L.L. No. 1-1995. Amendments noted where applicable.]

ARTICLE I
Adoption of Code
[Adopted 3-6-1995 as L.L. No. 1-1995]

Be it enacted by the Board of Trustees of the Village of Alden, County of Erie, New York, as follows:

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of **§** 20 of the Municipal Home Rule Law, the various chapters, sections and Articles of the 1966 Code of the Village of Alden, and other local laws, ordinances and certain resolutions of the Village of Alden, and consisting of Chapters 1 through 210, together with an Appendix, shall be known collectively as the "Code of the Village of Alden," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Village of Alden" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, Article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Trustees of the Village of Alden, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of **§** 1-3 below.

§ 1-3. Repeal of enactments not included in Code.

All local laws and ordinances of a general and permanent nature of the Village of Alden in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law. Specifically repealed is the 1966 Code of the Village of Alden.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in **§** 1-3 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

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

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

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

D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Village of Alden.

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

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

G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.

H. The levy or imposition of special assessments or charges.

I. The annexation or dedication of property.

J. Any legislation relating to salaries.

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

L. Any legislation adopted subsequent to June 27, 1994.

§ 1-5. Severability.

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

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Village Clerk of the Village of Alden and shall remain there for use and examination by the public until

final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified by the Village Clerk of the Village of Alden by impressing thereon the Seal of the Village of Alden, and such certified copy shall remain on file in the office of said Village Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Village of Alden" or any new local laws or resolutions, when enacted or adopted in such form as to indicate the intention of the Board of Trustees to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Board of Trustees deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Village Clerk to keep up-to-date the certified copy of the book containing the Code of the Village of Alden required to be filed in the office of the Village Clerk for use by the public. All changes in said Code and all local laws and resolutions adopted by the Board of Trustees subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws or resolutions until such changes, local laws or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

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

Copies of the Code may be purchased from the Village Clerk of the Village of Alden upon the payment of a fee to be set by resolution of the Board of Trustees[1], which Board may also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-10. Penalties for tampering with Code.

Any person who, without authorization from the Village Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Village of Alden or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Village of Alden to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than two hundred fifty dollars ($250.00) or imprisonment for a term of not more than fifteen (15) days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Village of Alden, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one (1) or more of said pieces of legislation. It is the intention of the Board of Trustees that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.

B. In addition, the following amendments and/or additions are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)[2]

---

[1] **Editor's Note: See Ch. A220, Fees.**

[2] **Editor's Note: In accordance with § 1-11B, the following chapters, parts, Articles and sections were added, amended or adopted: §§ 17-1, 17-2, 17-3A, 17-5, 17-7, 37-8B, 52-7A, 58-2, 62-5D, 62-10A, 66-9 and 66-16; Ch. 78; §§ 105-4B and 105-16A; Chs. 125 and 131; § 143-3; Ch. 143, Art. II; §§ 147-3 and 165-4; Ch. 165, Part 2; §§ 173-11, 173-13, 173-16, 173-26A, 177-8B, 177-12B and D and 177-13; Ch. 181; §§ 185-3C(1)(g), 185-4, 185-9, 185-10, 190-1, 190-2, 190-20, 198-2A and 198-4; Ch. 200; §§ 205-4, 205-7, 205-9, 205-10, 205-11, 205-15, 205-18, 205-22, 210-6, 210-25C(1), 210-25G, 210-26A(5)(b), 210-27C(1), 210-33, 210-35A and 210-38B, C and D. The following provisions were**

C. Furthermore, all references to the "Clerk-Treasurer" are hereby amended to read "Clerk."

D. Furthermore, all language has been amended to read as gender neutral language.

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Village of Alden, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered **§§** 1-1 to 1-13, inclusive.

§ 1-13. When effective.

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

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deleted: original §§ 33-1, 33-2, 33-3, 33-4, 33-6, 33-7 and 33-8 of L.L. No. 3-1976; § 40-7 of Ch. 40, Art. I, of the 1966 Code; §§ 41-1 and 41-5 of L.L. No. 5-1976.

Chapter 14

ENVIRONMENTAL CONSERVATION COMMISSION

§ 14-1.	**Commission created.**	**§ 14-5.**	**Powers and duties.**
§ 14-2.	**Legislative intent.**	**§ 14-6.**	**Reports.**
§ 14-3.	**Membership.**	**§ 14-7.**	**Compensation and expenses.**
§ 14-4.	**Officers, meetings and committees.**	**§ 14-8.**	**Cooperation.**

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 2-9-2012 as L.L. No. 1-2012.]

GENERAL REFERENCES

Flood damage prevention -- See Ch. 105.

§ 14-1. Commission created.

The Board of Trustees of the Village of Alden hereby creates a commission which shall be known as the "Village of Alden Commission for Conservation of the Environment," hereinafter called the "Commission."

§ 14-2. Legislative intent.

The preservation and improvement of the quality of the natural and man-made environment within the Village of Alden, in the face of population growth, urbanization and technologic change with their accompanying demands on natural resources, are found to be of increasing and vital importance to the health, welfare and economic well-being of present and future inhabitants and require forthright action by the governing body of the Village of Alden. It is recognized that the biologic integrity of the natural environment on which man is dependent for survival and the natural functional beauty of our surroundings which condition the quality of our life experience cannot be protected without the full cooperation and participation of all the people of the Town and Village of Alden working in partnership with local and state officials and with various public and private institutions, agencies and organizations. Establishment of the Commission for

Conservation of the Environment is a necessary step in fostering unified action on environmental problems and to ensure compliance with various related Local Laws.

§ 14-3. Membership.

A. The Commission shall consist of five (5) members. The members shall be appointed by the Mayor upon the consent of the Board of Trustees and shall serve at the pleasure of the Mayor. Persons residing within the Village and Town who are interested in the improvement and preservation of environmental quality shall be eligible for appointment as a member of the Commission. Vacancies on the Commission shall be filled in the same manner as other Village appointments, except that a vacancy occurring other than by the expiration of term of office shall be filled only for the remainder of the unexpired term.

B. The Board of Trustees of the Village, the Village Mayor, the Chairman of the Planning Board, the Village Superintendent of Public Works, Village Attorney, Code Enforcement Officer, and other officials that may be hereafter designated by the Mayor shall be ex officio members of the Commission.

§ 14-4. Officers, meetings and committees.

The Mayor, shall designate a member of the Commission to act as Chairman thereof. At the first meeting of the Commission, its members shall elect from among themselves a Recording Secretary. The Commission shall adopt rules and procedures for its meetings. It shall keep accurate records of its meetings and activities and shall file an annual report as provided in this chapter.

§ 14-5. Powers and duties.

The powers and duties of the Commission shall be to:

A. Advise the Board of Trustees and the Mayor on matters affecting the preservation, development, and use of the natural and man-made features and conditions of the Village of Alden, insofar as beauty, quality, biologic integrity and other environmental factors are concerned and in the case of man's activities and developments, with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment of the people of the Village of Alden.

B. Develop and, after receiving general approval by the Board of Trustees, conduct a program of public information in the community which shall be designed to foster increased understanding of the nature of the environmental problems and issues and support for their solutions.

C. Conduct studies, surveys and inventories of the natural and man-made features within the Village of Alden and such other studies and surveys as may be necessary to carry out the general purpose of this chapter.

D. Maintain an up-to-date inventory or index of all open spaces in public and private ownership within the municipality, including but not limited to natural landmarks, glacial and other geomorphic or physiographic features, streams and their floodplains, swamps, marshland and other wetlands, unique biotic communities, scenic and other open areas of natural or ecological value, and of the ownership, present use and proposed use of such open areas, so as to provide a base of information for recommendations by the Commission for their preservation and/or use.

E. Seek to coordinate, assist and unify the efforts of private groups, institutions and individuals within the Village of Alden in accordance with the purposes of this chapter.

F. Maintain liaison and communications with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Commission.

G. Work in cooperation with the Planning Board, recommending from time to time to the Board of Trustees, plans and programs relating to environmental improvement for inclusion in the Comprehensive Plan of the Village of Alden and, similarly, recommend to the Board of Trustees and the Code Enforcement Officer, appropriate and desirable changes in existing local laws and ordinances relating to environmental control or recommend new resolutions, local laws and ordinances.

H. Have all of the powers which are allowed and specified under the laws of the State of New York.

I. Make recommendations to the Board of Trustees and the Mayor, with respect to acceptance, by gift, grant, devise, bequest or otherwise, property, both real and personal, in the name of the Village of Alden as may be necessary to conserve and otherwise properly utilize open spaces and other land and water resources within the boundaries of the Village of Alden. Such real property may be

accepted upon the recommendation of the Village Attorney in fee for land and water rights or as any lesser interest, development, rights, easement, including conservation easement, covenant or other contractual right, including conveyance with limitations or reversions.

J. Carry out such other duties as may be assigned from time to time by the Board of Trustees and the Mayor.

K. Prepare, print and distribute books, maps, charts and pamphlets in accord with the purposes of this chapter subject to funding as may be designated by the Mayor.

L. Obtain and maintain in orderly fashion books and other publications to support the necessary researches of the Commission into local environmental conditions.

§ 14-6. Reports.

The Commission shall submit an annual report to the Board of Trustees, not later than the first day of April of each year concerning the activities of and the work of the Commission and from time to time shall submit such reports and recommendations as may be necessary to fulfill the purposes of this chapter.

§ 14-7. Compensation and expenses.

The members of the Commission, including ex-officio members, shall receive no compensation for their services as members thereof but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within the appropriation made available therefor and pursuant to any policies set by the Village.

Chapter 17

ETHICS

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§ 17-1. Purpose.
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§ 17-13. Severability.

ARTICLE VI
Disclosures

§ 17-14. Transactional statement of disclosure.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Art. I, 11-12-1970 as L.L. No. 6-1970 (Ch. 12, Art. I, of the 1966 Code); Art. II, 11-12-1970 as L.L. No. 7-1970 (Ch. 12, Art. II, of the 1966 Code). Amended in its entirety 6-24-2004 By L.L. No. 1-2004. Subsequent amendments noted where applicable.]

ARTICLE I
General Provisions

§ 17-1. Purpose.

This Code establishes minimum standards of ethical conduct for Village Employees to help ensure that the business of government is free from improper influence that may

result from opportunities for private gain. This law requires timely and public disclosure of interests that may influence the actions of Village employees. This Code is intended to facilitate consideration of potential problems before they arise, to minimize unwarranted suspicion, and to enhance the accountability of government to the people.

§ 17-2. Applicability of other laws.

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflict of interest provisions or procedures prescribed by statute of the State of New York, and also in addition to common-law rules and judicial decisions relating to the conduct of Village employees to the extent that the same are more severe in their application than this Code.

ARTICLE II
Code of Ethics

§ 17-3. Definitions.

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

BOARD - Village Board of the Village of Alden.

CODE - Code of Ethics of the Village of Alden.

DEPENDENT - Son, daughter, stepson, stepdaughter or any other person who could be claimed as a dependent for Federal income tax purposes.

DOING BUSINESS WITH THE VILLAGE - Having or providing any contract, service, or work with the Village; buying, selling, renting, leasing, or otherwise acquiring from or dispensing to the Village any goods, services or property.

FAMILY MEMBER - Spouse, spouse's siblings, parent, parents-in-law, sibling, child, stepchild, grandparent, aunt, uncle, niece, nephew, grandchild and their spouses.

INTEREST:

(1) Any activity, other than service to the Village, from which a Village Employee receives compensation for services rendered or goods sold or produced.

(2) Any entity, other than the Village, from which a Village Employee receives compensation for services rendered or goods sold or produced; or

(3) Any entity in which a Village Employee directly owns five percent (5%) or greater of the outstanding stock.

MINISTERIAL ACT - Any action of a Village Employee done in the ordinary course of his or her duties not requiring the use of judgment.

RECUSAL - The act or process of disqualifying oneself by reason of prejudgment, bias or interest in a subject matter or action.

SPOUSE - The husband or wife of the Village Employee unless living separate and apart from the employee or separated pursuant to a judicial order, decree or judgment, or a legally binding separation agreement.

VILLAGE - The Village of Alden, any of its agencies, boards, committees or departments.

VILLAGE EMPLOYEE - Any person working for the Village of Alden, whether elected or appointed, paid or unpaid, serving in a full-time, part-time or advisory capacity.

§ 17-4. Standards of conduct.

A. Ethics and integrity become recognized characteristics of an organization only when they exist in the people who make up the organization. For ethics and integrity to be recognized as hallmarks of Alden Village Government, each Village Employee must be committed to the following standards of conduct:

(1) Honest, open and trustworthy in all relationships.

(2) Reliable and consistent in conduct of assignments and responsibilities; doing that which is right rather than expedient.

(3) Objective, constructive, and responsive in work performance.

(4) Truthful, complete and accurate in what is said and done.

(5) Committed to the assignments entrusted to him or her, with accountability for what he or she does and chooses not to do.

(6) Careful and economical in use of all Village resources.

(7) Respect for the work of others; giving credit and refraining from criticism unless warranted.

(8) Freedom from involvement in activities that could compromise the employee, his or her position with the Village, or the Village itself.

Achieving high standards of ethics and integrity requires hard work, courage, and making difficult choices. Consultation among fellow employees, supervisors, elected officials and/or the Village Board of Ethics may be necessary to determine a proper course of action. To this end, Village Employees must be committed to working together to earn the confidence of the Village residents, fellow employees and those doing business with the Village.

§ 17-5. Conflicts of interest.

No Village employee shall have any interest, financial or otherwise direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in conflict with the proper discharge of duties in the public interest, as specified below.

§ 17-6. Prohibited activities. [Amended 1-19-2006 by L.L. No. 3-2006]

A Village Employee who knowingly and/or intentionally engages in the following prohibited activities shall be penalized according to the provisions of this Code.

A. No Village Employee shall accept other employment which will impair the employee's independence of judgment in the exercise of the employee's official duties.

B. No Village Employee shall accept employment or engage in any business or professional activity which will require the employee to disclose confidential information gained by reason of official position or authority.

C. No Village Employee, for a period of five (5) years after termination of service with the Village, shall appear before the Village, except on his or her own behalf, in relation to any case, proceeding or application in which the employee participated, unless specifically requested by the Village Board.

D. No Village Employee shall engage in any transaction as representative or agent of the Village with any business entity in which the employee has a direct or indirect

financial interest that might reasonably tend to conflict with the proper discharge of the employee's official duties.

E. No Village Employee shall, by the employee's conduct, give the reasonable impression that any person can improperly influence the employee or unduly enjoy the employee's favor in the performance of the employee's official duties or that the employee is affected by the kinship, rank, position or influence of any party or person.

F. No Village Employee shall make personal investments in enterprises which the employee has reason to believe may be directly involved in decisions to be made by the employee or which will otherwise create substantial conflict between the employee's duty in the public interest and the employee's private interest.

G. No Village Employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself/herself or others.

H. No Village Employee shall directly or indirectly solicit, accept, or receive any gift or series of gifts from a single source within a calendar year having a value of One Hundred Dollars ($100.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which the gift was intended to influence the employee in the performance of his or her official duties or was intended as a reward for any official action.

I. No Village Employee shall use any Village personnel or any Village owned or leased equipment, materials, supplies or property for personal gain or benefit to the employee, the employee's family member or any other entity, except those which are generally available to all the citizens of the Village, without the prior knowledge and consent of the Village Board of Trustees. Nothing herein shall limit the Village's ability to assist the volunteer fire department that encompasses the Village.

J. No Village Employee shall enter into an agreement with the Village to purchase goods or services having a value in excess of Five Hundred Dollars ($500.00) per year from the employee, the employee's family member, or a company in which the employee has an interest unless: a) those goods or services are provided by the employee following a competitive bidding process, and b) the employee providing the goods or services files a Transactional Statement of Disclosure as prescribed in this Code.

K. No Village Employee shall induce or assist another official or employee of the Village to violate any provisions of this Code.

L. No Village Employee shall knowingly transfer any asset, interest or property for the purpose of concealing same from the disclosure required by this Code, while retaining an equitable interest therein.

§ 17-7. Duty to report.

Every Village Employee shall report promptly in writing to the Board of Ethics or the Village Attorney any action which is interpreted as an improper attempt to influence him or her in the conduct of his/her office or any action which appears to be a violation of this Code of Ethics. Any Village Employee reporting such actions shall be protected by the Village against reprisal for the lawful disclosure of such information.

§ 17-8. Penalties for offenses.

A. The Board of Ethics may recommend a civil penalty in an amount of up to ten thousand dollars ($10,000.00) against any Village Employee who knowingly and intentionally files a disclosure statement with intent to deceive or to otherwise fraudulently misrepresent or withhold material information, and such deception or misrepresentation is found to be both intentional and material.

B. The Board of Ethics may recommend a warning, reprimand, suspension or removal from office or employment, and/or a civil penalty in an amount up to one thousand five hundred dollars ($1,500.00) to any Village employee who knowingly and willfully:

1) Fails to file, in a timely manner, any required statement(s) of disclosure.

2) Violates any other prohibition contained in this law. The employee may also be liable in damages to the Village for any loss or increase in cost incurred by the Village because of said violation.

C. For any violation of this law, the Village Board may in addition to the above:

1) Impose a civil forfeiture of up to three times the financial value of any benefit derived from the violation.

2) Refer the matter to the appropriate prosecutor.

D. Upon the recommendation of the Board of Ethics or upon its own motion, the Village Board may impose additional disciplinary action as allowed by law.

E. Any person aggrieved by a final decision made under this Code may seek judicial review pursuant to Article 78 of the CIVIL PRACTICE LAW AND RULES.

ARTICLE III
Board of Ethics

§ 17-9. Board established; membership; powers.

A. There is hereby established a Village of Alden Board of Ethics.

B. The Board of Ethics shall consist of three (3) members each having a three (3) year term of office. Initially, one (1) member shall serve until December 31st of the first year; one (1) member shall serve until December 31st of the second year; and one (1) member shall serve until December 31st of the third year. No members shall serve for more than four (4) consecutive three (3) year terms.

C. Members shall be appointed by the Village Board. In the event a vacancy occurs prior to the expiration of any term, the Village Board, within three (3) months, shall fill the vacancy for the balance of the term in the same manner as members are appointed to full terms. All members shall reside in the Village of Alden and serve without compensation, except for necessary and reasonable expenses.

D. Only one (1) member shall be a Village Employee.

E. The members of the Board of Ethics shall elect a Chairperson, vice Chairperson and Secretary at its first meeting of each year.

F. The Board of Ethics shall meet at least quarterly. Additional meetings may be called by the Chairperson or a majority of all the members upon written seven (7) day notice to the remaining members of the Board of Ethics. A majority of the Board of Ethics, then appointed shall constitute a quorum.

G. One (1) member shall be selected annually by lot for purposes of conducting preliminary investigations of complaints and report back to the full Board of Ethics. Alternatively, the Village Attorney may be called upon by the full Board to conduct any necessary investigations.

H. Meetings of the Board of Ethics shall be open to the public, except meetings called to review disclosure statements, render advisory opinions, or to act upon complaints filed with the Board of Ethics. A meeting that would otherwise be

closed may be opened upon the request of the employee whose matter is being discussed.

I. A Board of Ethics member may be removed by the Village Board after:

(1) Receipt of written notice of allegations of neglect of duty, gross misconduct, inability to discharge the powers and duties of the office or violation of this Code,

(2) An opportunity to reply, and

(3) A finding of neglect of duty, gross misconduct, inability to discharge the powers and duties of the office or violation of this Code.

J. The Board of Ethics shall adopt and implement rules and regulations necessary for the internal implementation of this Code. It shall conduct its affairs in accordance with the New York State Administrative Procedure Act and General Municipal Law.

K. The Board of Ethics shall possess, exercise and enjoy all the rights, powers, and privileges necessary to the enforcement of this Code of Ethics and as granted by the Village Board.

§ 17-10. Duties. [Amended 1-19-2006 by L.L. No. 4-2006]

A. Advisory Opinions.

1) Upon written request, the Board of Ethics shall render advisory opinions to any Village employee, to any Village agency, board, committee or department, or to entities seeking to do or doing business with the Village, as to questions or situations regarding the application of this Code.

2) A request for an advisory opinion shall not be made public.

3) Advisory opinions rendered by the Board of Ethics shall not be made public. However, if the Board of Ethics decides that the opinion rendered may benefit other employees of the Village, the Board of Ethics shall prepare and publish a summary of such opinion. All references to specific persons, places or the like shall be deleted before the opinion is made public.

4) Opinions that are not made public pursuant to the above procedure shall be redacted in accordance with the procedure set forth above and shall remain accessible to the Board of Ethics to guide it in future deliberations.

B. Review Statements of Disclosure.

1) The Board of Ethics shall be responsible for the review of all filed Statements of Disclosure. This review is to determine whether, pursuant to this code, a conflict of interest exists.

2) If the Board of Ethics decides that a conflict of interest exists, it shall notify the employee in writing of its findings. The employee shall appear before the Board of Ethics for the purpose of responding to the Board of Ethics's findings. After the hearing, the Board of Ethics shall affirm, affirm with modification, or vacate its initial findings. Upon a determination to affirm or affirm with modification its initial finding, the Board of Ethics shall forward such determination to the Village Board, recommending if necessary, penalties in accordance with this Code.

C. Complaints

1) The Board of Ethics shall receive, review, investigate, determine and act upon any written complaint alleging violations of this Code. A complaint must be signed by the person or legal entity alleging a violation of this Code.

2) The Board of Ethics shall refer a complaint to the individual investigator which will investigate and report back to the Board of Ethics.

3) Upon receiving the report of the Review Committee, the Board of Ethics shall dismiss the complaint if no credible evidence is found to support it. If credible evidence is found to support the complaint, a full formal hearing of the Board of Ethics must be held with written notice to all interested parties.

4) The employee who is the subject of the complaint must receive written notice of a full hearing of the Board of Ethics and appear. Any notice and hearing pursuant to this paragraph shall be governed by the provisions of the New York State Administrative Procedures Act as to such matters as proper notice and right to counsel, among others.

5) If the Board of Ethics finds the complaint not supported by a preponderance of credible evidence, the complaint must be dismissed and

shall not be made public. If the complaint is found to be supported by a preponderance of credible evidence, the Board of Ethics shall make a determination, setting forth its reasons, recommend a penalty, and forward it to the Village Board for consideration.

6) A written decision must be prepared for every complaint and shall include a summary of the evidence or information upon which the Board of Ethics based its decision and its recommendations.

D. Education.

(1) The Board of Ethics shall assist with compliance with this Code by:

(a) Responding to written requests submitted by Village Employees as to the meaning of any portion of the Ethics Code.

(b) Developing training programs and materials on provisions and the intent of this Code for education of Village Employees and residents, as directed by the Village Board.

ARTICLE IV
Maintenance & Access of Records
[Amended 1-19-2006 by L.L. No. 5-2006]

§ 17-11. Records maintenance.

A. The Village Clerk's Office shall be the repository for all records generated in compliance with this code.

B. All records, except advisory opinions, will be destroyed after seven (7) years from the date of filing.

C. Records shall include, but not be limited to, the following:

(1) List of Village employees to be updated by January 25th of each year by the Village Clerk.

(2) Transactional Statements of Disclosure.

(3) Requests for advisory opinion.

(4) Advisory opinions.

(5) Complaints, investigations and determinations.

§ 17-12. Records access.

A. Those records generated by this Code and the Board of Ethics shall be governed by the Freedom of Information Law of the State of New York.

B. Records generated by this Code and the Board of Ethics as set forth herein are deemed to be documents the disclosure of which would violate an employee's privacy and are not open to public inspection. Documents exempt from disclosure shall include but not be limited to the following:

(1) Complaints against specific Village Employees and all materials related to such actions.

(2) Materials of any nature relating to ongoing investigations of the Board of Ethics.

(3) A request for an advisory opinion in accordance with this Code.

(4) Advisory opinions

C. It shall be a violation of this Code for a Village Employee, to inspect or copy a publicly accessible document for any unlawful purpose or for purposes of charitable or political solicitation unless disclosure is permitted pursuant to any Freedom of Information Law.

D. A Village Employee whose Disclosure form is accessed, pursuant to the above provisions, shall be promptly notified of such access by the Village Clerk.

ARTICLE V
Severability Clause

§ 17-13. Severability.

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

sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE VI
Disclosures
[Amended 1-19-2006 by L.L. No. 6-2006]

§ 17-14. Transactional statement of disclosure and recusal.

1. Whenever a Village Employee is requested or required to take action in his or her official capacity on a matter before the Village and presently knows a) that either the performance or nonperformance of that action would provide a monetary or material benefit to the employee or to a family member, different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit or b) the employee has or will have an interest in the matter, then the Village Employee shall promptly file a Transactional Statement of Disclosure as set forth herein and shall not participate or act in that matter.

2. Any Village Employee, prior to any final action being taken, who has or presently knows he or she will have an interest in any matter being considered by the Village will publicly disclose the nature and extent of such interest, file a Transactional Statement of Disclosure, setting forth the nature and extent of that interest~~.~~ with the Village Clerk.

3. Nothing in this section shall prohibit a Village Employee from performing a ministerial act or require a Village Employee to file a Transactional Statement of Disclosure required by paragraph one of this section prior to performing a ministerial act. The award of a contract by a Village Employee pursuant to the public bidding requirements of Section 103 of the General Municipal Law of the State of New York shall be deemed a ministerial act.

Chapter 28

NOTIFICATION OF DEFECTS

§ 28-1. Notification required.
§ 28-2. Contents of notice.
§ 28-3. Notification of Clerk.
§ 28-4. Recordkeeping.
§ 28-5. Liability restrictions.
§ 28-6. Construal of provisions.
§ 28-7. Applicability.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 1-8-1996 as L.L. No. 1-1996. Amendments noted where applicable.]

§ 28-1. Notification required.

No action or special proceeding shall be commenced, prosecuted or maintained against the Village of Alden, any officers, agents, employees or appointees of the Village of Alden for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of such Village of Alden, any officers, agents, employees or appointees of the Village of Alden for the defective, unsafe, out-of-repair, dangerous or obstructed condition, including the existence of snow, ice, loose gravel or other foreign substance thereon, of any village-owned, leased or otherwise controlled property of any kind, including but not limited to streets, roads, highways, sidewalks, bridges, land, culverts, sluices, street or traffic control signs, poles, standards, gravel pits, driveways, buildings and other structures, equipment, disposal sites, streams or bodies of water, drains, parks, playgrounds, recreation areas, tennis courts, swimming pools, wading pools, pavilions, waterlines, sewer lines and utilities, either aboveground or underground, unless written notice thereof was actually given to the Village Clerk of the Village of Alden previously thereto and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove such condition complained of.

§ 28-2. Contents of notice.

Such written notice shall contain the name and address of the person giving such notice, the date of existence and condition complained of, the location of the condition and a description of the condition.

§ 28-3. Notification of Clerk.

The Code Enforcement Officer, Superintendent of Public Works or Trustees of the Village of Alden shall transmit, in writing, to the Village Clerk of the Village of Alden, within ten (10) days after the receipt thereof, all written notices received by said officer, Superintendent or elected official.

§ 28-4. Recordkeeping.

Recordkeeping requirements pertaining to such notices, including preservation of the notices, shall be as set forth in Subdivision g of **§** 4-402 of the Village Law of the State of New York, as amended from time to time, or other statute amendatory thereto.

§ 28-5. Liability restrictions.

Nothing herein shall be construed as enlarging in any way the liability of the Village of Alden, any officers, agents, employees or appointees of the Village of Alden.

§ 28-6. Construal of provisions.

Nothing herein shall be deemed in any way to alter or amend the time limitations nor service requirements of **§§** 50-e through 50-i of the General Municipal Law of the State of New York as the same now exists or may be hereafter amended.

§ 28-7. Applicability.

Nothing contained herein, however, shall be held to revive any claim or cause of action now barred by any existing requirements or statute of limitation or to waive any existing limitation now applicable to any claim or cause of action against the Village of Alden.

Chapter 37

RECORDS

ARTICLE I
Public Access to Records

§ 37-1. Purpose and scope.
§ 37-2. Designation of records access officer.
§ 37-3. Location of records.
§ 37-4. Hours of public inspection.
§ 37-5. Requests for access records.
§ 37-6. Subject matter list.
§ 37-7. Denial of access; appeals.
§ 37-8. Fees.
§ 37-9. Public notice.

ARTICLE II
Records Retention

§ 37-10. Adoption of schedule.
§ 37-11. Disposal of records.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Art. I, 3-22-1978 (Ch. 37 of the 1966 Code); Art. II, 3-27-1989 (Ch. 38 of the 1966 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Fees -- See Ch. A220.

ARTICLE I
Public Access to Records
[Adopted 3-22-1978 (Ch. 37 of the 1966 Code)]

§ 37-1. Purpose and scope.

A. The people's right to know the process of government decision making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

B. This Article provides information concerning the procedures by which records may be obtained from the Village of Alden.

C. The Village of Alden personnel shall furnish to the public the information and records required by the Freedom of Information Law,[1] as well as records otherwise available by law.

D. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 37-2. Designation of records access officer.

A. The Clerk's office shall be responsible for ensuring compliance with the regulations herein and shall designate one (1) or more persons as records access officer by name or by specific job title and business address, who shall have the duty of coordinating the response to public requests for access to records. The designation of one (1) or more records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

B. The records access officer is responsible for assuring that the Village of Alden personnel:

(1) Maintain an up-to-date subject matter list.

(2) Assist the requester in identifying requested records, if necessary.

(3) Upon locating the records, take one (1) of the following actions:

(a) Make records available for inspection.

(b) Deny access to the records in whole or in part and explain, in writing, the reasons therefor.

(4) Upon request for copies of records:

(a) Make a copy available upon payment or offer to pay established fees, if any;[2] or

(b) Permit the requester to copy those records.

(5) Upon request, certify that a record is a true copy.

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[1] **Editor's Note: The statutory authority for the provisions of this chapter is Article 6 of the Public Officers Law.**
[2] **Editor's Note: See Ch. A220, Fees.**

(6) Upon failure to locate records, certify that:

(a) The Clerk is not the custodian for such records; or

(b) The records of which the Clerk is a custodian cannot be found after diligent search.

§ 37-3. Location of records.

Records shall be available for public inspection and copying at the Village Municipal Building.

§ 37-4. Hours for public inspection.

A. Requests for public access to records shall be accepted during the normal working hours of the Village of Alden Clerk.

B. Records will be produced for examination and copying during the hours that the Clerk's office is regularly open for business.

§ 37-5. Requests for access to records.

A. All requests for records shall be made in writing.

B. Requests for records shall be honored within five (5) business days of receipt of such request.

C. Requests shall reasonably describe the record or records sought. Whenever possible, the request shall specify dates, file designations or other information that might help in describing the record sought.

D. Should the Clerk fail to provide or deny access to the records sought within five (5) business days of the receipt of such request, the Clerk shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. Failure of the Clerk to either grant or deny a request within ten (10) business days after the date of acknowledgment or receipt of a request shall be construed as a denial of access that may be appealed.

§ 37-6. Subject matter list.

A. The Clerk shall maintain a reasonably detailed current list by subject matter of all records in his or her possession, whether or not the records are available pursuant to Subdivision 2 of **§** 87 of the Public Officers Law.

B. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

C. The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

§ 37-7. Denial of access; appeals.

A. The Board of Trustees shall hear appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.[3]

B. Denial of access shall be in writing, stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body established to hear appeals, and that person or body shall be identified by name, title, business address and business telephone number. The records access officer shall not be the appeals officer.

C. If an agency fails to respond to a request within five (5) business days of receipt of a request as required in **§** 37-5D, such failure shall be deemed a denial of access by the agency.

D. Any person denied access to records may appeal within thirty (30) days of a denial.

E. The time for deciding an appeal by the Board of Trustees shall commence upon receipt of a written appeal identifying:

(1) The date and location of a request for records.

(2) The records that were denied.

(3) The name and return address of the appellant.

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[3] **Editor's Note: See Article 6 of the Public Officer's Law.**

F. The Board of Trustees shall transmit to the Committee on Public Access to Records copies of all appeals upon receipt of an appeal. Such copies shall be addressed to:

Committee on Public Access to Records
Department of State
162 Washington Avenue
Albany, New York 12231

G. The Board of Trustees shall inform the appellant and the Committee on Public Access to Records of its determination, in writing, within seven (7) business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in Subsection F of this section.

H. A final denial of access to a requested record, as provided for in Subsection G of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

§ 37-8. Fees.[4]

Except when a different fee is otherwise prescribed by law:

A. There shall be no fee charged for the following:

(1) Inspection of records.

(2) Search for records.

(3) Any certification pursuant to this Article.

B. The fee for copying records shall be established from time to time by resolution of the Board of Trustees. **[Amended 3-6-1995 by L.L. No. 3-1995]**

C. The fees for the copying of records not covered by Subsections A and B of this section shall not exceed the actual reproduction cost, which is the average unit cost for copying a record, excluding the fixed costs of the agency, such as operator salaries.

§ 37-9. Public notice.

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[4] **Editor's Note: See Ch. A220, Fees.**

The Board shall publicize by posting in a conspicuous location and/or by publication in a local newspaper of general circulation:

A. The location where records shall be made available for inspection and copying.

B. The name, title, business address and business telephone number of the designated records access officer.

C. The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

ARTICLE II
Records Retention
[Adopted 3-27-1989 (Ch. 38 of the 1966 Code)]

§ 37-10. Adoption of schedule.

Records Retention and Disposition Schedule MU-1,[5] issued pursuant to Article 57-A of the Arts and Cultural Affairs Law and containing legal minimum retention periods for municipal governments records, is hereby adopted for use by all municipal officers in disposing of municipal government records listed therein.

§ 37-11. Disposal of records.

In accordance with Article 57-A of the Arts and Cultural Affairs Law:

A. Only those records will be disposed of that are described in Records Retention and Disposition Schedule MU-1[6] after they have met the minimum retention period prescribed therein.

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

[5] **Editor's Note: This schedule is on file in the village offices.**
[6] **Editor's Note: This schedule is on file in the village offices.**

Chapter 42

TREASURER

§ 42-1. Position created.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-8-1999 by L.L. No. 1-1999. Amendments noted where applicable.]

GENERAL REFERENCES

Ethics -- See Ch. 17.

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§ 42-1. Position created.

The position of Village Treasurer within the Village of Alden is hereby created, with such duties and responsibilities as may be determined by the respective Civil Service Commissions of the State of New York and County of Erie as well as the Village of Alden.

Chapter 43

VILLAGE ADMINISTRATOR

§ 43-1. Position created; duties and responsibilities

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 9-28-2000 by L.L. No. 4-2000. Amendments noted where applicable.]

§ 43-1. Position created; duties and responsibilities.

The position of Village Administrator within the Village of Alden is hereby created, with such duties and responsibilities as may be determined by the respective Civil Service Commissions of the State of New York and County of Erie, where applicable, as well as the Village of Alden.

Chapter 52

ADULT USES

§ 52-1. Purpose.
§ 52-2. Definitions.
§ 52-3. Restrictions.
§ 52-4. Certificate of Registration.
§ 52-5. Applicability.
§ 52-6. Revocation; hearing.
§ 52-7. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 11-23-1981 as L.L. No. 6-1981 (Ch. 4 of the 1966 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Peace and good order -- See Ch. 147.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

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§ 52-1. Purpose.

It is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics. Such activities are deleterious to the health, welfare and well-being of the residents of the Village of Alden and adversely and seriously endanger the adjacent areas thereto. It is recognized that special regulation is necessary in order to prevent proliferation of such uses and to ensure that those effects will not adversely influence the surrounding neighborhoods.

§ 52-2. Definitions.

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

> ADULT BOOKSTORE -- A person, establishment or business, whether retail or wholesale, having more than a minimal portion of its stock-in-trade, recordings, books, magazines, periodicals, films, videotapes/cassettes or other viewing materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or anatomical areas; or a person, establishment or

business containing a segment or section devoted to the sale or display of such material.

ADULT MOTION-PICTURE THEATER -- An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or anatomical areas for observation by patrons.

ADULT USES -- Any person, establishment or business involved in the viewing or dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to a specific sexual activity or anatomical area.

ANATOMICAL AREAS:

A. Less than the completely and opaquely covered genitals, pubic region or female breasts below a point immediately above the top of the areola.

B. Human male genitals in a discernably turgid state, even if completely and opaquely covered.

BUSINESS -- Any commercial enterprise, association or arrangement for profit.

DISSEMINATION -- The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or anatomical areas.

MINIMAL PORTION -- Ten percent (10%) of gross sales for any calendar year.

PERSON -- Any individual, firm, partnership, corporation, club, association or legal representative, acting individually or jointly.

SEXUAL ACTIVITIES:

A. Human genitals in a state of sexual stimulation or arousal.

B. Acts of human masturbation, sexual intercourse or sodomy.

C. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

SUBSTANTIAL CONNECTION:

A. In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.

B. In a partnership, limited or general, an individual who shares in the ownership or control of any of the assets of the partnership business.

C. In a corporation, an individual who is an officer, director or holder, either directly, indirectly or beneficially, of more than twenty percent (20%) of any class of stock.

§ 52-3. Restrictions.

In addition to other requirements of this chapter and the Code of the Village of Alden, adult uses shall be permitted, subject to the following restrictions:

A. No adult use shall be allowed within three hundred (300) feet of another existing adult use.

B. No adult use shall be located within four hundred (400) feet of the boundaries of any district that is zoned for residential use.

C. No adult use shall be located within one thousand (1,000) feet of a preexisting school or place of worship.

D. No adult use may be located in any zoning district except that which is zoned as industrial.

E. Signs. Only one (1) sign shall be permitted, visible from the exterior of a building which is occupied by a regulated use, and such sign shall be no larger than two hundred (200) square feet, nor shall such sign consist of any material other than plain lettering. No sign shall have any photographic or artistic representation whatsoever thereon.

F. Exposure of materials to public view. No regulated use shall expose or cause to be exposed to public view, visible from the outside of the premises, any of the materials regulated by this chapter.

§ 52-4. Certificate of registration. [Amended 1-23-2003 by L.L. No. 2-2003]

No person, firm, association, club, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains an adult use, without first complying with the provisions of this section.

A. In addition to all other required licenses and permits, no form of adult use shall be permitted to operate until a certificate of registration is obtained from the Village Clerk's office. Application for a certificate of registration will contain:

(1) The name and address of the person, business or establishment, subject to the provisions of this section.

(2) The address of the premises so regulated.

(3) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s), if the property is in a land trust.

(4) The name, business address, home address, business telephone number, and home telephone phone number of all persons having any connection with the business or establishment, subject to the provisions of this section.

(5) The criminal record, convictions and/or pleas of guilty to any violation of any Federal, State, and/or local criminal and/or penal law and/or code for all persons listed herein.

(6) The exact nature of the adult use.

(7) If the premises or the building in which the business containing the adult use is located is leased or rented, a copy of said lease.

B. If there occurs any change in the information required for the certificate of registration, the Village Clerk shall be notified of any such changes, and a new, amended application shall be filed within ten (10) days of such change.

C. The processing fee for each such certificate of registration or amendment thereto shall be established by resolution of the Board of Trustees.[1]

D. Certificates of registration shall, unless revoked, be valid for one (1) year from the date of issuance.

E. All fees are nonrefundable.

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[1] **Editor's Note: See Ch. A220, Fees.**

F. No certificate of registration issued under the provisions of this section shall be transferable or assignable to any other person without the written permission of the Board of Trustees, nor shall any certificate of registration be transferable for use at any other premises, building or location other than that so stated and set forth in the certificate of registration.

G. All certificates of registration must be prominently and conspicuously displayed on the premises, building or location for which it is issued by the owner, manager or agent of the adult use.

H. Any intentional or knowingly made false statement or any statement which a registrant or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith, shall be grounds for rejection, suspension or revocation of the certificate.

I. Periodic inspections by authorized police agencies or departments shall be made. Such inspections shall be reasonable as to the time and the manner of the same.

§ 52-5. Applicability.

This chapter shall apply to any person, firm, corporation, club, association or other entity which actually engages in the conduct of a regulated use under this chapter and shall further and equally apply to the owner of any building, structure or premises upon which such regulated use is conducted. Any violation of this chapter shall subject both the person, firm, club, association, corporation or entity conducting such regulated use and the owner of the premises upon which such regulated use is conducted to the penalties provided herein.

§ 52-6. Revocation; hearing.

A. The Board of Trustees reserves the power to revoke, without notice, any certificate of registration issued under the provisions of this chapter at any time in cases in which such certificates were procured by fraud or false representation of facts or for the violation of or failure to comply with any provision of this chapter by any registrant or his or her servants, agents or employees. In case of such revocation, no portion of any fee for such certificate shall be refunded.

B. After any such revocation, the registrant, upon request, shall be entitled to a hearing before the Board of Trustees not less than ten (10) days after such

revocation nor more than thirty (30) days afterwards. All such requests must be in writing and given to the Village Clerk, who will set a date for the hearing, giving the registrant ten (10) days' notice thereof.

§ 52-7. Penalties for offenses.

A. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding two hundred fifty dollars ($250.00) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. **[Amended 3-6-1995 by L.L. No. 3-1995]**

B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation hereunder.

Chapter 58

ALCOHOLIC BEVERAGES

ARTICLE I
Public Consumption

§ 58-1. Legislative intent.
§ 58-2. Definitions.
§ 58-3. Possession or consumption in public places prohibited.
§ 58-4. Exceptions; permit required; issuance.
§ 58-5. Discarding of containers.
§ 58-6. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Art. I, 12-10-1979 as L.L. No. 6-1979 (Ch. 5, Art. I, of the 1966 Code). Amendments noted where applicable.]

GENERAL REFERENCES

License and permits -- See Ch. 125.
Peace and good order -- See Ch. 147.

ARTICLE I
Public Consumption
[Adopted 12-10-1979 as L.L. No. 6-1979
(Ch. 5, Art. I, of the 1966 Code)]

§ 58-1. Legislative intent.

It is the intent of the Board of Trustees of the Village of Alden, as an exercise of its police power, to promote the general health, safety and welfare of the residents of the village by enacting this Article since it is the finding of the Board of Trustees that the possession of open containers of alcoholic beverages and/or the consumption of alcoholic beverages by persons on public premises, except under controlled conditions, is detrimental to the health, safety and welfare of the residents of the village and contributes to the development of unsanitary conditions and the creation of nuisances. It is further the intent of the Board of Trustees of the Village of Alden that this Article shall not be considered as a traffic regulation insofar as it relates to motor vehicles or the operation thereof.

§ 58-2. Definitions. [Added 3-6-1995 by L.L. No. 3-1995]

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

OPEN CONTAINER -- Any open bottle, can or container containing liquor, beer, wine or other alcoholic beverage, as the same is defined by the Alcoholic Beverage Control Law of the State of New York.

§ 58-3. Possession or consumption in public places prohibited.

No person shall have, possess, carry or transport any liquor, wine, beer or other alcoholic beverage in an open bottle or other open container in or upon any public sidewalk, street, lane, highway, building, parking lot, park, recreation area or other public property or in any vehicle upon such area, within the Village of Alden. No person shall drink or otherwise consume any liquor, wine, beer or other alcoholic beverage in or upon any of the aforesaid public areas or property within the Village of Alden.

§ 58-4. Exceptions; permit required; issuance. [Amended 1-23-2003 by L.L. No. 3-2003]

A. If any individual or organization desires to have, distribute or consume alcoholic beverages on public property in the Village of Alden, said individual or organization must submit a request in writing to the Board of Trustees or its duly authorized representatives for a permit therefor at least seven (7) days prior to the date scheduled for using such beverage. No fee shall be charged for the granting of said permit.

B. A permit shall be issued only upon the following conditions:

(1) Such individual or organization, by its duly authorized agent, must agree, in writing, to assume full responsibility for supervising the conduct of the group or individuals benefiting from such permit and to properly police, clean up and restore the premises after use to its prior condition. The permit shall be available for display upon the request of any police enforcement officer.

(2) Such individual or organization must further agree, in writing, that adequate precautions shall be taken to ensure that minors will not be served or allowed to consume alcoholic beverages at the permitted event or gathering.

(3) No alcoholic beverages shall be distributed or consumed other than on the specific premises described in the permit and only during the time stated therein.

(4) No permit shall be issued to any individual or organization which has previously been issued a permit and has failed to comply with the provisions thereof.

§ 58-5. Discarding of containers.

No person shall discard alcoholic or other beverage containers upon any public sidewalk, street, lane, highway, parking lot, park, recreation area or other public property within the Village of Alden without the express permission of the village.

§ 58-6. Penalties for offenses. [Amended 1-23-2003 by L.L. No. 3-2003]

A. The violation of any of the provisions of this Article shall be punishable by a maximum fine of two hundred fifty dollars ($250.00) or by imprisonment for fifteen (15) days, or by both such fine and imprisonment.

B. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense continues, a separate and distinct offense hereunder.

Chapter 62[1]

(Reserved)

[1] **Editor's Note: Former Ch. 62, Amusements and Amusement Devices, adopted 11-23-1981 was repealed 1-23-2003 by L.L. No. 4-2003.**

Chapter 66

ANIMALS

ARTICLE I
Administration of Standards

§ 66-1. Word usage; definitions.
§ 66-2. Reserved.
§ 66-3. Reserved.

ARTICLE II
Dogs and Cats

§ 66-4. Identification of dogs and cats.
§ 66-5. Leashing of dogs.
§ 66-6. Prevention of disturbance by barking.
§ 66-7. Care and control of cats.
§ 66-8. Prevention of nuisances.
§ 66-9. Abandonment.
§ 66-10. Seizure of dogs or cats at large.
§ 66-11. Reserved.
§ 66-12. Impounding fees and redemption, dogs.
§ 66-13. Impounding fees and redemption, cats.
§ 66-14. Destruction or disposition of unredeemed dogs and cats.
§ 66-15. Investigation of complaints.
§ 66-16. Limit on number of dogs and cats.
§ 66-17. Filing of complaints.
§ 66-18. Appearance tickets.
§ 66-19. Penalties for offenses.
§ 66-20. Severability.
§ 66-21. Liability of Village Officials and employees.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Art. I, 11-28-1977 as L.L. No. 9-1977 (Ch. 15 of the 1966 Code). Amended in its entirety 1-23-2003 by L.L. No. 5-2003. Other amendments noted where applicable.]

GENERAL REFERENCES

Licenses and permits -- See Ch. 125.

ARTICLE I

Administration of Standards

§ 66-1. Word usage; definitions.

A. Word usage. Except for specific terms herein defined, the terms and words used in this local law shall have the same meaning as such terms and words are defined in §108 of Article 8 of the Agriculture and Markets Law of the State of New York, as amended, unless specifically modified herein.

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

AT LARGE -- Any animal that is on property open to the public or is on private property not owned or leased by the owner of the animal, unless permission for such presence has been obtained. No animal shall be deemed to be at large if it is:

1) A guide dog actually leading a blind person.

2) A police work-dog in use for police work.

3) A hearing dog actually used to aid a deaf person.

NUISANCE -- Any animal which annoys or gives trouble and vexation; that which is offensive or noxious

PEACE OFFICER -- As defined in § 2.1 of Article 2 of the Criminal Procedure Law of the State of New York

STRAY -- Any animal at large without proper identification.

§ 66-2. Reserved. [Amended 5-22-2003 by L.L. No. 24-2003]

§ 66-3. Reserved. [Amended 5-22-2003 by L.L. No. 24-2003]

ARTICLE II

Dogs and Cats

§ 66-4. Identification of dogs and cats.

A. All dogs and cats when present anywhere other than the premises of the owner must have adequate identification. Adequate identification for the purpose of this article shall consist of either:

1) A permanently implanted microchip and registration with current owner information.

2) A collar tag stating the name, address and phone number of the owner.

3) For dogs, a current USDA registration tag.

B. Items which do not constitute adequate identification (not inclusive) are:

1) A collar only with no identification tag as stated above.

2) An identification tag, or USDA tag which does not contain current information.

3) An implanted microchip without proper and current owner registration.

C. Any dog or cat that is at large without proper identification will be deemed a stray.

§ 66-5. Leashing of dogs.

A. No person owning, harboring or having the care, custody or charge and control of a dog shall permit such dog to be at large in the Village of Alden, elsewhere than on the premises of the owner or person having such custody and control, unless restrained by a chain or leash not exceeding six (6) feet in length.

B. The fact that a dog is at large in the Village of Alden, elsewhere than on the premises of the owner or person having care, custody or charge and control of such dog, without being leashed as required, shall be presumptive evidence that the dog has been permitted to be at large with the knowledge of the owner or person having care, custody or charge and control of the dog.

§ 66-6. Prevention of disturbance by barking.

No person shall cause, suffer, allow or permit the owning, possessing or harboring or any pet animal or pet bird that frequently or for a continued duration makes sounds that create a noise disturbance across a residential real property line. For the purposes of this chapter, a "noise disturbance" shall be defined as that noise created by an animal for fifteen (15) minutes in any one (1) hour interval. For the purpose of this chapter, "noise disturbance" is further defined as any sound that endangers the safety or health of any person, endangers personally property, or disturbs a reasonable person of normal sensitivities.

§ 66-7. Care and control of cats.

Any person owning, harboring or having the care, custody or charge and control of any cat within the Village of Alden or who permits a cat to enter the corporate limits of the Village of Alden shall exercise sufficient and proper care and control over such cat at all times so as to prevent the cat from becoming a public nuisance or otherwise violating this Article. A cat shall be deemed to be a public nuisance when said cat damages either public or private property or harms the lawful users or occupants thereof. Damage may include, but is not limited to, soiling or defecating upon any property, other than the owner's property, by a cat.

§ 66-8. Prevention of nuisances.

No person owning, harboring or having the care, custody or charge and control of any cat or dog shall permit it to soil, defile or commit any nuisance on any place where people congregate or walk or upon any public or private property whatsoever. This provision shall apply to all public and privately owned property in the Village of Alden except the property of the person owning, harboring or having the custody or control of such animal. All animal waste shall be removed by any sanitary method approved by the local health authority.

§ 66-9. Abandonment.

No person shall abandon any dog or cat of any age or permit such dog or cat to become a stray.

§ 66-10. Seizure of dogs or cats at large.

Any dog running at large or any cat deemed to be a public nuisance, contrary to the provisions of these sections, within the village limits of the Village of Alden shall be subject to seizure and impounding by the Animal Control Officer, any peace officer or by any other person or agency designated by the Board of Trustees or authorized by law to seize and impound animals.

§ 66-11. Reserved. [Amended 5-22-2003 by L.L. No. 24-2003]

§ 66-12. Impounding fees and redemption, dogs.

A. Any dog found to be in violation of any laws of the State of New York or to be at large pursuant to this local law and seized by any animal control officer or peace officer shall be held for the redemption period and may be redeemed by the owner within that time and in the manner prescribed by § 118 of Article 7 of the Agriculture and Markets Law of the State of New York, provided that the owner pays all applicable fees.[1]

B. Any dog seized shall be properly cared for, sheltered, fed and watered by the Village of Alden or it's agent during the redemption period. If veterinary care is required to maintain the dog during such period, reasonable veterinary care must be provided. The owner of such dog shall pay for said veterinary fees in addition to the impoundment fees.

C. The fee for the boarding of dogs shall be as set from time to time by the Village of Alden Board of Trustees.[2]

D. The seizure of any dog shall not relieve any person from any violation under this local law.

§ 66-13. Impounding fees and redemption, cats.

A. Any cat found to be at large and creating a nuisance pursuant to these local laws or in violation of any other local law shall be seized by any animal control officer or peace officer and held for the redemption period set forth below. The owner may redeem such cat during this time provided that the owner pays all applicable fees.[3]

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[1] **Editor's Note: See Ch. A220, Fees.**
[2] **Editor's Note: See Ch. A220, Fees.**
[3] **Editor's Note: See Ch. A220, Fees.**

B. Cats seized will be held for a period of five (5) days, during which time they may be redeemed by their owner.

C. All reasonable attempts will be made to notify owner of cats seized that have identification as defined in this chapter. The method of identification will determine the course of notification.

D. Any cat seized shall be properly cared for, sheltered, fed and watered by the Village of Alden or it's agent during the redemption period. If veterinary care is required to maintain the cat during such period, reasonable veterinary care must be provided. The owner of such cat shall pay for said veterinary fees in addition to the impounding fees.

E. The fee for the boarding of cats shall be as set from time to time by the Village of Alden Board of Trustees.[4]

F. The seizure of any cat shall not relieve any person from any violation under this local law.

§ 66-14. Destruction or disposition of unredeemed dogs and cats.

If any dog or cat so impounded is not redeemed, as provided in these sections and the New York State Agriculture and Markets Law, the person designated by village officials to seize such dog or cat may order the destruction thereof or may deliver such dog or cat to any duly approved humane organization.

§ 66-15. Investigation of complaints.

The Animal Control Officer, any peace officer or a person being designated and authorized by the Board of Trustees to enforce the provisions of this Article shall, upon receipt of a complaint that a violation has taken place, investigate the complaint and, if a violation is found to exist, issue a summons to the owner or person having such custody and control or, if the dog or cat is a stray or abandoned, take such dog or cat into custody as set forth above.

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[4] **Editor's Note: See Ch. A220, Fees.**

§ 66-16. Limit on number of dogs and cats.

No more than three (3) cats or three (3) dogs or any combination of cats or dogs exceeding three (3), over the age of six (6) months, shall be kept, maintained or harbored in any residential housing unit or on its grounds. Persons owning or having custody and control of dogs or cats in excess of that number, as of the effective date of this Article, shall not be held in violation of this Article, but shall not replace such dogs or cats upon their death or loss until in compliance with the maximum limits therein.

§ 66-17. Filing of complaints.

Any person who observes a dog or cat causing damage or destruction to property of a person other than its owner or committing a public nuisance upon the premises of a person other than its owner may file a signed complaint, under oath, with the Village Clerk of the Village of Alden or a police officer, specifying the objectionable conduct of the animal, the date thereof, the damage caused, a description of the animal and the name and residence, if known, of the owner or other person harboring said dog or cat.

§ 66-18. Appearance tickets.

Upon the observation of the Animal Control Officer, any police officer or any other person or agency designated by the Board of Trustees to enforce this Article or upon a written complaint filed by any person with the Animal Control Officer, any police officer or with the Village Clerk, the Animal Control Officer or any police officer may issue or the Village Clerk may direct the Animal Control Officer or any police officer to issue an appearance ticket to any person alleged to be in violation of this Article. Such person shall be required to appear before the Local Magistrate to answer the complaint. Each appearance shall be supported by an information and written complaint of the Animal Control Officer or any police officer or person having knowledge of said violation.

§ 66-19. Penalties for offenses.

Except as otherwise provided by Article 7 of the Agriculture and Markets Law, any person who violates this Article or knowingly permits the violation of this Article or any of the provisions thereof shall be deemed to have committed an offense against this Article, and any person convicted of any such violation, after investigation and hearing, shall be liable to a penalty of not more than two hundred and fifty dollars ($250.00) for each violation and/or imprisonment for not more than fifteen (15) days.

§ 66-20. Severability.

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

§ 66-21. Liability of Village Officials and employees.

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

Chapter 78

BUILDING CONSTRUCTION AND FIRE PREVENTION

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§ 78-3. Code Enforcement Officers and Inspectors.

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§ 78-4. Building permits.

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-6-1995 by L.L. No. 1-1995; amended in its entirety 12-21-2006 by L.L. No. 18-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Buildings, unsafe – See Ch. 81.
Flood damage prevention -- See Ch. 105.
Licenses and permits -- See Ch. 125.
Mobile home parks -- See Ch. 131.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

ARTICLE I
Administration of Standards

§ 78-1. Purpose.

It is the purpose of this chapter to provide for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in the Village of Alden. Except as otherwise provided in the Uniform Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this chapter.

§ 78-2. Definitions.

BUILDING PERMIT -- A permit issued pursuant to § 78-4 of this Chapter. The term "Building Permit" shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this Chapter.

CERTIFICATE OF OCCUPANCY -- A certificate issued pursuant to § 78-7B of this Chapter. The term "Certificate of Occupancy" shall mean Certificate of Occupancy or Certificate of Compliance for the purposes of this chapter.

CODE ENFPORCEMENT OFFICER -- The Code Enforcement Officer appointed pursuant to § 78-3B of this Chapter.

CODE ENFORCEMENT PERSONNEL -- The Code Enforcement Officer and all Inspectors.

COMPLIANCE ORDER -- An order issued by the Code Enforcement Officer pursuant to § 78-15A of this Chapter.

ENERGY CODE -- The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

INSPECTOR -- An inspector appointed pursuant to§ 78-3D of this Chapter.

OPERATING PERMIT -- A permit issued pursuant to § 78-10 of this Chapter. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this Chapter.

PERMIT HOLDER -- The Person to whom a Building Permit has been issued.

PERSON -- An individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

STOP WORK ORDER -- An order issued pursuant to § 78-6 of this Chapter.

TEMPORARY CERTIFICATE -- A certificate issued pursuant to § 78-7D of this Chapter.

UNIFORM CODE -- The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

VILLAGE – The Village of Alden.

ARTICLE II
Enforcement Personnel

§ 78-3. Code Enforcement Officer and Inspectors.

A. There is hereby designated in the village a public official, to be known as the "Code Enforcement Officer." The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this Chapter. The Code Enforcement Officer shall have the following powers and duties:

(1) Receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications.

(2) Upon approval of such applications, to issue Building Permits, Certificates of Occupancy, Temporary Certificates and Operating Permits, and to include in Building Permits, Certificates of Occupancy, Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate.

(3) Conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy , Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this Chapter.

(4) Issue Stop Work Orders.

(5) Review and investigate complaints.

(6) Issue orders pursuant to § 78-15A (Violations) of this Chapter.

(7) Maintain records.

(8) Collect fees as set forth by the Village of Alden Board of Trustees.

(9) Pursue administrative enforcement actions and proceedings.

(10) In consultation with the Village of Alden Attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this Chapter, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this Chapter.

(11) Exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this Chapter.

B. The Code Enforcement Officer shall be appointed by the Mayor with approval of the Village Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced

in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by Mayor with approval of the Village Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this Chapter.

D. One or more Inspectors may be appointed by the Mayor with approval of the Village Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this Chapter. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

E. The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Board of Trustees.

ARTICLE III
Building Permits

§ 78-4. Building permits.

A. Except as otherwise provided in subdivision B of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

B. No Building Permit shall be required for work in any of the following categories:

(1) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(2) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses), except where specifically exempt as allowed by the New York State Building Construction and Fire Prevention Code;

(3) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;

(4) Construction of temporary motion picture, television and theater stage sets and scenery;

(5) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(6) Installation of partitions or movable cases less than 5'-9" in height;

(7) Painting, wallpapering, tiling, carpeting, or other similar finish work;

(8) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;

(9) Replacement of any equipment provided the replacement does not alter the equipment’s listing or render it inconsistent with the equipment’s original specifications; or

(10) Repairs, provided that such repairs do not involve any of the following:

(a) The removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component,

(b) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress.

(c) The enlargement, alteration, replacement or relocation of any building system.

(d) The removal from service of all or part of a fire protection system for any period of time.

C. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

D. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

(1) A description of the proposed work.

(2) The tax map number and the street address of the premises where the work is to be performed.

(3) The occupancy classification of any affected building or structure.

(4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code.

(5) Three (3) sets of construction documents (drawings and/or specifications) which:

(a) Define the scope of the proposed work.

(b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law.

(c) Indicate with sufficient clarity and detail the nature and extent of the work proposed.

(d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code.

(e) A site plan or plat plan as required by Article VII of Chapter 210 (Zoning) of this Code, that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

E. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision D of this section. Construction documents which are accepted and approved as part of the application for a Building Permit shall be marked as approved by the Code Enforcement Officer in writing or by stamp. Two sets of the approved construction documents shall be retained by the Code Enforcement Officer, and one set of the approved construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of approved construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

F. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code, the Energy Code, and all other applicable laws, codes and ordinances.

G. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

H. All work shall be performed in accordance with the construction documents which were submitted with and approved as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

I. Building Permits shall become invalid unless the authorized work is commenced within six (6) months following the date of issuance. Building Permits shall expire twelve (12) months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon written request, for successive periods not to exceed twelve (12) months each, provided that:

(1) The permit has not been revoked or suspended at any time.

(2) Such renewal is necessary as so determined by the Code Enforcement Officer and within the best interest of the village and public health and welfare.

(3) The relevant information in the application is up-to-date.

(4) The renewal fee[1] is paid.

J. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates all of the following:

(1) That all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

K. The fees specified in or determined in accordance with the provisions set forth in § 78-16 (Fees) of this Chapter must be paid at the time of issuance of a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

[1] **Editor's Note: See Ch. A220, Fees.**

ARTICLE IV
Inspections

§ 78-5. Construction inspections.

A. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision B of this section is ready for inspection.

B. The following elements of the construction process shall be inspected, where applicable:

(1) Work site prior to the issuance of a Building Permit.

(2) Footing and foundation.

(3) Preparation for concrete slab.

(4) Framing.

(5) Building systems, including underground and rough-in.

(6) Fire resistant construction.

(7) Fire resistant penetrations.

(8) Solid fuel burning heating appliances, chimneys, flues or gas vents.

(9) Energy Code compliance.

(10) A final inspection after all work authorized by the Building Permit has been completed.

C. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all

applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

ARTICLE V

Enforcement Procedures

§ 78-6. Stop work orders.

A. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

(1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(3) Any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

B. Stop Work Orders shall:

(1) Be in writing.

(2) Be dated and signed by the Code Enforcement Officer.

(3) State the reason or reasons for issuance.

(4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.

C. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is

not the Permit Holder, on the Permit Holder) personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

D. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

E. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision A of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 78-15 (Violations) of this Chapter or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

ARTICLE VI
Certificates of Occupancy

§ 78-7. Certificates of occupancy.

A. A Certificate of Occupancy shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy.

B. The Code Enforcement Officer shall issue a Certificate of Occupancy if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code

Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy:

(1) A written statement of structural observations and/or a final report of special inspections.

(2) Flood hazard certifications.

C. A Certificate of Occupancy shall contain the following information:

(1) The Building Permit number.

(2) The date of issuance of the Building Permit.

(3) The name, address and tax map number of the property.

(4) If the Certificate of Occupancy is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy is issued.

(5) The use and occupancy classification of the structure.

(6) The type of construction of the structure.

(7) The assembly occupant load of the structure, if any.

(8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required.

(9) Any special conditions imposed in connection with the issuance of the Building Permit.

(10) The signature of the Code Enforcement Officer issuing the Certificate of Occupancy and the date of issuance.

D. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines all of the following:

(1) That the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely.

(2) That any fire- and smoke-detecting or fire protection equipment which has been installed is operational.

(3) That all required means of egress from the building or structure have been provided.

The Code Enforcement Officer may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed ninety (90) days, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

E. If the Code Enforcement Officer determines that a Certificate of Occupancy or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

ARTICLE VII
Hazard Identification and Notification

§ 78-8. Notification regarding fire or explosion.

The chief of any fire department providing fire fighting services for a property within the Village of Alden shall promptly notify the Code Enforcement Officer of any fire or

explosion involving any structural damage, fuel burning appliance, chimney or gas vent. Notification shall be on a form provided by the Code Enforcement Officer.

§ 78-9. Unsafe buildings and structures.

Unsafe buildings, structures, and equipment in the Village of Alden shall be identified and addressed in accordance with the procedures established by Chapter 81 (Unsafe Buildings) of this Code.

ARTICLE VIII
Fire Safety and Property Maintenance

§ 78-10. Operating permits.

A. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

(1) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled “Fire Code of New York State” and incorporated by reference in 19 NYCRR section 1225.1.

(2) Hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling.

(3) Use of pyrotechnic devices in assembly occupancies.

(4) Buildings containing one or more areas of public assembly with an occupant load of one hundred (100) persons or more.

(5) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Village of Alden Board of Trustees.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision A shall be required to obtain an Operating Permit prior to commencing such activity or operation.

B. An application for an Operating Permit shall be in writing on a form provided by the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

C. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.

D. In any circumstance in which more than one activity listed in subdivision A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single Operating Permit to apply to all such activities.

E. Operating permits shall be issued for such period of time, not to exceed one year in the case of any Operating Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.

F. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

G. The fee specified in or determined in accordance with the provisions set forth in §78-16 (Fees) of this Chapter must be paid prior to the issuance of an Operating Permit, an amended Operating Permit, or for reissue or renewal of an Operating Permit.

§ 78-11. Fire safety and property maintenance inspections.

A. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

(1) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

(2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.

(3) Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every thirty-six (36) months.

B. In addition to the inspections required by subdivision A of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon any of the following:

(1) The request of the owner of the property to be inspected or an authorized agent of such owner.

(2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist.

(3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist.

Nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

C. Nothing in this section or in any other provision of this Chapter shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (“OFPC”) and the New York State Fire

Administrator under Executive Law section 156-e and Education Law section 807-b.

ARTICLE IX
Records

§ 78-12. Complaints.

A. The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this Chapter, or any other law, ordinance, or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include any of the following steps as the Code Enforcement Officer may deem to be appropriate:

(1) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection.

(2) If a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 78-15 (Violations) of this Chapter.

(3) If appropriate, issuing a Stop Work Order.

(4) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 78-13. Record keeping.

A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of all of the following:

(1) All applications received, reviewed and approved or denied.

(2) All plans, specifications and construction documents approved.

(3) All Building Permits, Certificates of Occupancy, Temporary Certificates, Stop Work Orders, and Operating Permits issued.

(4) All inspections and tests performed.

(5) All statements and reports issued.

(6) All complaints received.

(7) All investigations conducted.

(8) All other features and activities specified in or contemplated by § 78-4 through § 78-12 of this Chapter.

(9) All fees charged and collected.

B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

§ 78-14. Program review and reporting.

A. The Code Enforcement Officer shall annually submit to the Village of Alden Board of Trustees a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in § 78-13 (Record Keeping) of this Chapter and a report and summary of all appeals or litigation pending or concluded.

B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of the Village of Alden, on a form prescribed by the Secretary of State, a report of the activities of the Village of Alden relative to administration and enforcement of the Uniform Code.

C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials the Village of Alden is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Village of Alden in connection with administration and enforcement of the Uniform Code.

ARTICLE X
Violations

§ 78-15. Violations.

A. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this Chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall:

(1) Be in writing

(2) Be dated and signed by the Code Enforcement Officer.

(3) Specify the condition or activity that violates the Uniform Code, the Energy Code, or this Chapter.

(4) Specify the provision or provisions of the Uniform Code, the Energy Code, or this Chapter which is/are violated by the specified condition or activity.

(5) Specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance.

(6) Direct that compliance be achieved within the specified period of time.

(7) State that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time

The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

B. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

C. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this Chapter, or any term or condition of any Building Permit, Certificate of Occupancy, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Chapter, shall be liable to a civil penalty of not more than two hundred dollars ($200.00) for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Village of Alden.

D. An action or proceeding may be instituted in the name of the Village of Alden, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this Chapter, or any term or condition of any Building Permit, Certificate of Occupancy, Temporary Certificate, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this Chapter, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this Chapter, an action or proceeding may be commenced in the name of the Village of Alden, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Village of Alden Board of Trustees.

E. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 78-6 (Stop Work Orders) of this Chapter, in any other section of this Chapter, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in certified mail 78-6 (Stop Work Orders) of this Chapter, in any other section of this Chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 381 of the Executive Law, and any remedy or penalty

specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 381 of the Executive Law.

ARTICLE XI
Additional Standards

§ 78-16. Fees[2].

A fee schedule shall be established by resolution of the Village of Alden Board of Trustees. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of Occupancy, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this Chapter. Such fees shall be payable to the Village of Alden.

§ 78-17. Intermunicipal agreements.

The Village of Alden Board of Trustees may, by resolution, authorize the Mayor of the Village of Alden to enter into an agreement, in the name of the Village of Alden, with other governments to carry out the terms of this Chapter, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

§ 78-18. Partial invalidity.

If any section of this Chapter shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this Chapter.

[2] **Editor's Note: See Ch. A220, Fees.**

§ 78-19. Restrictions on Village employees.

No officer or employee of the village appointed pursuant to this chapter shall, except with prior written approval of the Board of Trustees, engage in any activity inconsistent with his/her duties or with the interests of the village, nor shall he/she, during the term of his/her employment, engage directly in any building construction or alteration or building repair business in the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or the preparation of plans or specifications thereof within the village, except that this provision shall not prohibit any employee engaging in such activities in the connection of construction, alteration or repair of his/her personal residence, a building or structure owned by him/her or his/her relatives.

§ 78-20. Electrical installations.

All electrical installations must comply with the requirements of the Uniform Fire Prevention and Building Code of the State of New York. It is required that all work be filed within and inspected by competent inspector(s) acceptable to the Code Enforcement Officer and Village of Alden Board of Trustees. Each inspector(s) must demonstrate to the satisfaction of the Code Enforcement Officer that he/she has been trained and is qualified in the inspection and enforcement of the applicable codes.

§ 78-21. Plumbers to be licensed.

A. No person shall engage in any plumbing work relating to the tapping, connection or repair of village water and sewer lines within the village unless he/she shall be duly licensed by and have a proper bond or certificate of insurance on file with the Village of Alden.

B. Application for a plumbing license shall be made on a form supplied by the Village of Alden and shall be accompanied by an applicable fee[3]. All licenses shall be valid only for the calendar year in which they are issued.

§ 78-22. Control of water runoff. [Amended 12-20-2007 by L.L. No. 4-2007]

Any structure for which a building permit is issued is required to have sufficient gutters and downspouts installed on that portion of the structure that work is being performed upon, to allow proper drainage of water runoff. These gutters and downspouts must be installed to ensure water runoff does not discharge onto adjoining properties. This

[3] **Editor's Note: See Ch. A220, Fees.**

section shall not apply to detached storage buildings with a building footprint area of three hundred (300) square feet or less.

§ 78-23. Swimming pool drainage.

A swimming pool shall be provided with adequate drainage. Drainage shall be into the sanitary-sewer system. Upon inspection of the property by the Code Enforcement Officer, approval may be issued by him or her to discharge the pool water onto a lawn, in fields or woods or to an existing drainage system, provided that the water does not overflow into adjoining properties.

§ 78-24. Stripping of topsoil.

No person shall strip or excavate topsoil for the purpose of the construction of any building until a building permit has been issued therefore.

§ 78-25. Dumpster required.

A dumpster shall be required to be placed on the site of construction where a building permit has been issued for the duration of construction, or an approved debris removal service shall be provided. All construction debris must be placed and kept in the dumpster at all times during construction.

A. This requirement shall apply to:

(1) New primary commercial structures.

(2) Commercial additions with a gross floor area of three hundred (300) square feet or more.

(3) Accessory commercial structures with a gross floor area of three hundred (300) square feet or more.

(4) New residential dwellings.

(5) Residential additions with a gross floor area of three hundred (300) square feet or more.

(6) Accessory residential structures with a gross floor area of three hundred (300) square feet or more.

§ 78-26. Oversight or dereliction of Code Enforcement Officer.

No oversight or dereliction of duty on the part of the Code Enforcement Officer or on the part of any employee of the village shall legalize the erection, construction, alteration, removal, use or occupancy of a building or structure that does not conform to the applicable building laws, ordinances or regulations or that does not conform to the provisions of an application, plans or specifications on the basis of which a building permit was issued or that does not conform to the applicable provisions of the village zoning regulations.[4]

§ 78-27. Interpretation of provisions.

The powers enumerated in this chapter shall be interpreted liberally to effectuate the purposes thereof and shall not be construed as limitations of powers.
building or structure owned by him/her for his/her personal residence and not constructed and/or altered for sale and/or rental purposes.

[4] **Editor's Note: See Ch. 210, Zoning.**

Chapter 81

BUILDINGS, UNSAFE

§ 81-1. Purpose.
§ 81-2. Identification of unsafe buildings.
§ 81-3. Examination of buildings; notice of unsafe conditions.
§ 81-4. Contents of notice.
§ 81-5. Public hearing.
§ 81-6. Emergencies.
§ 81-7. Penalties for offenses.
§ 81-8. Severability.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 1-23-2003 by L.L. No. 7-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Licenses and permits – See Ch. 125.
Building construction and fire prevention – See Ch. 78.
Zoning – See Ch. 210.

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§ 81-1. Purpose.

This chapter is adopted in order to promote and protect public health, safety, comfort, convenience, prosperity and other aspects of the general welfare of the residents of the Village of Alden. Those general purposes include the following specific purposes: the protection of property, the preservation of property values and the elimination of fire, safety and health hazards.

§ 81-2. Identification of unsafe buildings.

All buildings or structures which have any of the following defects shall be deemed unsafe buildings:

A. Those whose exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

B. Those walls which, exclusive of the foundation, show thirty-three percent (33%) or more damage or deterioration of the supporting member or members or fifty

percent (50%) or more of damage or deterioration of the nonsupporting enclosing or outside walls or covering.

C. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

D. Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the Village of Alden.

E. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.

F. Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.

G. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of communication.

H. Those which have parts thereof which are so attached that they may fall and injure members of the public or adjoining property.

I. Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of the village and/or any adjoining property.

J. Those buildings existing in violation of any provision of Chapter 78, Building Construction and Fire Prevention, or any other provisions of the Code of the Village of Alden, any regulations promulgated thereunder, any federal laws or regulations or any laws or regulations of the State of New York.

§ 81-3. Examination of buildings; notice of unsafe conditions.

A. The Code Enforcement Officer of the Village of Alden shall examine or cause to be examined any building reported or observed to be dangerous or unsafe under the provisions of the Code of the Village of Alden. A written record of such examination shall be filed with the Village of Alden Board of Trustees.

B. A notice shall be served on the owner or at least one (1) of the owner's executors, legal representatives, agents, lessees or any other person, firm or corporation having a vested or contingent interest in the building or structure, either personally or by certified mail, return receipt requested, addressed to the last known address of such person, firm or corporation as shown by the records of the Receiver of Taxes and/or in the office of the County Clerk or County Register. If such service is made by certified mail, a copy of such notice shall be posted on the premises. Failure of the person or persons to receive the mailed notice shall not impede the continuance of the procedures hereby established.

§ 81-4. Contents of notice.

The notice referred to in § 81-3B above shall contain the following:

A. A description of the premises.

B. A statement of the particulars in which the building or structure is unsafe or dangerous.

C. An order requiring the building or structure to be made safe and secure, repaired, demolished or removed.

D. A statement that the securing, repair, demolition or removal of the building or structure shall commence within thirty (30) days from the date of the service of the notice and shall be completed within sixty (60) days thereafter unless the Village of Alden Board of Trustees shall specify a period or time other than sixty (60) days for such completion.

E. The time and place designated for a hearing before the Village Board of Trustees on matters at issue in the notice.

F. A statement that in the event the building or other structure shall be reported unsafe or dangerous and in the event of the neglect or refusal of the person served with notice to repair and secure or take down such building or other structure, an examination of the premises will be made by a qualified official of the Village of Alden and a practical builder, engineer or architect to be named by the Board of Trustees and by a practical builder, engineer or architect to be named by the person served with the notice as herein provided, and that in the event of the refusal or neglect of the person so notified to appoint such a practical builder, engineer or architect, the persons named or appointed by the Board of Trustees shall make the examination and report to the Board of Trustees as herein provided for.

G. A statement that if the report of the examination made by a majority of the three (3) persons or by the two (2) persons, as the case may be, shall be that the building or structure is unsafe or dangerous to the public or to the tenants or occupants thereof, that an application will be made to a court of competent jurisdiction for an order determining the building or structure to be a public nuisance and directing that it shall be repaired and made secure or that it shall be demolished and removed.

H. A statement that the land on which the building or other structure is located shall be assessed for all costs and expenses incurred by the Village of Alden in connection with the proceedings to repair and secure or take down and remove, including the cost of actually removing said building or structure and any legal costs, including attorney's fees and disbursements, relating to the enforcement of this Chapter.

§ 81-5. Public hearing.

The Village Board of Trustees shall conduct a public hearing at the time and place specified in the notice prescribed under § 81-4 of this chapter at which the owner and persons having an interest in the property or structure in question may respond to the matters at issue in the notice.

§ 81-6. Emergencies.

If the Code Enforcement Officer determines that the building or structure is in such condition that there is an actual immediate danger of its falling or collapsing so as to endanger life and property, he/she may forthwith cause the necessary work to be done to render said building or structure temporarily safe, whether or not the procedure prescribed in this chapter has been instituted or not. Under such circumstances the Code Enforcement Officer may require all occupants or tenants of the building or structure to vacate the same forthwith, and, when necessary for the public safety, close and temporarily barricade sidewalks, streets, adjoining buildings or structures and prohibit the same from being used until the unsafe or dangerous condition has been removed.

§ 81-7. Penalties for offenses.

Any person who shall violate any provisions of this chapter, commit unauthorized removal of notices or interference with officials shall be guilty of an offense punishable by a fine not to exceed two hundred fifty dollars ($250.00) or imprisonment for a period not to exceed fifteen (15) days, or both. Each day's continued violation shall constitute a separate offense.

§ 81-8. Severability.

In any section, clause or provision of this chapter or the application thereof to any persons is adjudged invalid, the adjunction shall not effect other sections, clauses or provisions or the application thereof which can be sustained or given effect without the invalid section, clause or provision or application, and to this end the various sections, clauses or provisions of this chapter are declared to be severable.

Chapter 84

CROSS CONNECTION CONTROL

§ 84-1.	**Purpose and responsibility.**	**§ 84-7.**	**Required testing and certification.**
§ 84-2.	**Definitions.**	**§ 84-8.**	**Experts.**
§ 84-3.	**Requirements.**	**§ 84-9.**	**Fees.**
§ 84-4.	**Installation and maintenance.**	**§ 84-10.**	**Entrance to premises.**
§ 84-5.	**Plumbing.**	**§ 84-11.**	**Enforcement and penalties.**
§ 84-6.	**New systems.**		

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 10-18-2007 as L.L. No. 1-2007. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Water use and service -- See Ch. 205.
Zoning – See Ch. 210.
Fees -- See Ch. A220.

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§ 84-1. Purpose and responsibility.

A. It is the purpose of this chapter to:

(1) ~~A~~Protect the public drinkable water supply of the Village of Alden from the possibility of contamination by isolating within its customers' internal distribution system(s) or its customers' private water system(s) such contaminants or pollutants which could backflow in the public water supply system; and

(2) ~~A~~To comply with the requirements of the New York State Sanitary Code Subpart 5 and in particular 5-1.31 and other provisions of the New York State Department of Health (NYSDOH).

B. ~~B~~The Village of Alden Water Department shall be responsible for the protection of all Village of Alden water distribution system from contamination due to the backflow of the contaminants through water service connections. If, in the

judgment of the Superintendent of Public Works or his/her designated representative, an acceptable backflow prevention device is required at any Village water service connection to any customer's premises, for the safety of the water system, the Superintendent of Public Works or his/her designated representative shall give notice in writing to said customer to install such acceptable backflow prevention device at each service connection to their premises. The customer shall immediately install such approved device or devices at his own expense; and failure, refusal or inability on the part of the customer to install, have tested and maintained said device or devices shall constitute ~~a~~ grounds for penalties or discontinuing water service to the premises as provided for in 84-11 of this Chapter, until such requirements have been met.

§ 84-2. Definitions.

ACCEPTABLE BACKFLOW PREVENTION DEVICE -- An acceptable air gap, reduced pressure zone device or double check valve assembly as used to contain potential contamination within a facility. In order for the reduced pressure zone device or the double check valve assembly to be acceptable, it must be listed on the most current version of the New York State Department of Health List of Acceptable Devices (PWS-14).

APPROVED -- Accepted by the Village of Alden Water Department as meeting an applicable specification stated or cited in this Chapter or as suitable for the proposed use.

AUXILLARY WATER SUPPLY -- Any water supply on or available to the premises other than a Village of Alden approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s) such as a well, spring, stream, rain water, etc., or used waters or industrial fluids. These waters may be contaminated or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

CROSS CONNECTION -- Any connection or potential connection, which allows or potentially allows for the intermingling of water from any auxiliary water supply or any substance from any other unauthorized source with water from a Village of Alden approved public water supply.

CUSTOMER'S WATER SYSTEM -- The piping used to convey water supplied by the Village of Alden water supply system throughout a customer's facility. The system shall include all those parts of the piping beyond the control point of the Village Water Department. The control point is the corporation stop on the Village water main valve located in the public-right-of-way that isolates the customer's facilities from the Village distribution system.

HAZARDOUS FACILITY -- A facility in which substances may be present which, if introduced into the public water system, would or may endanger or have an adverse affect on the health of other water customers. Typical examples: laboratories, sewage treatment plants, chemical plants, hospitals, mortuaries and commercial enterprises. This is also defined as any commercial or business enterprise as defined by Zoning[1] or by Business Use Permit.

PUBLIC WATER SUPPLY SYSTEM -- The Village of Alden water supply system, including the source, treatment works, transmission mains, distribution system and storage facilities serving the public. This includes the distribution system up to its connection with the customer's water system.

REDUCED PRESSURE ZONE (RPZ) DEVICE, ACCEPTABLE -- A device containing a minimum of two independently acting check valves, together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow the pressure between these two checks shall be less than the upstream (supply) pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure. The unit must include tightly closing shutoff valves located at each end of the device, and each device shall be fitted with properly located test cocks.

OTHER TERMS -- All other terms are defined in the Department of Health and Village of Alden Cross Control Manuals and policies as now in force or as amended from time to time.

§ 84-3. Requirements.

A. The customer's water system shall be open for inspection at all reasonable times to authorized representatives of the Village of Alden.

B. ~~3.2~~The Village of Alden shall rate a customer's water system according to its degree of hazard to the public water system. Some of the factors to be considered are the use and availability of contaminants, the availability of an auxiliary water supply, and the type of fire fighting system in use.

C. ~~3.3~~An acceptable backflow prevention device shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served but, in all cases, before the first branch line leading off the service line, as follows:

[1] **Editor's Note: See Ch. 210, Zoning.**

(1) ~~3.4~~Whenever a customer's water system is rated hazardous, an acceptable reduced pressure zone device or air gap shall be installed.

(2) ~~3.4~~Whenever a customer's water system is rated aesthetically objectionable, as a minimum, an acceptable double check valve assembly shall be installed. Unless otherwise determined by the Water Department, one and two family residential water systems shall be deemed to have non-hazardous classification.

D. ~~3.5~~The design of the installation of an acceptable backflow prevention device must be prepared in accordance with New York State laws and regulations. The design must be approved by the Superintendent of Public Works or his/her designated representative and all agencies required by the applicable New York State and Village of Alden laws and regulations. Once approved by the Village, the design will be forwarded to New York State Health Department for final review and approval. No devices shall be installed until final design approval is granted.

E. ~~3.6~~It shall be the duty of the customer at any premises classified as hazardous pursuant to C(1) and C(2)~~4.4~~ above where a reduced pressure zone device, and/or a double check valve assembly is required, to have certified inspections and operational tests done on every containment device, at least once a year. In those instances where the Superintendent of Public Works or his/her designated representative deems the hazard to be great enough, he may require certified inspections at more frequent intervals. Certified inspections and operational tests must also be made when any reduced pressure zone device is to be installed, repaired, overhauled or replaced, in addition to the requirement of an annual certified inspection and operational test. All inspections and tests shall be at the expense of the customer and shall be performed, by a New York State Department of Health (NYSDOH) certified tester approved by the Village of Alden Water Department. The Village Water Department shall make available the names, addresses and telephone numbers of those persons who are certified as testers for such backflow prevention devices. It shall be the responsibility of the water customer per NYS Sanitary Code 5.1.31 a, b, & c to see that such certified inspections and operational testes are made. The customer shall notify the Water Department in advance, in writing when the tests are to be undertaken so that a representative may witness the tests if the Water Department so desires. These devices shall be repaired, overhauled or replaced at the expense of the customer whenever said devices are found to be defective. Records of such tests, repairs and overhauls shall be kept and made available to the Water Department. Copies of all testing and maintenance records shall be sent to the Water Department immediately after the work is performed. Protection of the public water supply and the customer's water system must be in full force at all times. Note: There is

no "Grace Period" for non-compliance or repairs, etc. under any section of this Chapter. Nothing contained in this Chapter grants license for non-compliance.

F. ~~3.7~~No water service connection to any customer's water system shall be installed or maintained by the Village of Alden Water Department unless the water supply is protected as required by State laws and regulations and this Chapter. Service of water to any premises shall be discontinued by the Village of Alden Water Department if a backflow prevention device required by this Chapter is not installed, tested and maintained, or if it is found that, a backflow prevention device has been removed or by-passed or otherwise compromised. Service will not be restored until such conditions or defects are corrected.

G. ~~3.8~~No customer shall allow any water or other substance from an auxiliary water supply or other source to enter any portion of the customer's internal distribution system, which is connected directly or indirectly to any Village of Alden public water supply.

§ 84-4. Installation and maintenance.

A. Water Meters and/or Containment Devices, their Vaults, Protective Enclosures, Appurtenances and other Structures, to include those installations and plumbing inside buildings: It shall be the sole responsibility of the water customer to install and maintain said items at an acceptable level of condition as determined by the Village of Alden Water Department and shall be in continuous conformity with governing laws, ordinances, regulations and specifications of the Village of Alden Water Department and the State of New York as now in force or amended.

B. ~~6.2~~It shall be the ~~Ordinance~~ Policy of the Village of Alden Water Department to follow the general regulations and standards regarding water distribution systems, and especially those covering Cross Connection Control as adopted by ~~the Erie County Water Authority and~~ the State of New York, notwithstanding the right of the Village of Alden Water Department to amend and/or modify those regulations and standards to be more detailed or restrictive at its sole election.

§ 84-5. Plumbing.

All internal plumbing must conform to and be maintained in continued conformity with the N.Y.S. Uniform Fire Prevention and Building Codes and the N.Y.S. Sanitary Code or any amendments made from time to time as well as any local codes, and may be inspected by the Village of Alden Water Department or the Village of Alden Building Department to qualify it's conformity.

§ 84-6. New systems.

All containment device installment design plans must be stamped by a New York State licensed engineer and must be approved by both the Village of Alden and the New York State Department of Health. The Engineers report must be accompanied by the Village of Alden Water Department Design Approval Criteria as amended from time to time. ~~6.1~~

§ 84-7. Required testing and certification.

The test reports (Form DOH 1013) for each device shall be submitted to the Health Department and also the Village of Alden Water Department at least annually or more frequently at the discretion of the water supplier. Unacceptable completion of the test report forms submitted by a tester may result in the Village of Alden Water Department barring future testing by that particular certified tester in the Village of Alden.

§ 84-8. Experts.

The Village of Alden Water Department may engage the services of an expert to manage the cross connection control program and transfer this cost to the customer for the review of said property.

§ 84-9. Fees.

A. ~~5.1~~The Applicant shall be responsible for plan review and device inspection fees as established from time to time by resolution of the Village Board of Trustees.[2]

B. The Applicant shall be required to pay any fees associated for review by the New York State Department of Health.

~~Fees for Plan Review by the Village of Alden Water Department Engineer:~~

~~¾ to 1 ½ inch pipe size $xyz.00~~

~~Over 1 ½ inch pipe size $xyz.00~~

~~5.2Fees for Plan Review by the New York State Department of Health~~

~~¾ to 1 ½ inch pipe size $xyz.00~~

~~Over 1 ½ inch pipe size $xyz.00~~

~~5.3 Fees for Inspections for each device shall be required at a cost of $75.00. All other inspections for determination for the need for RPZ shall be at a cost of $75.00.~~

C. ~~5.4~~Additional reviews and inspections may be charged to the water customer at one-half the Review and/or Inspection Fee for each additional review or

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[2] **Editor's Note: See Ch. A220, Fees.**

inspection as deemed appropriate by the Superintendent of Public Works or his/her designated representative.

§ 84-10. Entrance to premises.

For the purpose of inspection, installation, maintenance, repair, turning on or shutting off water, authorized personnel of the Water Department shall have free and full access, at all reasonable times, to all parts of any premises supplied with water from the Village of Alden Water Department or upon which application has been made to the Water Department or to which water is reasonably believed to be supplied. Filing of an application shall in addition to the provisions of this Chapter be deemed ~~consistent~~ as consent to such access.

§ 84-11. Enforcement and penalties.

~~A~~A. No water service connection to any premises shall be installed or maintained by the water user, unless the water supply is protected as required by this Chapter and such other local, state and federal laws, rules and regulations.

B. ~~B~~If any facility served by the water system denies a water department person access to their premises for the purpose of determining if protection to the public water system is necessary, then the maximum protection condition shall be imposed with the requirement that the number of devices shall equal the number of service lines.

C. ~~C~~The following penalties shall be applicable for a violation of this Chapter:

(1) ~~C1~~Failure to submit for approval for the appropriate backflow prevention device installation within sixty (60) days after the first notice: $250.00 fine.

(2) Failure to submit for approval for the appropriate backflow prevention device installation within thirty (30) after the second notice: Termination of Service.

(3) ~~C2~~Failure to install the appropriate backflow prevention device within thirty (30) days after approval: $300.00 fine and/or Termination of Service.

(4) ~~C3~~Failure to at least annually test and certify that the backflow device installation meets the criteria to comply as an acceptable containment device within ten (10) days of notice: $300.00 fine and/or Termination of Service.

(5) ~~C4~~Failure to correct, replace or repair a backflow prevention device or the installation as required: $300.00 fine and/or Termination of Service.

(6) ~~C5~~Any water service terminated under this Chapter shall be subject to the fees[3] of Termination for Nonpayment as outlined in Chapter 205 of this Code.

(7) ~~C6~~Any penalties under this section shall be treated as though it is for water service and may be placed on tax roll as a lien if unpaid.

[3] **Editor's Note: See Ch. A220, Fees.**

Chapter 86

CURFEW

§ 86-1.	**Statement of authority.**	**§ 86-5.**	**Violations.**
§ 86-2.	**Statement of purpose.**	**§ 86-6.**	**Penalties.**
§ 86-3.	**Restrictions.**	**§ 86-7.**	**Severability.**
§ 86-4.	**Exceptions/exemptions.**	**§ 86-8.**	**Effective date.**

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 6-23-2011 as L.L. No. 8-2011. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 177.

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§ 86-1. Statement of authority.

The Board of Trustees of the Village of Alden pursuant to the authority granted to it under Article 4 of the Village Law and Section 10 of the Municipal Home Rule Law of the State of New York hereby enacts as follows:

§ 86-2. Statement of purpose.

The Board of Trustees has found that numbers of minors have been congregating in and about the Village after dark causing general nuisance to residents. It is necessary that a curfew be established in order to reduce juvenile crime and vandalism, protect the children of the municipality, protect private and municipal property, reinforce parental authority, and maintain a high quality of life for all residents of the Village.

§ 86-3. Restrictions.

A. It shall be unlawful for any minor, age 17 and under, to be or remain in or upon any public street, sidewalk, highway, park, vacant lot or any other public place whatsoever, starting at 11:00 P.M. and ending at 6:00 A.M on the following day.

B. It shall be unlawful for the parent or guardian having legal custody of a minor to negligently, recklessly, and/or knowingly allow or permit the minor to be in violation of the restrictions imposed in Section 3(A) above or to otherwise have no knowledge of the whereabouts of such minor child during such hours.

§ 86-4. Exceptions/exemptions.

The following shall constitute exemptions to the operation of the restriction in Section 3(A):

A. If the minor is accompanied by his or her parent, legal guardian or other responsible person over the age 21 who has been approved by the child's parent or legal guardian;

B. If the minor is legally employed and is either going to or from the place of employment or if the minor is in a public place during curfew hours in the course of his or her employment.

C. If the minor is lawfully attending, going to or returning from a school, church or community sponsored athletic, musical, or social activity or event. This exception will apply for one-half hour after the completion of any such event.

D. If the minor was involved in an emergency situation involving a circumstance or combination of circumstances requiring immediate action to prevent property damage, serious bodily injury or loss of life.

E. If the minor was in the public place for the specific purpose of exercising fundamental rights, such as freedom speech or religion or the right of assembly protected by the First Amendment of the United States Constitution or Article I of the Constitution of the State of New York, as opposed to generalized social association with others; or

F. If the minor was engaged in interstate travel.

§ 86-5. Violations.

Failure to comply with this law shall be a violation as defined in Section 55.10 of the New York State Penal Law and penalties may be imposed thereunder and pursuant to Section 80.05 of the New York Penal Law. Any penalties imposed under this law are in addition to any other remedies available at law.

§ 86-6. Penalties.

In addition to any violation as set forth in Section 5 herein, an appearance ticket may be issued to the parent(s) and/or legal guardian(s) of such minor. The penalty for the first violation of this Local Law shall be a fine not to exceed Fifty Dollars ($50.00). A second violation of the same charge with respect to the same minor shall be subject to a fine of not less than One Hundred Dollars ($100.00). A third violation for the same minor shall result in a fine not less than Two Hundred Fifty Dollars ($250.00). In addition to any fine imposed, the Court may order restitution and/or community service with respect to any property damage incurred during the time of any violation.

§ 86-7. Severability.

In the event any word, phrase or part of this law shall be declared unconstitutional, the same shall be severed and separated from the remainder of this law and shall not affect the remainder of said law which shall remain in full force and effect.

§ 86-8. Effective date.

This law shall take effect immediately.

Chapter 87

DRUG-FREE SCHOOL ZONES

§ 87-1. Declaration of policy.
§ 87-2. Enforcement.
§ 87-3. Posting of signs by Superintendent of Public Works.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 5-9-1994. Amendments noted where applicable.]

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§ 87-1. Declaration of policy.

A. The Village of Alden Board hereby declares its implacable opposition to the illegal sale of any controlled substance on or near school grounds and supports severe penalties for such acts.

B. The Village of Alden Board hereby declares that there shall be a Drug-Free School Zone around each school in the Village of Alden, as defined in Chapter 280 of the Laws of 1986,[1] which zone shall consist of area within the real property boundary of all schools within the Village of Alden, together with one thousand (1,000) feet beyond said real property boundary.

§ 87-2. Enforcement.

The Village of Alden Board declares its support for full and strict law enforcement of all laws designed to prevent illegal sale of controlled substances within said Drug-Free School Zone and its support for increased criminal penalties for the sale of controlled substances within said zone.

§ 87-3. Posting of signs by Superintendent of Public Works.

The Superintendent of Public Works shall be authorized to purchase and place appropriate signs to be posted at select locations to be determined by the Village of Alden and the Alden Central School District.

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[1] **Editor's Note: See §§ 70.00, 220.00, 220.34 and 220.44 of the Penal Law.**

Chapter 105

FLOOD DAMAGE PREVENTION

§ 105-1. Findings.
§ 105-2. Purpose.
§ 105-3. Objectives.
§ 105-4. Definitions.
§ 105-5. Applicability.
§ 105-6. Basis for establishing areas of special flood hazard.
§ 105-7. Interpretation of provisions; conflicts.
§ 105-8. Penalties for offenses.
§ 105-9. Warning and disclaimer of liability.
§ 105-10. Designation of local administrator.
§ 105-11. Development permit.
§ 105-12. Duties of local administrator.
§ 105-13. General standards.
§ 105-14. Specific standards.
§ 105-15. Floodways.
§ 105-16. Appeals board.
§ 105-17. Conditions for variance.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 9-14-1987 as L.L. No. 1-1987 (Ch. 22 of the 1966 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land -- See Ch. 181.
Zoning -- See Ch. 210.

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§ 105-1. Findings.

The Board of Trustees of the Village of Alden finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Alden and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 105-2. Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.

B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.

D. Control filling, grading, dredging and other development which may increase erosion or flood damages.

E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 105-3. Objectives.

The objectives of this chapter are to:

A. Protect human life and health.

B. Minimize expenditure of public money for costly flood control projects.

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

D. Minimize prolonged business interruptions.

E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in areas of special flood hazard.

F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

G. Provide that developers are notified that property is in an area of special flood hazard.

H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 105-4. Definitions.

A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application.

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

APPEAL -- A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING -- A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM), with base flood depths from one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD -- The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 - 99, V, VO, VE or V1 – 30 on a community’s Flood Insurance Rate Map (FIRM). It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain." **[Amended 1-23-2003 by L.L. No. 8-2003]**

BASE FLOOD -- The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT -- That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL -- A wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING -- Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR -- The same meaning as "basement."[1]

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

ELEVATED BUILDING -- A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

FLOOD BOUNDARY - FLOODWAY MAP (FBFM) -- An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD or FLOODING -- A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) -- An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM) -- An official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY -- The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary - Floodway Map and the water surface elevations of the base flood.

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[1] Editor's Note: The definition of "coastal high hazard area," which immediately followed this definition, was deleted on 3-6-1995 by L.L. No. 3-1995.

FLOODPROOFING -- Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY -- The same meaning as "regulatory floodway."

FLOOR -- The top surface of an enclosed area in a building, including the basement, i.e., the top of a slab in concrete slab construction or the top of wood flooring in wood frame construction.

FUNCTIONALLY DEPENDENT USE -- A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE -- The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR -- The lowest level, including the basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement, is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME -- A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL -- For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
MOBILE HOME -- See Chapter 131 of this code.[2]

[2] **Editor's Note: Amended at time of adoption of Code; See Ch. 1, General Provisions, Art. I.**

NATIONAL GEODETIC VERTICAL DATUM (NGVD) -- As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION -- Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD -- The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND -- At least fifty-one percent (51%) of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY -- The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in **§** 105-12B of this chapter.[3]

START OF CONSTRUCTION -- The initiation, excluding planning and design, of any phase of a project or physical alteration of the property and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the "actual start" means affixing of the manufactured home to its permanent site.

STRUCTURE -- A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT -- Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which

[3] **Editor's Note: The definition of "sand dunes," which immediately followed this definition, was deleted on 3-6-1995 by L.L. No. 3-1995.**

are solely necessary to assure safe living conditions or any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE -- A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 105-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Village of Alden.

§ 105-6. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled the "Flood Insurance Study for the Village of Alden of Erie County, New York," dated January 6, 1984, with accompanying Flood Insurance Rate Maps and Flood Boundary - Floodway Maps, are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at the Municipal Building, 13336 Broadway, Alden, New York 14004.

§ 105-7. Interpretation of provisions; conflicts.

A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.

B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the highest standards shall govern.

§ 105-8. Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter

and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than two hundred fifty dollars ($250.00) or imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Alden from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under **§§** 105-16 and 105-17 will be declared noncompliant, and notification will be sent to the Federal Emergency Management Agency.

§ 105-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Village of Alden, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 105-10. Designation of local administrator.

The Building Inspector is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 105-11. Development permit.[4]

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in **§** 105-6. Application for a development permit shall be made on forms furnished by the local

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[4] Editor's Note: Attachment A, Flood Hazard Area Development Permit Application Form, and Attachment B, Certificate of Compliance, which were adopted as part of L.L. No. 1-1987, are on file in the office of the Village Clerk.

administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

A. Application stage. The following information is required where applicable:

(1) Elevation, in relation to mean sea level, of the proposed lowest floor, including the basement or cellar, of all structures.

(2) Elevation, in relation to mean sea level, to which any nonresidential structure will be floodproofed.

(3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in **§** 105-13C(1).

(4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in **§** 105-14.

(5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

B. Construction stage. Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

§ 105-12. Duties of local administrator.

The duties of the local administrator shall include, but not be limited to:

A. Permit application review. The local administrator shall:

(1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.

(2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.

(a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.

(b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.

(4) Review all development permits for compliance with the provisions of § 105-13E, Encroachments.

B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 105-6, Basis for establishing areas of special flood hazard, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 105-13D(4), in order to administer § 105-14, Specific standards, and § 105-15, Floodways.

C. Information to be obtained and maintained. The local administrator shall:

(1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including the basement or cellar of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.

(2) For all new or substantially improved floodproofed structures:

(a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and

(b) Maintain the floodproofing certifications required in **§§** 105-13 and 105-14.

(3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances, when granted, and certificates of compliance.

D. Alteration of watercourses. The local administrator shall:

(1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

(1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.

(2) Base flood elevation data established pursuant to **§** 105-6 and/or Subsection B, when available, shall be used to accurately delineate the areas of special flood hazard.

(3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

(1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in **§** 105-8 of this chapter.

(2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in **§** 105-8 of this chapter.

G. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the development permit or the approved variance.

H. Certificate of compliance.

(1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.

(2) All other development occurring within the designated flood hazard area will have, upon completion, a certificate of compliance issued by the local administrator.

(3) All certifications shall be based upon the inspections conducted subject to Subsection G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 105-13. General standards.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two (2) feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

(1) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.

(2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(3) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters.

(4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, greater than either fifty (50) lots or five (5) acres.

E. Encroachments.

(1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the areas of special flood hazard set forth in **§** 105-12A(3). This may require the submission of additional technical data to assist in the determination.

(2) In all areas of special flood hazard in which base flood elevation data is available pursuant to **§** 105-12B or Subsection D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.

(3) In all areas of the special flood hazard where floodway data is provided or available pursuant to **§** 105-12B, the requirements of **§** 105-15, Floodways, shall apply.

§ 105-14. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in **§** 105-6, Basis for establishing areas of special flood hazard, and **§** 105-12B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction. New construction and substantial improvements of any resident structure shall:

(1) Have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation.

(2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation or be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

(a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(2) If the structure is to be floodproofed:

(a) A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(b) A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.

(3) The local administrator shall maintain on record a copy of all such certificates noted in this section.

C. Construction standards for areas of special flood hazard without base flood elevations. New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated to or above the base flood elevation as may be determined in § 105-12B or two (2) feet above the highest adjacent grade where no elevation data is available.

(1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.

(2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must

either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

(a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 105-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See definition in **§** 105-4.) The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by **§§** 105-6 and 105-12B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 105-16. Appeals board.

A. The Zoning Board of Appeals, as established by the Village of Alden, shall hear and decide appeals and requests for variances from the requirements of this chapter. **[Amended 3-6-1995 by L.L. No. 3-1995]**

B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.

C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

(1) The danger that materials may be swept onto other lands to the injury of others.

(2) The danger to life and property due to flooding or erosion damage.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(4) The importance of the services provided by the proposed facility to the community.

(5) The necessity to the facility of a waterfront location, where applicable.

(6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(7) The compatibility of the proposed use with existing and anticipated development.

(8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.

(11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(12) The costs of providing governmental services during and after flood conditions, including search and rescue operations and maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.

E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

F. The local administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 105-17. Conditions for variance.

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that **§** 105-16D(1) through (12) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the contributing structures procedures set forth in the remainder of this section.

C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

(1) The criteria of Subsections A, D, E and F of this section are met.

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

F. Variances shall only be issued upon receiving written justification of:

(1) A showing of good and sufficient cause.

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.

G. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

Chapter 109

GAMES OF CHANCE

§ 109-1. Licenses authorized.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 12-12-1994. Amendments noted where applicable.]

§ 109-1. Licenses authorized.

The Village of Alden hereby authorizes the licenses by the Town of Alden for games of chance within the Village of Alden pursuant to this chapter and subject to a permissive referendum as required by law.

Chapter 120

JUNKYARDS

§ 120-1. Title.
§ 120-2. Purpose.
§ 120-3. Definitions and word usage.
§ 120-4. Location.
§ 120-5. License required.
§ 120-6. Application for license.
§ 120-7. Planning Board review.
§ 120-8. Village Board review and public hearing.
§ 120-9. Decision.
§ 120-10. Issuance of license; renewal; revocation.
§ 120-11. Standards.
§ 120-12. Penalties for offenses.
§ 120-13. Enforcement.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 5-18-2006 as L.L. No. 7-2006.]

GENERAL REFERENCES

Building construction and fire prevention -- See Ch. 78.
License and permits -- See Ch. 125.
Unlicensed vehicles – See Ch. 203
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

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§ 120-1. Title.

This chapter shall be known as the "Junkyards Law of the Village of Alden."

§ 120-2. Purpose.

The purpose of this chapter is to promote the health, safety, protection and general welfare of the inhabitants of the Village of Alden, in the following manner:

A. By the regulation of junkyards and the requirement that all junkyards be properly licensed in the Village of Alden by the Board of Trustees.

B. By the use of standards and regulations for the operation, establishment, and maintenance of junkyards.

§ 120-3. Definitions and word usage.

A. Word usage. When not inconsistent with the context, words used in the present tense include the future tense. Plural and singular connotations are interchangeable. The word "person" includes a firm, partnership or corporation as well as an individual, whether tenant, owner, lessee, licensee, agent, heir or assignee. The word "shall" is always mandatory. The word "used" includes the term "designed or intended to be used."

B. Definitions. For the purposes of this chapter, the following words shall have the meanings ascribed to them in this section:

JUNK – Old iron, steel, brass, copper, tin, lead, metals of any kind or other base metals; old cordage, ropes, rags; fibers, or fabrics; old rubber; old and/or used bottles or other glass; refuse; packaging materials; cardboard boxes; old carton boxes; papers; wrecked, damaged, rusting, and/or non-operational automobile(s) or other vehicle(s) or machinery or parts thereof; used or second hand building materials; two (2) or more white goods, including but not limited to, washers, dryers, stoves, ovens, freezers, air conditioners, furnaces, water tanks/heaters, refrigerators; wood and/or wood products; tree stumps; three (3) or more inoperable bicycles; inoperable mowers; inoperable snow blowers; ceramics; wastepaper and other waste or discarded material which might be prepared to be used again in some form; and any or all of the foregoing whether for sale or not; and motor vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but “junk” shall not include materials or objects accumulated by a person as by-products, waste, or scraps from the operation of his or her own business or materials or objects held and used by a manufacturer as an integral part of his or her own manufacturing process.

JUNKYARD – An area, lot, parcel or place used as storage, whether in connection with another business or not, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, baled, packed, disassembled, handled or abandoned, including auto wrecking or dismantling yards, house wrecking yards, used lumber yards and places or yards for use of salvaged steel materials and equipment. This also includes premises where two or more abandoned, unused, unregistered,

unlicensed or junk motor vehicle or any portion, section or part thereof are stored, except as permitted and regulated by Chapter 203 of this Code.

MOTOR VEHICLE -- As defined in Chapter 203 of this Code.

PERSON – Any individual, corporation, partnership, association, agency or any other legal entity.

VILLAGE BOARD – The duly elected Board of Trustees of the Village of Alden.

§ 120-4. Location.

Junkyards shall only be located in the Village of Alden as set forth in Chapter 210 of this Code.

§ 120-5. License required.

No person shall operate, establish or maintain a junkyard in the Village of Alden without first obtaining a license as hereinafter provided nor shall any person, firm, corporation, organization and/or entity collect, store or keep on any land or in any yard or open space in the Village of Alden any items described in § 120-3(B).

§ 120-6. Application for license.

Application for a junkyard license shall be made to the Village Board of Trustees on a form provided by the Village of Alden and shall be accompanied by a filing fee[1] as set by the Village Board.

§ 120-7. Planning Board review.

All applications for a junkyard license shall be reviewed by the Village Planning Board, which shall report its recommendations to the Village Board. The Planning Board shall review the application at their next regular meeting, at least ten (10) days prior to which the application for the license was received by the Village Clerk.

§ 120-8. Village Board review and public hearing.

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[1] **Editor's Note: See Ch. A220, Fees.**

Within thirty (30) days after receipt of the Village of Alden Planning Board's recommendations, the Village Board shall conduct a public hearing on the application. All property owners within five hundred (500) feet of the proposed site shall be notified of the hearing by regular mail. Publication of the hearing shall be made in the official newspaper of the Village of Alden no less than seven (7) days before the date of the hearing.

§ 120-9. Decision.

A. Within thirty (30) days of the public hearing on the application, the Village of Alden shall render a decision on the application and notify the applicant by regular mail. In making its decision, the Village Board shall consider the following:

(1) The applicant's ability to comply with fencing and any other local regulations.

(2) Proof of legal ownership or the right to the use of the site, the nature of the development of the surrounding property and whether or not the proposed location poses a serious threat to public health and safety.

(3) Aesthetic considerations, including but not limited to the type of road servicing the junkyard and the natural and/or artificial barriers screening the junkyard from public view.

(4) The nature and development of surrounding property.

§ 120-10. Issuance of license; renewal; revocation.

A. Upon approval of the application and payment of the applicable fee[2], a license shall be issued and will remain in effect for one (1) year from the date of issuance. Said license is non-transferable.

B. The license may be renewed each year upon payment of the applicable fee[3] without a public hearing, provided that all provisions of this chapter are complied with and the junkyard does not become a public nuisance.

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[2] **Editor's Note: See Ch. A220, Fees.**

[3] **Editor's Note: See Ch. A220, Fees.**

C. Where any of these requirements of this chapter are not met, the license may be revoked by the Village Board after a public hearing. Upon revocation of a license, the Village Board shall require the removal of all junk on the premises.

§ 120-11. Standards.

The following are standards for the operation, establishment and maintenance of a junkyard:

A. All junkyards shall be so located so that no part thereof shall be within five hundred (500) feet of a church or school.

B. All junkyards shall be completely surrounded by a fence at least eight (8) feet but no more than ten (10) feet in height, which substantially screens the enclosed area, and with suitable gates that can be closed and locked. Such fence shall be a minimum of ten (10) feet from a public street or right-of-way, and a minimum of five (5) feet from any property line. In addition to security, such fence, including any landscaping, shall also provide a visual screen or buffer sufficient to conceal all junk and operations from public view.

C. Fencing and landscaping shall be maintained in a neat and orderly appearance at all times.

D. Fencing, screening, natural buffers and landscaping shall not be placed so as to obstruct the view of motor vehicle operators on adjacent public streets.

E. Fire lanes offering adequate access to building and storage areas shall be provided and maintained as required in the New York State Uniform Fire Prevention and Building Code.

F. All junk shall be piled or arranged in neat rows to permit easy and clear passage through the area.

G. No junk shall be stacked or stored in such a manner that any of the contents are visible from a public street.

H. All automobiles, parts or other material described herein shall be kept within the fencing enclosure except as necessary for removal or transportation of the same.

I. The licensee shall personally manage the activity for which the license is granted.

J. Gates shall be kept locked in a secure manner whenever a junkyard is not supervised by the licensee or his/her employees.

K. No junkyard shall be used as a dump area nor as a place for storage, burning or disposal of trash or garbage.

§ 120-12. Penalties for offenses.

A. Any person who violates any provision of this chapter shall be guilty of a violation and be subject to a fine of two hundred fifty dollars ($250.00) and/or imprisonment not to exceed fifteen (15) days. The imposition of any penalty for a violation of this chapter shall not excuse the violation nor permit it to continue.

B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation hereunder.

§ 120-13. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer

Chapter 125

LICENSES AND PERMITS

§ 125-1.	Issuance.	§ 125-5.	Peddling and hawking license required; exceptions.
§ 125-2.	Refusal of license or permit; appeal.	§ 125-6.	License fees; expiration date.
§ 125-3.	Suspension of license.	§ 125-7.	Assignment of licenses.
§ 125-4.	Auctioneer's license required; exception.	§ 125-8.	Posting or production of licenses.
		§ 125-9.	Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 6-10-1932 (Ch. 27 of the 1966 Code); amended in its entirety 1-23-2003 by L.L. No. 9-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic Beverages -- See Ch. 58.
Amusements and amusement devices -- See Ch. 62.
Solid Waste -- See Ch. 173.
Fees -- See Ch. A220.

§ 125-1. Issuance.

Unless otherwise provided, all licenses or permits required by the ordinances or local laws of the Village of Alden shall be issued by the Village Clerk, and the Village Clerk's Office shall issue said permits and collect the fees[1] therefor.

§ 125-2. Refusal of license or permit; appeal.

In the event that the Clerk shall refuse to issue a license or permit, the person who has been refused a license or permit may appeal to the Board of Trustees, who shall, upon a favorable majority vote, order the Village Clerk to issue a license or permit to the applicant.

[1] **Editor's Note: See Ch. A220, Fees.**

§ 125-3. Suspension of license.

Where any business, trade or other entity for which a license is granted by the village is or is about to become a nuisance or menace to the peace, comfort and health of the Village of Alden or its inhabitants, the Clerk shall have the right to immediately suspend such license or permit upon serving written notice to the holder of such license or permit or upon any person in charge of such business, trade or other entity, pending decision by the Board of Trustees.

§ 125-4. Auctioneer's license required; exception.

No person shall engage in the business of auctioneering unless a license shall have been issued to him or her in accordance with this chapter; provided, however, that no license shall be required of executors or administrators selling as such or by constables or other persons selling mortgages under executions or by order of the court.

§ 125-5. Peddling and hawking license required; exceptions.

No person shall engage in the occupation of peddling and hawking within the Village of Alden without first obtaining a license from the Clerk; provided, however, that this chapter shall not apply to:

A. The hawking and peddling of farm produce by the producer thereof or his or her servants or employees.

B. Members of the Armed Forces of the United States in accordance with **§** 32 of the General Business Law.

§ 125-6. License fees; expiration date.

Unless otherwise stated, all license fees shall be paid to the Village Clerk, and all licenses shall be issued yearly based on the calendar year shall expire on the last day of the calendar year. The fees[2] for licenses and permits shall be determined by resolution of the Board of Trustees of the Village of Alden at its organizational meeting.

§ 125-7. Assignment of license.

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[2] **Editor's Note: See Ch. A220, Fees.**

No license or permit shall be assigned without the consent of the Board of Trustees.

§ 125-8. Posting or production of licenses.

All licenses or permits issued by the Village of Alden shall be posted in a conspicuous place in the building licensed or in the place where the business licensed is carried on. All other licenses or permits shall be kept in a convenient place where they can be readily produced upon demand by the Clerk, the Board of Trustees or persons duly authorized to demand the same.

§ 125-9. Penalties for offenses.

A. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding two hundred fifty dollars ($250.00) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment.

B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation hereunder.

Chapter 131

MOBILE HOME PARKS

§ 131-1. Title.
§ 131-2. Purpose.
§ 131-3. Definitions and word usage.
§ 131-4. Authorized parking; license requirements; exceptions.
§ 131-5. Standards.
§ 131-6. Mobile home park design standards.
§ 131-7. Utilities.
§ 131-8. Supplemental regulations.
§ 131-9. License required for mobile home park.
§ 131-10. Health and safety considerations.
§ 131-11. Maintenance and management.
§ 131-12. Inspection; corrections of conditions; revocation of license.
§ 131-13. Penalties for offenses.
§ 131-14. Administration; fees.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-6-1995 as L.L. No. 1-1995. Amended in its entirety 1-23-2003 by L.L. No. 10-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention -- See Ch. 78.
License and permits -- See Ch. 125.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

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§ 131-1. Title.

This chapter shall be known as the "Mobile Home Park Law of the Village of Alden."

§ 131-2. Purpose.

The purpose of this chapter is to promote the health, safety, protection and general welfare of the inhabitants of the Village of Alden, including those living in mobile homes, in the following manner:

A. By the regulation of mobile homes in parks and the requirement that all mobile home parks be properly licensed in the Village of Alden by the Board of Trustees.

B. By the requirement that mobile home parks can be established only in accordance with the plans for the same, as approved by the Village Planning Board and the Village Board of Trustees.

C. By the use of standards and regulations for the design and operation of mobile home parks.

§ 131-3. Definitions and word usage.

A. Word usage. When not inconsistent with the context, words used in the present tense include the future tense. Plural and singular connotations are interchangeable. The word "person" includes a firm, partnership or corporation as well as an individual, whether tenant, owner, lessee, licensee, agent, heir or assignee. The word "shall" is always mandatory. The word "used" includes the term "designed or intended to be used."

B. Definitions. For the purposes of this chapter, the following words shall have the meanings ascribed to them in this section:

ACCESSORY BUILDING -- A subordinate building located on the same mobile home space as the mobile home.

BOARD OF TRUSTEES -- The duly elected Board of Trustees of the Village of Alden.

CODE ENFORCEMENT OFFICER or BUILDING INSPECTOR -- Code enforcement officer of the Village of Alden.

DRIVEWAY -- A minor private way used by vehicles and pedestrians on a mobile home park lot. This area may include off-street parking.

FIRE COMPANY -- The organization, public or private, authorized by the Village of Alden or by state law to provide fire prevention and fire protection services to any or all areas of the Village of Alden.

LICENSE -- A written permit or certification issued by the Village of Alden permitting the construction, operation, alteration and extension of

an existing or future mobile home park under the provisions of this chapter.

MOBILE HOME -- A year round residential living unit, approved by and constructed in full compliance with all applicable Federal and New York State safety standards; designed as a single-family dwelling to be transported on its own frame by towing to a site in one or two sections. As used in this law the term “Mobile Home” shall not include the following:

1. Recreational vehicles, vans, motor homes or pick-up trucks with caps or other added enclosures.

2. Travel trailers or camping trailers designed to be driven or towed by an automobile.

3. Prefabricated, sectionalized houses transported on a removable frame and completed on the site, and subject to the New York State Uniform Fire Prevention and Building Code.

MOBILE HOME LOT -- The space for rent or lease only in any mobile home park which shall be designed for and assigned to occupancy by one (1) mobile home.

MOBILE HOME PARK -- A parcel of land which has been designed and improved for the placement of mobile homes for non-transient use and is not be platted and filed as a subdivision with the Erie County Clerk.

MOBILE HOME STAND -- That part of an individual mobile home lot which has been reserved for the placement of a mobile home, exclusive of appurtenances.

MODULAR HOME (MANUFACTURED HOME) -- A factory-manufactured home incorporating structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site.

PARK SITE PLAN -- The plan required of an applicant for a license to establish, maintain and operate a mobile home park in the Village of Alden pursuant to the standards for mobile home parks as enumerated in

this chapter. Said plan shall show in sufficient detail, as required by local reviewing authorities, all of the required information pertaining to the proposed layout of a premises for a mobile home park in compliance with this chapter.

PARK STREET -- A private way which affords the principal means of access to individual park lots or auxiliary buildings.

PATIO -- A surfaced outdoor living space designed and intended to supplement the interior mobile home living area on a seasonal, warm-weather basis.

SEASONAL ENCLOSURE -- Structure consisting of one or more walls and a roof, but no provisions for heating or cooling, attached to a mobile home for the purpose of providing shelter from weather.

STORM SHELTER -- Same as seasonal enclosure.

VILLAGE CLERK -- The duly appointed Village Clerk of the Village of Alden.

VILLAGE ENGINEER -- The duly appointed Village Engineer of the Village of Alden.

VILLAGE PLANNING BOARD -- The duly appointed Planning Board of the Village of Alden.

§ 131-4. Authorized parking; license requirements; exceptions.

A. No premises in the Village of Alden shall be used for the parking or locating of a mobile home unless such use is allowed by a license obtained as provided in this chapter.

B. From the effective date of this chapter, all duly licensed mobile home parks shall be established in locations consistent with applicable provisions of Chapter 210, Zoning.

§ 131-5. Standards.

A. General application and variance.

(1) Unless otherwise provided in this chapter, the following standards shall apply to all proposed and existing mobile home parks and their establishment, maintenance and operation in the Village of Alden after the effective date of this chapter. This includes such times as a license is reissued, unless otherwise provided for in this chapter.

(2) An exception to the above subsection may be granted by the Planning Board with Village Board approval, where said Boards find that, because of unusual circumstances of shape of premises, topography of premises or other existing conditions, extraordinary hardship would result from strict compliance with the following standards for mobile home parks, in which event said Boards may vary the applicability of said standards so substantial justice may be done and the public interest may be served. No variance shall be granted which will have the effect of nullifying the intent or purpose of this chapter or the requirements of the Erie County Health Department.

B. Mobile home park site plan. A mobile home park site plan, prepared by a licensed engineer, shall show:

(1) The location, boundaries, dimensions and topography of the tract of land proposed to be used for the mobile home park.

(2) The number, location and size of all spaces reserved for independent mobile homes and all service outlets or connections therefor.

(3) The boundaries of and facilities to be included in recreation areas.

(4) The location, size and electric lighting plan for roads and outdoor areas.

(5) The number, location and size of any proposed structures.

(6) The location, type and capacity of water supply, distribution and storage, sewage treatment and disposal and stormwater drainage facilities.

(7) Plans and specifications for all buildings and other improvements constructed within the mobile home park.

(8) Plans for any and all landscaping within and/or on the perimeter of the mobile home park, exclusive of individual lots.

(9) Design standards for roads and other infrastructures, which shall be those that are spelled out in Chapter 181, Subdivision of Land, of the Code of the Village of Alden.

(10) Such other information in such detail as may be reasonably required by village and county reviewing authorities.

§ 131-6. Mobile home park design standards.

A. Prior to the installation of any mobile home, a building permit must first be obtained from the Village of Alden.[1]

B. Each mobile home lot in a newly created mobile home park or new addition to an existing mobile home park shall be at least fifty-five (55) feet wide and shall contain a minimum of six thousand six hundred (6,600) square feet, of which no more than thirty percent (30%) shall be occupied by the mobile home stand. Each mobile home lot shall abut on a park street with access to a public highway. Such lots shall be clearly defined and mobile homes shall be sited on such lots so that no mobile home will be:

(1) Less than twenty-five (25) feet from any park street, as measured from the near edge of the pavement.

(2) Less than fifteen (15) feet from the rear line of any mobile home park lot.

(3) Less than five (5) feet from any side yard lot line.

(4) Less than fifteen (15) feet from any other mobile home. If a garage or carport is added, it must be at least five (5) feet from the side yard boundary.

[1] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**

C. Each mobile home lot in an existing mobile home park shall be maintained at the size identified in the licensing section of this chapter. A new mobile home may be installed on an existing mobile home park lot in an existing mobile home park provided the mobile home:

(1) Does not occupy more than eighty percent (80%) of the total lot area.

(2) Is at least five (5) feet from any side yard lot line.

(3) Is at least ten (10) feet from any rear yard lot line.

(4) Is at least ten (10) feet from any park street, as measured from the near edge of the pavement.

D. Mobile homes shall be located a minimum of one hundred (100) feet from any public right-of-way or highway boundary. However, the Planning Board may, for stated reasons, recommend a greater setback. The minimum setback shall not be used for accessory uses, such as recreation or vehicular parking. If such setback area is part of the mobile home park premises, such setback area shall be satisfactorily landscaped as designated on the mobile home park site plan and shall be maintained in a mowed condition, if appropriate. The minimum setback can contain one (1) accessory office for the purpose of park operations, provided it is a permanent structure and a building permit is obtained therefor.[2]

E. Mobile homes shall be located a minimum of one hundred (100) feet from any property line of property abutting the mobile home park site, except that the Planning Board may permit a lesser buffer if local conditions so warrant it. Under no circumstances shall this buffer be less than fifty (50) feet.

F. Each mobile home shall be used only for single-family residential purposes.

G. All living areas of a mobile home, including all attached appurtenances, shall be considered as part of the occupied area when computing the percent of occupied area of mobile home space.

H. Each mobile home park shall contain space for a minimum of twenty-four (24) units.

I. Curbs or gutters shall be provided on both sides of all internal drives.

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[2] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**

J. Each mobile home shall be equipped and maintained with a skirt of rigid material acceptable to the Code Enforcement Officer, around the base, covering all of the undercarriage and running gear.

K. Each mobile home lot shall be provided with two (2) parking spaces at least ten (10) feet by twenty (20) feet each. In the case of the installation of a mobile home on an existing mobile home park lot, each mobile home shall be provided with one (1) parking space at least ten (10) feet by twenty (20) feet. Such spaces will be an all weather-surface on a suitable base, subject to the approval of the Code Enforcement Officer.

L. Each mobile home shall be provided with an adequate foundation designed by a New York State licensed architect or engineer and approved by the Code Enforcement Officer or his or her authorized representatives.

M. Each mobile home lot shall be suitably graded to provide adequate drainage.

N. No mobile home or attachment thereto shall be permitted within forty (40) feet of any building other than another mobile home.

O. All mobile homes shall meet current applicable standards of the New York State Building and Fire Prevention Code.

P. Suitable vehicular access shall be provided to each mobile home park lot. Each park street shall be well-marked and continuous and shall connect with a street or highway at a ninety (90) degree angle, and at least a twenty-eight (28) foot pavement width shall be improved and maintained with an all-weather hard surface on a suitable base, subject to the approval of the Code Enforcement Officer. All park streets shall be illuminated as per standards required for residential subdivisions in the Village of Alden.

Q. An area or areas restricted to recreational use shall be provided in each mobile home park. A minimum of ten percent (10%) of the gross land area shall be made available in one (1) or more places within the park for this use. The Planning Board of the village may require park or recreational equipment within such area, as well as suitable fencing and landscaping of such areas for screening purposes. If it is determined that recreation land is not appropriate, then money in lieu of land shall be provided for each mobile home lot based on fees established by the Board of Trustees.[3]

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[3] **Editor's Note: See Ch. A220, Fees.**

§ 131-7. Utilities.

A. No mobile home park license shall be issued until the water system thereof is connected to and serviced by a public water supply distribution system and approved by the Erie County Health Department. The water system of a mobile home park shall be connected by pipes to each mobile home stand.

B. All plumbing in a mobile home park shall be constructed and maintained in accordance with standards approved by the Erie County Health Department and with all applicable state and local laws and regulations.

C. All water from showers, tubs, toilets, laundries, faucets, sinks and lavatories shall be wasted into a public sewer system. Each mobile home park lot shall be provided with a satisfactory sewer connection approved by the Village of Alden.

D. An electric service shall be provided for each mobile home stand. The installation of said outlet shall comply with all applicable state, county and local laws and regulations.[4]

§ 131-8. Supplemental regulations.

A. Installation of a mobile home onto an existing mobile home park lot may be done only by first obtaining a building permit from the Code Enforcement Officer as specified in Chapter 78, Building Construction and Fire Prevention of this Code. Such mobile home installation must comply with § 131-6 and § 131-7 of this chapter and all other applicable state, county and local laws and regulations.

B. No mobile home shall be occupied prior to the issuance of a certificate of occupancy by the Code Enforcement Officer, as specified in Chapter 78, Building Construction and Fire Prevention of this Code.

C. It shall be unlawful to increase the living or storage space of any mobile home licensed hereunder, without first obtaining a permit from the Code Enforcement Officer. This shall not preclude or prohibit the erection of a storm shelter or seasonal enclosure thereon, provided that a building permit is secured therefor, and provided that storage space is not afforded in the storm shelter. Awnings or canopies without sides may be attached to mobile homes, and an outdoor, unenclosed patio may be constructed to the rear of the front setback, provided that a building permit is secured therefor.[5]

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[4] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**
[5] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**

D. The Village of Alden must be notified in writing a minimum three (3) days prior to the removal of any mobile home from a mobile home lot.

E. No occupied mobile home shall be located in a mobile home park in any area other than upon a mobile home park lot.

F. Mobile home parks shall at all times be maintained in a clean and sanitary manner in accordance with the provisions of this chapter and with any other requirements imposed as a condition of granting a license or the renewal thereof. Nothing in this chapter shall be construed to abrogate any of the provisions of the Erie County Health Department or of the Public Health Law of the State of New York, as the same now provides or as the same may hereafter be amended. In the event of inconsistencies existing between the provisions of this chapter and said code or law, said code or law shall govern.

§ 131-9. License required for mobile home park. [Amended 6-23-2011 by L.L. No. 2-2011]

A. It shall be unlawful to construct or operate a mobile home park without first securing a license, and thereafter annually renewing same, from the Village Board and complying with the considerations and standards of this chapter.

B. The Village Clerk of the Village of Alden shall issue a license to an applicant whose site has been established as a mobile home park, to be effective from September 1st of the current calendar year, when all of the following have been satisfied:

(1) Submission of a completed license application on or before May 1st of the current calendar year..

(2) Receipt of required fee as herein provided.

(3) Approval by the Code Enforcement Officer, Superintendent of Public Works and Village Engineer.

(4) Approval of the original application by the Erie County Department of Health.

(5) Approval of the application by the Village of Alden Board of Trustees.

C. The original application for a mobile home park license shall be filed with the Village Clerk and shall be accompanied by a nonrefundable fee, as set forth in the

schedule of fees established by the Village Board, per acre of land area on the site of the proposed mobile home park, as shown on the application. The fee per mobile home for an annual license and renewal thereafter shall be an amount set forth in the schedule of fees established by the Village Board.[6] Thereafter each mobile home shall be assessed on the tax rolls of the Village of Alden against the owner(s) of the mobile home park or qualified mobile home park owners applying for senior citizen exemption under the Real Property Tax Law. In addition, a building permit fee[7] per mobile home unit, as established in the schedule of fees set by the Village Board, will be charged for the purpose of ensuring compliance with this chapter or any other applicable local law or ordinance prior to the issuance of a certificate of occupancy. Such fees shall apply to the initial installation of units or the replacement of such units as determined by the Code Enforcement Officer.

D. The application for a license and/or annual renewal thereof shall be made on forms prescribed by the Village Board and shall include the name and address of the record owner of the property, and in the case of an organization or corporation, the names and addresses of all principals of said organization or corporation. In the event the title is vested in some other person other than the applicant, the application shall be submitted, together with a duly verified statement, by the record owner that the applicant is authorized by him to construct and maintain the mobile home court. The initial license application shall also include, but shall not be limited to: all application materials submitted at the time the mobile home park was established and engineering plans and specifications of all improvements and facilities constructed or to be constructed within the mobile home park.

E. Expiration of licenses.

(1) All mobile home court licenses in effect on the effective date of this Chapter shall expire on May 31, 2003.

(2) Application for annual renewal of a mobile home park license shall be submitted for the period commencing on or after June 1, 2003, and shall be accompanied by a fee as set forth in the schedule of fees[8] set by the Village Board. Licenses issued upon approval of said application and each subsequent license shall expire on August 31st of the year following the issuance thereof.

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[6] **Editor's Note: See Ch. A220, Fees.**
[7] **Editor's Note: See Ch. A220, Fees.**
[8] **Editor's Note: See Ch. A220, Fees.**

F. Public hearing required.

(1) Before any mobile home park license is approved or renewed, a public hearing shall be held by the Village of Alden Board of Trustees on or before June 15th of the current calendar year to accept comments for or against such approval or renewal.

§ 131-10. Health and safety considerations.

A. A licensee of a mobile home park shall assure that the essential community services, such as mail drop, police and fire protection, are adequately accommodated.

(1) The park shall contain adequate fire hydrants as required by applicable state, county and village requirements.

(2) The licensee shall be obligated to remove snow and maintain all park streets in a manner which allows free access to emergency vehicles.

B. The park shall not be subject to hazards such as objectionable smoke, noxious odors, unusual noises or flooding.

C. The condition of soil, groundwater level, drainage, rock formations and topography shall be such as not to create hazards to the property or to the health and safety of the occupants or to adjacent property owners.

D. Trash collection shall be provided by the mobile home park licensee. The storage, collection and disposal of refuse in a mobile home park shall be so managed as to create no health or accident hazards, rodent harborage, insect breeding area or pollution of air or water. All refuse shall be stored in flytight, watertight, rodent-proof containers, which shall be provided in sufficient number and capacity to prevent any refuse from overflowing. Insect and rodent control assurance to safeguard public health as recommended by the Erie County Health Department shall be applied to all mobile home parks.

E. All waste from showers, tubs, toilets, laundries, faucets, sinks and lavatories shall be directed into a public sewer system whose design, capacity, construction and operation are approved by the applicable state, county, or local agency having jurisdiction over the disposal system.

§ 131-11. Maintenance and management. [Amended 6-23-2011 by L.L. No. 2-2011]

A. Every mobile home park licensee shall maintain a park map showing all mobile home lots with their dimensions and a park register containing a record of all mobile homes and occupants. Such park map and park register shall be available to any authorized person inspecting the mobile home park and shall be preserved for the period required by the Code Enforcement Officer. The mobile home park licensee shall provide the Village Clerk and Code Enforcement Officer with one (1) copy each of such park map and park register by June 1st of each year, to be kept on file for inspection by any interested person. Such park register shall contain:

(1) The name, address and telephone number of each operator or person in charge of the mobile home park.

(2) The names and addresses of all mobile home occupants residing in the park.

B. In every mobile home park, there shall be a building in which shall be located the office of the operator or person in charge of said park. A mobile home may be approved by the Village Board to serve as said office instead of a separate building, but must be identified as the office. A copy of the mobile home park license and a copy of this chapter and all subsequent amendments thereto as may be made from time to time by the Village Board shall be posted in said office. The park map and park register shall at all times be kept in said office.

C. It is hereby the duty of the attendant or person in charge, together with the licensee, to:

(1) Keep the park map and park register.

(2) Maintain the park in a clean, orderly and sanitary condition at all times.

(3) Prohibit the use of any mobile home by a greater number of persons than it is designed to accommodate.

(4) See that the provisions of this chapter are complied with, including the collection and payment to the Village Clerk of any mobile home building permit fees, occupancy fees, and licensing fees now or hereafter required by said chapter to be paid in connection with the occupancy of the mobile home park.

(5) In addition to notifying park occupants of all applicable provisions of this chapter, the management shall inform tenants of their rights and responsibilities regarding any restrictions, rules, regulations, deed and/or lease covenants and facilitate strict compliance with all such conditions.

D. Vacant mobile home park lots shall be kept in a safe, clean, and sanitary manner at all times. The following are standards for vacant mobile home park lots, and shall be applicable to all vacant mobile home park lots within a mobile home park:

(1) All utilities on a vacant lot shall be terminated at their source or at a shut-off mechanism, approved by the Village of Alden;

(2) All footings, foundations, concrete, asphalt and stone shall be removed from the vacant lot and disposed of properly;

(3) All vacant lots shall be graded with topsoil and seeded with grass or sod in accordance with the park drainage system, such that no standing water exists on the lot and no water is displaced onto adjoining lots or other properties.

(4) These requirements shall not apply for vacant mobile home park lots where a valid building permit has been secured for the installation of a mobile home on said lot.

§ 131-12. Inspections; corrections of conditions; revocation of license.

A. Before a mobile home park commences operation, and before a mobile home park license is issued, the Code Enforcement Officer shall make an inspection of the site. He shall determine that all the requirements of this chapter have been complied with before he approves the license application.

B. If the Code Enforcement Officer finds that a mobile home park is not being maintained in a clean, orderly and sanitary condition or that such mobile home court is not being operated in accordance with the provisions of this chapter, he shall serve upon the licensee, his agent or employee an order in writing directing that conditions therein specified be remedied within ten (10) days after service of such order. If, after the expiration of said period, such conditions are not corrected in accordance with said order, the Code Enforcement Officer shall serve a notice in writing upon such mobile home park licensee, requiring the licensee to appear before the Village Board of the Village of Alden at a time to be specified in such notice and show cause why such license should not be otherwise revoked.

The Village Board may, after a hearing at which the testimony and witnesses of the Code Enforcement Officer and the licensee shall be heard, revoke said license if the conditions described in the original order have not been corrected or if the licensee has violated or caused to have violated any of the other provisions of this chapter not so cited in the original order of the Code Enforcement Officer. Upon the revocation of such license, the premises affected shall forthwith cease to be used for the purpose of a mobile home park and all mobile homes shall be removed therefrom within a period of time as indicated by the revocation action of the Village Board, at the sole expense of the mobile home park owner. In lieu of the revocation of said license, the Village Board may require alternative conditions upon the mobile home park and its owner(s) that seek to accomplish the intentions of this chapter.

§ 131-13. Penalties for offenses.

A. Any person who violates any provision of this chapter shall be guilty of a violation and be subject to a fine of two hundred fifty dollars ($250.00) and/or imprisonment not to exceed fifteen (15) days. The imposition of any penalty for a violation of this chapter shall not excuse the violation nor permit it to continue.

B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation hereunder.

§ 131-14. Administration; fees.

A. The Village Clerk and the Code Enforcement Officer are directed to maintain one (1) copy of this chapter and all revisions and amendments thereto in their respective offices where they may be inspected by any interested person.

B. It shall be the duty of the Village Clerk to perform all tasks assigned to him or her by the provisions of this chapter. Among other duties, the Village Clerk shall collect, record and turn over to appropriate village officials all moneys received from license applications, license renewals, permits and such other certifications as provided for in this chapter or by the Board of Trustees.

C. Fees for licenses, applications, renewals, permits and such other authorizations by the Village of Alden, as provided for in this chapter, shall be established by the Board of Trustees by type and amount.[9]

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[9] **Editor's Note: See Ch. A220, Fees.**

Chapter 133[1]

(Reserved)

[1] **Editor's Note: Former Ch. 133, Multichannel Service Providers, adopted 4-28-1997 by L.L. No. 2-1997, listed in the Code as on file in the Clerk's office, was repealed 5-11-2000 by L.L. No. 2-2000.**

Chapter 143

PARK RULES AND REGULATIONS

§ 143-1.	**Power to designate public parks.**	**§ 143-3.**	**Use of parks.**
§ 143-2.	**Fireman's Memorial Park.**	**§ 143-4.**	**Rules and regulations.**
		§ 143-5.	**Penalties for offenses.**

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 6-26-2004 by L.L. No. 2-2004. This Chapter replaces former Chapter 143, PARKS AND RECREATION AREAS. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic Beverages -- See Ch. 58.
Amusements and amusement devices -- See Ch. 62.
Solid Waste -- See Ch. 173.
Fees -- See Ch. A220.

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§ 143-1. Power to designate public parks.

The power to designate an area as a village park shall be vested in the Village Board.

§ 143-2. Fireman's Memorial Park.

The "Fireman's Memorial Park" shall be defined as that area bounded by the east curbline of Church Street, the northerly curbline of Broadway and the southerly curbline of West Main Street.

§ 143-3. Use of parks.

The village parks are to be used by Alden residents and their guests only.

§ 143-4. Rules and regulations.

It shall be unlawful for any person to do any of the acts hereinafter specified.

A. Hours. For any reason to enter a park prior to 6:00 a.m. or to remain within the park after sundown.

(1) Special extension. If an organization or resident wishes to have the hours extended, this may be done upon request of the organization or resident to the Village Board, the Mayor or a duly appointed representative at least five (5) days prior to the reservation date. Approval of this request may be granted by the Village Board, the Mayor or a duly appointed representative.

(2) Hours of operation of recreation. The Village of Alden Board of Trustees shall have the authority to extend the hours of access to the confines of the park when, in the judgement of the Board, public interest demands it.

(3) In case of an emergency when, in the judgement of the Village Board, the Mayor, or a duly appointed village representative, the public interest demands it, any portion of a park may be closed to the public or to designated persons until permission is given to reopen.

B. Firearms. For any person to take or otherwise transport any firearms, air guns, knives, swords, slingshots or bows and arrows or other weapons in a park. Responsibly supervised events may allowed with written permission of the Village Board.

C. Preservation of property. For any reason to injure, deface, disturb or befoul any part of a park or any of the buildings, signs, equipment or other property found therein or to remove, injure or destroy any tree, flower, shrub, rock or other organic or inorganic matter. The peeling of bark or the cutting or injuring of trees is prohibited.

D. Fires. For any person to light any fire for any purpose in the park except in a grill, stove, or oven provided for that purpose. Lighted matches, cigarettes, cigars or burning tobacco must not be deposited or left where they may cause fires.

E. Garbage and refuse. Grounds must be maintained in a clean and sanitary condition. Littering of any kind is strictly prohibited. Garbage and refuse must be deposited in the receptacles provided.

F. Dogs and other animals. For any person to bring dogs or other animals into a park unless the same are on a leash and kept on a leash while in the park.

G. Hunting, fishing and trapping. For any person to hunt or trap game within park boundaries or for any person to fish within park boundaries where posted.

H. Bathing, wading and swimming. For any person to bathe, wade or swim in any of the streams, pools or lakes in the park, except where and as prescribed by special rules governing the same.

I. Horses and riders. Horses and their riders are prohibited from using park areas, except over bridle paths or other paths established for said purposes. No rider shall travel at a gait in excess of a trot while in the park to preserve the safety of the public and avoid endangering children at play.

J. Speed limit. No person shall drive or cause to be driven along or over any road within the park any vehicle at a speed or in a manner which endangers the life or limb of any person, and in no event shall the speed of any vehicle exceed ten (10) miles per hour, nor shall any person park, stand or stop or cause to be parked, standing or stopped any vehicle at any point where a sign prohibiting same has been erected pursuant to a direction of a village employee or by the Village Board. Motorcycles, motor bicycles and motor scooters are to be parked at the parking lots and not driven off the paved highways.

K. Skateboards and rollerblades. No person shall utilize skateboards, rollerblades, roller skates and non-motorized scooters in the park except upon paved highways within the park. No person shall ~~use~~ utilize skateboards, rollerblades, roller skates and non-motorized scooters in a manner which causes defacement or damage to the park.

L. Playground equipment. No person shall use the playground equipment for purposes other than intended for said equipment. Only those persons for which the equipment is designed shall use the equipment.

M. Glass containers. For any person, firm or corporation to possess any glass beverage container within the park.

N. Loud noise. No person, organization, corporation, group or other entity shall ~~to~~ cause or permit to continue any noise which may be determined by a reasonable person to be excessive, disturbing and/or annoying if heard by such other individual or entity at a distance of more than fifty (50) feet from the noise source. At no time shall bullhorns, radios, boom boxes, CD players, or other electronic or mechanical devices be used in any Village park without the prior written permission of the Board of Trustees or their designee. Such sound generation devices shall not include cellular telephones, walkie talkies, or similar communication devices which do not otherwise amplify sound. In no event shall any electronic and/or mechanical device be used to generate audible noise after 11:00 p.m. nor before 7:00 a.m. in any Village park.

O. Alcoholic beverages. For any person, firm, organization, entity or corporation to possess any alcoholic beverage within the park unless permitted to do so by permit issued by the Village of Alden.

P. Commercial enterprises. For any person, firm or corporation to sell or offer for sale within the park any property or privilege whatsoever, unless authorized by the Village Board.

Q. Park reservations. Village residents and organizations may reserve available shelters at any park.

(1) The Village Clerk shall have the authority to grant permission to individuals who are residents to use the shelters. Reservation will not be accepted before April 1 of the year of use.

(2) At the discretion of the Village Clerk, organizations, through their representatives, may be granted use of the shelters after January 1 of the year of use. An exception to this rule would be organizations or individuals selling tickets for an event or products at the event. In such cases, permission is to be granted by the Village Board at a regular meeting or a special meeting of such Board.

§ 143-5. Penalties for offenses.

A. Violation of any of the foregoing rules and regulations set forth in this chapter shall constitute an offense, and a person guilty of such offense shall be punishable by a fine not exceeding two hundred fifty dollars ($250.00) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment.

B. Each instance of an offense under this chapter shall constitute, for each offense, a separate and distinct violation hereunder.

Chapter 147

PEACE AND GOOD ORDER

§ 147-1. Fires on streets.
§ 147-2. Use of weapons.
§ 147-3. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 11-22-1976 as L.L. No. 3-1976 (Ch. 33 of the 1966 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation areas -- See Ch. 143.
Streets and sidewalks -- See Ch. 177.

§ 147-1. Fires on streets.[1]

No person shall, without the permission of the Board of Trustees or the Mayor of the village, build a fire of any description, including the burning of leaves, rubbish or paper, in or upon the paved or improved section of any street or other public ground within the village.

§ 147-2. Use of weapons.[2]

No person shall use, discharge or propel any rifle, pistol or other firearm or any knife, bow or other weapon that may be dangerous, harmful or injurious to any person, property or animal within the Village of Alden except as authorized by the Board of Trustees or by the laws of the State of New York.

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[1] Editor's Note: Former §§ 33-1 through 33-4, which immediately preceded this section and provided regulations on riots and noise disturbance, obscene language, loitering and damaging public property, respectively, were deleted on 3-6-1995 by L.L. No. 3-1995.

[2] Editor's Note: Former §§ 33-6, 33-7 and 33-8, which immediately preceded this section and provided regulations on fireworks, soliciting and houses of ill fame, respectively, were deleted on 3-6-1995 by L.L. No. 3-1995.

§ 147-3. Penalties for offenses. [Amended 3-6-1995 by L.L. No. 3-1995]

Except as otherwise set forth, a violation of this chapter shall be deemed a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars ($1,000.00) or by imprisonment for a period not exceeding one (1) year, or by both fine and imprisonment.

Chapter 155

PROPERTY REGISTRATION

§ 155-1. Title.
§ 155-2. Purpose.
§ 155-3. Definitions.
§ 155-4. Registration required.
§ 155-5. Registry.
§ 155-6. Expiration of registration; renewal.
§ 155-7. Fees
§ 155-8. Violations; penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: 2-9-2012 as L.L. No. 2-2012. Other amendments noted where applicable.]

GENERAL REFERENCES

Licenses and permits -- See Ch. 125.

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§ 155-1. Title.

This chapter shall be known as the "Property Registration Law of the Village of Alden, New York."

§ 155-2. Purpose.

The purpose of this legislation is to protect the health, safety and welfare of the residents of the Village of Alden as well as the individuals who may rent property within the Village.

§ 155-3. Definitions.

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

AGENT -- Any person who has charge, care, custody and/or control of a building or part of such building in which rental dwelling units or rooming units are leased on either a weekly, monthly, or longer period of time.

OWNER – The property owner of record as listed in the most recent publication of the Official Tax Roll of the Village of Alden.

RENTAL UNIT – Any room or contiguous group of rooms located within a building and forming a habitable living space which is leased and/or rented for any period of time.

ROOMING UNIT – Any furnished room for rent located within a building and forming a single sleeping space which is leased and/or rented.

LEASE – Any agreement, whether oral or written, regardless of the length of time which shall reflect an agreement between two or more parties with respect to the use and/or occupation of a rental dwelling unit and/or rooming unit.

§ 155-4. Registration required.

A. All owners, residing outside the County of Erie, State of New York, of real property including, but not limited to, mobile home parks, commercial establishments, retail entities, service businesses, and industrial facilities shall register said real property with the Village Clerk and Code Enforcement Officer.

B. All owners of apartment units and/or dwelling units which are are leased and/or rented regardless of the particular length of time of such lease or rental of units, shall register said real property with the Village Clerk and Code Enforcement Officer. This shall not include owner-occupied two family dwellings.

C. As of the effective date of this article, all owners of existing real property required to be registered as above shall be registered on or before May 31, 2012.

D. The owner of any newly constructed or created rental unit required to be registered as above shall register such real property prior to allowing occupancy of said real property and any new rental unit therein.

E. The owner of any real property already registered with the Village shall notify the Village, in writing, within thirty (30) days after any change occurs in the registration information. A new owner of a registered real property shall register such property within thirty (30) days of assuming ownership.

§ 155-5. Registry.

A. The Village shall maintain a registry of all registered property containing the following information which shall be provided by the owner on forms available

from the Code Enforcement Officer. Such required information shall include, but not be limited to, the following:

(1) Name, legal residence, address, if different, and telephone number of the owner of the real property. In the event that the owner is not a natural person, than the owner information shall include the president, general manager or other chief executive officer of the entity owning such property. Where more than one natural person has an ownership interest, the required information shall be included for each owner. The information required shall also include the address, telephone number, and electronic address for the owner and all other responsible persons as set forth herein.

(2) Name, legal residence, address, telephone number and electronic mail address of any agent in care, custody and/or control of the real property.

(3) The number and type of rental and/or rooming units in the dwelling, if applicable.

(4) The legal address of the real property. Individual room or housing unit numbers or designations must be provided for rental properties, where applicable.

(5) The employer identification number in the event that the real property is owned by a corporation or similar entity.

(6) If neither the address of the owner nor the address of the agent in control of the real property as provided herein are located within the County of Erie, the owner must provide the name, legal resident, or other business address within Erie County of a natural person who shall act as an agent for service of process and service of notices and orders issued pursuant to the Code of the Village of Alden, the New York State Fire Building Construction and Fire Prevention Code and the New York State Energy Conservation Code, for service of process in connection with the prosecution of violations under such Codes. The owner and/or agent shall accept service of process by regular mail and certified mail, return receipt requested which shall be deemed sufficient and proper service.

§ 155-6. Expiration of registration; renewal.

A. All registrations for real property under this Code shall expire on May 31st of each calendar year.

B. All real property required to be registered under this Code shall renew said registration on or before June 1st of each calendar year.

§ 155-7. Fees.

Upon registering, the owner of such real property shall pay an annual registration fee[1] as set forth by the Board of Trustees. All registration fees and renewal fees must be paid by no later than May 31st of each calendar year.

§ 155-8. Violations; penalties for offenses.

A. It shall be a violation of this article for an owner or responsible person to provide inaccurate information for the registry of real property or to fail to provide the information required herein for the registry and/or to fail to register and/or re-register after the expiration of the original registration.

B. A violation of this article will be assessed on each day that the property is not registered up to Twenty-five Dollars ($25) per day for each day that the property is either not registered and/or inaccurate and/or incomplete information is provided after notice to the owner to comply.

[1] **Editor's Note: See Ch. A220, Fees.**

Chapter 165

SEWERS

Part 1
Rents and Charges

ARTICLE I
Sewer Rents

§ 165-1. Purpose.
§ 165-2. Basis for charges.
§ 165-3. Amount of rents; payments.
§ 165-4. Unpaid rents as lien.

ARTICLE II
Tapping or Connection Fees

§ 165-5. Connection fees.

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Sewer Construction and Connections

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ARTICLE IV
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§ 165-7. Unsanitary deposit of waste prohibited.
§ 165-8. Toilet facilities; connection to public sewer required.

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Private Sewage Disposal

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§ 165-10. Permit required; fee.
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§ 165-12. Compliance with state public health recommendations.
§ 165-13. Public sewer availability.
§ 154-14. Operation at owner's expense.
§ 165-15. Additional requirements imposed by Health Officer.
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ARTICLE VI
Construction and Connections

§ 165-17. Permit required; fees.
§ 165-18. Conformity Required
§ 165-19. Construction of sewers.
§ 165-20. Sanitary sewer extensions.

ARTICLE VII
Use of Public Sewer
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§ 165-22. Stormwater discharge prohibited.
§ 165-23. Approval of Board to discharge into sewers.

§ 165-24. Additional construction requirements.

§ 165-25. Other wastes or waters prohibited.
§ 165-26. Interceptors
§ 165-27. Maintenance of interceptors.
§ 165-28. Wastes subject to review by the Board.
§ 165-29. Pretreatment.
§ 165-30. Control manhole.
§ 165-31. Measurements; tests and analysis.

§ 165-32. Special agreements for industry.

ARTICLE VIII

Protection from Damage

§ 165-33. Penalty for damaging or tampering with sewer.

ARTICLE IX

Powers and Authority of Inspectors

§ 165-34. Entering private property; release of information.
§ 165-35. Inspection upon sale of property.

ARTICLE X

Penalties for Offenses

§ 165-36. Enforcement authority.
§ 165-37. Written notice of violation.
§ 165-38. Continued violation.
§ 165-39. Liability to village.
§ 165-40. Harmful contribution.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden: Part 1, 4-16-1962 (Ch. 40, Art. I, of the 1966 Code); Amended in its entirety 1-23-2003 by L.L. No. 11-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Licenses and permits -- See Ch. 125.
Water use and service -- See Ch. 205.
Fees -- See Ch. A220.

Part 1
Rents and Charges

ARTICLE I
Sewer Rents

§ 165-1. Purpose.

For the purpose of providing for the payment of the operation, maintenance, repair and improvement of the sewer system of the Village of Alden on the basis of a separate utility and providing for the payment of the cost thereof, including the treatment and disposal works and any enlargement and replacement thereof, and payment in part of the debt incurred for the enlargement or replacement of the same and interest thereon, but not for the extension of the sewer system to serve any unsewered areas or for any purposes other than those above specified, sewer rents are established as hereinafter provided.

§ 165-2. Basis for charges.

Owners and occupants of premises connected to the sewer system shall pay a rental based upon the amount of the water consumed on said premises as disclosed by each water meter on the premises where such meters are required by village ordinances and which premises are served by the sewer system.

§ 165-3. Amount of rents; payment.[1]

The amount of sewer rents shall be determined by resolution of the Board of Trustees of the Village of Alden. Such sewer rents shall be billed and paid quarterly and at the same time as provided for the billing and payment of water bills. Any discount or penalty applicable to water bills shall likewise apply to the payment of sewer rents.

§ 165-4. Unpaid rents as lien.

Unpaid sewer rents shall constitute a lien upon the real property of the owner served by the sewer system and may be added to the tax bill and collected as provided by law, or, at the option of the village, in the event of nonpayment, the water may be turned off on the premises served by said sewer the same as for an unpaid water bill, and service shall not

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[1] **Editor's Note: See Ch. A220, Fees.**

be reestablished until the bill is paid, plus a charge established from time to time by resolution of the Board of Trustees.

ARTICLE II
Tapping or Connection Fees[2]

§ 165-5. Connection fees.

A. There is hereby imposed on the owner of each property connecting to the sewer system, after the effective date of this Article, a connection fee for each single-family dwelling, each multiple-family dwelling, and each nonresidential building. Such fee is to be determined by resolution of the Board of Trustees of the Village of Alden. All owners of property shall connect their premises to the sewer system as and when the same may be available in accordance with the regulations set down in Part 2 of this chapter of the Code of the Village of Alden.

B. There is hereby imposed on any other person connecting to the sewer system, after the effective date of this Article, a connecting fee to be determined by resolution of the Board of Trustees of the Village of Alden, said fee to be based upon the number of receptacles entering into the building drain. The term "receptacle" shall include any toilet, shower, bathtub, sink, washbasin, floor drain or outlet of a similar nature.

C. Existing dwellings which have not been afforded sewage facilities as of the date of the effective date of this Article shall not be subject to the above-described fees.

[2] **Editor's Note: See Ch. A220, Fees.**

Part 2
Sewer Construction and Connections

ARTICLE III
Terminology

§ 165-6. Word usage; definitions.

A. Word usage. "Shall" is mandatory; "may" is permissive.

B. Definitions. As used in this Part 2, the following terms shall have the meanings indicated:

ASTM (denoting "American Society for Testing and Materials") -- The latest published amendments or revisions of the specifications and standards promulgated by the Society.

BOARD -- The Board of Trustees of the village or its authorized representatives.

BOD (denoting "biochemical oxygen demand") -- The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at twenty degrees centigrade (20° C.), expressed in parts per million by weight.

BUILDING DRAIN -- That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

BUILDING SEWER -- The extension from the building drain to the public sewer or other place of disposal. It shall be installed, maintained and owned by the owner and shall be under the jurisdiction of the village.

COMBINED SEWER -- A sewer receiving both surface runoff and sewage.

ENFORCING OFFICER -- The Superintendent of Public Works, or his/her designee.

GARBAGE -- Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

HEALTH OFFICER -- Any person designated by the Village of Alden or the New York State Department of Health or the Erie County Health Department to perform any functions or tasks as required by law.

INDUSTRIAL WASTES -- The liquid wastes from industrial processes as distinct from sanitary sewage.

NATURAL OUTLET -- Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

OWNER -- Any person who owns the property which is being serviced by the public sanitary sewer system, any user of the public sanitary sewer system or any individual owning real property situated within the Village of Alden.

PERSON -- Any individual, firm, company, partnership, association, society, corporation or group.

pH -- The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE -- The wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.

PUBLIC SEWER -- A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

SANITARY SEWER -- A sewer which carries sewage and to which storm- , surface and ground waters are not intentionally admitted.

SEWAGE -- A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

SEWAGE TREATMENT PLANT -- Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS -- All facilities for collection, pumping, treating and disposing of sewage.

SEWER -- A pipe or conduit for carrying sewage.

SPDES -- The State Pollutant Discharge Elimination System.

STORM SEWER or STORM DRAIN -- A sewer which carries storm- and surface waters and drainage, but excludes sewage and polluted industrial wastes.

SUSPENDED SOLIDS -- Solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtering.

USER -- Any person who owns any property which is serviced by the public sanitary sewer system or any person who uses any aspect of the public sanitary sewer system.

VILLAGE -- The Village of Alden.

WATERCOURSE -- A channel in which a flow of water occurs, either continuously or intermittently.

ARTICLE IV
Use of Public Sewers Required

§ 165-7. Unsanitary deposit of waste prohibited.

It shall be unlawful to discharge or cause to be discharged into any natural outlet within the village any sanitary sewage, industrial wastes or other polluted waters, except where interception of treatment has been provided in accordance with subsequent provisions of these rules.

§ 165-8. Toilet facilities; connection to public sewer required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purpose, situated within the village and accessible to a public sanitary sewer of the village, are hereby required, at their expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of these rules within ninety (90) days after the date of official notice to do so, provided that said public sewer is within one hundred fifty (150) feet of the building to be served.

ARTICLE V
Private Sewage Disposal

§ 165-9. Unavailability of sanitary sewers.

Where a public sanitary sewer is not available under the provisions of Article IV of this Part 2, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Article.

§ 165-10. Permit required; fee. [3]

Before the commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent of Public Works. The application for such permit shall be made on a form furnished by the village, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Superintendent of Public Works. The fee for such permit and inspection shall be determined by resolution of the Board of Trustees of the Village of Alden.

§ 165-11. Inspection.

A permit for the use of a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent of Public Works. He or she shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Superintendent of Public Works when the work is ready for final inspection and before any underground portions are covered.

§ 165-12. Compliance with state public health recommendations.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health of the State of New York. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than twenty thousand (20,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

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[3] **Editor's Note: See Ch. A220, Fees.**

§ 165-13. Public sewer availability.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Article V, a direct connection shall be made to the public sewer in compliance with this Part 2, and any septic tanks, cesspools and similar private sewage-disposal facilities shall be abandoned and filled with suitable material.

§ 165-14. Operation at owner's expense.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the village.

§ 165-15. Additional requirements imposed by Health Department.

No statement contained in this Article shall be construed to interfere with any additional requirements that may be imposed by the Health Department.

§ 165-16. Time limit for connection.

When a public sewer becomes available, the building sewer shall be connected to said public sewer within ninety (90) days, and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

ARTICLE VI
Construction and Connections

§ 165-17. Permit required; fees.

No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent of Public Works. The owner, user or his or her agent shall make applications on a form furnished by the Village of Alden, supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent of Public Works. Such plans are required for multiple dwellings or commercial or public buildings. Applications may be made by the contractor, who must show authorization from the owner or user. The contractor must show proof that he is currently a licensed plumber in the Village of Alden. Inspection fees for these public

improvements shall be determined by resolution of the Board of Trustees of the Village of Alden.[4]

§ 165-18. Conformity required.

Every plumber or sewer pipelayer shall be subject and conform to all and each of these rules, regulations and penalties which now exist or may hereinafter be adopted by the Board.

§ 165-19. Construction of sewers.

A. All costs and expenses incident to the installation and connection of the building sewer shall be born by the owner. The owner shall indemnify the village from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

B. A separate and independent building sewer shall be provided for every building, except where special permission is received from the Board.

C. Old building sewers may be used in connection with new buildings only when they are found, upon examination and approval by the enforcing officer, to meet all requirements of these regulations.

D. The building sewer shall be constructed of one (1) of the following:

(1) Four-inch extra heavy cast-iron soil pipe and fittings conforming to the requirements of latest revision of the ASTM A74 latest revision. Joints for pipe and fittings shall be push-on type with gaskets of neoprene or rubber in accordance with the latest revision of ASTM C564.

(2) Four-inch polyvinyl chloride (PVC) non-pressure pipe and fittings conforming to the requirements of ASTM D3034 latest revision, with minimum pipe stiffness of forty-six (46) pounds per square inch at a maximum deflection of five percent (5%). Joints shall be bell and spigot type, with rubber gaskets factory-installed in the bell.

(3) Variations in these requirements may be acceptable if approved by the enforcing officer, in writing.

[4] **Editor's Note: See Ch. A220, Fees.**

(4) American Society for Testing and Materials tests on all sewer pipes must be performed in the United States. Any variance from the sewer sizes described above must be approved by the Board.

E. The slope of building sewers shall be one-fourth (1/4) inch per foot unless special permission is obtained from the enforcing officer, but in no case is a slope of less than one-eighth (1/8) inch per foot acceptable.

F. The building sewer shall be brought to the building at a depth sufficient to afford protection from frost. It shall be laid at a uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings.

(1) Cast-iron soil pipe shall be embedded using native material, containing no stones larger than one and one-half (1 ½) inches in size or debris. Material shall be hand-placed and thoroughly compacted to the center line of the pipe. From the center line of the pipe to a depth of twelve (12) inches above the pipe, embedment shall be placed and compacted in such a manner as to not damage the pipe. Whenever specified or directed by the enforcing officer, select fill material shall be used in lieu of native material.

(2) Polyvinyl chloride (PVC) pipe shall be embedded using select fill, as directed by the enforcing officer, from a depth of four (4) inches below the pipe to a depth of twelve (12) inches over the pipe, unless otherwise specified or directed. Select fill shall be hand-placed and thoroughly compacted in maximum six-inch layers.

(3) Other types of pipe approved for use shall be embedded in strict accordance with the pipe manufacturer's recommendations and as directed by the enforcing officer.

G. No footing drains, roof drains or other drains carrying surface or ground water shall be connected to the building or sanitary sewer. A sump pump shall be provided wherever required to carry ground- and surface water to a natural outlet or storm sewer. Municipal highway and water departments and utility companies shall be notified before any excavation is made.

H. Pipe laying and backfill shall be in accordance with applicable ASTM specifications for pipe material used and as directed by the enforcing officer. No backfill shall be placed until the work has been inspected to the satisfaction of the enforcing officer. Cast-iron pipe or concrete encasement shall be required where the building sewer crosses under the pavement of an existing or future public

road. In the event of unstable soil conditions, special construction methods may be required by the enforcing officer.

I. Each building sewer shall be provided with a cleanout at housewall end, at sharp changes in direction and at least for every one hundred (100) feet of length; the openings to be a minimum of three (3) inches above the cellar floor. A double hand-hole trap and fresh air inlet are required to be placed in the building drain when practicable, but may be located in the building sewer upon written approval of the enforcing officer.

J. Connection of the building sewer into the sanitary sewer shall be by:

(1) A vitrified-tile, reinforced concrete, cast-iron or asbestos cement branch or riser installed at the time of construction of the main sewer. Joints shall be equal to Type I or III as described in ASTM C-425-64T and as designated by the enforcing officer. Damaged vitrified-tile branches shall be replaced. All connections shall be watertight.

(2) Saddle-type connections to the main sewers shall be made in a smooth, round hold, machine drilled. The fitting used shall be made to ensure that it will not protrude into the main sewer. The fitting shall fit the contour of the inside of the main sewer and be designed for the size of pipe into which construction is being made. One-eighth (1/8) inch clearance shall be provided between the fitting and the hole and between the shoulder of the fitting and the face of the main pipe. These spaces shall be completely filled with waterproof joint material capable of withstanding any stress or strain likely to be encountered in normal sanitary sewer construction or maintenance without leaking. The fitting shall be constructed of materials compatible with pipe material used and shall be approved by the enforcing officer.

K. All excavations for building or sanitary sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the enforcing officer. Ditches and culvert pipes for storm- and sewer water or other utilities disturbed during installation of sewer shall be restored to their original condition. All driveways and parking areas shall be backfilled with select fill and restored to their original condition.

§ 165-20. Sanitary sewer extensions.

A. Applications to construct extensions or additions to the village sewer shall be made as outlined in § 165-17 of this chapter. Three (3) sets of the application to construct the sanitary sewer, along with six (6) sets of detailed plans showing the proposed construction, shall be forwarded to the Superintendent of Public Works. Two (2) set of the approved plans shall be retained by the Superintendent of Public Works for office and field use. Three (3) sets of the application and approved plans will be forwarded with a letter of approval to the Erie County Health Department for final acceptance. Evidence of Health Department approval is required by the Superintendent of Public Works.

B. Inspection during construction will be made by the enforcing officer. No sanitary sewers shall be backfilled until such inspection has been made. Inspection and acceptance by the village does not relieve the owner of the responsibility to keep the sewer operating in accordance with these regulations. All dates of construction shall be provided to the Superintendent of Public Works, in writing, at least seventy-two (72) hours prior to such construction commencing or continuing.

C. Extensions or additions to the sanitary sewer system shall be made with one (1) of the following:

(1) Extra heavy cast-iron soil pipe and fittings conforming to ASTM A74 latest revision. Joints for pipe and fittings shall be push-on type with gaskets of neoprene or rubber in accordance with ASTM C564 latest revision.

(2) Polyvinyl chloride (PVC) non-pressure pipe and fittings conforming to ASTM D3034 latest revision (for sizes four-inch through fifteen-inch) and ASTM F679 latest revision (for sizes eighteen-inch through twenty-seven-inch), with minimum pipe stiffness of forty-six (46) pounds per square inch at a maximum deflection of five percent (5%). Joints shall be bell and spigot type with rubber gaskets factory-installed in the bell.

(3) Other pipe materials may be acceptable if approved by the enforcing officer, in writing.

(4) Pipe installation shall be as specified in § 165-18F through H.

D. No connection of sanitary sewer extensions shall be permitted to the trunk sewer of the village until infiltration or other tests and final inspections have been made and approved by the Board, in writing. The allowable rate of infiltration shall not

exceed two hundred (200) gallons per inch of pipe diameter, per mile of sewer per day. The method of infiltration measurement shall be approved by the enforcing officer.

E. Existing sewers may be connected to the trunk system only when they are found upon examination and tests by the Village of Alden to be acceptable.

F. Prior to any work commencing on or near Village of Alden sewer lines, the contractor performing the work must show proof that he/she has proper performance/liability bonding in form and amount acceptable to the Village of Alden.

G. A developer or other person installing a sanitary lateral sewer connection to a public sewer shall post a maintenance bond with the Village of Alden, guaranteeing the sewer for a period of two (2) years from the time of acceptance of the sewer by the Village of Alden. The amount of this bond shall be as determined by the Village of Alden. During this period, any defects in the sewer or appurtenances shall be corrected at the builder's expense.

H. Whenever pipe laying is not in progress, the end of the pipe shall be securely closed with a tight-fitting cover or plug. Any earth or other material entering the main sewer due to operations of the plumbing, contractor or building owner shall be removed at his or her expense. All trenches shall be protected by sufficient sheeting and bracing.

I. Within highway rights-of-way, excavation, backfilling and restoration of surfaces shall be in accordance with requirements of the highway agency having jurisdiction.

J. Connection of an extension or addition to the sewer system shall be made only through an existing or newly approved manhole.

ARTICLE VII
Use of Public Sewers

§ 165-21. Plumbers to be licensed.

All plumbers performing any work on or near public sewers must be licensed as provided for in § 78-21 of this code.

§ 165-22. Stormwater discharge prohibited.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters into any sanitary sewer.

§ 165-23. Approval of Board to discharge into sewers.

Stormwater and all other unpolluted drainage shall be discharged into such sewers as are specifically designated as storm sewers or into a natural outlet approved by the Board of Trustees. Industrial cooling water or unpolluted process waters may be discharged upon approval of the Board into a storm sewer or natural outlet.

§ 165-24. Additional construction requirements.

All buildings hereafter erected with subsoil drains encircling the footing walls or under cellar floor shall meet the following requirements:

A. The building sewer shall not be connected to the building drain until all foundation wall backfill has been made and the roof construction of the building completed.

B. The yard areas immediately adjacent to the structure shall be so graded and maintained as to slope a minimum of one (1) inch to two (2) feet away from the foundation walls for a distance of at least five (5) feet. Additional fills shall be placed as needed to maintain this condition.

C. Roof leaders or downspouts may be terminated to discharge stormwater onto front or rear yard lawn areas. The water shall not be discharged onto the earth at a lesser distance than four (4) feet from the building foundation wall.

§ 165-25. Other wastes or waters prohibited.

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:

A. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150° F.).

B. Any water or waste which may contain more than one hundred (100) parts per million, by weight, of fat, oil or grease.

C. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

D. Any biodegradable garbage that has not been properly shredded.

E. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.

F. Any waters or wastes having a pH lower than five point five (5.5) or higher than nine point zero (9.0) or having any other corrosive property capable of causing damage or hazards to structures, equipment and/or personnel of the sewage works.

G. Any waters or waste containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals or to create any hazard in the receiving waters of the sewage treatment plant.

H. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

I. Any noxious or malodorous gas or substance capable of creating a public nuisance.

§ 165-26. Interceptors.

A. Grease, oil and sand interceptors shall be provided when, in the opinion of the enforcing officer, they are necessary for the proper handling of liquid waste containing grease in excessive amounts or any flammable waste, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the enforcing officer and shall be located so as to be readily and easily accessible for cleaning and inspection.

B. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of a

substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

§ 165-27. Maintenance of interceptors.

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his or her expense, and operate efficiently at all times.

§ 165-28. Wastes subject to review by the Board.

A. The admission into the public sewers of any waters or wastes having any of the following shall be subject to the review and approval by the Board:

(1) A five (5) day biochemical oxygen demand greater than three hundred (300) parts per million by weight.

(2) Containing more than three hundred fifty (350) parts per million by weight of suspended solids.

(3) Containing any quantity of substances having the characteristics described in § 165-24.

(4) Having an average daily flow greater than two percent (2%) of the average daily sewer flow of the village.

B. Where necessary, in the opinion of the Board, the owner shall provide, at his or her expense, such preliminary treatment as may be necessary to:

(1) Reduce the biochemical oxygen demand to three hundred (300) parts per million and the suspended solids to three hundred fifty (350) parts per million by weight;

(2) Reduce objectionable characteristics or constituents with the maximum limit provided for in Subsection A, above; or

(3) Control of quantities and rates of discharge of such waters or wastes. Plans, specifications and any other pertinent information relating to the proposed preliminary treatment facilities shall be submitted for approval to the Board and shall be subject to the requirements of all applicable codes, ordinances and laws.

§ 165-29. Pretreatment.

A. Where necessary, in the opinion of the Board, users shall make wastewater acceptable under the limitations established by this Part 2 and by **§** 307 of the Federal Clean Water Act of 1977 before discharging into the sewage works. Any facilities required to pretreat wastewater to a level acceptable to the Board shall be provided and maintained at the user's expense.

B. Upon the promulgation of the Federal Categorical Pretreatment Standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Part 2 for sources in that subcategory, shall immediately supersede the limitations imposed under this Part 2.

C. State requirements and limitations on discharges shall apply in any case when they are more stringent than federal requirements and limitations or those in this Part 2.

§ 165-30. Control manhole.

When required by the Board, the owner of any properties served by a building sewer carrying industrial waste shall install a suitable control manhole in the building sewer to facilitate observation, sampling band measurement of the waste. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Board. The manhole shall be installed by the owner at his or her expense and shall be maintained by him or her so as to be safe and accessible at all times.

§ 165-31. Measurements; tests and analysis.

A. When necessary, as determined by the Board, testing of the characteristics of water and waste referred to in **§§** 165-24 and 165-27 shall be conducted, and the cost of such testing may be billed to the user.

B. All measurements, tests and analysis shall be determined in accordance with Standard Methods for the Examination of Water and Sewage and shall be determined at the control manhole provided for in **§** 165-29 or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

§ 165-32. Special agreements for industry.

No statement contained in this Part 2 shall be construed as preventing any special agreement or arrangement between the village and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Board for treatment subject to pretreatment, flow rate control and/or payment therefor by the industrial concern in accordance with rules and regulations of the Erie County Health Department and New York State.

ARTICLE VIII
Protection from Damage

§ 165-33. Penalty for damaging or tampering with sewer.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the village sewer works. Any person violating this provision shall be subject to immediate arrest under the charge of disorderly conduct.

ARTICLE IX
Powers and Authority of Inspectors

§ 165-34. Entering private property; release of information.

A. The Superintendent of Public Works and other duly authorized employees of the village bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Part 2.

B. Information and data on a user obtained from reports, questionnaires, monitoring programs and from inspections shall be available to the public or other governmental agency without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the Board, at the time the information is submitted, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Wastewater constituents and characteristics will not be recognized as confidential information.

C. While performing the necessary work on private properties referred to in Subsection A above, the enforcing officer or duly authorized employees of the village shall observe all safety rules applicable to the premises.

D. The enforcing officer and other duly authorized employees of the village bearing proper credentials and identification shall be permitted to enter all private properties through which the village holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewer works lying within said easement. All entry and subsequent work, if any, on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§ 165-35. Inspection upon sale of property. [Amended 6-23-2011 by L.L. No. 9-2011]

It shall be the responsibility of the owner of any property to provide notice of the transfer of ownership of any real property whether by sale, exchange, testamentary transfer, intestacy transfer, or some other means of transfer of real property within the Village of Alden to the Superintendent of Public Works prior to the closing and/or transfer of title of the property. The purpose of this notice is to allow an inspection of such premises by the Superintendent of Public Works or his/her designee. Such inspection will be for the purpose of verifying that all sanitary and storm sewer service connections are in accordance with all local, county, state, and federal regulations. Such inspection shall be undertaken during regular business hours no later than thirty (30) calendar days prior to any closing and/or transfer of title. In the event that deficiencies are found, the Superintendent of Public Works shall be notified of the completion of such work to remedy said deficiencies and a final inspection shall take place no later than five (5) days prior to such closing and/or transfer of title.

ARTICLE X
Penalties for Offenses

§ 165-36. Enforcement authority.

The Superintendent of Public Works is hereby authorized and directed to enforce this chapter and issue appearance tickets for violations of this chapter.

§ 165-37. Written notice of violation.

Any person found to be violating any provision of this Part 2, except Article VIII, shall be served by the village with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

§ 165-38. Continued violation.

Any person who shall continue any violation beyond the time limit provided for in Article X, **§** 165-35, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined in the amount not to exceed one thousand dollars ($1,000.00) and or imprisonment up to one (1) year for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

§ 165-39. Liability to village.

Any person violating any of the provisions of this Part 2 shall become liable to the Village of Alden for any expense, loss or damage occasioned in the village by reason of such violation.

§ 165-40. Harmful contribution.

A. The Board, or its designated agent, may suspend service when such suspension is necessary, in the opinion of the Board, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, causes interference to the sewage works or causes the village to violate any condition of its SPDES permit.

B. Any person notified of a suspension of the wastewater treatment service shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the Board, or its designated agent, shall take such steps as deemed necessary, including immediate severance of the sewer connection to prevent or minimize damage to the sewage works or endangerment to any individuals or the environment. The Board shall reinstate service upon proof of the elimination of the noncomplying discharge.

Chapter 173

SOLID WASTE

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§ 173-30.	Severability.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 9-29-1992 as L.L. No. 2-1992. Amended in its entirety 1-23-2003 by L.L. No. 12-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Licenses and permits -- See Ch. 125.
Unlicensed vehicles -- See Ch. 203.
Fees -- See Ch. A220.
Garbage Fees. – See Ch. A330.

§ 173-1. Title.

This chapter shall be known as the "Solid Waste Management Law of the Village of Alden, New York."

§ 173-2. Purpose.

A. The reduction, reuse and recycling of solid waste are important public concerns and will aid in the protection and preservation of the environment.

B. The Solid Waste Management Act of 1988[1] mandates passage of an ordinance or law by each local municipality within the State of New York to require that solid waste which has been left for collection or which is delivered by the generator of such waste to a solid waste management facility shall be separated in recyclable, reusable or other components for which economic markets for alternative uses exist.

C. The control and management of solid waste is a vital concern to the residents of the Village of Alden with respect to the control of noxious and/or other hazardous odors, refuse and materials.

§ 173-3. Definitions.

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

AUTHORIZED COLLECTOR -- A person, individual, association, partnership or corporation or employer or agent thereof authorized by contract or permit with the village to collect solid waste from residential, commercial and institutional properties, as herein defined, under the terms and conditions of this chapter. In the event of municipal collection, this definition shall include the governing body and employees thereof.

BULKIES -- Large items such as sofas, upholstered chairs, mattresses and box springs, but excluding large appliances, such as refrigerators, stoves, dishwashers, washers, dryers, etc., which are considered recyclable.

COMMERCIAL OPERATION -- All property used for industrial or commercial purposes, including but not limited to retail and wholesale establishments, apartments with three or more units, trailer courts, offices, garages, gas stations,

[1] **Editor's Note: This Act was adopted as Chapter 70 of the Laws of 1988.**

manufacturing establishments, repair establishments, banks, motels, restaurants and other similar and related facilities.

CONTAINER -- Any can, bin, box, bag or other unit used for storage of recyclable materials.

FACILITY -- Any solid waste management/resource recovery facility employed beyond the initial solid waste collection process which is to be used, occupied or employed for or is incidental to the receiving, transporting, storage or processing or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom, including recycling centers, transfer stations, processing systems, resource recovery facilities, sanitary landfills, plants and facilities for composting or landspreading of solid wastes, secure land burial facilities, reprocessing and recycling facilities, surface impoundments and waste oil storage, incinerators and other solid waste disposal, reduction or conversion facilities.

HAZARDOUS WASTE -- Solid waste that is especially harmful or potentially harmful to public health. This shall include, but not be limited to, explosives, toxic materials and medical waste.

INSTITUTION -- An organization or establishment devoted to the promotion of a particular object or cause, including schools, nursing homes, retirement homes, health facilities, governmental facilities, libraries, fire halls, etc.

MUNICIPAL SOLID WASTE -- All putrescible and nonputrescible materials, including garbage, refuse and other discarded solid materials, including but not limited to solid waste materials resulting from industrial, commercial, residential and agricultural operations and from community activities. Liquids, semisolids and contained gaseous materials are hereby defined as "solid waste." It shall not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. In addition, it shall not include hazardous waste.

PERSON -- Any individual, firm, partnership, association, corporation, group of individuals, institution or other entity.

PRIVATE COLLECTOR -- Any person, firm, partnership, corporation or legal entity providing for the collection of municipal solid waste and/or recyclable materials.

PRIVATE SUBSCRIPTION -- The collection of municipal solid waste and recyclable materials where the resident contracts directly with the private collector of the subscriber's choice.

RECYCLABLE MATERIAL -- Those materials specified by the Village of Alden for separate collection in accordance with recycling regulations. Such materials may include, but are not limited to:

A. ALUMINUM -- Aluminum products and containers fabricated primarily of aluminum and commonly used for soda, beer, beverages or other food or drink.

B. METAL CAN -- Containers fabricated primarily of steel or tin or bimetal cans of steel, tin and/or aluminum, other than aluminum cans.

C. GLASS CONTAINER -- New and used glass food and beverage containers which have been rinsed and are free of food contamination, including clear (flint), green and brown (amber) colored glass bottles and jars. "Glass" shall not include ceramics, plate glass, auto glass, Pyrex, leaded glass, mirrored glass or flat glass.

D. PLASTIC CONTAINER -- Includes high-density polyethylene (HDPE) and polyethylene terephthalate (PET) designated respectively as No. 2 and No. 1 on the recycling code located on the containers.

E. NEWSPRINT -- Common, inexpensive machine-finished paper made chiefly from wood pulp and used for newspapers.

F. CORRUGATED -- Wood-pulp-based material which is usually smooth on both sides with a corrugated center; commonly used for boxes, excludes material with a waxed coating.

G. HIGH-GRADE PAPER -- White and colored office bond, duplicating paper, computer paper and other high-quality paper.

H. MAGAZINE -- Magazines, glossy catalogs and other glossy paper.

I. LARGE APPLIANCE -- Stoves, refrigerators, dishwashers, dryers, washing machines, water heaters and other large appliances, scrap metal, air conditioners, microwaves and televisions.

RECYCLING -- The separation, collection, processing, recovery and sale or reuse of metals, glass, paper, plastics and other materials which would otherwise be disposed of as solid waste.

RESIDENT -- Any person residing within the Village of Alden on a temporary or permanent basis, but excluding persons residing in hotels or motels, unless such individuals have established the same as a permanent residence.

RESIDENTIAL PROPERTY -- Properties used as dwellings, including buildings having two dwelling units in one building. Multiple-dwelling residential buildings containing three or more dwelling units, for purposes of this chapter, shall be treated as commercial properties.

SOLID WASTE MANAGEMENT -- The purposeful systematic control of the storage, collection, transportation, processing and disposal of solid waste.

SOURCE SEPARATION -- To separate the recyclable materials from the municipal solid waste stream at the point of waste generation.

YARD WASTE -- Organic yard and garden waste, leaves, grass clippings and brush.

§ 173-4. Modifications.

Nothing herein shall prevent the Village Superintendent of Public Works or other designated person from modifying what shall be considered recyclable materials as the need arises.

§ 173-5. Owner responsibilities.

Owners and occupiers of residential property are herein required to make accumulated municipal solid waste available for collection as scheduled under the terms hereof.

§ 173-6. Financial responsibilities of owner; failure to make payments; garbage fee liens. [Amended 2-9-2012 by L.L. No. 3-2012].

A. The owner of any property situated within the village limits from which any waste as defined in this Code is collected, or for which a per-unit charged is assessed, shall be responsible for all taxes, levies, fines and collection fees as may be deemed warranted by the village, and the same shall be paid pursuant to the

schedule determined by the Board of Trustees. All unpaid taxes, levies, fines and collection fees shall constitute a lien upon the real property of the owner, and the owner's failure to timely make such payments shall expressly empower the Board of Trustees or its designee or the Village Clerk with the authority to place such unpaid balances upon the real property taxes, and such unpaid balances shall be levied against the subject real property owned by the party failing to pay such taxes. Nothing herein, however, shall prevent the Board of Trustees, the Village Clerk or their designees from otherwise using any other available collection means or legal redress to recover such liens, taxes, fines, levies or fees as may be permitted by law.

B. All property within the Village of Alden as defined herein shall be assessed a fee for administration, collection and disposal services relating to solid waste, as applicable. Such fees shall be set forth in Chapter A330 (Garbage Fees) of this Code.

C. Upon a showing of good cause and within the discretion of the Board of Trustees, owners of real property may make written application to the Board of Trustees for a reduction of the assessed garbage fee for a specific property, provided there is a change to the status of the use of such property. No requests will be granted based on the quantity of waste being generated by said property. Any approved reduction of an assessed fee shall be effective on the next Village of Alden tax roll following a request that has been approved prior to March 1st of any given year. If a reduction of an assessed fee is approved after the March 1st deadline, the reduction will be made on the following year's Village of Alden tax roll. Nothing herein shall require the Board of Trustees to grant such adjustment of a garbage fee.

D. Any changes to the status of the use of a property that results in an increase of the assessed garbage fees on said property shall be collected on a pro-rated basis prior to the issuance of any Building Permit for the subject property. The new fees shall be calculated as set forth in Chapter A330 (Garbage Fees) of this Code.

(1) For Building Permits issued for changes prior to March 1st, the additional yearly fees for a property shall be calculated and divided by twelve (12) to determine the per-month charge. This per-monthly charge shall then be assessed for each month remaining in the fiscal year.

(2) For Building Permits issued for changes after March 1st, the additional yearly fees for a property shall be calculated and divided by twelve (12) to determine the per-month charge. This per-monthly

charge shall then be assessed for each month remaining in the fiscal year. An additional fee equal to the yearly fee shall be collected for the next fiscal year. Nothing herein shall require the Board of Trustees to grant such adjustment of a garbage fee.

§ 173-7. Collection to be under contract or permit.

A. All municipal solid waste accumulated on any residential property in the village shall be collected, conveyed and disposed of by the village or by an authorized collector under contract with the Village in accordance with the provisions of this chapter.

B. All municipal solid waste accumulated on commercial, industrial and institutional properties shall be collected, conveyed and disposed of by the village or authorized collectors under contract with or permitted by the Village of Alden. In such a case where a commercial, institutional or industrial establishment contracts directly with a collector, the fee or payment shall be a matter of private agreement between the owners or occupiers and the collector. When approved by the village, owners of nonresidential properties may collect, convey and dispose of privately generated municipal solid waste by their own containers and/or trucks, provided that they comply with the provisions of this chapter and any rules or regulations in existence which are applicable thereto and the New York State Department of Environmental Conservation regulations.

§ 173-8. Prohibited acts.

It shall be unlawful for any person to collect and dispose of any municipal solid waste within the Village of Alden except as provided for in this chapter and the rules and regulations promulgated thereunder.

§ 173-9. Source separation required.

Municipal solid waste generated or originated within the Village of Alden which has been left for collection or which is delivered by the generator of such waste to a facility shall be handled in the following manner:

A. Prior to initial collection or transport, source separation shall be required of each and every person or party discarding municipal solid waste and/or recyclable materials. Recyclable materials shall not be commingled with other solid waste during collection, transportation or storage following collection.

B. Authorized collectors collecting residential, commercial, industrial and/or institutional municipal solid waste generated within the village shall refuse to collect municipal solid waste from any person or party who has clearly failed to source separate the recyclable materials and/or who has not properly prepared the recyclable materials to the specifications of the collector.

§ 173-10. Designated collection days.

The Superintendent of Public Works shall designate a day or days for the removal of municipal solid waste from the streets of the village.

§ 173-11. Receptacles; placement at curb. [Amended 2-9-2012 by L.L. No. 3-2012]

Upon such designated day or days, such municipal solid waste shall be placed at the curbline or in the area between the sidewalk and the pavement in front of the premises owned or occupied by that person. All municipal solid waste stored on-premises on non-pickup days must be wholly contained in a garbage can or trash receptacle with a tight-fitting lid.

A. All municipal solid waste collected from the premises in which recyclable materials have been separated shall be placed in approved receptacles. No such receptacles so placed for municipal solid waste shall exceed fifty (50) pounds, including the weight of the contents in the container.

B. All empty receptacles shall be removed by the owner or occupier from in front of the premises before 9:00 p.m. of the day the contents are collected.

§ 173-12. Junk; abandoned vehicles.

For provisions relating to abandoned or junk vehicles, see Chapter 203, Vehicles, Unlicensed.

§ 173-13. Authorized collectors.

A. Only authorized collectors who are acting under authority of the Village of Alden shall collect, pick up, remove or cause to be collected, picked up or removed any solid waste recyclable materials so placed for collection.

B. Any unauthorized collection, pickup or removal shall constitute a separate and distinct violation of this chapter.

§ 173-14. Ownership of recyclables placed for collection.

A. From the time any person places any recyclable materials at the curb or pavement edge for purposes of collection by the Village of Alden or its designated representatives or agent, those recyclable materials shall become the property of the Village of Alden or its authorized agent. No person who is not acting under the Village of Alden or its authorized agent shall collect, pick up, remove or cause to be collected, picked up or removed any recyclable materials so placed for collection. Each such unauthorized collection, pickup, or removal shall constitute a separate violation of this chapter; provided, however, that where the Village of Alden has refused to collect certain recyclables because they have not been placed or treated in accordance with the provisions of this chapter, the person responsible for initially placing those materials for collection may and shall remove those materials from any curb, sidewalk or pavement edge.

B. Nothing in this chapter shall prohibit any person from making arrangements for private collection of recyclables, provided that recyclables to be privately collected shall not be placed at the curb or pavement edge in or immediately preceding the day for municipal collection of such recyclables; and provided further, that any container used for private collection shall meet the requirements set forth in **§** 173-11 or such bulk container or dumpster requirements relating to public health and safety as may be established from time to time by resolution of the Board of Trustees of the Village of Alden.

C. Nothing in this chapter shall be construed to prohibit any person from separating recyclables from other waste materials to be collected by a private collector and placing such recyclables properly contained in accordance with **§** 173-11 at the curb or pavement edge for collection by the Village of Alden at the time designated by the Superintendent of Public Works pursuant to **§** 173-10.

D. This section will be effective immediately upon adoption.

§ 173-15. Refusal by collector to remove.

Where the authorized collector has refused to collect certain recyclable materials because they have not been separated, placed or treated in accordance with the provisions of this chapter, the person responsible for initially placing those materials for collection shall remove those materials from any curb, sidewalk or street side immediately.

§ 173-16. Private collection.

Nothing herein shall prevent any person from making arrangements for the private collection, sale or donation of recyclable materials prior to placement at the curbside.

§ 173-17. Issuance of permits; fees.

All private and authorized collectors must obtain a solid waste collection permit for each collection vehicle from the Village of Alden. A fee for such permit shall be set by the Village Board of Trustees on an annual basis,[2] and all permits shall be issued for the calendar year or such portion thereof. There shall be no reduction in the fee for any permit issued after the beginning of any calendar year.

§ 173-18. Collector stickers.

An authorized collector sticker shall be permanently displayed on each vehicle operated by or on behalf of the authorized collector.

§ 173-19. Denial of applications.

Authorized collector applications may be denied if the applicant or permit holder has been adjudged or administratively determined to have committed one or more violations of this chapter during a preceding village fiscal year.

§ 173-20. Liability.

All authorized collectors' permits or other permit holders shall defend, indemnify and otherwise hold harmless the Village of Alden and its employees, elected officials and agents from any pending, threatened or actual claims, causes of action, suits or liability or expenses arising from the omissions and/or solid waste disposal activities by the authorized collector.

§ 173-21. Application for permit.

Each collector who shall apply for a permit under this section, on forms provided by the Village Clerk, shall state the manner of collection, the place and method of disposal of the municipal solid waste and recyclable materials from its residential, commercial,

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[2] **Editor's Note: See Ch. A220, Fees.**

industrial and institutional customers. Each authorized collector shall maintain separate monthly records of solid waste and recyclable materials collected, transported or disposed of by the authorized collector, which shall include, but not be limited to, the following information:

A. The geographical area and number of units in which the solid waste or recyclable material was generated.

B. The quantity, by ton, of solid waste and of each type of recyclable material collected.

C. The quantity, by ton, of recycled materials delivered to a recycling facility(ies) and the location of the recycling facility(ies).

D. The quantity, by ton, of solid waste delivered to each facility.

§ 173-22. Reports.

Reports containing the information required as stated above shall be compiled and delivered to the Superintendent of Public Works or other designated individual on a quarterly basis.

§ 173-23. Unacceptable waste.

Authorized collectors shall not accept for collection municipal solid waste which has not been source separated in conformity with this chapter.

§ 173-24. Inspection of collection vehicles and containers.

All portions of vehicles and containers used to haul, transport or dispose of recyclable materials, including such containers placed outside residences, shall be subject to inspection to ascertain compliance with this chapter by the Superintendent of Public Works, and/or any other public official designated by the Village of Alden.

§ 173-25. Enforcement authority; issuance of tickets.

The Superintendent of Public Works is hereby authorized and directed to issue appearance tickets for violations of this chapter.

§ 173-26. Failure to comply.

A. When the Superintendent of Public Works determines that a failure to comply with this chapter may have occurred, that individual shall recommend to the village that the authorized collector or permit holder application or permit be denied, suspended or revoked or its holder subjected to a reprimand or fine or that the generator or originator of the solid waste or recyclable materials be subject to sanctions, fines or penalties as hereinafter set forth.

B. Notification.

(1) The affected generator, applicant or permit holder shall be notified of the alleged failure, in writing, which shall include the following:

(a) A statement of the condition allegedly violated, referring to the pertinent ordinance, law, rule or regulation.

(b) A short and plain statement of the alleged misconduct.

(c) A statement of the time, place and nature of any hearing or proceeding.

(2) The notice shall be personally served or sent by registered mail to the generator, applicant or permit holder's last known address, at least ten (10) days before the date of any hearing or proceeding, with a copy of such notice to the Mayor of the village. In the event that personal service cannot be reasonably made or the generator, applicant or permit holder refuses to accept any registered mail, notice shall be deemed sufficient if sent by regular mail.

(3) All such hearings and/or proceedings shall be held before the Village Justice, who shall make a determination of the scope and nature of the violation. Such proceeding shall be conducted within thirty (30) days of the date of service of the notice.

(4) Nothing shall prevent the parties to the proceeding from entering into any form of stipulation, agreed settlement, consent order or other resolution prior to any determination by the Village Justice.

§ 173-27. Penalties for offenses.

A. The failure of any person engaged in the business of collecting municipal solid waste and/or recyclable materials or rendering solid waste and/or recycling services who is not authorized by the Village of Alden or anyone who collects, picks up, removes or causes to be collected, picked up or removed municipal solid waste or recyclable materials in a manner not in compliance with this chapter shall be guilty of a violation, punishable by a fine of not less than two hundred fifty dollars ($250.00) or by imprisonment for a term not to exceed fifteen (15) days, or both. Each day such violation occurs or continues shall constitute a separate offense.

B. Failure of a waste generator to comply with the provisions of this chapter or any rule or regulation promulgated thereunder designated as a violation shall be punishable as follows:

(1) For the first conviction: by a fine not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00).

(2) For a second conviction: by a fine not less than fifty dollars ($50.00) nor more than seventy-five dollars ($75.00).

(3) For a third conviction: by a fine not less than seventy-five dollars ($75.00) nor more than one hundred fifty dollars ($150.00).

(4) For a fourth and each subsequent conviction thereafter: by a fine not less than one hundred fifty dollars ($150.00) nor more than three hundred dollars ($300.00).

C. Any penalties or damages recovered or imposed under this chapter are in addition to any other remedies available at law or equity.

§ 173-28. Other remedies.

Nothing herein shall prevent the Village Justice from ordering any other form of remedial action or making any other such determination consistent with the purposes of this chapter in addition to the fines set forth herein.

§ 173-29. Superintendent of Public Works to prepare rules and regulations.

The Board of Trustees hereby directs the Superintendent of Public Works to prepare rules and regulations regarding the collection of municipal solid waste within the corporate limits of the Village of Alden. Upon approval by the Board of Trustees, such rules and regulations shall be applicable to all waste generators, persons, facilities, permit holders and authorized collectors within the Village of Alden.

§ 173-30. Severability.

If a court of competent jurisdiction finds any provision of this chapter or the corresponding rules and regulations invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of this chapter and the corresponding rules and regulations shall continue to be separate and fully effective.

Chapter 175

STORMWATER MANAGEMENT – EROSION & SEDIMENT CONTROL

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 12-6-2007 as L.L. No. 2-2007. Subsequent amendments noted where applicable.

GENERAL REFERENCES

Building construction and fire prevention -- See Ch. 78.
Stormwater management – illicit discharge -- See Ch. 176.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

ARTICLE I
General Provisions

§ 175-1. Findings of fact.

A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

B. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;

C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;

D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;

E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;

G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 175-2. Purpose.

A. The purpose of this local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in Section 175-1 hereof. This local law seeks to meet those purposes by achieving the following objectives:

(1) Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;

(2) Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

(3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;

(4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

(5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

(6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 175-3. Applicability.

A. This local law shall be applicable to all land development activities as defined in Section 175-5 of this local law.

B. The Board of Trustees shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the appropriate municipal departments for review and the Planning Board. The Stormwater Management Officer may:

(1) Review the plans,

(2) upon approval by the Board of Trustees, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by the board, or

(3) Accept the certification of a licensed professional that the plans conform to the requirements of this law.

C. All land development activities subject to review and approval by the Village of Alden Board of Trustees and/or the Village of Alden Planning Board shall be reviewed subject to the standards contained in this local law.

D. All land development activities not subject to review as stated in this section shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this law.

§ 175-4. Exemptions.

A. The following activities are exempt from review under this law.

(1) Agricultural activity as defined in this local law.

(2) Routine maintenance activities that disturb less than two acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

(3) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.

(4) Land development activities for which a building permit has been approved on or before the effective date of this law.

(5) Cemetery graves.

(6) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(7) Emergency activity immediately necessary to protect life, property or natural resources.

(8) Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.

(9) Landscaping and horticultural activities in connection with an existing structure.

ARTICLE II
Terminology

§ 175-5. Definitions.

For the purpose of this chapter, certain words and terms used herein are defined as follows:

AGRICULTURAL ACTIVITY -- the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT -- a property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING -- any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than one hundred (100) square feet of area.

CHANNEL -- a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING -- any activity that removes the vegetative surface cover.

DEDICATION -- the deliberate appropriation of property by its owner for general public use.

DEPARTMENT -- the New York State Department of Environmental Conservation

DESIGN MANUAL -- the *New York State Stormwater Management Design Manual*, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER -- a person, corporation, partnership, organization or any other entity who undertakes land development activities.

EROSION CONTROL MANUAL -- the most recent version of the “New York Standards and Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book”.

GRADING -- excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER -- those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

INDUSTRIAL STORMWATER PERMIT -- a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION -- the process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND -- an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY -- construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER -- the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MAINTENANCE AGREEMENT -- a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION -- pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING -- clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN -- sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT -- land development activity

RECHARGE -- the replenishment of underground water reserves.

SEDIMENT CONTROL -- measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS -- cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 -- A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SYSTEMS GP-02-02 -- A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards

STABILIZATION -- the use of practices that prevent exposed soil from eroding.

STOP WORK ORDER -- an order issued which requires that all construction activity on a site be stopped.

STORMWATER -- rainwater, surface runoff, snowmelt and drainage

STORMWATER HOTSPOT -- a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT -- the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY -- one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER -- an employee designated by the Board of Trustees to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal departments and inspect stormwater management practices

STORMWATER MANAGEMENT PRACTICES (SMPs) -- measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) -- a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF -- flow on the surface of the ground, resulting from precipitation

SURFACE WATERS OF THE STATE OF NEW YORK -- lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the sate or within its jurisdiction. Storm sewers and waster treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE -- a permanent or intermittent stream or other body of water, either natural or man-made, which gather or carrier surface water.

WATERWAY -- a channel that directs surface runoff to a watercourse or to the public storm drain.

ARTICLE III
Stormwater Pollution Prevention

§ 175-6. Stormwater pollution prevention plan required.

No application for approval of a land development activity shall be reviewed until the appropriate board has received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law.

§ 175-7. Contents of stormwater pollution prevention plans.

A. All SWPPPs shall provide the following background information and erosion and sediment controls:

(1) Background information about the scope of the project, including location, type and size of project.

(2) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent offsite surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s); the site map must be at a scale no smaller than one inch equals one hundred feet (1” = 100’);

(3) Description of the soil(s) present at the site;

(4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than two (2) acres shall be disturbed at any one time unless pursuant to an approved SWPPP.

(5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.

(6) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill -prevention and response;

(7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

(8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

(9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

(10) Temporary practices that will be converted to permanent control measures;

(11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

(12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

(13) Name(s) of the receiving water(s);

(14) Delineation of SWPPP implementation responsibilities for each part of the site;

(15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

(16) Any existing data that describes the stormwater runoff at the site.

B. Land development activities as defined in Section 175-5 of this local law and meeting Condition “A”, “B” or “C” below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Section 175-7C below as applicable:

(1) Condition A - Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified

on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

(2) Condition B - Stormwater runoff from land development activities disturbing five (5) or more acres.

(3) Condition C - Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

C. SWPPP Requirements for Condition A, B and C:

(1) All information in Section 175-7A of this local law

(2) Description of each post-construction stormwater management practice;

(3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;

(4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms

(5) Comparison of post-development stormwater runoff conditions with pre-development conditions

(6) Dimensions, material specifications and installation details for each post-construction stormwater management practice;

(7) Maintenance schedule to ensure continuous and effective operation of each post construction stormwater management practice.

(8) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.

(9) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Sections 175-13, 175-14, 175-15, and 175-16 of this local law.

(10) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.

§ 175-8. Other environmental permits.

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 175-9. Contractor certification.

A. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity : “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

B. The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

C. The certification statement(s) shall become part of the SWPPP for the land development activity.

D. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 175-10. Technical standards.

A. For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

(1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)

(2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).

§ 175-11. Equivalence of technical standards.

Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Section 175-10 of this local law and the SWPPP shall be prepared by a licensed professional.

§ 175-12. Water quality standards.

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state of New York.

§ 175-13. Maintenance and inspection during construction.

A. The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty percent (50%).

B. For land development activities as defined in Section 175-5 of this local law and meeting Condition A, B or C in Section 175-7B, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven (7) days and within twenty-four (24) hours of any storm event producing zero-point five (0.5) inches of precipitation or more. Inspection reports shall be maintained in a site log book.

C. The applicant or developer or their representative shall be on site at all times

when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

§ 175-14. Maintenance easement(s).

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Alden to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Village Attorney.

§ 175-15. Maintenance after construction.

A. The owner or operator of permanent stormwater management practices installed in accordance with this law shall ensure they are operated and maintained to achieve the goals of this law. Proper operation and maintenance also includes as a minimum, the following:

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Section 175-12 of this local law.

§ 175-16. Maintenance agreements.

The Board of Trustees shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The Board of Trustees, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual

access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 175-17. Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

ARTICLE IV
Administration & Enforcement

§ 175-18. Erosion and sediment control inspection.

A. The Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Village of Alden at least forty-eight (48) hours before any of the following as required by the Stormwater Management Officer:

(1) Start of construction

(2) Installation of sediment and erosion control measures

(3) Completion of site clearing

(4) Completion of rough grading

(5) Completion of final grading

(6) Close of the construction season

(7) Completion of final landscaping

(8) Successful establishment of landscaping in public areas.

B. If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No

further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

§ 175-19. Stormwater management practice inspections.

The Stormwater Management Officer, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer. The Board of Trustees may designate a professional engineer to review all practices in conjunction with the Stormwater Management Officer.

§ 175-20. Inspection of stormwater facilities after project completion.

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

§ 175-21. Submission of reports.

The Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law.

§ 175-22. Right of entry for inspections.

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Village or its designee the right to enter the property at

reasonable times and in a reasonable manner for the purpose of inspection as specified in Section 175-20 of this local law.

§ 175-23. Construction completion guarantee.

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Board of Trustees in its approval of the Stormwater Pollution Prevention Plan, the Board of Trustees may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Village of Alden as the beneficiary. The security shall be in an amount to be determined by the Board of Trustees based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Board of Trustees, provided that such period shall not be less than one (1) year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the Board of Trustees.

§ 175-24. Maintenance guarantee.

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Village of Alden with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Village of Alden may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

§ 175-25. Recordkeeping.

Any entity subject to this law must maintain all necessary records demonstrating compliance with this law and make same available to the Village upon reasonable demand.

§ 175-26. Notice of violation.

A. When the Stormwater Management Officer determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice of violation shall contain :

(1) The name and address of the landowner, developer or applicant;

(2) The address when available or a description of the building, structure or land upon which the violation is occurring;

(3) A statement specifying the nature of the violation;

(4) A description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;

(5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

§ 175-27. Stop work orders.

The Stormwater Management Officer may issue a stop work order for violations of this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Stormwater Management Officer confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

§ 175-28. Violations.

Any land development activity that is commenced or is conducted contrary to this local law, may be restrained by injunction or otherwise abated in a manner provided by law.

§ 175-29. Penalties.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars ($350.00) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five (5) years, punishable by a fine not less than three hundred fifty dollars ($350.00) nor more than seven hundred dollars ($700.00) or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars ($700.00) nor more than one thousand dollars ($1000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 175-30. Withholding of certificate of occupancy.

If any building or land development activity is installed or conducted in violation of this local law the Code Enforcement Officer may prevent the occupancy of said building or land.

§ 175-31. Restoration of lands.

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Village of Alden may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In the event of an emergency as determined by the Stormwater Management Officer and/or the Code Enforcement Officer, the Village may take such action as it, in its sole discretion, is deemed necessary to protect the residents and property within the Village.

§ 175-32. Fees for services.

The Board of Trustees shall require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village.

Schedule A
Stormwater Management Practices Acceptable for Water Quality
(*From: New York State Stormwater Management Design Manual, Table 5.1*)

Group	Practice	Description
Pond	Micropool Extended Detention Pond (P-1)	Pond that treats the majority of the water quality volume through extended detention, and incorporates a micropool at the outlet of the pond to prevent sediment resuspension.
	Wet Pond (P-2)	Pond that provides storage for the entire water quality volume in the permanent pool.
	Wet Extended Detention Pond (P-3)	Pond that treats a portion of the water quality volume by detaining storm flows above a permanent pool for a specified minimum detention time.
	Multiple Pond System (P-4)	A group of ponds that collectively treat the water quality volume.
	Pocket Pond (P-5)	A stormwater wetland design adapted for the treatment of runoff from small drainage areas that has little or no baseflow available to maintain water elevations and relies on groundwater to maintain a permanent pool.
Wetland	Shallow Wetland (W-1)	A wetland that provides water quality treatment entirely in a shallow marsh.
	Extended Detention Wetland (W-2)	A wetland system that provides some fraction of the water quality volume by detaining storm flows above the marsh surface.
	Pond/Wetland System (W-3)	A wetland system that provides a portion of the water quality volume in the permanent pool of a wet pond that precedes the marsh for a specified minimum detention time.
	Pocket Wetland (W-4)	A shallow wetland design adapted for the treatment of runoff from small drainage areas that has variable water levels and relies on groundwater for its permanent pool.

Group	Practice	Description
Infiltration	Infiltration Trench (I-1)	An infiltration practice that stores the water quality volume in the void spaces of a gravel trench before it is infiltrated into the ground.
	Infiltration Basin (I-2)	An infiltration practice that stores the water quality volume in a shallow depression before it is infiltrated into the ground.
	Dry Well (I-3)	An infiltration practice similar in design to the infiltration trench, and best suited for treatment of rooftop runoff.
Filtering Practices	Surface Sand Filter (F-1)	A filtering practice that treats stormwater by settling out larger particles in a sediment chamber, and then filtering stormwater through a sand matrix.
	Underground Sand Filter (F-2)	A filtering practice that treats stormwater as it flows through underground settling and filtering chambers.
	Perimeter Sand Filter (F-3)	A filter that incorporates a sediment chamber and filter bed as parallel vaults adjacent to a parking lot.
	Organic Filter (F-4)	A filtering practice that uses an organic medium such as compost in the filter in place of sand.
	Bioretention (F-5)	A shallow depression that treats stormwater as it flows through a soil matrix, and is returned to the storm drain system.
Open Channels	Dry Swale (O-1)	An open drainage channel or depression explicitly designed to detain and promote the filtration of stormwater runoff into the soil media.
	Wet Swale (O-2)	An open drainage channel or depression designed to retain water or intercept groundwater for water quality treatment.

Chapter 176

STORMWATER MANAGEMENT – ILLICIT DISCHARGE

§ 176-1. Purpose.
§ 176-2. Definitions.
§ 176-3. Applicability.
§ 176-4. Responsibility for administration.
§ 176-5. Discharge prohibitions.
§ 176-6. Prohibition against failing individual sewage treatment systems.
§ 176-7. Prohibition against activities contaminating stormwater.
§ 176-8. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.
§ 176-9. Suspension of access to MS4.
§ 176-10. Industrial or construction activity discharges.
§ 176-11. Access and monitoring discharges.
§ 176-12. Notification of spills.
§ 176-13. Enforcement.
§ 176-14. Appeal of notice of violation.
§ 176-15. Corrective measures after appeal.
§ 176-16. Injunctive relief.
§ 176-17. Alternative remedies.
§ 176-18. Violations deemed a public nuisance.
§ 176-19. Remedies not exclusive.
§ 176-20. Severability.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 12-6-2007 as L.L. No. 3-2007. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Stormwater Management – Erosion & Sediment Control – See Ch. 175
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

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§ 176-1. Purpose.

The purpose of this law is to provide for the health, safety, and general welfare of the citizens of the Village of Alden through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This law establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the

SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this law are:

A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit no. GP-02-02 or as amended or revised;

B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge non-stormwater wastes;

C. To prohibit Illicit Connections, Activities and Discharges to the MS4;

D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this law; and

E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 176-2. Definitions.

BEST MANAGEMENT PRACTICE -- Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT -- The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY -- Activities requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEPARTMENT -- The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL -- New York State licensed professional engineer or licensed architect.

HAZARDOUS MATERIALS -- Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTIONS -- Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

(1) Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE -- Any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section 176-5 of this local law.

INDIVIDUAL SEWAGE TREATMENT SYSTEM -- A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY -- Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

MS4 -- Municipal Separate Storm Sewer System.

MUNICIPAL SEPARATE STORM SEWER SYSTEM -- A conveyance or system of conveyances (including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(1) Owned or operated by the Village of Alden;

(2) Designed or used for collecting or conveying stormwater;

(3) Which is not a combined sewer; and

(4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2

MUNICIPALITY -- The Village of Alden

NON-STORMWATER DISCHARGE -- Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON -- Any individual, limited liability corporation, association, organization, not for profit organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT -- Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES -- Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS -- Shall mean:

(1) Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

(2) 303(d) Listed Waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.

(3) Total Maximum Daily Load (TMDL) Strategy. The condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the MS4 discharges. If the discharge

from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(4) The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six (6) months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPEDES) STORMWATER DISCHARGE PERMIT -- A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER -- Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO) -- An employee, the municipal engineer or other public official(s) designated by the Village of Alden to enforce this local law. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices. It shall include, but not be limited to the Superintendent of Public Works, Village Engineer, and the Code Enforcement Officer, working individually, or jointly.

303(d) LIST – A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next (2) two years.

TOTAL MAXIMUM DAILY LOAD (TMDL) -- The maximum amount of a pollutant to be allowed to be released into a waterbody so as not to impair uses of the water, allocated among the sources of that pollutant.

WASTEWATER -- Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

§ 176-3. Applicability.

This law shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 176-4. Responsibility for administration.

The Stormwater Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this law. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

§ 176-5. Discharge prohibitions.

A. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Section 175-6A(1). The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows*:*

(1) The following discharges are exempt from discharge prohibitions established by this local law, unless the Department or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

(2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this local law.

(3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

(4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(1) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person is considered to be in violation of this local law if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

§ 176-6. Prohibition against failing individual sewage treatment systems.

A. No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

(1) The backup of sewage into a structure.

(2) Discharges of treated or untreated sewage onto the ground surface.

(3) A connection or connections to a separate stormwater sewer system.

(4) Liquid level in the septic tank above the outlet invert.

(5) Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.

(6) Contamination of off-site groundwater.

§ 176-7. Prohibition against activities contaminating stormwater.

A. Activities that are subject to the requirements of this section are those types of activities that:

(1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.

(2) Cause or contribute to the municipality being subject to the Special Conditions as defined in Section 176-2 of this local law.

B. Such activities include failing individual sewage treatment systems as defined in Section 176-6, improper management of pet waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§ 176-8. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

A. Where the SMO has identified illicit discharges as defined in Section 176-2 or activities contaminating stormwater as defined in Section 176-7 the municipality may require implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

(1) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.

(2) Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge as defined in Section 176-2 or an activity contaminating stormwater as defined in Section 176-7, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

(3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

B. Where individual sewage treatment systems are contributing to the municipality's being subject to the Special Conditions as defined in Section 176-2 of this local law, the owner or operator of such individual sewage treatment systems shall be required to:

(1) Maintain and operate individual sewage treatment systems as follows:

(a) Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within ten inches of the bottom of the outlet baffle or sanitary tee.

(b) Avoid the use of septic tank additives.

(c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and

(d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items

(2) Most tanks should be pumped out every two to three years. However, pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.

(3) Repair or replace individual sewage treatment systems as follows:

(a) In accordance with 10NYCRR Appendix 75A to the maximum extent practicable.

(b) A design professional licensed to practice in New York State shall prepare design plans for any type of absorption field that involves:

1. Relocating or extending an absorption area to a location not previously approved for such.

2. Installation of a new subsurface treatment system at the same location.

3. Use of alternate system or innovative system design or technology.

(c) A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system. The design professional shall obtain approvals from the Erie County Health Department and the Village of Alden as deemed necessary.

§ 176-9. Suspension of access to MS4.

A. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this law may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the SMO.

§ 176-10. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the municipality prior to the allowing of

discharges to the MS4.

§ 176-11. Access and monitoring of discharges.

A. This section applies to all facilities that the SMO must inspect to enforce any provision of this Law, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Law.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this law as often as may be necessary to determine compliance with this Law. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.

(3) The municipality shall have the right to set up on any facility subject to this law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The municipality has the right to require the facilities subject to this law to install monitoring equipment as is reasonably necessary to determine compliance with this law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Unreasonable delays in allowing the municipality access to a facility subject to this law is a violation of this law. A person who is the operator of a facility subject to this law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this law.

(6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this law, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this law or any

order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 176-12. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services together with the SMO. In the event of a release of non-hazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within two (2) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

§ 176-13. Enforcement.

A. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this law, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

(1) The elimination of illicit connections or discharges;

(2) That violating discharges, practices, or operations shall cease and desist;

(3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(4) The performance of monitoring, analyses, and reporting;

(5) Payment of a fine; and

(6) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the

violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars ($350.00) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five (5) years, punishable by a fine not less than three hundred fifty dollars ($350.00) nor more than seven hundred dollars ($700.00) or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars ($700.00) nor more than one thousand dollars ($1000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's (seven (7) consecutive calendar days) continued violation shall constitute a separate additional violation or any repeated violation on non-consecutive calendar days.

§ 176-14. Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal the determination of the SMO to the Village Board of Trustees within fifteen (15) days of its issuance, which shall hear the appeal within thirty (30) days after the filing of the appeal, and within five (5) days of making its decision, file its decision in the office of the village clerk and mail a copy of its decision by certified mail to the discharger.

§ 176-15. Corrective measures after appeal.

A. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within five (5) business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

B. If refused access to the subject private property, the SMO may seek a warrant in a

court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 176-16. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this law. If a person has violated or continues to violate the provisions of this law, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 176-17. Alternative remedies.

A. Where a person has violated a provision of this Law, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Village Attorney and with the concurrence of the Code Enforcement Officer, where:

(1) The violation was unintentional

(2) The violator has no history of pervious violations of this Law.

(3) Environmental damage was minimal.

(4) Violator acted quickly to remedy violation.

(5) Violator cooperated in investigation and resolution.

B. Alternative remedies may consist of one or more of the following:

(1) Attendance at compliance workshops

(2) Storm drain stenciling or storm drain marking

(3) River, stream or creek cleanup activities

§ 176-18. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this law is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. All costs for abatement undertaken by the Village shall be a lien on the real property of the violator and may be included on the real property taxes on the affected property.

§ 176-19. Remedies not exclusive.

The remedies listed in this law are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

§ 176-20. Severability.

The provisions of this law are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this law.

Chapter 177

STREETS AND SIDEWALKS

§ 177-1. Digging or removal of materials.
§ 177-2. Moving of buildings.
§ 177-3. Repairing vehicles in streets.
§ 177-4. Trees, bushes and shrubs.
§ 177-5. Obstruction of streets by railway cars.
§ 177-6. Removal of brush, grass and weeds; penalties.
§ 177-7. Driveway permit.
§ 177-8. Sidewalk construction permit.
§ 177-9. Sidewalks required for new construction.
§ 177-10. Sidewalk construction safety precautions.
§ 177-11. Snow and ice.
§ 177-12. Regulation of snow removal.
§ 177-13. Posters and handbills.
§ 177-14. Billboards or other advertising matter.
§ 177-15. Operation of certain vehicles on sidewalks prohibited.
§ 177-16. Placing of materials in streets.
§ 177-17. Obstruction of sidewalks.
§ 177-18. Unmotorized devices/vehicles.
§ 177-19. Enforcement.
§ 177-20. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 11-22-1976 as L.L. No. 5-1976 (Ch. 41 of the 1966 Code). Amended in its entirety 6-26-2004 by L.L. No. 3-2004. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Drug-free school zones -- See Ch. 87.
Licenses and permits -- See Ch. 125.
Mobile home parks -- See Ch. 131.
Parks and recreation areas -- See Ch. 143.
Solid waste -- See Ch. 173.
Subdivision of land -- See Ch. 181.
Vehicles and traffic -- See Ch. 200.
Off-road vehicles -- See Ch. 201.
Unlicensed vehicles -- See Ch. 203.
Water use and service -- See Ch. 205.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

§ 177-1. Digging or removal of materials. [Amended 6-23-2011 by L.L. No. 10-2011]

A. No person shall dig any street, lane, alley or sidewalk or remove any material or substance therefrom except as permitted, in writing, by the Superintendent of Public Works.

B. In the event that any sidewalk, street, lane or alley is removed, altered, dug, cut, or otherwise changed in any manner whatsoever, all repairs/restoration work shall be performed by the Department of Public Works and the cost of such repairs/restoration work shall be borne by the landowner. In the event that the landowner does not make payment to the Village for such repairs/restoration work, then the cost of same shall constitute a lien upon the real property of the owner. Upon the owner's failure to timely make such payments as demanded by the Village, same shall expressly empower the Board of Trustees or its designee or the Village Clerk with the authority to place such unpaid balances upon the real property taxes on the property owned by the landowner. Nothing herein, however, shall prevent the Board of Trustees, the Village Clerk or their designees from otherwise using any other available collection means or legal redress available, whether civil or criminal, to recover such liens, taxes, fines, levies or fees as may be permitted by law.

C. In the event any person shall otherwise damage, in whole or in part, any street, lane, alley, or sidewalk, such person must notify the Department of Public Works and Code Enforcement Officer immediately. Any repairs and/or replacements shall be done by the Village of Alden at the cost of the property owner and/or person causing such damage as so determined by the Department of Public Works. All repairs shall be deemed a lien on the real property and such lien shall be prior and superior to every other lien or claim except of an existing tax. The Board of Trustees of the Village of Alden may certify to the Village Clerk the amount of any such lien which has not been paid in the time and in the manner prescribed by such Board, with a description of the real property affected thereby. The Village Board of Trustees may include such amount in the annual tax levy and shall have such levy made upon the real property affected herein. Nothing herein, however, shall prevent the Board of Trustees, the Village Clerk or their designees from otherwise using any other available collection means or legal redress available, whether civil or criminal, to recover such liens, taxes, fines, levies or fees as may be permitted by law.

§ 177-2. Moving of buildings.

No person shall move or cause to be moved or assist in moving any building into, upon, along or across any street, lane, alley or sidewalk within the village without first

obtaining permission therefor from the Superintendent of Public Works. No person to whom such permission has been granted shall permit such building to remain in or upon such street, lane, alley or sidewalk for a period in excess of twenty-four (24) hours unless with the express permission of the Board of Trustees.

§ 177-3. Repairing vehicles in streets.

No person, firm or corporation shall repair any motor vehicle within the bounds of any street or highway within the Village of Alden except in cases of emergency when repairs may be made in a way not to unnecessarily obstruct such street or highway, and then only to an extent that will permit the removal of such vehicle from such street or highway.

§ 177-4. Trees, bushes and shrubs.

The owner or occupant of any premises within this village in front of which shade or ornamental trees, bushes and/or shrubs shall be placed, planted or set shall cause the same to be kept trimmed so that the projecting limbs and branches shall not be less than ten (10) feet above the roadway, lane, alley, right-of-way and/or sidewalk and if said owner or occupant shall neglect to keep such plantings so trimmed, it shall be the duty of the Superintendent of Public Works of the village, after five (5) days' notice by him or her, in writing, to said owner or occupant, to cause said plantings to be trimmed as therefor said at the expense of the owner, and such expense may be assessed upon the land and property in front of which said planting shall stand. Such assessment shall be a lien thereon to be paid pursuant to law.

§ 177-5. Obstruction of streets by railway cars.

It shall be unlawful for any person or corporation to obstruct the free passage of any street within the village by means of any railway car or locomotive, except when the same shall be actually running or to take on or let off passengers, and then no longer than five (5) minutes.

§ 177-6. Removal of brush, grass and weeds; penalties.

The owner or occupant of any building, lot or premises within the Village of Alden shall cut down, remove and destroy all brush, grass and noxious weeds growing within fifty (50) feet of a building, structure, or right-of-way of such premises or along the front thereof, as provided for and regulated in the Property Maintenance Code of New York State.

A. If any such owner or occupant shall fail to comply with this section within five (5) days written notice, as required, he or she shall pay a penalty for each offense[1], and it shall be the duty of the Superintendent of Public Works to make provisions for the cutting and removal of such brush and noxious weeds and to cause the same to be removed at the cost and expense of the owner, and such expense shall be assessed upon the land and property on which such weeds shall be cut. Such assessment shall be a lien thereon to be paid pursuant to law.

§ 177-7. Driveway permit.

No person, organization, entity, company and/or corporation shall construct any driveway onto an existing street or public place within the Village of Alden without first obtaining a permit from the Superintendent of Public Works. Such driveway connection between the sidewalk and/or right-of-way line shall be constructed in accordance with specifications approved by the Board of Trustees. For the purposes of this chapter, the term “driveway” shall mean any private road or way that connects a house, apartment, garage, accessory structure, commercial building, industrial building or other building with a public street.

§ 177-8. Sidewalk construction permit.

No person, organization, entity, company and/or corporation shall construct or alter any sidewalk in the Village of Alden without first obtaining a permit from the Superintendent of Public Works. Such sidewalks shall be constructed in accordance with specifications approved by the Board of Trustees.

§ 177-9. Sidewalks required for new construction.

When a new primary building or structure, as defined in Chapter 210 of this Code, is constructed on a parcel of land that does not have sidewalks, said sidewalks shall be installed by the owner or developer across the entire frontage of the parcel. This provision shall also apply to any property where an accessory structure, whether attached or detached, is constructed with a permanent foundation or piers. If a property subject to the provisions of this section does not have adjoining sidewalks on adjoining properties, the Village of Alden Board of Trustees may waive or modify these requirements upon prior, written request. The Board may place any conditions upon such approval as may be deemed necessary and/or provident. Sidewalks shall be constructed in accordance with specifications approved by the Board of Trustees.

§ 177-10. Sidewalk construction safety precautions.

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[1] **Editor's Note: See Ch. A220, Fees.**

It shall be the duty of every person, organization, entity, company and/or corporation repairing or building a sidewalk to properly barricade said sidewalk and to install and maintain warning lights at either end thereof sufficient to warn pedestrians thereof.

§ 177-11. Snow and ice.

A. No person, organization, entity, company and/or corporation shall permit any snow, ice or water to fall from a roof edge, ledge, sign, light, planting or building projection upon any street or sidewalk so as to create a dangerous or hazardous condition. The owner of such premises shall, after notice from a village official, immediately correct and rectify any such dangerous condition. The owner thereof shall also have an independent and affirmative duty to correct and rectify any such dangerous condition without notice.

B. No person shall pump, allow to run or divert any water upon any street or sidewalk so as to create a dangerous or hazardous condition. The owner of such premises shall, after notice from a village official, immediately correct and rectify any such dangerous condition. The owner thereof shall also have an independent and affirmative duty to correct and rectify any such dangerous condition without notice.

§ 177-12. Regulation of snow removal.

No person organization, entity, company and/or corporation or private entity shall plow, shovel, sweep or pile snow, ice or other materials in or beyond the right-of-way of any street or public highway or upon any public sidewalk, or cause such to be done so as to interfere with the safety and convenience of public travel. The property owner where the snow, ice or other materials originated shall be responsible for compliance with this section.

§ 177-13. Posters and handbills.

No person shall post or hang any handbill, notice, poster, placard or advertisement upon any post, telephone, telegraph or electric light pole, tree, hydrant, fence, bridge or other object or structure in the streets, alleys or public grounds except upon billboards authorized and located by the Board of Trustees of the Village, and then only with the prior permission of the Village Board of Trustees. Such handbills, notices, posters placards or other advertisements must be removed in a timely fashion and pursuant to the directives of the Village Board of Trustees or its designee.

§ 177-14. Billboards or other advertising matter.

No person shall erect, construct or maintain or use in, upon or near any street, sidewalk or public place within the Village of Alden any billboard or other advertising media without the prior written permission of the Board of Trustees of the Village of Alden.

§ 177-15. Operation of certain vehicles on sidewalks prohibited.

No person shall operate or drive, cause to be operated or driven or knowingly permit the operation or driving of any motorized vehicle, motorcycle, all-terrain vehicle, all-terrain cycle, moped, motorized scooter, go cart or other device moved by other than human power in or upon any sidewalk within the corporate limits of the Village of Alden.

A. The provisions of this section shall not apply to any motorized vehicle or equipment which is owned and operated by the Village of Alden for the purposes of maintenance of or removal of snow from such sidewalks.

B. The provisions of this section shall not apply to any motorized vehicle or equipment which is owned and operated by a property owner and is utilized primarily for the care and maintenance of such person's property.

C. The provisions of this section shall not apply to a motorized wheelchair or such similar medical equipment for the disabled.

§ 177-16. Placing of materials in streets. [Amended 12-20-2007 by L.L. No. 6-2007]

No person shall dump, deposit or place any materials upon a street or street right-of-way, including but not limited to dirt, stone, concrete, building materials, wood, metals, or any other mineral or construction material. This section shall not apply to solid waste for regular municipal collection on scheduled and/or announced days, grass clippings, leaves, branches and other yard waste authorized for pick-up within this Code. Nothing herein, however, shall prevent or affect the traversing of motor vehicles, bicycles or related instruments, or pedestrians over, along, and/or on such street or street right-of-way..

§ 177-17. Obstruction of sidewalks. [Amended 12-20-2007 by L.L. No. 7-2007]

No person shall, at any time, obstruct a sidewalk with a vehicle, garbage, bulk trash, bicycles, brush, wood, tree limbs, grass clippings, hoses, personal items. or any other materials.

§ 177-18. Unmotorized devices/vehicles. [Amended 6-23-2011 by L.L. No. 3-2011]

In order to protect the safety of the residents of the Village of Alden by providing that unmotorized devices shall not be placed on public property which would impede the flow of traffic, including emergency vehicles, it is the intent of the Board of trustees tor estrict the placement of such devices when same are unhitched or otherwise not connected to a motor vehicle.

A. Unmotorized devices and/or vehicles shall be defined as including, but not be limited to, trailers, boats, all terrain vehicles, tractors, snow mobiles, and campers or such other similar devices that may be transported or drawn upon a highway.

B. The Unmotorized devices and/or vehicles shall, when unhitched, not be parked on any public street, public parking lot, or other public place within the Village of Alden.

C. The Unmotorized devices and/or vehicles shall, when unhitched, not be parked within or on any front lawn of any property within the Village of Alden.

D. The Unmotorized devices and/or vehicles shall, when unhitched, not be parked preventing ingress and egress over and about any public sidewalk within the Village of Alden.

E. The It shall not be a defense to any claimed violation under this Chapter that such unmotorized device was licensed or otherwise registered in the State of New York.

§ 177-19. Enforcement. [Amended 6-23-2011 by L.L. No. 3-2011]

The provisions fo this Chapter shall be enforced by the Code Enforcement Officer and/or any police/peace office, or both.

§ 177-20. Penalties for offenses. [Amended 12-20-2007 by L.L. No. 8-2007]

Except as otherwise set forth, a violation of this chapter shall be punishable by a fine not exceeding two hundred fifty dollars ($250.00) or by imprisonment for a period not exceeding fifteen (15) days, or by both fine and imprisonment. Costs for removal shall be in addition to any other penalties as determined by the Court.

Chapter 181

SUBDIVISION OF LAND

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-6-1995 as L.L. No. 1-1995. Amended in its entirety 1-23-2003 by L.L. No. 13-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention -- See Ch. 78.
Flood damage prevention -- See Ch. 105.
Licenses and permits -- See Ch. 125.
Mobile home parks -- See Ch. 131.
Sewers -- See Ch. 165.
Stormwater management – erosion & sediment control --See Ch. 175.
Stormwater management – illicit discharge --See Ch. 176.
Streets and sidewalks -- See Ch. 177.
Water use and service -- See Ch. 205.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

ARTICLE I
General Provisions

§ 181-1. Approval authority.

By authority of the resolution adopted by the Village Board pursuant to the provisions of Article 7 of the Village Law, the Planning Board has the power and authority to approve plats for subdivisions within the incorporated area of the village.

§ 181-2. Declaration of policy.

It is declared to be the policy of the Village Planning Board to consider land subdivisions as part of a plan for the orderly, efficient and economical development of the village. Land to be subdivided shall be of such character that it can be used for building purposes without danger to health or peril from fire, flood or other menace. Proper provision shall be made for drainage, water, sewerage and other needed improvements. The proposed streets shall compose a convenient system conforming to the Official Map[1] and shall be properly related to the proposals shown on the Village Plan. Streets shall be of such width, grade and location as to accommodate the prospective traffic, to afford adequate light and air and to facilitate fire protection. In proper cases, park areas of suitable location, size and character for playground or other recreational purposes shall be shown on the subdivision plat.

§ 181-3. Conflict with other provisions.

[1] **Editor's Note: The Official Map is on file in the village offices.**

Should any of these regulations conflict or be inconsistent with any provision of the Village Law, such provision of the Village Law shall apply.

§ 181-4. Title.

In order that land may be subdivided in accordance with this policy, these regulations, which shall be known as and which may be cited as the "Village of Alden Land Subdivision Regulations."[2]

ARTICLE II
Terminology

§ 181-5. Definitions.

For the purpose of this chapter, certain words and terms used herein are defined as follows:

ARTERIAL STREET -- A street or highway which is used as a main thoroughfare for trucks, automobiles and other traffic.

BUSINESS STREET -- A street which serves or is designed to serve as an access to abutting business properties.

COLLECTOR STREET -- A street which carries traffic from minor streets to the major street system of arterial streets, including the principal entrance streets of a residential development.

DEAD-END STREET or CUL-DE-SAC -- A street or a portion of a street with only one (1) vehicular outlet.

EASEMENT -- Authorization by a property owner for the use by another and for a specified purpose of any designated part of his or her property.

MARGIN ACCESS STREET -- A street which is a minor street parallel to and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.

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[2] **Editor's Note: These regulations were originally adopted by the Planning Board of April 17, 1969, and approved by the Village Board.**

MINOR STREET -- A street intended to serve primarily as an access to abutting residential properties.

OFFICIAL MAP -- The map established by the Village Board under **§** 7-724 of the Village Law showing the streets, highways and parks heretofore laid out, adopted and established by law and any amendments thereto adopted by the Village Board or additions thereto resulting from the approval of subdivision plats by the Planning Board and the subsequent filing of such approved plats.[3]

OFFICIAL SUBMISSION DATE -- The date when a subdivision plat shall be considered submitted to the Planning Board, as provided in **§** 7-728 of the Village Law, is hereby defined to be the date of a meeting of the Planning Board at which all required surveys, plans and data described in Article V are submitted.

PLANNING BOARD -- The Village Planning Board.

PLANNING BOARD CLERK – The Clerk of the Village of Alden.

PRELIMINARY PLAT -- A drawing or drawings clearly marked "preliminary" and showing the salient features of a proposed subdivision, as specified in Article V, **§** 181-24, of these regulations, submitted to the Planning Board for purposes of consideration prior to submission of the final plat and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

SKETCH PLAN -- A sketch of a proposed subdivision showing the information specified in Article V, **§** 181-22, of these regulations to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the layout and objectives of these regulations.

STREET -- Includes streets, roads, avenues, lanes or other ways.

STREET PAVEMENT -- The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH -- The distance between property lines.

SUBDIVIDER -- Any person, firm, corporation, partnership or association who shall lay out, for the purpose of sale or development, any subdivision or part thereof, as defined herein, either for himself or herself or others.

SUBDIVISION -- The division of any parcel of land into three (3) or more lots, blocks or sites, with or without streets or highways, and includes resubdivision.

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[3] **Editor's Note: The current map is on file in the village offices.**

SUBDIVISION, MAJOR -- Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five (5) or more lots, or any size subdivision requiring any new street or extension of municipal facilities.

SUBDIVISION, MINOR -- Any subdivision containing not more than four (4) lots fronting on an existing street, not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Master Plan, Official Map or Zoning Ordinance,[4] if such exists, or these regulations.

SUBDIVISION PLAT -- A drawing, in final form, showing a proposed subdivision, containing all information or detail required by law and by these regulations, to be presented to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the office of the County Clerk or Registrar.

VILLAGE DEVELOPMENT PLAN or VILLAGE PLAN -- A comprehensive plan for development of the village prepared by the Planning Board and approved by the Village Board of Trustees, pursuant to **§** 7-722 of the Village Law, which indicates the general locations recommended for various public works and reservations and for the general physical development of the village and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

ZONING ORDINANCE -- The officially adopted Zoning Ordinance of the village, together with any and all amendments thereto.[5]

ARTICLE III
Application Procedure

§ 181-6. Conformance required. [Amended 6-26-2004 by L.L. No. 4-2004]

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[4] Editor's Note: The Master Plan and Official Map are on file in the village offices. See Ch. 210, Zoning, for the current zoning provisions.
[5] Editor's Note: See Ch. 210, Zoning.

A. No subdivision of land shall be made, nor shall contract be made for the sale of any part thereof, and no permit for the erection of a structure in any proposed subdivision shall be granted and no street, sanitary sewer or water main shall be laid out, constructed, opened or dedicated except in accordance with the provisions of these regulations and in accordance with the following procedures, which includes, basically, three (3) steps:

(1) Preapplication hearing.

(2) Conditional approval of preliminary plat.

(3) Approval of the final plat.

B. Plans, profiles and details for the construction of engineering projects must bear the seal of a professional engineer licensed by the State of New York. Plats, boundary surveys, contour maps and other related work not involving engineering projects may be prepared by a licensed land surveyor and must bear his or her seal.

C. No land or part thereof shall be subdivided for a period of three (3) years from the date of the last recorded subdivision of said land or part thereof.

D. In the case where public improvements such as, but not limited to, roadways, water, sanitary sewer, storm sewer and utilities are proposed as part of a subdivision, final subdivision approval shall be deemed null and void if construction of said improvements have not commenced within two (2) years of the date final subdivision approval was granted.

§ 181-7. Preapplication hearing.

A. Submission of data. Any owner of land shall, before subdividing or resubdividing land, submit to the Planning Board Clerk, two (2) copies of Planning Form No. 1[6] and three (3) copies of the required sketch plan(s) showing information required in Article V, **§** 181-22, a minimum of twenty-one (21) days prior to a scheduled Planning Board meeting for the purposes of classification and preliminary discussion.

B. Discussion of requirements and classification.

(1) The subdivider or his or her duly authorized representative shall attend the meeting of the Planning Board to discuss the requirements of these

[6] **Editor's Note: This form can be obtained at the village offices.**

regulations for street improvements, drainage, sewerage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information.

(2) Classification of the sketch plan is to be made at this time by the Planning Board as to whether it is a minor or major subdivision, as defined in these regulations. The Board may require, however, when it deems it necessary for protection of the public health, safety and welfare, that a minor subdivision comply with all or some of the requirements specified for major subdivisions. If the sketch plan is classified as a minor subdivision, the subdivider shall then comply with the procedure outlined in Article III, **§** 181-8, of these regulations. If it is classified as a major subdivision, the subdivider shall then comply with the procedures outlined in Article III, **§§** 181-9, 181-10 and 181-11.

C. Study of sketch plan(s). The Planning Board shall determine whether the sketch plan(s) meets the purposes of these regulations and shall, where it deems it necessary, make specific recommendations, in writing, to be incorporated by the applicant in the next submission to the Planning Board.

§ 181-8. Final plat approval of a minor subdivision.

A. Application and fee.

(1) Within six (6) months after classification of the sketch plan as a minor subdivision by the Planning Board, the subdivider shall submit two (2) copies of Planning Form Number 2, application for final plat approval of a minor subdivision.[7] Failure to do so shall require resubmission of the sketch plan to the Planning Board for reclassification. The final plat shall conform to the layout shown on the sketch plan, plus any recommendations made by the Planning Board. The final plat shall in all respects comply with the requirements set forth in the provisions of §§ 7-728, 7-730 and 7-732 of the Village Law and Article V, § 181-23A, of these regulations.

(2) All applications for final plat approval for minor subdivisions shall be accompanied by a fee as established from time to time by resolution of the Board of Trustees,[8] per lot for each lot of the subdivision.

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[7] **Editor's note: This form can be obtained from the village offices.**
[8] **Editor's Note: See Ch. A220, Fees.**

B. Number of copies. Five (5) copies of the final subdivision plat shall be presented to the Planning Board Clerk at least fifteen (15) days prior to a scheduled monthly meeting of the Planning Board.

C. Subdivider to attend Planning Board meeting. The subdivider or his or her duly authorized representative shall attend the meeting of the Planning Board to discuss the final subdivision plat.

D. When officially submitted. The time of submission of the final subdivision plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least fifteen (15) days prior to which the application for final plat approval, complete and accompanied by the required fee and all data required by Article V, **§** 181-23, of these regulations, has been filed with the Planning Board Clerk.

E. Public hearing. A public hearing shall be held by the Planning Board within sixty-two (62) days from the time of submission of the final subdivision plat for approval. Said hearing shall be advertised in a newspaper of general circulation in the village at least five (5) days before such hearing.

F. Action on final subdivision plat. The Planning Board shall, within sixty-two (62) days from the date of the public hearing, approve, modify and approve, or disapprove the final subdivision plat.

§ 181-9. Preliminary plat approval for a major subdivision. [Amended 12-20-2007 by L.L. No. 16-2007]

A. Application and fee.

(1) Prior to the filing of an application for final approval of a major subdivision plat, the subdivider shall submit two (2) copies of Planning Form Number 3, application for approval of the preliminary plat for major subdivision[9] in the form described in Article V, **§** 181-24, hereof. The preliminary plat shall in all respects comply with the requirements set forth in the provisions of **§§** 7-728, 7-730 and 7-732 of the Village Law and Article V, **§** 181-24, of these regulations, except where a waiver may be specifically authorized by the Planning Board.

[9] **Editor's Note: This form can be obtained from the village offices.**

(2) The application for approval of the preliminary plat shall be accompanied by a fee as established from time to time by resolution of the Board of Trustees,[10] per lot for each lot in the proposed plat section.

B. Number of copies. Five (5) copies of the preliminary plat shall be presented to the Planning Board Clerk at least fifteen (15) days prior to a regular monthly meeting of the Planning Board.

C. Preliminary plat to be marked. All copies of the preliminary plat shall be clearly marked "Preliminary Plat" and shall conform to the definition provided in this chapter.

D. Subdivider to attend Planning Board meeting. The subdivider or his or her duly authorized representative shall attend the meeting of the Planning Board to discuss the preliminary plat.

E. Study of preliminary plat. The Planning Board shall study the practicability of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets and their relation to the topography of the land; water supply; sewage disposal; drainage; lot sizes and arrangement; the future development of adjoining lands as yet unsubdivided; and the requirements of the Master Plan, the Official Map[11] and zoning regulations, if such exist.

F. When officially submitted. The time of submission of the preliminary plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least fifteen (15) days prior to which the application for approval of the preliminary plat, complete and accompanied by the required fee and all data required by Article V, **§** 181-24, of these regulations, has been filed with the Planning Board Clerk.

G. When preliminary plat is considered complete.

(1) A preliminary plat shall not be considered complete until the provisions of the state environmental quality review act have been complied with as outlined in §§ 7-728, 7-730 and 7-732 of Village Law.

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[10] Editor's Note: See Ch. A220, Fees.

[11] Editor's Note: The Master Plan and Official Map are on file in the village offices. See Ch. 210, Zoning, for the current zoning provisions.

H. Decision on the preliminary plat.

(1) Within sixty-two (62) days after the time of submission of a completed preliminary plat, the Planning Board shall take action to approve, with or without conditions and modifications, or disapprove such preliminary plat, and the grounds of any condition and modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning Board to act within such sixty-two (62) day period shall constitute an approval of the preliminary plat.

(2) When granting approval for a preliminary plat, the Planning Board shall state the conditions of such approval, if any, with respect to:

(a) The specific changes which it will require in the final plat.

(b) The character and extent of the required improvements for which waivers may have been requested and which, in its opinion, may be waived without jeopardy to the public health, safety, morals and general welfare.

(c) The amount of improvement or the amount of all bonds therefor which it will require as prerequisite to the approval of the final subdivision plat.

(3) The action of the Planning Board, plus any conditions attached thereto, shall be noted on three (3) copies of Planning Form Number 3.[12] One (1) copy shall be returned to the subdivider, one (1) retained by the Planning Board and one (1) forwarded to the Village Board. Approval of a preliminary plat shall constitute approval of a preliminary plat only as a guide to the preparation of the final plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these regulations and the conditions of the preliminary approval, if any. Prior to approval of the final subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in final form or as a result of new information obtained at the public hearing.

I. A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Chapter 175 and Chapter 176 of this Code shall be required for Preliminary Subdivision Plat Approval. The SWPPP shall met the performance and design criteria and standards in Chapter 175 and Chapter 176 of this Code.

[12] **Editor's Note: This form can be obtained from the village offices.**

The approved Preliminary Subdivision Plat shall be consistent with the provisions of this Chapter.

§ 181-10. Final plat approval of a major subdivision. [Amended 12-20-2007 by L.L. No. 17-2007]

A. Application for approval and fee. The subdivider shall, within six (6) months after the approval of the preliminary plat, file with the Planning Board Clerk two (2) copies of Planning Form Number 4, application for approval of the final subdivision plat.[13] All applications for final plat approval for major subdivisions shall be accompanied by a fee as established from time to time by resolution of the Board of Trustees.[14] If the final plat is not submitted within six (6) months after the approval of the preliminary plat, the Planning Board may refuse to approve the final plat and require resubmission of the preliminary plat.

B. The final plat shall in all respects comply with the requirements set forth in the provisions of **§§** 7-728, 7-730 and 7-732 of the Village Law and these regulations, except where a waiver may be specifically authorized by the Planning Board.

C. Number of copies. A subdivider intending to submit a proposed final subdivision plat for the approval of the Planning Board shall provide the Planning Board Clerk with copies of the application and seven (7) copies [one (1) copy on mylar] of the plat, one (1) copy of the plat in electronic format (if available), the original and one (1) true copy of all offers of cession, covenants and agreements and two (2) prints of all construction drawings, at least fifteen (15) days in advance of the regular monthly Planning Board meeting at which it is to be officially submitted.

D. When officially submitted. The time of submission of the final subdivision plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least fifteen (15) days prior to which the application for approval of the final subdivision plat, complete and accompanied by all data required by Article V, **§** 181-25, of these regulations, has been filed with the Planning Board Clerk.

E. Endorsement of state and county agencies. Water and sewer facility proposals contained in the final subdivision plat shall be properly endorsed and approved by the Village Engineer and the Superintendent of Public Works. Applications for approval of plans for sewer or water facilities will be filed by the subdivider with all necessary village, county and state agencies. Endorsement and approval by the State Department of Health shall be secured by the subdivider before official submission of the final subdivision plat.

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[13] **Editor's Note: This form can be obtained from the village offices.**
[14] **Editor's Note: See Ch. A220, Fees.**

F. Public hearing. A public hearing shall be held by the Planning Board within sixty-two (62) days after the time of submission of the final subdivision plat for approval. This hearing shall be advertised in a newspaper of general circulation in the village at least five (5) days before such hearing.

G. Action on proposed final subdivision plat. The Planning Board shall, within (62) days from the date of the public hearing on the final subdivision plat, approve, modify and approve, or disapprove the final subdivision plat. However, the final subdivision plat shall not be signed by the authorized officers of the Planning Board for recording until the subdivider has complied with the provisions of § 181-11 of this Article.

H. Signing of plat.

(1) Every final subdivision plat submitted to the Board for its approval shall carry the following endorsement:

Approved by resolution of the Planning Board of the Village of Alden, New York, on the _____ day of _____, 20_____, subject to all requirements and conditions of said resolution. Any change, erasure, shall void this approval.

Signed this _____ day of _____, 20_____,

_____
Chairman

_____
Secretary

(2) In the absence of the Chairman or Secretary, the Acting Chairman or Acting Secretary, respectively, may sign in his or her place.

I. Plat notation. The following notation must appear on all final subdivision plats before final approval of the Planning Board:

"No building permit for construction on any lot in this subdivision will be issued if the dimensions of the lot area are less than that indicated on this subdivision map unless a change in lot size is approved by the Village of Alden Planning Board."
at the public hearing.

J. A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Chapter 175 and Chapter 176 of this Code and with the terms of preliminary plan approval shall be required for Final Subdivision Plat Approval. The SWPPP shall met the performance and design criteria and standards in Chapter 175 and Chapter 176 of this Code. The approved Final Subdivision Plat shall be consistent with the provisions of this Chapter.

§ 181-11. Required improvements and agreements. [Amended 5-18-2006 by L.L. No. 8-2006]

A. Required improvements.

(1) The subdivider shall at his or her own expense install all of the following improvements in accordance with the standards and specifications of these regulations, other regulations of the Village Board or, in the absence of such specific regulations, in accordance with the requirements of the Village Engineer.

(a) Streets with curbs or gutters.

(b) Sidewalks in front of all lots.

(c) Sanitary sewer lines.

(d) Storm sewer lines.

(e) Water mains and fire hydrants.

(f) Monuments at block corners and other necessary points.

(g) Aboveground drainage facilities, i.e., ditch, swale, sluiceway, etc.

(h) Street trees (willows, American elm and poplars are not acceptable) in front of all lots.

(2) The Planning Board may waive, subject to appropriate conditions and guaranties, for such period as it may determine, the provision of any or all such improvements of a particular plat or plats which are not requisite in the interests of the public health, safety and general welfare. (See Article VI).

(3) In the case of required sidewalks, the subdivider shall have the option to complete all required sidewalks as provided for in this section, or exercise the following procedure:

(a) The subdivider shall request, in writing, to delay installation of sidewalks per this section.

(b) The cost of installation of all required sidewalks shall be determined by the Village of Alden. This cost shall be doubled and shall hereinafter be referred to as “final sidewalk cost”.

(c) A cash deposit in the amount of the final sidewalk cost shall be placed into an escrow account designated and controlled by the Village of Alden. No interest shall be paid to the subdivider for deposited monies in the escrow account, for the entire life of the account.

(d) The subdivider shall indemnify and hold the Village of Alden harmless in the event any claims are filed as a result of the lack of sidewalks being installed.

(e) The subdivider shall require any person or entity purchasing one or more lots in the subdivision to sign an affidavit acknowledging the subdivider’s option to not install all required sidewalks immediately. Said affidavit shall indicate that it is the financial responsibility of the developer to install all sidewalks unless other arrangements are made with individual property owners.

(f) The subdivider shall install all required sidewalks within two (2) years of the date of issuance of the first building permit for any lot in said subdivision. Failure to do so will result in the withdrawal of escrow funds by the Village of Alden to install required sidewalks.

(g) The Village of Alden will hold the remainder of the escrow funds for a period of two (2) years after the date of acceptance by the Village of Alden of all required sidewalks as a maintenance assurance.

(h) Any remaining escrow funds existing after the maintenance assurance period shall be returned to the subdivider without interest within thirty (30) days of written request by the subdivider.

B. Public improvements and performance bond.

(1) After approval of public improvement drawings, plans and specifications, and thirty (30) days prior to commencing any work on such proposed public improvements, the subdivider shall obtain a public improvement permit by first submitting an application for the installation of public improvements.[15] Such permit shall outline the type and extent of the public improvement(s) and their approximate costs.

(2) A filing fee to defray inspection costs of such improvements shall be submitted at the time of filing. Such fees shall be payable to the Village of Alden and shall be as established from time to time by resolution of the Board of Trustees.[16]

(3) Before the Planning Board grants final approval of the subdivision plat, the subdivider shall follow the procedure set forth in either Subsection B(3)(a) or (b) as follows:

(a) In an amount set by the Planning Board, the subdivider shall either file with the Village Clerk a certified check to cover the full cost of the required improvements or the subdivider shall file with the Village Clerk a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of **§** 7-724 of the Village Law and shall be satisfactory to the Village Board, the Village Engineer, the Superintendent of Public Works, and the Village Attorney or other person designated by the Village Board as to form, sufficiency, manner of execution and surety. A period of one (1) year [or such other period as the Planning Board may determine appropriate, not to exceed three (3) years] shall be set forth in the bond within which required improvements must be completed.

(b) The subdivider shall complete all required improvements to the satisfaction of the Village Engineer, the Superintendent of Public Works, or other engineer designated by the Village Board who shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Board. For any required improvements not so completed, the subdivider shall file with the Village Clerk a bond or certified check covering the costs of such improvements and the cost of satisfactorily installing any improvement not approved by the Village Board. Any such bond shall be satisfactory to the Village Board, the

[15] **Editor's Note: This form can be obtained from the village offices.**
[16] **Editor's Note: See Ch. A220, Fees.**

Village Engineer, the Superintendent of Public Works, the Village Attorney, or other person designated by the Village Board as to form, sufficiency, manner of execution and surety.

(c) The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Village Engineer, the Superintendent of Public Works, or other engineer designated by the Village Board and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements according to Subsection B(3)(b), then said map shall be submitted prior to endorsement of the plat by the appropriate Planning Board officer. However, if the subdivider elects to provide a bond or certified check for all required improvements as specified in Subsection B(3)(a), such bond shall not be released until such a map is submitted.

C. Modification of design of improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Village Engineer, the Superintendent of Public Works, or other engineer designated by the Village Board that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Village Engineer, the Superintendent of Public Works, or other engineer designated by the Village Board may, upon approval by a previously delegated member of the Planning Board, authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Village Engineer or other engineer designated by the Village Board shall issue any authorization under this section, in writing, and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

D. Inspection and approval of improvements.

(1) In the instance where the Village Engineer and the applicant's engineer are one and the same individual or concern, the Village may, at its discretion, employ a qualified inspector to act as its agent for the purposes of assuring the satisfactory completion of improvements required by the Planning Board and adherence to appropriate construction detail sheets and specifications.

(2) Approval of improvement drawings and inspection of the necessary work for improvements shall be made by (a qualified person designated by the Planning Board or) the Village Engineer or the Superintendent of Public Works, for the purpose of assuring satisfactory function and completion of improvements required by the Planning Board per these regulations, other resolutions by the Village Board pertaining to such matters or, in the absence of specific regulations, in accordance with the requirements of the Village Engineer or the Superintendent of Public Works.

(3) At least ten (10) days prior to commencing construction of required improvements, the subdivider shall notify the Superintendent of Public Works, in writing, of the time when he or she proposes to commence construction of such improvements so that he/she may cause inspection to be made to assure that all village specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the Planning Board.

(4) If the Village Engineer, the Superintendent of Public Works, or other person designated by the Village Board shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he or she shall so report to the Village Board and the Planning Board. The Village Board then shall notify the subdivider and, if necessary, the bonding company and take all necessary steps to preserve the village rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

E. Utilities. As to utilities required by the Planning Board, the Board may accept assurance from each public utility company whose facilities are proposed to be installed. Such assurance will be in writing, addressed to the Board, stating that such public utility company will make the installations necessary for the furnishing of its services within a specified time, in accordance with the approved construction detail sheets.

F. Offers of cession and releases.

(1) The plat shall be endorsed with the necessary agreements in connection with required easements or releases.

(2) The plat shall be accompanied by an offer of cession of all streets and parks and other recreation areas and any other required easements or

conveyances, such offer to remain binding on the subdivider of the premises or his or her heirs and assigns until acceptance or disapproval by the Village Board or until application for a resubdivision is approved. No action taken by the Planning Board or any other officer or agency of the village in accordance with these procedures shall be deemed to be agreement to accept or an acceptance of title or other interest in and to any real or personal property until the same is accomplished by specific resolution of the Village Board.

(3) Formal offers of cession to the village of all streets and parks, not marked on the plat with notation to the effect that such cession will not be offered, shall be filed with the Planning Board prior to plat approval.

§ 181-12. Filing of approved subdivision plat.

A. Final approval and filing. Upon completion of the requirements in **§§** 181-10 and 181-11 above and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Planning Board (Chairman or Acting Chairman) and may be filed by the applicant in the office of the County Clerk. Any subdivision plat not so filed or recorded within ninety (90) days of the date upon which such plat is approved or considered approved by reasons of the failure of the Planning Board to act shall become null and void, unless the particular circumstances of said applicant warrant the Planning Board to grant an extension which shall not exceed two (2) additional periods or ninety (90) days.

B. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed, in writing, on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ 181-13. Public streets and recreation areas.

A. Public acceptance of streets. The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the village of any street, easement or other open space shown on such subdivision plat.

B. Ownership and maintenance of recreation areas. When a park, playground, greenbelt or other recreation area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the village of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Village Board covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such area.

ARTICLE IV
General Requirements and Design Standards

§ 181-14. Standards established.

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth hereinafter. Said standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in Article VI herein.

§ 181-15. General standards.

A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.

B. Conformity to Official Map and Master Plan.[17] Subdivisions shall conform to the Official Map of the village and shall be in harmony with the Master Plan, if such exists.

C. Specifications for required improvements. All required improvements shall be constructed or installed to conform to the village specifications and requirements.

§ 181-16. Street layout.

A. Width, location and construction. Streets shall be of sufficient width, suitably located and adequately constructed to conform with the Master Plan, if such exists, and to accommodate the prospective traffic and afford access for fire-

[17] **Editor's Note: The Official Map and Master Plan are on file in the village offices.**

fighting, snow removal and other road maintenance equipment. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system.

B. Arrangement. The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivisions and for proper projection of principal streets into adjoining properties which are not yet subdivided in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services, such as sewers and water and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.

C. Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.

D. Special treatment along major arterial streets. When a subdivision abuts or contains an existing or proposed major arterial street, the Board may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

E. Provision for future resubdivision. Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations.

F. Dead-end streets. The creation of dead-end or loop residential streets will be encouraged wherever the Board finds that such type of development will not interfere with normal traffic circulation in the area. In the case of dead-end streets, where needed or desirable, the Board may require the reservation of a twenty-foot-wide easement to provide for continuation of pedestrian traffic and utilities to the next street. Subdivisions containing twenty (20) lots or more shall have at least two (2) street connections with existing public streets or streets shown on the Official Map,[18] if such exists, or streets on an approved subdivision plat for which a bond has been filed.

G. Block size. Blocks generally shall not be less than four hundred (400) feet nor more than one thousand two hundred (1,200) feet in length. In general, no block

[18] **Editor's Note: The Official Map is on file in the village offices.**

width shall be less than twice the normal lot depth. In blocks exceeding eight hundred (800) feet in length, the Planning Board may require the reservation of a twenty-foot-wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a five-foot-wide paved footpath be included.

H. Intersections with collector or major arterial roads. Minor or secondary street openings into such roads shall, in general, be at least five hundred (500) feet apart.

I. Street jogs. Street jogs with center-line offsets of less than one hundred twenty-five (125) feet shall be avoided.

J. Angle of intersection. In general, all streets shall join each other so that for a distance of at least one hundred (100) feet the street is approximately at right angles to the street it joins.

K. Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography.

L. Other required streets. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

§ 181-17. Street design.

A. Widths of rights-of-way. Streets shall have the following widths. When not indicated on the Master Plan or Official Map,[19] if such exists, the classification of streets shall be determined by the Board. (See Table I, Standards for Street Design.[20])

	Minimum Right-of-Way	Minimum Pavement

[19] **Editor's Note: The Master Plan And Official Map are on file in the village offices.**
[20] **Editor's Note: Table I is included at the end of this chapter.**

Type of Street	**(feet)**	**(feet)**
Marginal access	40	20
Minor	70	26
Collector	70	28
Arterial or business	80	30

B. Improvements. Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, streetlights and signs, street trees and fire hydrants, except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Village Engineer. Such grading and improvements shall be approved as to design and specifications by the Village Engineer.

(1) Fire hydrants. Installation of fire hydrants shall be in conformity with all requirements of standard thread and nut as specified by the New York Fire Insurance Rating Organization and the Division of Fire Safety of the State of New York.

(2) Streetlighting facilities. Lighting facilities shall be in conformance with the lighting system of the village. Such lighting standards and fixtures shall be installed after approval by the appropriate power company and the authorized village electrical inspector.

C. Utilities in streets. The Planning Board shall, wherever possible, require that underground utilities be placed in the street right-of-way between the paved roadway and street line to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities before the street is paved.

D. Utility easements. Where topography is such as to make impractical the inclusion of utilities within the street rights-of-way, perpetual unobstructed easements at least fifteen (15) feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present as few irregularities as possible. Such easements shall be cleared and graded where required and shall be indicated on the plat.

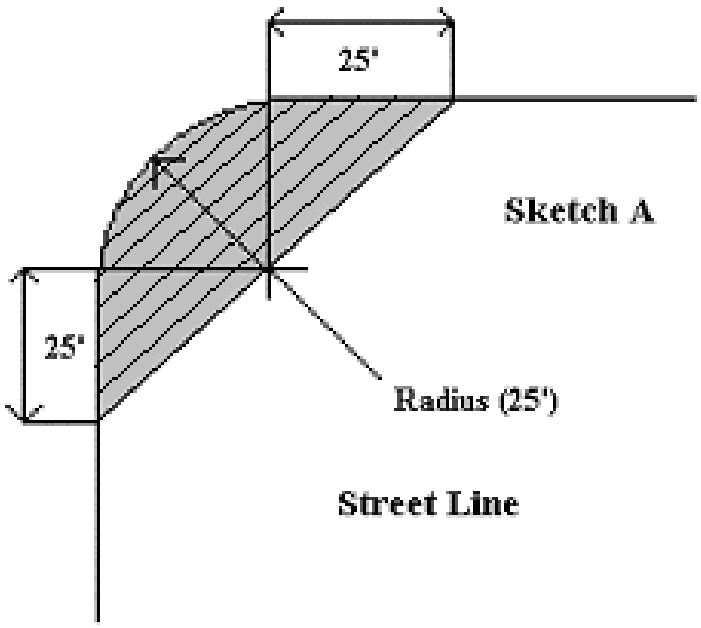
E. Grades. Grades of all streets shall conform in general to the terrain and shall conform to Table I, Standards for Street Design.[21]

[21] **Editor's Note: Table I is included at the end of this chapter.**

F. Changes in grade. All changes in grade shall be connected by vertical curves of such length as given in Table I, Standards for Street Design.[22]

G. Curve radii at street intersections. All street right-of-way lines at intersections shall be rounded by curves of at least twenty-five (25) feet radius, and curbs shall be adjusted accordingly.

H. Steep grades and curves; visibility at intersections. A combination of steep grades and curves shall be avoided in order to provide visibility for traffic safety. That portion of any corner lot, whether at an intersection entirely within the subdivision or of a new street with an existing street, which is shown shaded on Sketch A below, shall be cleared of all growth, except isolated trees, and obstructions above the level two and one-half (2 ½)feet higher than the center line of the street. If directed, ground shall be excavated to achieve visibility.



I. Dead-end streets (culs-de-sac). Where dead-end streets are designed to be so permanently, they should, in general, not exceed five hundred (500) feet in length and shall terminate in a circular turnaround having a minimum right-of-way

[22] **Editor's Note: Table I is included at the end of this chapter.**

radius of sixty-five (65) feet and pavement radius of fifty (50) feet. At the end of temporary dead-end streets, a temporary turnaround with a pavement radius of fifty (50) feet shall be provided, unless the Planning Board approves an alternate arrangement.

J. Watercourses.

(1) Where a watercourse separates a proposed street from abutting property, provision shall be made for access to all lots by means of culverts or other structures of design approved by the Village Engineer.

(2) Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way as required by the Village Engineer and in no case less than twenty (20) feet in width.

K. Curve radii. In general, street lines within a block deflecting from each other at any one (1) point by more than ten degrees (10°) shall be connected with a curve, the radius of which for the center line of the street shall not be less than four hundred (400) feet on major streets, two hundred (200) feet on collector streets and one hundred fifty (150) feet on minor streets.

L. Service streets or loading space in commercial development. Paved rear-service streets of not less than twenty (20) feet in width or, in lieu thereof, adequate off-street loading space, suitably surfaced, shall be provided in connection with lots designed for commercial use.

M. Free flow of vehicular traffic abutting commercial developments. In front of areas zoned and designed for commercial use or where a change of zoning to a zone which permits commercial use is contemplated, the street width shall be increased by such amount on each side as may be deemed necessary by the Planning Board to assure the free flow of through traffic without interference by parked or parking vehicles and to provide adequate and safe parking space for such commercial or business district.

§ 181-18. Street names.

A. Type of name. All street names shown on a preliminary layout or subdivision plat shall be approved by the Planning Board. In general, streets shall have names and not numbers or letters.

B. Names to be substantially different. Proposed street names shall be substantially different so as not to be confused in sound or spelling with present names, except that streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name. Generally, no street should change direction by more than ninety degrees (90°) without a change in street name.

§ 181-19. Lots. [Amended 12-20-2007 by L.L. No. 9-2007]

A. Lots to be buildable. The lot arrangement shall be such that in constructing a building in compliance with the Zoning Ordinance[23] there will be no foreseeable difficulties for reasons of topography or other natural conditions. Lots should not be of such depth as to encourage the later creation of a second building lot at the front or rear.

B. Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines unless a variance from this rule will give a better street or lot plan.

C. Corner lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each street and to provide a desirable building site.

D. Lot dimensions. Lot dimensions shall at the least comply with the minimum standards of the Zoning Ordinance.[24] Where lots are more than double the minimum required area for the zoning district, the Planning Board may require that such lots be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots.

E. Double frontage lots. Double frontage lots should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet in width, across which there shall be no right of access, shall be provided along the line of lots abutting such a traffic artery or other disadvantageous use.

F. Building setback. All subdivision maps must show a minimum building setback line which shall be thirty (30) feet from any existing or proposed street, except buildings fronting on Exchange Street, Broadway, Crittenden or other proposed major streets shall be set back thirty-five (35) feet.

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[23] **Editor's Note: See Ch. 210, Zoning.**
[24] **Editor's Note: See Ch. 210, Zoning.**

G. Access from arterial streets. Lots shall not, in general, derive access exclusively from an arterial street. Where driveway access from an arterial street may be necessary for several adjoining lots, the Planning Board may require that such lots be served by a marginal access drive in order to limit possible traffic hazard on such street.

H. Lot drainage.

(1) All lots within a subdivision shall have a storm sewer installed across the entire street frontage of each lot.

(2) Drainage grades in rear or side yards shall be established by the subdivider and shown on all drawings of storm sewer facilities.

(3) Storm sewers accommodating rear yard drainage shall have receivers at least every four hundred (400) feet.

(4) A minimum grade of not less than thirty-three hundredths percent (0.33%) shall be maintained along these easements.

(5) Special conditions. If, in the opinion of the Planning Board or the Village Engineer, after review of plans submitted by the subdivider additional sewer facilities are needed to carry off surface water from rear and/or side yard areas, these additional sewer structures shall become part of the general sewer plan.

I. Driveway access. Driveway access and grades shall conform to specifications of the Village Driveway Ordinance, if one exists. Driveway grades between the street and the setback line shall not exceed ten percent (10%).

J. Access from private streets. Access from private streets shall be deemed acceptable only if such streets are designed and improved in accordance with these regulations.

K. Monuments. Permanent monuments meeting specifications approved by the Village Engineer as to size, type and installation shall be set at such block corners, angle points, points of curves in streets and other points as the Village Engineer may require, and their location shall be shown on the subdivision plat.

§ 181-20. Drainage improvements.

A. Removal of spring- and surface water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring- or surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way where feasible or in perpetual unobstructed easements of appropriate width.

B. Drainage structure to accommodate potential development upstream. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Village Engineer shall approve the design and size of the facility based on anticipated runoff from a ten-year storm under conditions of total potential development permitted by the Zoning Ordinance[25] in the watershed.

C. Responsibility from drainage downstream. The subdivider's engineer shall also study the effect of each subdivision on the existing downstream drainage facilities outside the area of the subdivision; this study shall be reviewed by the Village Engineer or other engineer designated by the Village Board. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a five-year storm, the Planning Board shall notify the Village Board of such potential condition. In such case, the Planning Board shall not approve the subdivision until provision has been made for the improvement of said condition.

D. Land subject to flooding. Land subject to flooding or land deemed by the Planning Board to be uninhabitable shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard, but such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or improved in a manner satisfactory to the Planning Board to remedy said hazardous conditions.

§ 181-21. Parks, open spaces and natural features. [Amended 5-18-2006 by L.L. No. 9-2006]

A. Recreation areas shown on Village Plan. Where a proposed park, playground or open space shown on the Village Plan is located in whole or in part in a subdivision, the Board shall require that such area or areas be shown on the plat in accordance with the requirements specified in Subsection B below. Such area or areas may be dedicated to the village, town or county by the subdivider if the Village Board approves such dedication.

[25] **Editor's Note: See Ch. 210, Zoning.**

B. Parks and playgrounds not shown on Town Plan.

(1) The Planning Board shall require that the plat show sites of a character, extent and location suitable for the development of a park, playground or other recreation purpose. The Planning Board may require that the developer satisfactorily grade any such recreation areas shown on the plat.

(2) The Board shall require that not less than three (3) acres of recreation space be provided per one hundred (100) dwelling units shown on the plat. However, in no case shall the amount be more than ten percent (10%) of the total area of the subdivision. Such area or areas may be dedicated to the town or county by the subdivider if the Village Board approves such dedication.

C. Information to be submitted. In the event that an area to be used for a park or playground is required to be so shown, the subdivider shall submit, prior to final approval, to the Board, three (3) prints [one (1) in cloth] drawn in ink showing, at a scale of not less than thirty (30) feet to the inch, such area and the following features thereof:

(1) The boundaries of said area, giving lengths and bearings of all straight lines; radii, lengths, central angles and tangent distances of all curves.

(2) Existing features such as brooks, ponds, clusters of trees, rock outcrops and structures.

(3) Existing and, if applicable, proposed changes in grade and contours of said area and of area immediately adjacent.

D. Waiver of plat designation of area for parks and playgrounds.

(1) In cases where the Planning Board finds that due to the size, topography or location of the subdivision, land for park, playground or other recreation purposes cannot be properly located therein or if, in the opinion of the Board, it is not desirable, the Board may waive the requirement that the plat show land for such purposes. The Board shall then require, prior to approval of the plat, a payment to the village in the amount as established from time to time by resolution of the Board of Trustees.[26]

(2) Such amount shall be paid to the Village Clerk at the time of final plat approval, and no plat shall be signed by the authorized officer of the

[26] **Editor's Note: See Ch. A220, Fees.**

Planning Board until such payment is made. All such payments shall be held by the Village Board in a special Village Recreation Site Acquisition and Improvement Fund to be used for the acquisition of land that is suitable for permanent park, playground or other recreational purposes; is so located that it will serve primarily the general neighborhood in which the land covered by the plat lies; and shall be used only for park, playground or other recreational land acquisition or improvements. Such money may also be used for the physical improvement of existing parks or recreation areas serving the general neighborhood in which the land shown on the plat is situated, provided that the Planning Board finds there is a need for such improvements.

E. Reserve strips prohibited. Reserve strips of land which might be used to control access from the proposed subdivision to any neighboring property or to any land within the subdivision itself shall be prohibited.

F. Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, beaches, historic spots, vistas and similar irreplaceable assets.

(1) A tree planning schedule must be submitted and approved by the Planning Board for all building lots in newly created subdivision lots prior to any lot clearing or removal of trees on said lot.

(a) The tree planting schedule shall contain a plot diagram of the entire building lot, with all proposed improvements and dimensions shown, including the location of all existing or proposed trees necessary to meet the requirements of this Section. All other non-required trees with a diameter of six (6) inches or more as measured three (3) feet above the base of the trunk proposed to remain on the lot must be indicated on the plan.

(2) No tree with a diameter of six (6) inches or more as measured three (3) feet above the base of the trunk shall be removed, unless trees proposed for removal are in compliance with a tree planting schedule that has been approved by the Village of Alden Planning Board. This requirement shall not apply to any trees located within the right-of-way of a street as shown on the final subdivision plat.

(3) All building lots in a newly created subdivision shall maintain a minimum of one (1) tree for every five thousand (5,000) square feet of lot area or fraction thereof.

(a) Said trees shall have a mimimum diameter of six (6) inches as measured three (3) feet above the base of the trunk, on the property.

(b) If the minimum number of trees as specified above do not exist, the property owner shall plant new trees with a minimum diameter of one and one-half (1 ½) inches, as measured three (3) feet above the base of the trunk, so that the total number of trees on any lot is at least equal to one (1) tree for every five thousand (5,000) square feet of lot area or fraction thereof.

(c) A minimum of one (1) tree, as specified and required above, must be located within the required front yard of the property, as defined in Chapter 210 of this Code.

(d) Said trees must be in place prior to the issuance of a final Certificate of Occupancy for the property.

ARTICLE V
Documents to be Submitted

§ 181-22. Sketch plan.

A. The sketch plan(s) initially submitted to the Planning Board shall be based on Tax Map information or some other similarly accurate base map at a scale [preferably not less than two hundred (200) feet to the inch] to enable the entire tract to be shown on one (1) sheet.

B. The sketch plan(s) shall be submitted showing the following information:

(1) The location of that portion which is to be subdivided in relation to the entire tract and the distance to the nearest existing street intersection.

(2) All existing structures, wooded areas, streams and other significant physical features within the portion to be subdivided and within two hundred (200) feet thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than ten (10) feet.

(3) The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.

(4) The Tax Map sheet, block and lot numbers, if available.

(5) All the utilities available and all streets which are either proposed, mapped or built.

(6) The proposed pattern of lots, including lot width and depth, street layout, recreation areas and systems of drainage, sewerage and water supply within the subdivided area [see **§** 181-23A(3)].

(7) All existing restrictions on the use of land, including easements, covenants or zoning lines.

(8) A description of soils and soil conditions and an overlay map and evaluation of the soils for the proposed use.

(9) A written plan or program indicating provisions for management and protection of soil, water, woodland and wildlife resources [for Subsections B(8) and (9), assistance is available at no cost from: Erie County Soil and Water Conservation District, 21 South Grove Street, East Aurora, New York 14502; phone: 652-8480]. Where no natural resource plan accompanies this phase, the Erie County Soil and Water Conservation District will be asked for comments and recommendations. No actions will be taken on the proposed development until such a report is received by the Planning Board.

§ 181-23. Minor subdivision plat.

A. In the case of minor subdivision only, the subdivision plat application shall include the following information:

(1) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.

(2) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by monuments as approved by the Village Engineer and shall be referenced and shown on the plat.

(3) On-site sanitation and water supply facilities designed to meet the minimum specification of the State Department of Health, and a note to this effect shall be stated on the plat and signed by a licensed engineer.

(4) Proposed subdivision name and the name of the village and county in which it is located.

(5) The date, North point, map scale and the name and address of the record owner and subdivider.

B. The plat to be filed with the County Clerk shall be printed in form and quantity as prescribed by the Erie County Clerk's Office.

§ 181-24. Major subdivision preliminary plat and accompanying data.

The following documents shall be submitted for approval of the preliminary plat:

A. Seven (7) copies each of the following:

(1) A preliminary plat map prepared at a scale of not more than two hundred (200) but preferably not less than one hundred (100) feet to the inch, showing the data given in Technical Checklist D, available from the Village Clerk.[27]

(2) Site Base Map A, showing information on Technical Checklist A; the same scale as the preliminary plat.

(3) Site Base Map B, showing information on Technical Checklist B; the same scale as the preliminary plat.

(4) Site Base Map C, showing information on Technical Checklist C; the same scale as the preliminary plat.

(5) The subplot grading plan.

[27] **Editor's Note: Technical Checklists A through C are also available from the Clerk.**

(6) The preliminary layout of the subdivision, with the preliminary plat section clearly shown if the application covers only a part of the subdivider's entire holding.

C. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.

D. A copy of approved requests for variance(s).

§ 181-25. Major subdivision final plat and accompanying data.

The following documents shall be submitted for final plat approval:

A. The plat to be filed with the County Clerk shall be in form and quantity as prescribed by the Erie County Clerk’s Office. The size of the sheets shall be in accordance with the Erie County Clerk's specifications, including a margin for binding of two (2) inches, outside of the border, along the left side and a margin of one (1) inch, outside of the border, along the remaining sides. The plat shall be drawn at a scale of no more than one hundred (100) feet to the inch and oriented with the North point at the top of the map. When more than one (1) sheet is required, an additional index sheet of the same size shall be filed showing to scale the entire subdivision with lot and block numbers clearly legible. The plat shall show:

(1) The proposed subdivision name or identifying title and the name of the village and county in which the subdivision is located, the name and address of the record owner and subdivider and the name, license number and seal of the licensed land surveyor shall be provided.

(2) Street lines, pedestrianways, lots, reservations, easements and areas to be dedicated to public use shall be provided.

(3) Sufficient data acceptable to the Village Engineer to determine readily the location, bearing and length of every street line, lot line and boundary line and to reproduce such lines upon the ground shall be provided. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.

(4) The length and bearing of all straight lines, radii, length of curves and central angles of all curves and tangent bearings shall be given for each street. All dimensions and angles of the lines of each lot shall also be

given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and true North point.

(5) The plat shall also show by proper designation thereon all public open spaces for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner in which such areas are to be maintained and the provisions made therefor.

(6) All offers of cession and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Village Attorney as to their legal sufficiency.

(7) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing practice.

(8) Permanent reference monuments shall be shown and shall be constructed in accordance with specification of the Village Engineer. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the State Department of Public Works. They shall be placed as required by the Village Engineer and their location noted and referenced upon the plat.

(9) All lot corner markers shall be permanently located satisfactorily to the Village Engineer, at least three-fourths (¾) inches (if metal) in diameter and at least twenty-four (24) inches in length, and located in the ground to existing grade.

(10) Monuments of a type approved by the Village Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street lines, points of curve and such intermediate points as shall be required by the Village Engineer.

B. Construction drawings, including plans, profiles and typical cross sections, as required, showing the proposed location, size and type of streets, sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, pavements and subbase, manholes, catch basins and other facilities shall be provided.

ARTICLE VI
Variances and Waivers

§ 181-26. Waivers.

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions. Such waiver(s) shall be granted only in situations where extraordinary and unnecessary hardships may result from strict compliance with the requirements of this chapter, and such waiver(s) shall only be granted to the extent necessary to meet the minimum objectives of said waiver(s).

§ 181-27. Conditions.

In granting waivers and modifications, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so waived or modified.

Table I
Standards for Street Design
Street Classifications

Requirement	Marginal Access	Minor	Collector	Arterial or Business
Minimum width of right-of-way	40 feet	70 feet	70 feet	80 feet[1]
Minimum width of pavement	20 feet	28 feet	30 feet	40 feet
Minimum radius of horizontal curves		150 feet, except for street intersection corners	200 feet	400 feet
Minimum length	100 feet, but	100 feet, but	200 feet, but	200 feet

of vertical curves	not less than 20 feet for each 1% algebraic difference of grade	not less than 20 feet for each 1% algebraic difference of grade	not less than 30 feet for each 1% algebraic difference of grade	
Minimum length of tangents between reverse curves	100 feet, except where excessive grades may be reduced to reasonable grades by shortening tangent	100 feet, except where excessive grades may be reduced to reasonable grades by shortening tangent	200 feet	200 feet
Maximum grade[2]	8%	8%, except that grades up to 12% may be approved on short runs	6%	4%
Requirement	**Marginal Access**	**Minor**	**Collector**	**Arterial or Business**
Recommended minimum grade	0.5%	0.5%	0.5%	0.5%
Absolute minimum	0.3%	0.3%	0.3%	0.3%
Minimum sight distance	150 feet	150 feet	250 feet	250 feet

Notes:
Street classification is adopted by the Association of State Highway Officials.
[1] Not including right-of-way for marginal access streets, if any.
[2] Equal to or less than three percent (3%) within fifty (50) feet of any intersection.

Chapter 185[1]

(Reserved)

[1] **Editor's Note: Former Ch. 185, Swimming Pools, adopted 2-26-1969 by L.L. No. 2-1969, was repealed 1-23-03 by L.L. No. 14-2003.**

Chapter 190

TAXATION

ARTICLE I
Tax on Utilities

§ 190-1. Imposition of tax.
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§ 190-5. Collection and enforcement; rules and regulations.
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ARTICLE V
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§ 190-24. Assessor abolished.
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§ 190-26. Future tax levy; taxable status date.
§ 190-27. Filing.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Tax on Utilities
[Adopted 11-20-1970 by L.L. No. 5-1970
(Ch. 44, Art. I, of the 1966 Code)]

§ 190-1. Imposition of tax. [Amended 3-6-1995 by L.L. No. 1-1995]

Pursuant to the authority granted by Article 5, § 5-530, of the Village Law of the State of New York, from, on and after January 1, 1971, there is hereby imposed:

A. A tax equal to 1% of the gross income of every utility doing business in the Incorporated Village of Alden which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income in excess of $500, except motor carriers or brokers subject to such supervision under Article 3-B of the Public Service Law.[1]

B. A tax equal to 1% of the gross operating income of every other utility doing business in the Incorporated Village of Alden which has an annual gross operating income in excess of $500.

§ 190-2. Definitions.

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

GROSS INCOME -- Includes:

A. In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the village.

B. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the village.

C. In the case of any utility, other than described in the above subsections:

(1) Receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in

[1] **Editor's Note: These provisions were repealed by L. 1970, c. 267, § 5, effective March 1, 1971. See now Transportation Law § 240 et seq.**

gross income), made or service rendered for ultimate consumption or use by the purchaser in the village, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deductions therefrom on account of the cost of the property sold, the cost of the materials used, labor or services or other costs, interest or discount paid or any other expense whatsoever.

(2) Profits from the sale of securities.

(3) Profits from the sale of real property growing out of the ownership or use of or interest in such property.

(4) Profits from the sale of personal property (other than property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the period for which a return is made).

(5) Receipts from interest, dividends and royalties derived from sources within the village (other than such as are received from a corporation, a majority of whose voting stock is owned by the taxpaying utility), without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof.

(6) Profits from any transaction (except sales for resale and rentals) with the village whatsoever.

GROSS OPERATING INCOME -- Includes, receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephone or telegraphy or in or by reason of the furnishing for such consumption or use of gas, electricity, steam, water, refrigeration, telephone or telegraph service of the village, including cash, credits and property of any kind or nature, without deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid or any other expense whatsoever.

PERSON -- Persons, corporations, companies, associations, joint-stock associations, copartnerships, estates, assignee of rents, any person acting in a fiduciary capacity or any other entity; and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever or by any other means; except the state, municipalities, public districts and corporations and associations organized and operated exclusively for religious, charitable or educational

purposes, no part of the net earnings of which insures to the benefit of any private shareholder or individual.
UTILITY -- Includes:

A. Every person subject to the supervision of the State Department of Public Service, except:

(1) Persons engaged in the business of operating or leasing sleeping and parlor railroad cars.

(2) Persons engaged in the business of operating or leasing railroads other than street-surface, rapid-transit, subway and elevated railroads.

(3) Omnibus corporations subject to supervision under **§** 150 et seq. of the Transportation Law.

B. Every person who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, whether or not such person is subject to the supervision of the State Department of Public Service.

C. Every person who furnishes gas, electricity, steam, water, refrigeration, telephone or telegraph service, by means of mains, pipes or wires, regardless of whether such activities are the main business of such person or are only incidental thereto or of whether use is made of the public streets.

§ 190-3. Application.

This Article and the tax imposed thereby shall:

A. Apply only within the territorial limits of the Village of Alden.

B. Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Alden, notwithstanding that some act is necessarily performed with respect to such transaction within such limits.

C. Be in addition to any and all other taxes and fees imposed by any other provisions of law.

D. Apply to all subject income received on and after January 1, 1971.

§ 190-4. Disposition of revenue.

All revenue resulting from the imposition of the tax imposed by this Article shall be paid into the treasury of the village and shall be credited to and deposited in the general fund of the village.

§ 190-5. Collection and enforcement; rules and regulations.

The Village Treasurer shall be the chief enforcement officer of this Article and shall make and be responsible for all collections hereunder. He or she shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which, in his or her discretion, are reasonably necessary to facilitate the administration of this Article and the collection of the taxes imposed hereby. Copies of all such rules and regulations and directives as may from time to time be promulgated shall be sent by registered mail to all utilities subject to this Article which register as such with the Village Treasurer. All such rules, regulations and directives shall be deemed a portion of this Article.

§ 190-6. Returns; filing and content.

A. Time of filing. Every utility subject to a tax hereunder shall file on or before July 31 and January 31 a return for the six calendar months preceding each return date, including any period for which the tax imposed hereby or any amendment hereof is effective. However, any utility whose average gross income or gross operating income for the aforesaid six-month period is less than $3,000 may file a return annually on October 1 for the 12 calendar months preceding each return date, including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility, whether subject to tax under this Article or not, may be required by the Village Treasurer to file an annual return**. [Amended 1-23-2003 by L.L. No. 15-2003]**

B. Contents. Returns shall be filed with the Village Treasurer on a form to be furnished by him or her for such purpose and shall show thereon the gross income or gross operating income for the period covered by the return and such other information, data or matter as the Village Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a copartner thereof or of a principal corporate officer to the effect that the statements contained therein are true.

§ 190-7. Payment.

At the time of filing a return as required by this Article, each utility shall pay to the Village Treasurer the tax imposed hereby for the period covered by such return. Such tax shall be due and payable at the time of the filing of the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

§ 190-8. Penalties and interest.

Any utility failing to file a return or a corrected return or to pay any tax or any portion thereof within the time required by this Article shall be subject to a penalty of 5% of the amount of tax due, plus 1% of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due; but the Village Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 190-9. Tax to be operating cost.

The tax imposed by this Article shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others, but shall constitute a part of the operating costs of such utility.

§ 190-10. Failure to file; incorrect returns.

In case any return filed pursuant to this Article shall be insufficient or unsatisfactory to the Village Treasurer, he or she may require at any time a further or supplemental return which shall contain any data that may be specified by him or her, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from him or her or if no return is made for any period, the Village Treasurer shall determine the amount due from such information as he or she is able to obtain and, if necessary, may estimate the tax on the basis of external indexes or otherwise. He or she shall give notice of such determination to the utility liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the utility against which it is assessed shall, within one year after the giving of notice of such determination, apply to him or her for a hearing or unless the Village Treasurer, of his or her own motion, shall reduce the same. After such hearing, he or she shall give notice of his or her decision to the utility liable for such tax.

§ 190-11. Review of final determination.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if the proceeding is commenced within 90 days after the giving of notice of such final determination; provided, however, that any such proceeding under said Article 78 shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance or resolution, shall be first deposited and an undertaking filed, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 190-12. Serving of notice.

Any notice authorized or required under the provisions of this Article may be given by mailing the same to the utility for which it is intended, in a postpaid envelope, addressed to such utility at the address given by it in the last return filed by it under this Article, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the utility to which addressed. Any period of time, which is determined according to the provisions of this section by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 190-13. Refunds.

If, within one year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax shall make application for a refund thereof and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Treasurer shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative of the Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Treasurer, as hereinbefore provided, or, of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding in the manner provided in the Civil Practice Law and Rules that such determination was erroneous or illegal. An application for a refund made as hereinbefore provided shall be deemed an application for the revision of any tax or penalty complained of, and the Village Treasurer may receive additional evidence with notice thereof to the person interested, and he or she shall be entitled to commence a

proceeding to review such determination in accordance with the provisions of the following section thereof.

§ 190-14. Review of proceedings for refunds.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Treasurer and he or she shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within 90 days after the giving of the notice of such denial, that a final determination of tax due was not previously made and that an undertaking is filed with the Village Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 190-15. Limitation of additional tax.

Except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment or additional tax shall be made with respect to taxes imposed under this Article after the expiration of more than three years from the date of filing of a return; provided, however, that where no return has been filed, as required hereby, the tax may be assessed at any time.

§ 190-16. Powers of Village Treasurer.

In addition to any other powers herein given the Village Treasurer and in order to further ensure payment of the tax imposed hereby, he or she shall have the power to:

A. Prescribe the form of all reports and returns required to be made hereunder.

B. Take testimony and proofs, under oath, with reference to any matter hereby entrusted to him or her.

C. Subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

§ 190-17. Enforcement.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon the request of the Village Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Treasurer. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by § 186-a of the Tax Law is made a lien.

ARTICLE II
Alternative Veterans Tax Exemption
[Adopted 10-1-1984 by L.L. No. 1-1984
(Ch. 44, Art. II, of the 1966 Code);
amended in its entirety 7-28-1997
by L.L. No. 3-1997]

§ 190-18. Maximum exemption.

In accordance with the authorization of Subparagraph (ii) of Paragraph (d) of Subdivision 2 of § 458-a of the Real Property Tax Law, the maximum allowable exemption of Paragraphs (a), (b) and (c) of Subdivision 2 of § 458-a of such law is hereby increased to $9,000, $6,000 and $30,000, respectively.

§ 190-19. (Reserved)

ARTICLE III
Veterans Tax Exemption
[Adopted 10-28-1985 by L.L. No. 1-1985
(Ch. 44, Art. III, of the 1966 Code)]

§ 190-20. Increase or decrease due to change in assessment. [Amended 3-6-1995 by L.L. No. 1-1995]

If the ratio between an exemption granted under § 458-a of the Real Property Tax Law of the State of New York and the total assessed value of the real property for which such exemption has been granted increases or decreases due only to a full value assessment in the assessing unit in which such real property is located, the amount of the exemption

heretofore or hereafter granted shall be increased or decreased in such subsequent year in the same proportion as the total assessed value has been increased or decreased.

ARTICLE IV
Exemption for Persons with Disabilities and Limited Income
[Adopted 1-1-2000 by L.L. No. 1-2000]

§ 190-21. Exemption granted; amount.

This article is adopted to allow real property owned by a person with disabilities, whose income is limited by such disability and who uses the property as that person's legal residence, to be the subject of a partial exemption from taxation to the extent of up to $13,500 of assessed valuation, to be reviewed annually by the Village Board.

ARTICLE V
Termination of Status as Assessing Unit
[Adopted 11-9-2000 by L.L. No. 7-2000]

§ 190-22. Legislative intent.

It is the intent of the Board of Trustees of the Village of Alden to implement § 1402(3) of the Real Property Tax Law providing for the voluntary termination of the village's status as an assessing unit, as provided in the Village Law and the Real Property Tax Law. It is also the intent of this article to abolish the position of Assessors and Board of Assessment Review and to terminate any and all responsibility as provided by law for the review of the assessments of real property located within the Village of Alden.

§ 190-23. Termination of status.

On or after the effective date of this article, the Village of Alden shall cease to be an assessing unit.

§ 190-24. Assessor abolished.

The position of Assessor in the Village of Alden is hereby abolished.

§ 190-25. Board of Assessment Review abolished.

The Board of Assessment Review in the Village of Alden is hereby abolished.

§ 190-26. Future tax levy; taxable status date.

On or after the effective date of this article, taxes in the Village of Alden shall be levied on a copy of the applicable part of the assessment roll of the Town of Alden, with a taxable status date of such town controlling for village purposes.

§ 190-27. Filing.

Within five days of the effective date of this article, the Board of Trustees of the Village of Alden shall file a copy of such local law with the Clerk and Assessor of the Town of Alden and with the State Board of Real Property Services.

Chapter 193

TELECOMMUNICATIONS

§ 193-1. Intent.
§ 193-2. Definitions.
§ 193-3. Location.
§ 193-4. General conditions.
§ 193-5. Exemptions.
§ 193-6. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-3-1997 by L.L. No. 1-1997. Amended in its entirety 1-23-2003 by L.L. No. 16-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Zoning -- See Ch. 210.

§ 193-1. Intent.

It is the intent of the Board of Trustees of the Village of Alden to provide a safe and efficient method of erecting, regulating and removing telecommunications facilities including, but not limited to, towers, cellular sites, antenna and buildings within the boundary limits of the Village of Alden. This ordinance is intended to provide for the appropriate location and development of communication towers to serve the residents and businesses of the Village of Alden; to minimize adverse visual effects of towers through careful design, sitting and vegetative screening; to avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures; to maximize use of any new or existing communication towers to reduce the number of towers needed; and to provide a safe and efficient means for the removal of unused facilities and to provide for the upkeep of facilities currently being utilized at no cost to the village taxpayers.

§ 193-2. Definitions.

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

> ACCESSORY STRUCTURE -- An accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility and located on the same lot as the communications tower. These shall include but

not be limited to utility or transmission equipment, storage sheds, building and cabinets.

ANTENNA -- An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves. It shall also mean a system of electrical conductors that transmit or receive frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communications services (PCS) and microwave communications.

BREAK POINT -- The location on a communication tower (a design feature) which, in the event of a tower failure, would result in the tower falling entirely within the boundaries of the property on which it is located.

EMERGENCY SERVICES -- Any municipal and/or emergency service provider, including but not limited to Department of Public Works, fire, police, emergency medical services, first aid, ambulance, rescue, recreation and any and all other municipal facilities and any private entity performing such services on behalf of or pursuant to any agreement with the village for the providing of such service.

EMF -- Electromagnetic field.

GUYED TOWER -- A communications tower that is supported, in whole or in part, by guy wires and ground anchors.

MONOPOLE TOWER -- A communications tower consisting of a single pole, constructed without guy wires and ground anchors.

NIER -- Nonionizing electromagnetic radiation.

ONE-HUNDRED-PERCENT-CLEAR ZONE -- The requirement that in the event of a tower failure, the entire height of the tower would fall completely within the boundaries of the property on which it is located.

SELF-SUPPORTING TOWER -- A communications tower that is constructed without guy wires and ground anchors.

TELECOMMUNICATION TOWER -- A guyed, monopole or self-supporting tower, constructed as a freestanding structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting or receiving television, am/fm radio, digital, paging, personal communication services, microwave, cellular, telephone or similar forms of electronic communication.

TELECOMMUNICATIONS EQUIPMENT BUILDING -- The building in which electronic receiving and relay equipment for cellular telecommunications facility is housed.

TELECOMMUNICATIONS FACILITY -- A telecommunications facility consists of the equipment and structures involved in receiving telecommunication or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

UTILITY SERVICE FACILITIES -- Elements of utility distribution, collection or transmission networks required by their nature to be relatively disbursed throughout the service area. Typical utility service facilities include but are not limited to electrical distribution substations, sewage lift stations and telephone exchange buildings and structures.

§ 193-3. Location.

A. Municipal property. With regard to any property owned by a municipal corporation, a party shall first seek a special permit from the Board of Trustees of the Village of Alden.

(1) Such special permit application shall contain the following information, in addition to any other information deemed relevant by the Board of Trustees of the Village of Alden:

(a) Four copies of all building plans.

(b) An application fee as so determined by the Board of Trustees.[1]

(c) Such performance, maintenance and removal bond(s) and such guaranties as may be required by the Board of Trustees.

(d) A detailed statement as to whether or not any other location is feasible within the village limits.

(e) Detailed map indicating the placement of all other telecommunications towers and communications towers within the geographical limits of the Town of Alden.

(f) Proof of notification (certified mail return receipts) to be given to the village by the applicant of all property owners within five

[1] **Editor's Note: See Ch. A220, Fees.**

hundred (500) feet of the boundaries of the property that the tower is to be constructed.

(g) Site plan, in a form and content acceptable to the Board of Trustees, prepared to scale and in sufficient detail and accuracy showing at a minimum:

[1] The exact location of proposed tower, together with guy wires and guy anchors, if applicable.

[2] The maximum height of the proposed tower.

[3] A detail of tower type (monopole, guyed, freestanding or other).

[4] The color or colors of the tower.

[5] The location, type and intensity of any lighting on the tower.

[6] The property boundaries (a copy of a property survey must also be provided).

[7] Proof of the landowner's consent if the applicant will not own the property (a copy of a lease agreement must also be provided if the applicant will not own that property.)

[8] Location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of the structures to the tower.

[9] The names and addresses of adjacent landowners.

[10] The location, nature and extent of any proposed fencing and landscaping or screening.

[11] The location, nature of proposed utility easements and access roads, if applicable.

[12] Building elevations of accessory structures or immediately adjacent buildings.

[13] Before and after propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer registered in the State of New York) demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.

(2) Use of municipal property may be subject to any lease arrangements and other terms and conditions as may be deemed appropriate by the Board of Trustees.

(3) All permit holders shall provide, in a form to be determined by the Board of Trustees, adequate protection to the residents of the Village of Alden with regard to the removal and maintenance of all such structures so as to ensure that same shall be removed when no longer in service.

(4) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within thirty (30) days of the submission of the application for the special permit.

(5) The use of any right-of-way owned, controlled and/or existing for the benefit of the village shall be subject to such payments by any entity utilizing such right-of-way as may be deemed reasonable by the municipality.

B. Industrial Zone.

(1) Upon the filing of a building permit, a telecommunications tower may be placed within any Industrial Zone within the limits of the Village of Alden upon submission of the site plan to the Planning Board pursuant to the requirement of Chapter 210, Zoning. After approval by the Planning Board, an application for a special permit shall be filed with the Board of Trustees of the Village for final approval, as provided in § 193-3A(1) of this Chapter.

(2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within thirty (30) days of the submission of the application for the special permit.

C. Commercial Zone.

(1) Telecommunications towers shall be permitted in any commercial zone within the limits of the Village of Alden upon the filing of the appropriate building permit and after site plan review by the Planning Board pursuant to Chapter 210, Zoning. Upon completion of the site plan review, a special permit application shall be filed with the Board of Trustees of the Village of Alden for final approval, as provided in § 193-3A(1) of this Chapter.

(2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within sixty (60) days of the submission of the application for the special permit.

(3) In addition to the special permit application, the applicant shall provide to the Planning Board and Board of Trustees a search ring prepared by a qualified radio frequency engineer (signed and sealed documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Boards why it selected the proposed site, discuss the availability (or lack of availability of a suitable structure within the search ring which would have allowed for a collocated antenna) and to what extent the applicant explored locating the proposed tower in an Industrial District or upon municipal property. Correspondence with other telecommunications companies concerning colocation is a part of this requirement.

(4) The village, upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the village. Line-of-sight drawings and visual simulations are mandatory for applications in residential districts.

D. Residential Zone.

(1) Telecommunications towers shall be permitted in any residential zone within the limits of the Village of Alden upon the filing of the appropriate building permit, SEQR review and after site plan review by the Planning Board pursuant to Chapter 210, Zoning. Upon completion of the site plan review, a special permit application shall be filed with the Board of Trustees of the Village of Alden for final approval, as provided in § 193-3A(1) of this Chapter.

(2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within ninety (90) days of the submission of the application for the special permit.

(3) In addition to the special permit application, the applicant shall provide to the Planning Board and Board of Trustees a search ring prepared by a qualified radio frequency engineer (signed and sealed documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background

map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Boards why it selected the proposed site, discuss the availability (or lack of availability of a suitable structure within the search ring which would have allowed for a collocated antenna) and to what extent the applicant explored locating the proposed tower in an industrial or commercial district or upon municipal property. Correspondence with other telecommunications companies concerning colocation is a part of this requirement.

(4) The village, upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the village. Line-of-sight drawings and visual simulations are mandatory for applications in residential districts.

(5) A renewal application for a special permit within a residential zone shall be made every three years from the date initial approval is given.

E. Colocation.

(1) An antenna and/or tower that is to be attached to an existing communications tower shall be permitted upon the issuance of a building permit and upon final approval of the Board of Trustees. A decision with regard to such approval shall be granted within sixty (60) days of filing of the application for a building permit.

(2) The building permit application shall also include a structural analysis/report verifying the ability of the structure to handle the additional antenna.

§ 193-4. General conditions.

A. Aesthetics. Telecommunications towers, facilities and antenna shall be located and buffered to the maximum extent which is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Board of Trustees may impose reasonable conditions on the applicant, including, but not limited to, the following:

(1) Use of a monopole or guy wire instead of a freestanding tower.

(2) Reasonable landscaping consisting of trees or shrubs to screen the base of the \

tower and/or to screen the tower to the extent possible from adjacent residential property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.

(3) Additional site plan requirements, such as specially designed towers, additional screening, greater setbacks and improved landscaping, to address aesthetic and safety concerns.

(4) The village may require the applicant to show that it has made good faith efforts to collocate on existing towers or other available and appropriate structures or to construct new towers near existing towers in an effort to consolidate visual disturbances.

(5) Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall not be artificially lighted except as required by the Federal Aviation Administration. Towers shall be of a nonreflective finish, the color of which shall be subject to approval. Any lights which may be required by the FAA shall not consist of strobe lights, unless specifically mandated by FAA.

(6) No tower shall contain any signs or advertising devices. A small sign on the fencing shall be placed to identify the ownership of the facility and a telephone number for emergencies.

(7) The applicant must submit a copy of its policy regarding colocation on the proposed tower with other potential future applicants. Such policy should allow colocation under the following conditions:

(a) The new antennas and equipment do not exceed structural loading requirements, interfere with village space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment.

(b) The party desiring to collocate pays the applicant an appropriate and reasonable sum to collocate.

(c) The party desiring to collocate has a similar policy of colocation for the applicant.

B. Radio frequency effect. The Planning Board may impose a condition on the applicant that the communication antennas be operated only at Federal Communications Commission designed frequencies and power levels and/or Environmental Protection Agency technical exposure limits and that the applicant to provide competent documentation to

support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.

C. Traffic, access and safety.

(1) A road turnaround and one parking space shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower antenna accessory structures is prohibited.

(2) All towers and guy anchors, if applicable, shall be enclosed by a fence not less than eight feet in height as measured from the finished grade or otherwise sufficiently protected from trespassing or vandalism.

(3) Radiation standards. All proposed communications towers shall comply with current standards of the Federal Communications Commission for nonionizing electromagnetic radiation and electromagnetic fields.

(4) If high voltage is necessary for the operation of the communications tower or any accessory structures, appropriate warning signs shall be permanently attached to the fence or wall shall be spaced not more than forty (40) feet apart.

(5) "No trespassing" warning signs shall be permanently attached to the fence or wall and shall be spaced not more than forty (40) feet apart.

(6) Mobile or immobile equipment not used in direct support of the telecommunications facility shall not be stored or parked on the site unless repairs to the tower are currently underway.

(7) Inspection. The Code Enforcement Officer and Board of Trustees may require periodic inspections of the telecommunications facilities to ensure structural integrity and adherence with this chapter. Based upon the results of that inspection, the Board of Trustees and Code Enforcement Officer may require repair, replacement or removal of nonconforming structures.

(8) The Superintendent of Public Works, in conjunction with the Board of Trustees and the Code Enforcement Officer, may promulgate other rules and regulations with regard to breakpoint, clear zones and telecommunications facilities as may be deemed necessary from time to time to implement the intent of this chapter.

D. Removal of tower. The applicant shall agree to remove the tower if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for four consecutive months. The Board of Trustees shall require the applicant to provide a demolition bond in an amount to be determined by the Board of Trustees based

upon the cost of removal or such other security as the parties may agree for purposes of removing the telecommunications facility in case the applicant fails to remove the tower as otherwise required.

E. Structural safety. During the application process and every three years after construction of the tower, the applicant/owner shall provide a certification from a qualified, professional engineer, certifying that the tower meets applicable structural safety standards and that an inspection of the tower, all accessory structures and all fencing has been made by the applicant/owner.

F. All telecommunications facilities shall he maintained in good order and repair.

G. No tower shall exceed one hundred fifty (150) feet in height from the base of the tower to the topmost portion of the tower.

H. No signal or frequency, whether radio, television, cellular, paging, personal communication services (PCS), microwave communication or other form of electronic communication, shall be permitted to be used on an frequency or band of frequencies utilized for emergency services within the Village of Alden and/or in any other area which would have the effect of interfering with the use and operation of any emergency service provider operating within the Village of Alden.

§ 193-5. Exemptions.

Subject to limits and allowable reasons therefor as permitted under federal and state law, rules and regulations.

A. Antennas less than seventy-five (75) feet in total height as measured from ground level used solely for residential household television, amateur radio and radio reception.

B. Satellite antennas measuring two (2) meters or less in diameter and located in commercial districts and satellite antennas one (1) meter or less in diameter regardless of location.

§ 193-6. Penalties for offenses.

A. A facility receiving a special permit by the Board of Trustees that subsequently does not meet the requirements of that permit shall have its permit revoked and the tower shall be removed within ninety (90) days with notification of the violation by the village. Failure to so remove the tower within ninety (90) days after notification by the Village shall result in a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day of a continuing violation.

Chapter 198[1]

(Reserved)

[1] **Editor's Note: Former Ch. 198, Vehicles, Abandoned, adopted 1-17-1966 as § 1.27 by L.L. No. 1-1966, was repealed 1-23-2003 by L.L. No. 17-2003 and has been renamed Vehicles, Unlicensed and is now Ch. 203 of this Code.**

Chapter 200

VEHICLES AND TRAFFIC

§ 200-1. Definitions.
§ 200-2. Speed limits.
§ 200-3. Parallel parking required.
§ 200-4. Limited parking areas.
§ 200-5. Interference with processions or parades prohibited.
§ 200-6. Main arteries designated; full stop required.
§ 200-7. Stop streets.
§ 200-8. Parking prohibited in designated areas of state highways.
§ 200-9. Parking or standing prohibited in designated areas of streets and county highways.
§ 200-10. Parking, standing or stopping prohibited in designated areas of streets and county highways.
§ 200-11. Signs to be erected.
§ 200-12. Weight limit for commercial vehicles.
§ 200-13. Seasonal parking; removal of vehicles.
§ 200-14. Truck exclusions.
§ 200-15. School zone speed limit.
§ 200-16. Off-street parking.
§ 200-17. Parking in front yards.
§ 200-18. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-21-1966 as L.L. No. 3-1966 (Ch. 50 of the 1966 Code). Amended in its entirety 12-23-2004 by L.L. No. 7-2004. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 177.
Unlicensed vehicles -- See Ch. 203.
Zoning -- See Ch. 210.

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§ 200-1. Definitions.

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

> CURBLINE -- The line of the existing curb or, if no curb shall exist on any street, the edge of the pavement at which such curb would be constructed.

FRONT YARD -- An open space extending the full width of the lot between a main building and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of such main building. However, the term "front yard" is not intended to include all or any part of a driveway, paved or unpaved, leading either to a parking area in the side yard or rear yard or to an attached or detached garage or carport.

§ 200-2. Speed limits.

Thirty (30) miles per hour is hereby established as the maximum speed at which vehicles may proceed on any street or highway, as defined in the Vehicle and Traffic Law of the State of New York, within the corporate limits of the Village of Alden, except for such areas in which a different speed is legally posted.

§ 200-3. Parallel parking required.

Except where otherwise provided, all vehicles when parked in the Village of Alden shall be parked parallel to and as close to the curb as possible, as provided in **§** 1203 of the Vehicle and Traffic Law of the State of New York.

§ 200-4. Limited parking areas. [Amended 6-23-2011 by L.L. No. 6-2011]

No person shall park any motor vehicle within the following areas of the Village of Alden except as limited below:

Name of Street	Side	Location / Limitation
Broadway	South	20 minute parking is limited to the following areas: 1) From a point 110 feet east of the northwest corner of tax parcel number 108.19-4-4 eastward a distance of 40 feet. 2) From a point 30 feet east of the east curbline of Exchange Street eastward a distance of 40 feet.

Name of Street	Side	Location / Limitation
		3) From a point 30 feet east of the east curbline of Kellogg Street eastward a distance of 40 feet.
Railroad Street	North	From the east curbline of Elm Street to a point 120 east of the east of the curbline of Elm Street; limited, however, to the hours between 8:00 a.m. and 4:00 p.m. Monday through Friday

§ 200-5. Interference with processions or parades prohibited.

No person shall drive or operate any vehicle so as to obstruct, cross through or interfere with a lawful procession, parade or funeral procession.

§ 200-6. Main arteries designated; full stop required.

The main arteries of travel within the village are Broadway, Exchange Street, Main Street and Crittenden Road. Any vehicle approaching any such main artery of travel shall come to a full stop unless otherwise directed by a police officer or signal.

§ 200-7. Stop streets.

Every driver of a vehicle shall bring his or her vehicle to a full stop and proceed only when safe before entering or crossing at the following intersections:

Name of Street	At Intersection of
Baxter Street	Irving Street
Elm Street	Railroad Street
Emerson Street	Park Street
Irving Street	Emerson Street
Kellogg Street	Railroad Street

Name of Street	At Intersection of
Lafayette Drive	Colonial Woods Dr.
Lindan Avenue	Baxter Avenue
Lindan Avenue	Irving Street
Mechanic Street	Railroad Street
Mercer Drive	Baxter Avenue
North Westcott Street	Irving Street
North Westcott Street	Park Street
Park Street	Baxter Avenue
Park Street	Emerson Street

§ 200-8. Parking prohibited in designated areas of state highways.

No person shall, at any time, park any motor vehicle within the following areas of state highways within the Village of Alden:

Name of Street	Side	Location
Broadway	North	Between the west side of the existing walk to the Alden State Bank and the west side of the east driveway to the parking lot of said bank
Broadway	North	Within 80 feet of the east curbline of Church Street
Broadway	North	Within 30 feet of the west curbline of Church Street
Broadway	North	Within 30 feet of the nearest curbline of Crittenden Street

Name of Street	Side	Location
Broadway	North	Within 60 feet of the east curbline of Emerson Street
Broadway	North	Within 30 feet of the west curbline of Emerson Street
Broadway	North	Within 30 feet of the west curbline of North Westcott Street
Broadway	North	Within 60 feet of the south curbline of West Main Street
Broadway	South	Between the east curbline of Elm Street and the west curbline of Mechanic Street
Broadway	South	Within 30 feet of the nearest curblines of Elm Street
Broadway	South	Within 30 feet of the nearest curblines of Exchange Street
Broadway	South	Within 30 feet of the nearest curblines of Kellogg Street
Broadway	South	Within 30 feet of the nearest curblines of Mechanic Street
Broadway	South	Within 30 feet of the nearest curblines of Westcott Street

§ 200-9. Parking or standing prohibited in designated areas of streets and county highways.

No person shall, at any time, park or stand any motor vehicle within the following areas of village streets or county highways within the Village of Alden:

Name of Street	Side	Location
Arlington Drive	East	Between the north curbline of Colonial Woods Drive and a point 30 feet north of said curbline
Church Street	East	Within 30 feet of the north curbline of Broadway
Church Street	East	Within 30 feet of the south curbline of West Main Street
Church Street	West	Within 30 feet of the north curbline of Broadway
Church Street	West	Within 30 feet of the south curbline of West Main Street
Colonial Woods Drive	North	Between a point 30 feet east of the east curbline of Arlington Drive, west to the east curbline of Arlington Drive
Crittenden Street	Both	Within 30 feet of the north curbline of Broadway
Crittenden Street	East	Between the north curbline of Park Street and the south curbline of Baxter Avenue; limited, however, to the hours between 7:00 a.m. and 4:30 p.m. on school days
Crittenden Street	West	Between the northerlymost entrance driveway of property of the Alden Central School District south to a point 160 feet north of the north curbline of Park Street; excluding a 110 foot zone in front of the building's main entrance, where 15 minute parking will be allowed, limited, however, to the hours between 7:00 a.m. and 4:30 p.m. on

Name of Street	Side	Location
		school days
Elm Street	West	Within 30 feet of the south curbline of Broadway
Emerson Street	Both	Within 30 feet of the north curbline of Broadway
Emerson Street	East	Between Park Street and Irving Street; limited, however, to the hours between 7:00 a.m. and 4:30 p.m. on school days
Exchange Street	Both	Between Broadway and the railroad tracks
Kellogg Street	East	Within 270 feet of the south curbline of Broadway
Kellogg Street	West	Within 40 feet of the south curbline of Broadway
Mechanic Street	Both	Within 30 feet of the south curbline of Broadway
Park Street	South	From Crittenden Road west to the town park; limited, however, to the hours between 7:00 a.m. and 4:30 p.m. on school days
Park Street	North	From a point 195 feet west of the west curbline of Crittenden Road, west to the town park; limited, however, to the hours between 7:00 a.m. and 4:30 p.m. on school days
Railroad Street	North	From the east curbline of Exchange Street to a point 150 feet east of the east

Name of Street	Side	Location
		curbline of Exchange Street
Railroad Street	North	From the east curbline of Mechanic Street to the easternmost end of Railroad Street
Railroad Street	North	Within 75 feet of the west curbline of Mechanic Street
Railroad Street	South	From the east curbline of Exchange Street to a point 1,600 feet east of the east curbline of Exchange Street
Railroad Street	South	From a point 2,450 feet east of the east curbline of Exchange Street to the easternmost end of Railroad Street
Westcott Street	Both	Within 30 feet of the south curbline of Broadway
West Main Street	North	In that area beginning at a point 465 feet from the intersection of the north curbline of Broadway and the north curbline of West Main Street and extending 256 feet west from such point
West Main Street	North	Within 100 feet of the east curbline of Meadow Drive
West Main Street	South	Within 40 feet of the north curbline of Broadway
West Main Street	South	Within 30 feet of the east curbline of Church Street

Name of Street	Side	Location
West Main Street	South	Within 30 feet of the west curbline of Church Street

§ 200-10. Parking, standing or stopping prohibited in designated areas of streets and county highways. [Amended 11-13-2008 by L.L. No. 1-2008]

No person shall, at any time, park, stand or stop any motor vehicle within the following areas of village streets or county highways within the Village of Alden:

Name of Street	Side	Location
Crittenden Street	West	Within 160 feet of the north curbline of Park Street
Park Street	North	Within 195 feet of the west curbline of Crittenden Street
Slade Drive	Both	Entire length of street

§ 200-11. Signs to be erected.

All areas restricted under **§§** 200-4, 200-8, 200-9 and 200-10 shall be indicated by appropriate signs placed on standards showing the areas herein restricted.

§ 200-12. Weight limit for commercial vehicles.

No commercial vehicle having an unloaded weight in excess of five thousand (5,000) pounds shall be parked or left standing on any street, highway or shoulder in the Village of Alden or on any portion of such street, highway or shoulder for more than two consecutive hours.

§ 200-13. Seasonal parking; removal of vehicles.

A. No motor or other vehicle shall, from the first day of November to the following first day of April, be parked or left standing on any street or public highway in the Village of Alden between the hours of 2:00 a.m. and 6:00 a.m. The Superintendent of Public Works is hereby authorized to

cause any vehicle left or parked on any street or public highway in violation of this section to be removed from such street or public highway to a vehicle impound which shall be designated by the Board of Trustees.

B. Before any vehicle so removed to the vehicle pound shall be delivered to any person, there shall be collected by the Village Clerk's Office a sum to be established at the annual organization meeting of the Board of Trustees[1] as a charge for removing such vehicle and storage of the same for the first twenty-four (24) hours or any part thereof, and an additional sum to be established as above stated for each additional twenty-four (24) hours or part thereof.

§ 200-14. Truck exclusions.

The driving or operation of any motor truck or truck tractor and trailer, weighing in excess of twenty thousand (20,000) pounds combined weight of truck, tractor, trailer and load, on the streets of the Village of Alden is hereby prohibited, except for the purpose of serving persons or property on said street.

§ 200-15. School zone speed limit.

No person shall drive at a speed exceeding fifteen (15) miles per hour during school hours as defined in the New York State Vehicle and Traffic Law when school is in session within the following areas of village streets or county highways within the Village of Alden:

Name of Street	Location
Crittenden Road	Between the southernmost point of the intersection of Park Street and Crittenden Road and the northernmost point of the intersection of Baxter Street and Crittenden Road
Park Street	Between the Town Park and 160 feet east of the east curbline of Crittenden Road

[1] **Editor's Note: See Ch. A220, Fees.**

§ 200-16. **Off-street parking.**

A. No person shall park, stand, store or leave a motor vehicle upon any publicly or privately owned premises or property, parking areas or parking lots without the consent and permission of the owner or lessees of such premises.

B. To effectuate the prohibition on such premises as above described, a conspicuous sign or parking signs shall be placed at the entrance to such parking lot or parking area informing the public as to the permitted conditions of parking thereon. A sign as hereinafter described shall be deemed substantial compliance with this section:

PARKING RESTRICTED
(six inches)

EXCEPT FOR (list persons or conditions
permitted) ONLY
(four inches)
ALL OTHERS KEEP OUT
(six inches)

UNDER PENALTY OF LAW
§ 200-16 OF THE CODE OF
THE VILLAGE OF ALDEN
(two inches)

POLICE ENFORCEMENT
(two inches)

C. Such sign or signs shall be at least three (3) feet high by four (4) feet wide, with red lettering of a size not less than that above-indicated upon a white background. The words "police enforcement" and "under penalty of law" on such signs shall be construed, among other things, to mean a request by the owner or lessees that the police shall enforce the provisions of this section against persons parking, standing, storing or leaving vehicles on such premises without the consent of the owner or lessees and that the police are authorized to enter upon such premises to enforce the provisions of this chapter. Such sign or signs shall state the conditions of parking or the provisions authorized by the owner or lessee to use said premises for parking, or both; and persons not included within such authorization or violating the regulations and conditions set out on said

signs shall be deemed to be using said premises unlawfully without the authority and consent of the owner or lessee.

D. This section may be enforced by the police in the same manner as elsewhere provided in this chapter for the enforcement of traffic or parking ordinances, including the use of tags and any other procedure authorized by law.

E. Proof of ownership of a vehicle shall be presumptive evidence in an action of enforcement of this section that the owner parked or caused his or her vehicle to be parked on such premises.

F. Should premises adjoin or abut upon a building or structure whose entrances or exits open upon such parking area, no vehicle shall be left parked, standing or placed in such a manner as to obstruct such entrances or exits, and a clear unobstructed passage shall be maintained and left open from such entrance or exits to the street or public right-of-way; such passageway shall be equal in width to the width of such entrances or exits in each instance, but in no case shall be less than five feet wide, and shall permit persons to enter and leave such building or structure with safety. A sign attached to such building or structure at the place of such entrances or exits shall inform users of such parking areas as to such restrictions, and failure to obey the regulations herein contained shall be deemed a violation of this section.

G. On demand of the police, any owner or lessee requesting police enforcement of this chapter shall furnish to the police a statement, in writing, signed by him or her or his or her agent, to the effect that a specified vehicle was unlawfully parked, stored or left upon his or her premises at a certain time or during a certain period without his or her consent or permission, and such owner or lessee shall be available to testify to such facts in court at the request of the police. Failure of an owner or lessee to comply with the request of the police as above set out shall be sufficient cause for the Chief of Police or his or her subordinates to cease enforcing this chapter at the premises of such owner or lessee who fails to give the cooperation required herein.

H. Where an owner of premises desires to prohibit completely parking thereon, he or she may notify the public to that effect by a conspicuous sign or signs placed on said premises stating in substance:

NO PARKING - POLICE ENFORCEMENT
UNDER PENALTY OF LAW

§ 200-16 CODE OF THE VILLAGE OF ALDEN

I. Such sign shall be not less than two (2) feet high by three (3) feet wide, with red lettering not less than four (4) inches high upon a white background. Any person who parks or leaves a vehicle on such posted premises shall be deemed in violation of this section.

J. This section is enacted pursuant to the authority of § 4-412 of the Village Law of the State of New York.[2]

§ 200-17. Parking in front yards.

A. Purpose. It is hereby resolved that the continual and habitual parking of vehicles in the front yards of lots is contrary to the goals of the Village of Alden in maintaining the quality and beauty of the property within the village. Regulation is necessary in order to prevent the deterioration of front yards to the detriment of surrounding property owners; provided, however, that nothing herein shall be construed to prevent the temporary placement of vehicles on front yards which occasionally occurs as a result of events such as family gatherings, social events and driveway repairs.

B. Parking prohibited. Except as otherwise provided for in this chapter, the parking of automobiles, buses, motorcycles, campers, mopeds, trailers, boats or any other vehicles in the front yard of lots, as hereinafter defined, within the Village of Alden is strictly prohibited. .

§ 200-18. Penalties for offenses.

Penalties shall be in accordance with § 1800 of the Vehicle and Traffic Law of the State of New York.

§ 200-19. [Removed 1-27-2005 by L.L. No. 1-2005]

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[2] **Editor's Note: See also § 1640-a of the Vehicle and Traffic Law.**

Chapter 201

VEHICLES, OFF-ROAD

§ 201-1. Purpose.
§ 201-2. Definitions.
§ 201-3. Operation on village property prohibited.
§ 201-4. Operation on private property restricted.
§ 201-5. Exceptions.
§ 201-6. Responsibilities of parent or guardian.
§ 201-7. Notice of violation to parent and guardian.
§ 201-8. Penalties for offenses.
§ 201-9. Conflicts with state law.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 8-12-1996 as part of L.L. No. 5-1996. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 177.
Vehicles and traffic -- See Ch. 200.

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§ 201-1. Purpose.

The Board of Trustees of the Village of Alden recognize the potential adverse impact on the health, safety and general welfare of the residents of the Village of Alden and to property within the village by the unpermitted use of off-road motorized vehicles on both private property and village property and, therefore, deems it appropriate to control the use of said vehicle.

§ 201-2. Definitions.

For the purpose of the chapter, the following terms shall have the meanings indicated:

> OFF-ROAD MOTORIZED VEHICLE -- Any type of motorized or motor driven vehicle or conveyance, including but not limited to snowmobiles, two-wheeled motor vehicles known as "trail bikes" and "motor scooters," three-wheeled motor vehicles known as "all-terrain cycles" and four-or-more-wheeled motor vehicles commonly known as "go carts" or "all-terrain vehicles," excluding motor vehicles as defined in **§§** 126 or 130 or the Vehicle and Traffic Law of the State of New

York which are registered in accordance with Articles 14 and 15 of the Vehicle and Traffic Law of the State of New York, and farm tractors and equipment.

PUBLIC PROPERTY -- All streets, sidewalks, easements or any other areas dedicated or commonly used by the public within, and all real property owned by the Village of Alden.

SNOWMOBILES -- Any self propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported whole or in part by one (1) or more skis, belts or cleats.

§ 201-3. Operation on village property prohibited.

It shall be unlawful for any person to operate or drive, cause to be operated or driven or knowingly permit such operation or driving of any off-road motorized vehicle upon any public property within the Village of Alden.

§ 201-4. Operation on private property restricted.

The operation of any off-road motorized vehicle is prohibited upon all private real property within the village unless the operator of that off-road motor vehicle has with him, and upon demand of a law enforcement officer presents, the written permission of the owner or lessee of said private property to operate said motorized vehicle on said private property.

§ 201-5. Exceptions.

A. Employees of the Village of Alden who shall operate off-road motorized vehicles within the scope of their employment shall be exempted from this chapter.

B. This chapter shall not apply to police or fire emergency vehicles and/or motorized handicap vehicles such as motorized wheel chairs, etc.

C. This chapter shall not apply to the operation of off-road motorized vehicles on real property owned by the operator of such vehicle or by the parent or legal guardian of such operator.

D. In any prosecution for a violation of this chapter, it shall be a defense (a burden or proof which is on the defendant) that the operator of the off-road motorized

vehicle has the permission of the owner or lessee of the real property upon which the alleged violation occurred to operate an off-road motorized vehicle.

§ 201-6. Responsibilities of parent or guardian.

It shall be unlawful for a parent, guardian or other person having the care, custody and control of any child under the age of sixteen (16) years to knowingly permit such child to operate an off-road motorized vehicle in a manner that violates the terms of this chapter.

§ 201-7. Notice of violation to parent and guardian.

Whenever any child under the age of sixteen (16) years is alleged to have violated this chapter, his parent, guardian or any person having the care, custody and control of the child shall be notified by the law enforcement officer, code enforcement officer or any person designated by them to give such notice.

§ 201-8. Penalties for offenses.

Any operator or parent, as defined in **§** 201-7, who shall violate any provisions of this chapter shall, upon conviction thereof, be sentenced to a fine not exceeding two hundred fifty dollars ($250.00) or imprisonment not exceeding fifteen (15) days, or both.

§ 201-9. Conflicts of state law.

Should any section or portion of this chapter be in conflict with the laws of the State of New York, including laws applicable to the operation, registration, ownership or control of motor vehicles, then in that instance, said laws of the State of New York shall prevail.

Chapter 203

VEHICLES, UNLICENSED

§ 203-1. Purpose.
§ 203-2. Definitions.
§ 203-3. Storage of unlicensed and/or abandoned vehicles on private land prohibited.
§ 203-4. Notice to remove vehicle.
§ 203-5. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 1-23-2003 by L.L. No. 19-2003. Originally adopted as Chapter 198, Abandoned Vehicles, 1-17-1966 as § 1.27 of L.L. No. 1-1966. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 177.
Vehicles and traffic -- See Ch. 200.
Zoning -- See Ch. 210.
Fees -- See Ch. A220.

§ 203-1. Purpose.

The seriousness of the matter of the outdoor storage of abandoned, junked, discarded and/or unlicensed motor vehicles upon privately owned properties within the village increases with the passage of time. It is a source of vexation and annoyance to the owners and occupants of adjoining lands. The outdoor storage of such vehicles upon private lands is unsightly. It constitutes an attractive nuisance to children and a peril to their safety in case of fire and explosion whenever gasoline is left in the fuel tanks of such vehicles. It depreciates the value of neighboring properties. The preservation of peace and good order, the suppression of vice, the benefit of trade, the preservation of public health, the protection of property and the prevention of fires and explosions compel the Board of Trustees of the Village of Alden to legislate upon the subject matter. It is hereby declared that the adoption of this chapter has for its purpose the effective termination of such obnoxious practice.

§ 203-2. Definitions. [Added 5-18-2006 by L.L. No. 10-2006].

MOTOR VEHICLE – Any vehicle propelled or drawn by power other than muscular power, originally intended for use on public roadways.

§ 203-3. Storage of unlicensed an/or abandoned vehicles on private land prohibited. [Amended 5-18-2006 by L.L. No. 11-2006].

A. It shall be unlawful for any person, firm or corporation, either as owner, occupant, lessee, agent, tenant or otherwise, to store, place, park or deposit or cause or permit to be stored, placed, parked or deposited an abandoned, unused or unlicensed motor vehicle or any portion, section or part thereof upon any private land within the corporate limits of the Village of Alden unless wholly contained in a garage or other structure of a similar nature or unless a permit shall have been obtained from the Village Clerk for such storage, placing, parking or depositing. Such permit shall be nonrenewable and issued for a period not to exceed thirty (30) days. A nonrefundable fee[1] as set forth from time to time by resolution of the Board of Trustees shall be required.

B. The following vehicles shall not be subject to the above provisions:

(1) Vehicles stored or parked within the area of any gasoline station, garage, auto repair shop or a business of a similar nature located in a commercial or industrial district, subject to the following conditions:

(a) That such business obtained prior written approval of the Village Board of Trustees and that such approval is renewed annually at the April reorganization meeting.

(b) That all vehicles must be located on the property of the approved business and no vehicles shall be placed in any right-of-way.

(c) No vehicles shall be placed in a manner that may obstruct the view of any motor vehicle operator.

(d) Such vehicles shall be in good repair and shall not remain on the property for a period in excess of thirty (30) calendar days unless said vehicle is for sale.

[1] **Editor's Note: See Ch. A220, Fees.**

(e) That all applicable New York State licensing requirements have been met for automobile sales on the premises.

(2) Those whose last registered owner of record is serving on active duty in the military service.

(3) Farm tractors, snowmobiles, motorcycles, all-terrain vehicles, all-terrain cycles and motorbikes, provided that these vehicles are in an operable condition.

(4) Those vehicles used for business purposes solely on the property of said business, provided:

(a) A Business Vehicle permit is secured for each vehicle in use;

(b) The applicable permit fee[2] is paid; and

(c) Each permit is renewed for the calendar year, regardless of when the original permit was obtained – all permits shall expire on December 31st of each year.

(d) Said business vehicle(s) is/are in operable condition

(5) Those vehicles used as snowplowing vehicles, provided:

(a) A Snowplowing Vehicle permit is secured for each vehicle;

(b) The applicable permit fee[3] is paid;

(c) Each permit is renewed for the calendar year, regardless of when the original permit was obtained – all permits shall expire on December 31st of each year;

(d) Only one snowplowing vehicle is in use on a single property; and

(e) Said snowplowing vehicle is in operable condition.

§ 203-4. Notice to remove vehicle. [Amended 5-18-2006 by L.L. No. 12-2006].

[2] **Editor's Note: See Ch. A220, Fees.**
[3] **Editor's Note: See Ch. A220, Fees.**

If the provisions of the foregoing section are violated, the Code Enforcement Officer shall serve written notice, either personally or by mail, upon the owner, occupant or person having charge of any such land to comply with the provisions of this chapter. The notice shall be in substantially the following form:

To the owner, occupant or person having charge of land known on the assessment records of the Village of Alden as "lot(s):"

Street Avenue: _____

_____

Notice is hereby given that an abandoned, unused or unlicensed vehicle has been found, stored or deposited upon the above-identified property in the Village of Alden in violation of Chapter 203 of the Code of the Village of Alden. This vehicle must be removed within seven (7) days from the date of this notice.

In case you fail or refuse to comply with this notice on or before the expiration of said seven (7) days from the date of this notice, you will be, upon conviction thereof, subject to any and all penalties set forth under **§** 203-5 of the Code of the Village of Alden, including but not limited to a fine of twenty-five dollars ($25.00) per day per vehicle, not exceeding two hundred fifty dollars ($250.00) per vehicle within any thirty (30) days. The continuation of an offense against the provisions of this chapter shall constitute a separate and distinct offense hereunder for each day that offense continues.

§ 203-5. Penalties for offenses.

Any person, firm or corporation, either as owner, occupant, lessee, agent, tenant or otherwise, who shall neglect or refuse to move said abandoned, unused, unlicensed motor vehicle or vehicles as directed or who shall fail to comply with the provisions of any notice herein provided for or who shall violate any of the provisions of this chapter shall be, upon conviction thereof, guilty of a violation punishable by a fine not to exceed two hundred fifty dollars ($250.00) and/or imprisonment not to exceed fifteen (15) days, per vehicle, within any thirty-day period. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense continues, a separate and distinct offense hereunder.

Chapter 204

WATER SUPPLY: PROTECTION FROM CONTAMINATION

§ 204-1. Statement.
§ 204-2. Scope and applicability.
§ 204-3. Definitions.
§ 204-4. General provisions.
§ 204-5. Specific regulations: Zone I-G
§ 204-6. Specific regulations: Zone II-G
§ 204-7. Specific regulations: Zone III-G
§ 204-8. Prohibitive acts.
§ 204-9. Inspections.
§ 204-10. Penalties.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden as Ch. 160, 12-27-2001 as L.L. No. 1-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention – See Ch. 78.
Flood damage prevention – See Ch. 105.
Licenses and permits – See Ch. 125.
Zoning – See Ch. 210.
Fees – See Ch. A220.

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§ 204-1. Statement.

A. Water supply sources are subjected to contaminants from:

(1) Wastewater discharges to surface and ground water;

(2) Improper handling and disposal of waste material;

(3) Improper handling, storage and use of materials which are, or may be, contaminating;

(4) Accidental spills of contaminating material from storage, during transit or during use, and

(5) Water, land and air resource use which may adversely affect water quality.

B. Public water supply sources have been contaminated in numerous instances because of systems, facilities and activities which were not properly managed or were not appropriately located in relation public water supply resources. The people of the Village of Alden and State of New York have a right to expect, and the Commissioner of Health is obligated to see, that every reasonable precaution and measure is taken to protect water supply resources from contamination and that safe drinking water is available from the public supply sources and systems.

C. In order to assure the adequate protection of sources of public water supply the following local law has been promulgated.

§ 204-2. Scope and applicability.

A. Minimum requirements are hereby presented to protect Village of Alden water supply sources from contamination. The rules and regulations herein set forth duly made and enacted in accordance with the provisions of the Public Health Law shall apply to the wells which comprise the source of the public water supply of the Village of Alden. Where legal jurisdiction may be outside the Village boundaries; then the laws and regulations as set forth by the U.S. Environmental Protection Agency (EPA), New York State Department of Environmental Conservation (DEC), County Departments of Health and other local and state laws shall apply.

§ 204-3. Definitions.

AQUIFER -- The ground water subsurface geologic formations which are now or may be subsequently developed for use as public water supply sources.

AQUIFER RECHARGE AREA -- The land where precipitation, snow and rain percolates directly through the ground to an aquifer. The aquifer recharge area shall be known as Zone II-G.

BEST MANAGEMENT PRACTICES -- Those methods and practices which have been adopted by the Department of Environmental Conservation to control non-point sources of pollution.

CHLORIDE SALT -- The solid compounds or solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter maintenance) or sodium chloride (commonly used for water softener regeneration and for winter maintenance).

ENVIRONMENTAL IMPACT ASSESSMENT – A written evaluation prepared by a permit applicant which provides a description of a proposed project or development and a detailed analysis of its environmental effects.

GROUND WATER -- Any water beneath the land surface in the saturated zone that is under atmospheric or artesian pressure and that enters wells and springs.

HERBICIDE -- Any substance used to destroy or inhibit plant growth.

HUMAN EXCRETA -- Human feces and urine.

JUNKYARD -- An area where two or more unregistered, old or secondhand motor vehicles are being accumulated for purposes of disposal, resale of used parts or an area for the storage or staging of any materials for reclaiming, reuse or holding purposes such as metal, glass, fabric, plastic and/or the like.

LINEAR DISTANCE -- The shortest horizontal distance from the nearest point of the structure or object to the extension of the centerline of the wells or to the other subject delineated.

NONPOINT POLLUTION -- Pollutants resulting from facilities systems and activities which are not specifically covered by effluent permits issued under Title 8, Section 17-0803 of the Environmental Conservation Law.

PESTICIDE -- Any substance used to destroy or inhibit pests such as rodents or insects.

POINT SOURCE POLLUTION -- Pollutants resulting from facilities systems and activities which are covered and operate under a permit issued pursuant to Title 8, Section 17-0803 of the Environmental Conservation Law.

POLLUTANT -- Dredge, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical waste, biological/medical materials, radioactive materials, hair, wrecked or discarded equipment, rock, sand, cellar dirt, excavated material, liquid waste and industrial, municipal and agricultural waste.

RADIOACTIVE MATERIAL -- Any material in any form that emits radiation spontaneously.

RADIATION – Ionizing radiation that is any alpha particle, beta particle, gamma ray, x-ray, neutron, high speed proton and any other atomic particle producing ionization but not mean any sound or radio wave, or visible, infrared or ultraviolet light.

REFUSE -- All putrescible and non-putrescible solid waste including garbage, manure, rubbish, ashes, incinerator residue, street cleaning, dead animals and solid commercial industrial wastes.

REFUSE DISPOSAL AREA -- Land used for the depositing of refuse.

SEWAGE -- Any liquid or solid waste matter from domestic, commercial, private or industrial establishment which is normally carried off in sewers or waste pipes.

SEWAGE DISPOSAL SYSTEM -- Any system used for the disposing of sewage.

SURVEILLANCE ZONE -- A ground water management zone as delineated herein; they shall be designated Zone I-G, Zone II-G and Zone III-G.

TOXIC CHEMICAL -- Any compound or substance including but not limited to acids, alkalis, gasoline, kerosene, fuel oil or diesel oil which is or may be harmful or poisonous to humans.

TREATMENT WORKS -- Any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, construction drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fill or other works, not specifically mentioned in this section, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage.

WATERCOURSE -- Any natural channel conveying water; a stream, brook, creek or bed of a stream which flows only seasonally.

WATER SUPPLY -- The public water supply of the Village of Alden.

WATERSHED TRIBUTARY TO AN AQUIFER RECHARGE AREA -- That land area which is the tributary surface from which the aquifer is replenished by rain and storm water run off to the aquifer recharge area. The Watershed Tributary to the aquifer recharge area shall be known as Zone III-G.

WELL -- Any present and future artificial excavation used as a source of public water supply which derives water from the interstices of rocks or solid ground which it penetrates including bored wells, drilled wells and driven wells.

WELL HEAD PROTECTION AREA -- The area within a circle which has a radius of three hundred (300) feet from the well and spring basin and extend to include the well cone of depression. This shall be known as Zone I-G.

ZONE DESIGNATION -- Zone I-G is the Well Head Protection Area; Zone II-G is the Aquifer Recharge Area; and Zone III-G is the Watershed Tributary to the aquifer recharge area.

§ 204-4. General provisions.

A. Surveillance zones shall be designated, by the Village of Alden, for each public water supply source for both ground and surface water and filed with the Commissioner of Health.

B. Inspections shall be made by the Village of Alden and may be made by the Department of Health in accordance with a schedule agreed to by the Village and Department of Health.

C. Applicable permits and approvals by State agencies or political subdivisions must be obtained for the manufacture, use, storage, disposal or discharge of any products, materials or by-products such as liquid or solid wastes within the zones which might adversely effect water supply sources, including but not limited to:

(1) SPDES permit;

(2) Onsite disposal systems;

(3) Land application of waste water;

(4) Disposal wells;

(5) Recharge basins, landfills, septic and sludge disposal;

(6) Hazardous and toxic materials;

(7) Radiological materials;

(8) Wastewater lagoons or pits;

(9) Pesticide storage;

(10) The manufacture, storage, use and disposal of these items.

All permits must be in conformance with these rules and regulations and insure that the standards for raw water quality are met. No systems, facilities or activities which would significantly degrade existing water quality are to be permitted.

D. Monitoring of water quality in the surveillance zones shall be the responsibility of the Village of Alden Department of Public Works. A monitoring schedule shall be established that will develop an information base to demonstrate both acute and chronic changes in water quality over time. This requirement is in addition to intake raw water monitoring.

E. Exceptions to the rules and regulations may be granted by the Commissioner of Health and/or the Village of Alden after appropriate study and review, based on prior usage or unique local conditions if, in their judgement, the health and safety of the consuming public will be protected because of treatment provided or other remedial action taken. Such exceptions, when obtained, shall be given in writing to the Village and then a public hearing on the question will be held prior to the Village of Alden issuing permits or taking action.

F. Environmental assessments shall be prepared covering:

(1) All continuing program activities and;

(2) Special projects within the surveillance zones that may adversely affect water quality.

G. A full environmental impact statement in accordance with the DEC, may be required, if the environmental review warrants. Any significant change in land use requires an environmental assessment as determined by the Village of Alden.

H. Potential water supply sources not yet developed and utilized may have surveillance zones designated to allow management of water bodies, watersheds, and ground water recharge areas and to preserve water quality for water supply purposes.

§ 204-5. Specific regulations: Zone I-G.

A. All land shall be protected and controlled through direct ownership of the land or through the acquisition of protective easements or other appropriate measures by the Village of Alden in order to prevent pollution of the ground or ground water supply.

B. All systems, facilities and activities are prohibited except for physical pumping and treatment facilities and controls. The area shall not be used for any other purpose than public water supply.

C. All well heads and containment buildings must be in conformance with federal, state and local flood plain management or similar regulations or ordinances to

prevent their contamination by flood waters. This area shall further be protected from pollution by surface waters originating outside thereof by the construction of suitable diversion ditches or embankments. The development of the water resources shall be so carried out that there shall be no opportunity for pollution to enter the water sources.

D. The physical pumping facilities and controls shall be protected against damage from tampering by fencing or other suitable enclosures or by their manner of construction and installation.

E. The area shall be posted prohibiting trespass for any purpose.

§ 204-6. Specific regulations: Zone II-G.

A. On site disposal systems

(1) All onsite disposal systems serving single family residences of ten (10) persons or less, or with flows less than one thousand (1000) gallons per day shall be designed, installed and maintained in accordance with the sanitary code standards. Local county sanitary codes and town and village ordinances shall also apply if they contain more stringent standards. However, if a sanitary sewer line is within three hundred (300) feet of the property the owner must connect to the existing line.

(2) A permit, from the Village is required prior to the installation of any subsurface disposal system. Conditions for a permit shall include an approved engineering plan, verification of the percolation rate by a licensed engineer and inspection of the installation prior to backfilling.

(3) The applicable standards and permit requirements of the Department of Environmental Conservation shall apply to systems with flows in excess of one thousand (1000) gallons per day.

(4) The use of sewage systems cleaners or additives is prohibited.

(5) Where there is evidence that chlorides and/or nitrates are increasing at an undesirable rate additional measures may be promulgated, by the Village of Alden, to minimize their affect.

(6) Land application of wastewater is prohibited.

(7) Disposal wells are prohibited.

(8) Use of storm water runoff recharge basins is prohibited.

(9) The stockpiling of snow removed from urbanized areas on the ground surface is prohibited.

(10) The establishment of refuse disposal areas or junkyards is prohibited. A comprehensive monitoring program for existing and abandoned refuse areas or junkyards is required and must be filed by both the owner and any user of the property with the Village of Alden upon such additional terms as may be required by the Village.

(11) Farm animal wastes shall not be concentrated except where provision has been made to prevent seepage to the ground water. Suitable storage facilities, as determined by the Village of Alden, are required when it is not possible to spread or dispose of waste on a daily basis. Such storage facilities must be maintained by both the owner of the property and the user of such facilities at all times to prevent seepage to the ground water.

(12) Land application of septic and municipal sludge is prohibited.

(13) All sewers installed shall be tight and remain tight within the allowable range, as required, at the time of installation as the state of the art allows. Remedial measures shall be taken by the owner if evidence indicates excessive infiltration is occurring. New sewers shall meet the tightness specifications for water mains as a minimum.

(14) No toxic chemical identified by the U.S. Environmental Protection Agency or the Department of Environmental Conservation shall be stored except under permit from the Village of Alden and those agencies. Disposal of toxic chemicals and industrial waste is prohibited. Toxic chemicals shall not be buried in the soil, spread upon the surface of the ground or allowed to enter ground waters. The Village of Alden reserves the right and authority to approve or disapprove permits within its jurisdiction.

(15) Use of wastewater lagoons and pits is prohibited.

(16) Disposal of radioactive material is prohibited.

(17) Use of fertilizers shall be in conformance with the best management practices as developed by the state soil and water conservation committee and as implemented by the preparation and use of farm plans as required by the soil and water conservation laws. Open storage of artificial fertilizers for commercial use is prohibited.

(18) No pesticides or herbicides shall be used until an environmental assessment is made specifically addressing the question of ground water contamination. All pesticide and herbicide storage, use and application shall be under permit as provided by environmental conservation law. Use of streams, disposal of containers and washing equipment used in conjunction with pesticides and herbicides is prohibited.

(19) Oil spills shall be reported and cleaned pursuant to navigation law sections. Spills of any other material shall be reported as required by the environmental conservation law. The Commissioner of Health and the Village of Alden shall be advised of any accidental spills within forty-eight (48) hours.

(20) Storage of chloride salts is prohibited except in waterproof buildings or in water tight vessels. Deicing salt use is restricted to the minimum amount needed for public safety in accordance with best management practices.

(21) All cemeteries shall be operated in accordance with department of health rules and regulations.

(22) Underground storage of petroleum products or any other chemicals or radioactive material is prohibited.

(23) Where ground water deterioration is likely to be caused by land development, the Village of Alden and the Department of Health shall insure that appropriate zoning and other controls are implemented to protect the ground water including, where appropriate, the designation of the aquifer as a “sole source” as permitted in § 1442(e) of the Safe Drinking Water Act.

(24) Environmental assessments must be prepared for the following and submitted to the Village and Department of Health for review and comment before any permits are issued:

(a) Excavations or cut-ins which expose ground water permanently or during maximum elevation of the water table, or which significantly reduce the thickness of the soil cover and thereby eases the entrance of contaminants into ground waters;

(b) The establishment of sand and gravel mining operations;

(c) The construction of overhead transmission lines, liquefied natural gas lines or other pipelines for materials which can impair water quality;

(d) Surface transportation corridors.

(25) All oil and gas wells shall be constructed in accordance with the requirements of the Village of Alden and Department of Environmental Conservation. All water supply wells shall be constructed and maintained in accordance with the requirements of the Department of Health. All abandoned wells shall be sealed in accordance with the requirements for oil, gas and water supply wells.

(26) Any water supply wells or any other wells which allow salt water intrusion shall be taken out of service and permanently sealed.

§ 204-7. Specific regulations: Zone III-G.

A. All onsite disposal systems serving single-family residences of ten (10) persons or less or with flows of less than one thousand (1000) gallons per day shall be designed, installed and maintained in accordance with the sanitary code and the standards promulgated in local county sanitary codes and town and village ordinances shall also apply if they contain more stringent standards.

B. A permit is required from the Village of Alden prior to the installation of any subsurface disposal system.

(1) Conditions for a permit shall include an approved engineering plan, verification of the percolation rate by a licensed engineer and inspection of the installation prior to backfilling.

(2) The use of system cleaners or additives are prohibited.

(3) No portion of the seepage unit shall be constructed, placed or rebuilt within one hundred (100) linear feet distance of the recharge area or tributary water courses.

C. Point source discharges to tributary streams are prohibited unless treatment equivalent to sand filtration and disinfection is provided for domestic wastewater and equivalent treatment for industrial wastewater. All effluents will meet drinking water standards.

D. Storm water outlets shall not discharge directly to streams and water courses. Provision shall be made to discharge to the surface of the ground one hundred (100) feet from a water course and a recharge area.

E. The dumping of snow removed from the streets, roads and parking areas directly into streams is prohibited.

F. No refuse shall be deposited on or beneath the surface of the ground within a three hundred (300) linear feet distance of any watercourse or Zone II-G. Solid waste disposal facilities shall conform to DEC regulations and be under permit. No junkyards shall be located within three hundred (300) linear feet distance of any water course or Zone II-G.

G. No concentration of animal wastes from agriculture operations including but not limited to manure piles, feed lots, barnyards and yard areas shall be located within three hundred (300) linear feet distance from any water course or Zone II-G. Barnyards, manure piles, etc. shall be separated from streams by ditches or surface grading to prevent their runoff from entering streams.

H. Provision shall be made for satisfactory disposal of milk house waste either by surface or subsurface irrigation that prevents any discharge to any water course or Zone II-G. Such facilities shall be located at least two hundred (200) linear feet distance from any water course or Zone II-G.

I. No septic waste, municipal sludge or human excreta shall be disposed of unless deposited in trenches or pits at a linear distance of not less than three hundred (300) feet from any water course or Zone II-G and covered with not less than one (1) foot of soil in such manner effectively to prevent it from being carried into any water course or into Zone II-G by surface runoff. All disposal of septic waste, municipal sludge or human excreta shall be done only under permit issued by the Village of Alden and Department of Environmental Conservation or Department of Health.

J. No industrial sludge or toxic chemicals shall be stored except under permit by the Village of Alden and where applicable by the U.S. Environmental Protection Agency and/or the Department of Environmental Conservation. Disposal of industrial sludge and toxic chemicals is prohibited.

K. Disposal of radioactive material is prohibited.

L. Open storage of artificial fertilizers for commercial use is prohibited. Agricultural use of fertilizers shall be in conformance with the best management practices as developed by the state soil and water conservation committee and implemented by the preparation and use of farm plans as required by the soil and water conservation district law.

M. All pesticide and herbicide storage, use and application shall be under permit as provided in Environmental Conservation Law, Article 33. Use of streams for make-up water or washing of equipment is prohibited.

N. Oil spills shall be reported to the Village of Alden and cleaned up pursuant to the navigation law. Spills of any other materials shall be reported as required by environmental conservation law. Cleanup of spills is the responsibility of the carrier.

O. Underground storage of petroleum products or any other contaminant material is prohibited.

P. Storage of chloride salts is prohibited within a five hundred (500) linear foot distance to a water course or Zone II-G except in weather proof buildings or water tight vessels. Deicing salt use is restricted to the minimum amount needed for public safety in accordance with best management practices.

Q. No interment of a human body shall be made within three hundred (300) linear feet distance of a water course or Zone II-G.

R. Farm tillage practices shall be in conformance with the best management practices as developed by the state soil and water conservation committee and implemented by the conservation district law. All land disturbing activity including general construction, highway construction, access road construction and maintenance is prohibited except where remedial measures have been put in place to minimize erosion and sediment production.

S. Where ground water deterioration is likely to be caused by land development or use, the Village of Alden and the Department of Health shall insure that appropriate zoning and other controls are implemented to protect the ground water.

T. All lands or tributary streams draining to public water supply and aquifers, shall be so identified on land use maps and in zoning regulations.

§ 204-8. Prohibited acts.

No person, including state agencies or political subdivisions having jurisdiction, shall perform any act or grant any permit or approval which may result in the contravention of the standards for raw water quality as contained in the Officials Compilation of Codes, Rules and Regulations of the State of New York.

§ 204-9. Inspections.

A. The Village of Alden Superintendent of Public Works or any person or persons charged with the maintenance or supervision of the public water supply system shall, by its officers or duly appointed representative, make regular and thorough inspections of the water courses and watershed to ascertain whether these rules and regulations are being complied with.

B. It shall be the duty of the aforesaid Superintendent of Public Works to cause copies of any rules and regulations violated to be served upon the persons violating the same, together with notices of such violations. If such persons served do not immediately comply with the rules and regulations it shall be the further duty of the aforesaid Superintendent to promptly notify the State Commissioner of Health of such violations.

C. The aforesaid Superintendent shall report to the State Commissioner of Health in writing, annually, prior to the 30th day of January the results of the regular inspections made during the preceding year. The report shall state the number of inspections which were made, the number of violations found, the number of notices served, the number of violations abated and the general condition of the watershed at the time of the last inspection.

§ 204-10. Penalties for offenses.

Penalties for violations of this chapter shall be those specified by § 1103 of the Public Health Law.

Chapter 204

WATER SUPPLY: PROTECTION FROM CONTAMINATION

§ 204-1. Statement.
§ 204-2. Scope and applicability.
§ 204-3. Definitions.
§ 204-4. General provisions.
§ 204-5. Specific regulations: Zone I-G
§ 204-6. Specific regulations: Zone II-G
§ 204-7. Specific regulations: Zone III-G
§ 204-8. Prohibitive acts.
§ 204-9. Inspections.
§ 204-10. Penalties.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden as Ch. 160, 12-27-2001 as L.L. No. 1-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention – See Ch. 78.
Flood damage prevention – See Ch. 105.
Licenses and permits – See Ch. 125.
Zoning – See Ch. 210.
Fees – See Ch. A220.

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§ 204-1. Statement.

A. Water supply sources are subjected to contaminants from:

(1) Wastewater discharges to surface and ground water;

(2) Improper handling and disposal of waste material;

(3) Improper handling, storage and use of materials which are, or may be, contaminating;

(4) Accidental spills of contaminating material from storage, during transit or during use, and

(5) Water, land and air resource use which may adversely affect water quality.

B. Public water supply sources have been contaminated in numerous instances because of systems, facilities and activities which were not properly managed or were not appropriately located in relation public water supply resources. The people of the Village of Alden and State of New York have a right to expect, and the Commissioner of Health is obligated to see, that every reasonable precaution and measure is taken to protect water supply resources from contamination and that safe drinking water is available from the public supply sources and systems.

C. In order to assure the adequate protection of sources of public water supply the following local law has been promulgated.

§ 204-2. Scope and applicability.

A. Minimum requirements are hereby presented to protect Village of Alden water supply sources from contamination. The rules and regulations herein set forth duly made and enacted in accordance with the provisions of the Public Health Law shall apply to the wells which comprise the source of the public water supply of the Village of Alden. Where legal jurisdiction may be outside the Village boundaries; then the laws and regulations as set forth by the U.S. Environmental Protection Agency (EPA), New York State Department of Environmental Conservation (DEC), County Departments of Health and other local and state laws shall apply.

§ 204-3. Definitions.

AQUIFER -- The ground water subsurface geologic formations which are now or may be subsequently developed for use as public water supply sources.

AQUIFER RECHARGE AREA -- The land where precipitation, snow and rain percolates directly through the ground to an aquifer. The aquifer recharge area shall be known as Zone II-G.

BEST MANAGEMENT PRACTICES -- Those methods and practices which have been adopted by the Department of Environmental Conservation to control non-point sources of pollution.

CHLORIDE SALT -- The solid compounds or solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter maintenance) or sodium chloride (commonly used for water softener regeneration and for winter maintenance).

ENVIRONMENTAL IMPACT ASSESSMENT – A written evaluation prepared by a permit applicant which provides a description of a proposed project or development and a detailed analysis of its environmental effects.

GROUND WATER -- Any water beneath the land surface in the saturated zone that is under atmospheric or artesian pressure and that enters wells and springs.

HERBICIDE -- Any substance used to destroy or inhibit plant growth.

HUMAN EXCRETA -- Human feces and urine.

JUNKYARD -- An area where two or more unregistered, old or secondhand motor vehicles are being accumulated for purposes of disposal, resale of used parts or an area for the storage or staging of any materials for reclaiming, reuse or holding purposes such as metal, glass, fabric, plastic and/or the like.

LINEAR DISTANCE -- The shortest horizontal distance from the nearest point of the structure or object to the extension of the centerline of the wells or to the other subject delineated.

NONPOINT POLLUTION -- Pollutants resulting from facilities systems and activities which are not specifically covered by effluent permits issued under Title 8, Section 17-0803 of the Environmental Conservation Law.

PESTICIDE -- Any substance used to destroy or inhibit pests such as rodents or insects.

POINT SOURCE POLLUTION -- Pollutants resulting from facilities systems and activities which are covered and operate under a permit issued pursuant to Title 8, Section 17-0803 of the Environmental Conservation Law.

POLLUTANT -- Dredge, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical waste, biological/medical materials, radioactive materials, hair, wrecked or discarded equipment, rock, sand, cellar dirt, excavated material, liquid waste and industrial, municipal and agricultural waste.

RADIOACTIVE MATERIAL -- Any material in any form that emits radiation spontaneously.

RADIATION – Ionizing radiation that is any alpha particle, beta particle, gamma ray, x-ray, neutron, high speed proton and any other atomic particle producing ionization but not mean any sound or radio wave, or visible, infrared or ultraviolet light.

REFUSE -- All putrescible and non-putrescible solid waste including garbage, manure, rubbish, ashes, incinerator residue, street cleaning, dead animals and solid commercial industrial wastes.

REFUSE DISPOSAL AREA -- Land used for the depositing of refuse.

SEWAGE -- Any liquid or solid waste matter from domestic, commercial, private or industrial establishment which is normally carried off in sewers or waste pipes.

SEWAGE DISPOSAL SYSTEM -- Any system used for the disposing of sewage.

SURVEILLANCE ZONE -- A ground water management zone as delineated herein; they shall be designated Zone I-G, Zone II-G and Zone III-G.

TOXIC CHEMICAL -- Any compound or substance including but not limited to acids, alkalis, gasoline, kerosene, fuel oil or diesel oil which is or may be harmful or poisonous to humans.

TREATMENT WORKS -- Any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, construction drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fill or other works, not specifically mentioned in this section, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage.

WATERCOURSE -- Any natural channel conveying water; a stream, brook, creek or bed of a stream which flows only seasonally.

WATER SUPPLY -- The public water supply of the Village of Alden.

WATERSHED TRIBUTARY TO AN AQUIFER RECHARGE AREA -- That land area which is the tributary surface from which the aquifer is replenished by rain and storm water run off to the aquifer recharge area. The Watershed Tributary to the aquifer recharge area shall be known as Zone III-G.

WELL -- Any present and future artificial excavation used as a source of public water supply which derives water from the interstices of rocks or solid ground which it penetrates including bored wells, drilled wells and driven wells.

WELL HEAD PROTECTION AREA -- The area within a circle which has a radius of three hundred (300) feet from the well and spring basin and extend to include the well cone of depression. This shall be known as Zone I-G.

ZONE DESIGNATION -- Zone I-G is the Well Head Protection Area; Zone II-G is the Aquifer Recharge Area; and Zone III-G is the Watershed Tributary to the aquifer recharge area.

§ 204-4. General provisions.

A. Surveillance zones shall be designated, by the Village of Alden, for each public water supply source for both ground and surface water and filed with the Commissioner of Health.

B. Inspections shall be made by the Village of Alden and may be made by the Department of Health in accordance with a schedule agreed to by the Village and Department of Health.

C. Applicable permits and approvals by State agencies or political subdivisions must be obtained for the manufacture, use, storage, disposal or discharge of any products, materials or by-products such as liquid or solid wastes within the zones which might adversely effect water supply sources, including but not limited to:

(1) SPDES permit;

(2) Onsite disposal systems;

(3) Land application of waste water;

(4) Disposal wells;

(5) Recharge basins, landfills, septic and sludge disposal;

(6) Hazardous and toxic materials;

(7) Radiological materials;

(8) Wastewater lagoons or pits;

(9) Pesticide storage;

(10) The manufacture, storage, use and disposal of these items.

All permits must be in conformance with these rules and regulations and insure that the standards for raw water quality are met. No systems, facilities or activities which would significantly degrade existing water quality are to be permitted.

D. Monitoring of water quality in the surveillance zones shall be the responsibility of the Village of Alden Department of Public Works. A monitoring schedule shall be established that will develop an information base to demonstrate both acute and chronic changes in water quality over time. This requirement is in addition to intake raw water monitoring.

E. Exceptions to the rules and regulations may be granted by the Commissioner of Health and/or the Village of Alden after appropriate study and review, based on prior usage or unique local conditions if, in their judgement, the health and safety of the consuming public will be protected because of treatment provided or other remedial action taken. Such exceptions, when obtained, shall be given in writing to the Village and then a public hearing on the question will be held prior to the Village of Alden issuing permits or taking action.

F. Environmental assessments shall be prepared covering:

(1) All continuing program activities and;

(2) Special projects within the surveillance zones that may adversely affect water quality.

G. A full environmental impact statement in accordance with the DEC, may be required, if the environmental review warrants. Any significant change in land use requires an environmental assessment as determined by the Village of Alden.

H. Potential water supply sources not yet developed and utilized may have surveillance zones designated to allow management of water bodies, watersheds, and ground water recharge areas and to preserve water quality for water supply purposes.

§ 204-5. Specific regulations: Zone I-G.

A. All land shall be protected and controlled through direct ownership of the land or through the acquisition of protective easements or other appropriate measures by the Village of Alden in order to prevent pollution of the ground or ground water supply.

B. All systems, facilities and activities are prohibited except for physical pumping and treatment facilities and controls. The area shall not be used for any other purpose than public water supply.

C. All well heads and containment buildings must be in conformance with federal, state and local flood plain management or similar regulations or ordinances to

prevent their contamination by flood waters. This area shall further be protected from pollution by surface waters originating outside thereof by the construction of suitable diversion ditches or embankments. The development of the water resources shall be so carried out that there shall be no opportunity for pollution to enter the water sources.

D. The physical pumping facilities and controls shall be protected against damage from tampering by fencing or other suitable enclosures or by their manner of construction and installation.

E. The area shall be posted prohibiting trespass for any purpose.

§ 204-6. Specific regulations: Zone II-G.

A. On site disposal systems

(1) All onsite disposal systems serving single family residences of ten (10) persons or less, or with flows less than one thousand (1000) gallons per day shall be designed, installed and maintained in accordance with the sanitary code standards. Local county sanitary codes and town and village ordinances shall also apply if they contain more stringent standards. However, if a sanitary sewer line is within three hundred (300) feet of the property the owner must connect to the existing line.

(2) A permit, from the Village is required prior to the installation of any subsurface disposal system. Conditions for a permit shall include an approved engineering plan, verification of the percolation rate by a licensed engineer and inspection of the installation prior to backfilling.

(3) The applicable standards and permit requirements of the Department of Environmental Conservation shall apply to systems with flows in excess of one thousand (1000) gallons per day.

(4) The use of sewage systems cleaners or additives is prohibited.

(5) Where there is evidence that chlorides and/or nitrates are increasing at an undesirable rate additional measures may be promulgated, by the Village of Alden, to minimize their affect.

(6) Land application of wastewater is prohibited.

(7) Disposal wells are prohibited.

(8) Use of storm water runoff recharge basins is prohibited.

(9) The stockpiling of snow removed from urbanized areas on the ground surface is prohibited.

(10) The establishment of refuse disposal areas or junkyards is prohibited. A comprehensive monitoring program for existing and abandoned refuse areas or junkyards is required and must be filed by both the owner and any user of the property with the Village of Alden upon such additional terms as may be required by the Village.

(11) Farm animal wastes shall not be concentrated except where provision has been made to prevent seepage to the ground water. Suitable storage facilities, as determined by the Village of Alden, are required when it is not possible to spread or dispose of waste on a daily basis. Such storage facilities must be maintained by both the owner of the property and the user of such facilities at all times to prevent seepage to the ground water.

(12) Land application of septic and municipal sludge is prohibited.

(13) All sewers installed shall be tight and remain tight within the allowable range, as required, at the time of installation as the state of the art allows. Remedial measures shall be taken by the owner if evidence indicates excessive infiltration is occurring. New sewers shall meet the tightness specifications for water mains as a minimum.

(14) No toxic chemical identified by the U.S. Environmental Protection Agency or the Department of Environmental Conservation shall be stored except under permit from the Village of Alden and those agencies. Disposal of toxic chemicals and industrial waste is prohibited. Toxic chemicals shall not be buried in the soil, spread upon the surface of the ground or allowed to enter ground waters. The Village of Alden reserves the right and authority to approve or disapprove permits within its jurisdiction.

(15) Use of wastewater lagoons and pits is prohibited.

(16) Disposal of radioactive material is prohibited.

(17) Use of fertilizers shall be in conformance with the best management practices as developed by the state soil and water conservation committee and as implemented by the preparation and use of farm plans as required by the soil and water conservation laws. Open storage of artificial fertilizers for commercial use is prohibited.

(18) No pesticides or herbicides shall be used until an environmental assessment is made specifically addressing the question of ground water contamination. All pesticide and herbicide storage, use and application shall be under permit as provided by environmental conservation law. Use of streams, disposal of containers and washing equipment used in conjunction with pesticides and herbicides is prohibited.

(19) Oil spills shall be reported and cleaned pursuant to navigation law sections. Spills of any other material shall be reported as required by the environmental conservation law. The Commissioner of Health and the Village of Alden shall be advised of any accidental spills within forty-eight (48) hours.

(20) Storage of chloride salts is prohibited except in waterproof buildings or in water tight vessels. Deicing salt use is restricted to the minimum amount needed for public safety in accordance with best management practices.

(21) All cemeteries shall be operated in accordance with department of health rules and regulations.

(22) Underground storage of petroleum products or any other chemicals or radioactive material is prohibited.

(23) Where ground water deterioration is likely to be caused by land development, the Village of Alden and the Department of Health shall insure that appropriate zoning and other controls are implemented to protect the ground water including, where appropriate, the designation of the aquifer as a “sole source” as permitted in § 1442(e) of the Safe Drinking Water Act.

(24) Environmental assessments must be prepared for the following and submitted to the Village and Department of Health for review and comment before any permits are issued:

(a) Excavations or cut-ins which expose ground water permanently or during maximum elevation of the water table, or which significantly reduce the thickness of the soil cover and thereby eases the entrance of contaminants into ground waters;

(b) The establishment of sand and gravel mining operations;

(c) The construction of overhead transmission lines, liquefied natural gas lines or other pipelines for materials which can impair water quality;

(d) Surface transportation corridors.

(25) All oil and gas wells shall be constructed in accordance with the requirements of the Village of Alden and Department of Environmental Conservation. All water supply wells shall be constructed and maintained in accordance with the requirements of the Department of Health. All abandoned wells shall be sealed in accordance with the requirements for oil, gas and water supply wells.

(26) Any water supply wells or any other wells which allow salt water intrusion shall be taken out of service and permanently sealed.

§ 204-7. Specific regulations: Zone III-G.

A. All onsite disposal systems serving single-family residences of ten (10) persons or less or with flows of less than one thousand (1000) gallons per day shall be designed, installed and maintained in accordance with the sanitary code and the standards promulgated in local county sanitary codes and town and village ordinances shall also apply if they contain more stringent standards.

B. A permit is required from the Village of Alden prior to the installation of any subsurface disposal system.

(1) Conditions for a permit shall include an approved engineering plan, verification of the percolation rate by a licensed engineer and inspection of the installation prior to backfilling.

(2) The use of system cleaners or additives are prohibited.

(3) No portion of the seepage unit shall be constructed, placed or rebuilt within one hundred (100) linear feet distance of the recharge area or tributary water courses.

C. Point source discharges to tributary streams are prohibited unless treatment equivalent to sand filtration and disinfection is provided for domestic wastewater and equivalent treatment for industrial wastewater. All effluents will meet drinking water standards.

D. Storm water outlets shall not discharge directly to streams and water courses. Provision shall be made to discharge to the surface of the ground one hundred (100) feet from a water course and a recharge area.

E. The dumping of snow removed from the streets, roads and parking areas directly into streams is prohibited.

F. No refuse shall be deposited on or beneath the surface of the ground within a three hundred (300) linear feet distance of any watercourse or Zone II-G. Solid waste disposal facilities shall conform to DEC regulations and be under permit. No junkyards shall be located within three hundred (300) linear feet distance of any water course or Zone II-G.

G. No concentration of animal wastes from agriculture operations including but not limited to manure piles, feed lots, barnyards and yard areas shall be located within three hundred (300) linear feet distance from any water course or Zone II-G. Barnyards, manure piles, etc. shall be separated from streams by ditches or surface grading to prevent their runoff from entering streams.

H. Provision shall be made for satisfactory disposal of milk house waste either by surface or subsurface irrigation that prevents any discharge to any water course or Zone II-G. Such facilities shall be located at least two hundred (200) linear feet distance from any water course or Zone II-G.

I. No septic waste, municipal sludge or human excreta shall be disposed of unless deposited in trenches or pits at a linear distance of not less than three hundred (300) feet from any water course or Zone II-G and covered with not less than one (1) foot of soil in such manner effectively to prevent it from being carried into any water course or into Zone II-G by surface runoff. All disposal of septic waste, municipal sludge or human excreta shall be done only under permit issued by the Village of Alden and Department of Environmental Conservation or Department of Health.

J. No industrial sludge or toxic chemicals shall be stored except under permit by the Village of Alden and where applicable by the U.S. Environmental Protection Agency and/or the Department of Environmental Conservation. Disposal of industrial sludge and toxic chemicals is prohibited.

K. Disposal of radioactive material is prohibited.

L. Open storage of artificial fertilizers for commercial use is prohibited. Agricultural use of fertilizers shall be in conformance with the best management practices as developed by the state soil and water conservation committee and implemented by the preparation and use of farm plans as required by the soil and water conservation district law.

M. All pesticide and herbicide storage, use and application shall be under permit as provided in Environmental Conservation Law, Article 33. Use of streams for make-up water or washing of equipment is prohibited.

N. Oil spills shall be reported to the Village of Alden and cleaned up pursuant to the navigation law. Spills of any other materials shall be reported as required by environmental conservation law. Cleanup of spills is the responsibility of the carrier.

O. Underground storage of petroleum products or any other contaminant material is prohibited.

P. Storage of chloride salts is prohibited within a five hundred (500) linear foot distance to a water course or Zone II-G except in weather proof buildings or water tight vessels. Deicing salt use is restricted to the minimum amount needed for public safety in accordance with best management practices.

Q. No interment of a human body shall be made within three hundred (300) linear feet distance of a water course or Zone II-G.

R. Farm tillage practices shall be in conformance with the best management practices as developed by the state soil and water conservation committee and implemented by the conservation district law. All land disturbing activity including general construction, highway construction, access road construction and maintenance is prohibited except where remedial measures have been put in place to minimize erosion and sediment production.

S. Where ground water deterioration is likely to be caused by land development or use, the Village of Alden and the Department of Health shall insure that appropriate zoning and other controls are implemented to protect the ground water.

T. All lands or tributary streams draining to public water supply and aquifers, shall be so identified on land use maps and in zoning regulations.

§ 204-8. Prohibited acts.

No person, including state agencies or political subdivisions having jurisdiction, shall perform any act or grant any permit or approval which may result in the contravention of the standards for raw water quality as contained in the Officials Compilation of Codes, Rules and Regulations of the State of New York.

§ 204-9. Inspections.

A. The Village of Alden Superintendent of Public Works or any person or persons charged with the maintenance or supervision of the public water supply system shall, by its officers or duly appointed representative, make regular and thorough inspections of the water courses and watershed to ascertain whether these rules and regulations are being complied with.

B. It shall be the duty of the aforesaid Superintendent of Public Works to cause copies of any rules and regulations violated to be served upon the persons violating the same, together with notices of such violations. If such persons served do not immediately comply with the rules and regulations it shall be the further duty of the aforesaid Superintendent to promptly notify the State Commissioner of Health of such violations.

C. The aforesaid Superintendent shall report to the State Commissioner of Health in writing, annually, prior to the 30th day of January the results of the regular inspections made during the preceding year. The report shall state the number of inspections which were made, the number of violations found, the number of notices served, the number of violations abated and the general condition of the watershed at the time of the last inspection.

§ 204-10. Penalties for offenses.

Penalties for violations of this chapter shall be those specified by § 1103 of the Public Health Law.

Chapter 205

WATER USE AND SERVICE

§ 205-1.	Making taps; payment of charges.
§ 205-2.	Making excavations and installing connections; fees.
§ 205-3.	Plumbers to be licensed.
§ 205-4.	Excavations in streets; bond required.
§ 205-5.	Excavating in and tunneling under pavement prohibited.
§ 205-6.	Filling excavations.
§ 205-7.	Guarding excavations; lights.
§ 205-8.	Meters required; supplying water to others.
§ 205-9.	Cost and installation of meters.
§ 205-10.	Sealing meters; tampering with meters.
§ 205-11.	Repair or replacement of meters.
§ 205-12.	Repairing leaks.
§ 205-13.	Vacating premises; notice to shut off water.
§ 205-14.	Charge when meter defective; repair costs.
§ 205-15.	Laying service pipes; bypassing meter.
§ 205-16.	Establishment of water rates.
§ 205-17.	Payment of bills; late payment.
§ 205-18.	Use of water at construction sites.
§ 205-19.	Right of access.
§ 205-20.	Inspection upon sale of property.
§ 205-21.	Taking water from fire hydrants; prosecution.
§ 205-22.	Lien for rents and charges.
§ 205-23.	Enforcement authority.
§ 205-24.	Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 8-16-1965 as L.L. No. 2-1965 (Ch. 52 of the 1966 Code). Amended in its entirety 1-23-2003 by L.L. No. 20-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Sewers -- See Ch. 165.
Streets and sidewalks -- See Ch. 177.
Fees -- See Ch. A220.

§ 205-1. Making taps; payment of charges.

All taps to water mains of the Village of Alden shall be made only by the duly designated official of the village. The charge therefor shall be established by the Village Board of Trustees[1] and shall be paid at the time of application, which shall be at least twenty-four (24) hours before the tap is to be made. The size of the tap, the length of service pipe and the location of each tap, stopcock, box and pipe shall be shown in such application.

§ 205-2. Making excavations and installing connections; fees.[2]

The applicant, at his or her own expense, shall cause all necessary excavations to be made as may be directed by the Village Superintendent of Public Works for any tap to be made and installed. The applicant shall furnish and install all necessary connections, including a curb box, from the water main tap to the premises. Such connections shall be of such size and material as determined by the Superintendent of Public Works. Inspection fees for such work shall be those that are set from time to time by the Village of Alden Board of Trustees.

§ 205-3. Plumbers to be licensed.

All plumbers performing any work on or near public water lines must be licensed as provided for in § 78-22 of this code.

§ 205-4. Excavations in streets; bond required.

A. No excavation shall be made in the street or any portion of the public way until the written permit therefor has been issued and all applicable fees have been paid. A bond or evidence of insurance coverage naming the Village of Alden as a named insured or additional insured indemnifying the village in the amount of one million dollars ($1,000,000.00), approved as to form and sufficiency of protection by the Village Attorney, shall be given to protect and hold harmless the Village of Alden against all loss, damage or expenses of any kind or in any way. Inspection fees for such work shall be those that are set from time to time by the Village of Alden Board of Trustees.[3]

B. A developer or other person installing a lateral water connection to a public water line shall post a maintenance bond with the Board Village of Alden, guaranteeing

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[1] **Editor's Note: See Ch. A220, Fees.**
[2] **Editor's Note: See Ch. A220, Fees.**
[3] **Editor's Note: See Ch. A220, Fees.**

the installation for a period of two (2) years from the time of acceptance of the installation by the Board Village of Alden. The amount of this bond shall be as determined by the Village of Alden. During this period, any defects in the installation or appurtenances shall be corrected at the builder's expense.

§ 205-5. Excavating in and tunneling under pavement prohibited.

No excavation shall be made in any pavement, and no tunneling shall be made under any pavement.

§ 205-6. Filling excavations.

All excavations must be filled as soon as possible with well-tamped bank-run gravel or such other material as may be approved by the Superintendent of Public Works, and no depression shall be permitted to exist where any excavation has been made.

§ 205-7. Guarding excavations; lights.

Every excavation shall be protected by sufficient barriers and shall have adequate warning lights at all times.

§ 205-8. Meters required; supplying water to others.

A water meter shall be installed for each flat or apartment and for each commercial store or business establishment. No owner or tenant of any premises supplied with water from the Village of Alden will be allowed to supply water to other persons or families and, upon so doing, will have the water supply stopped by the village.

§ 205-9. Cost and installation of meters.

All water meters shall be purchased by the Village of Alden and shall be installed under the direction of the Superintendent of Public Works. The owner of the premises shall pay for the cost of such meter and the cost of installation on the premises when making application for installation of any meter.[4]

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[4] **Editor's Note: See Ch. A220, Fees.**

§ 205-10. Sealing meters; tampering with meters. [Amended 12-20-2007 by L.L. No. 10-2007]

The village shall remain the owner of all meters. After installation, every meter shall be sealed. No person shall interfere with or disconnect or remove a water meter from any service, nor shall the seal be broken for any purpose or use. No person shall tamper with, disconnect, remove or damage any water meter lock-out device placed upon said meter by the Village of Alden. The owner of the property where any meter is installed shall be responsible for any tampering or damage of any meter, and any costs associated with materials and labor for repair and/or replacement.

§ 205-11. Repair or replacement of meters.

Any repair or replacement of a meter, when deemed necessary by the Superintendent of Public Works, shall be done only by authorized agents of the Village of Alden.

§ 205-12. Repairing leaks, replacing piping. [Amended 12-20-2007 by L.L. No. 11-2007]

All leaks on service lateral pipes in the street and any connection from the main, and in and upon all premises supplied with water must be promptly repaired and/or replaced by the owner or occupant of the premises, upon written notice by the Village of Alden. Upon the failure to make such repairs within the time frame set forth by the Village of Alden, the water supply will be turned off until the repairs and/or replacements are made and approved by the Village of Alden. In the event of an emergency as deemed by the Superintendent of Public Works, the Village of Alden may make emergency repairs and/or replacements and such costs shall be charged to the owner of the premises and shall be a lien as set forth under Section 205-21 herein. A further charge for shutting off and restoring the water supply shall be assessed against the owner and collected as part of the water rents.[5] If it is determined that during any repair and/or replacement of any pipes, fittings, valves, connections and/or any other appurtenance that same contains lead and/or any lead components, such valve, connection, pipe, fittings and/or other appurtenances whatsoever shall be immediately replaced by the owner.

§ 205-13. Vacating premises; notice to shut off water.[6]

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[5] **Editor's Note: See Ch. A220, Fees.**
[6] **Editor's Note: See Ch. A220, Fees.**

Consumers closing or vacating their premises must give notice at the office of the Village Clerk that the water is to be shut off, or they will be held responsible for the water bill until such notice is given. A charge set by the Village Board will be made for turning on the water thereafter.

§ 205-14. Charge when meter defective; repair costs.

Any consumer whose water meter fails to register or is otherwise improperly functioning will be charged at the average rate of consumption as shown by the meter when in proper working order. Each consumer must properly protect the meter from injury from any cause. Repair costs resulting from failure to protect the meter will be billed to the consumer.

§ 205-15. Laying service pipes; bypassing meter.

All service pipes must be laid four and one-half (4 ½) feet below the surface of the ground. No fixture or device of any description for the use of water shall be attached to the service pipe between the main and the meter, and all water used must first pass through the meter.

§ 205-16. Establishment of water rates.

The rates payable for water supplied by the Village of Alden may be designated as water rents or other water charges and shall be established from time to time by the Village Board of Trustees,[7] as authorized by the laws of New York State or applicable local law. These rates shall include any fees or charges associated with the supply of water to private properties, as specified in the schedule of fees.

§ 205-17. Payment of bills; late payment.

All water bills shall be paid at the office of the Village Clerk. A penalty, as determined by the Board of Trustees from time to time,[8] shall be added to the amount of each bill which has not been paid within twenty (20) days after the date of billing. When bills are not paid within such time, the water may be shut off by the village as specified in the water shutoff procedure of the Village of Alden.[9] The water shall not be turned on until

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[7] Editor's Note: See Ch. A220, Fees.
[8] Editor's Note: See Ch. A220, Fees.
[9] Editor's Note: The water shutoff procedure is on file in the Village Clerk's Office.

all amounts due have been paid, including a charge for shutting off and resuming the water supply. Such charge is to be determined by resolution of the Board of Trustees at its annual organizational meeting.

§ 205-18. Use of water at construction sites.

The water rent or charge for water supplied during the construction of any building, dwelling, structure or improvement, including sidewalks, curbs or driveways, shall be metered, and the metered rate shall apply. A minimum deposit established from time to time by resolution of the Board of Trustees[10] shall be paid with the request for a temporary installation, which deposit includes a charge for the meter installation and any damage to the meter. Such amount as not required for water consumed and the charge[11] will be returned to the applicant upon completion of such construction.

§ 205-19. Right of access.

The Superintendent of Public Works or his/her designee(s) shall, at all reasonable hours, have free access to all parts of premises to which water is supplied for the purpose of inspection, with proper identification stating the person's affiliation with the village, examination of fixtures and other investigation, and all persons using water must, at all times, frankly and with no concealment, answer all questions relating to the water consumption.

§ 205-20. Inspection upon sale of property. [Amended 6-23-2011 by L.L. No. 9-2011]

It shall be the responsibility of the owner of any property to provide notice of the transfer of ownership of any real property whether by sale, exchange, testamentary transfer, intestacy transfer, or some other means of transfer of real property within the Village of Alden to the Superintendent of Public Works prior to the closing and/or transfer of title of the property. The purpose of this notice is to allow an inspection of such premises by the Superintendent of Public Works or his/her designee. Such inspection will be for the purpose of verifying that all water service connections are in accordance with all local, county, state, and federal regulations. Such inspection shall be undertaken during regular business hours no later than thirty (30) calendar days prior to any closing and/or transfer of title. In the event that deficiencies are found, the Superintendent of Public Works shall be notified of the completion of such work to remedy said deficiencies and a final inspection shall take place no later than five (5) days prior to such closing and/or transfer of title.

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[10] **Editor's Note: See Ch. A220, Fees.**
[11] **Editor's Note: See Ch. A220, Fees.**

§ 205-21. Taking water from fire hydrants; prosecution.

Any person or persons, other than those authorized by the Village Board of Trustees, who shall open or take water from any fire hydrant or who shall maliciously or willfully injure or destroy any fire hydrant or other property in connection with the waterworks system will be held for all costs and charges therefor and will be prosecuted to the full extent of the law.

§ 205-22. Lien for rents and charges.

All water rents, charges, penalties and interest thereon and all charges for tapping, connecting and disconnecting and any other charges provided for by this or other law shall be a lien on the real property upon which the water is used, and such lien shall be prior and superior to every other lien or claim except the lien of an existing tax. The Board of Trustees of the Village of Alden may certify to the Village Clerk the amount of any such lien which has not been paid at the time and in the manner prescribed by such Board, with a description of the real property affected thereby, and the Village Board of Trustees may include such amount in the annual tax levy and shall have such levy made upon the real property affected herein.

§ 205-23. Enforcement authority.

The Superintendent of Public Works is hereby authorized and directed to enforce this chapter and issue appearance tickets for violations of this chapter.

§ 205-24. Penalties for offenses.

Any person or persons, firm or corporation that violates any provisions of this chapter shall be punishable by a fine of two hundred fifty dollars ($250.00) or imprisonment for up to fifteen (15) days, or both.

Chapter 208

WIND ENERGY CONSERVATION SYSTEMS

§ 208-1.	Title.
§ 208-2.	Purpose.
§ 208-3.	Definitions.
§ 208-4.	Land use tables.
§ 208-5.	Height regulations.
§ 208-6.	Applications process for utility-scale systems.
§ 208-7.	Criteria for approval of utility-scale systems.
§ 208-8.	Decommissioning and site restoration plan; bond required.
§ 208-9.	Effect on local roads; bond.
§ 208-10.	Designated collection days.
§ 208-11.	Receptacles; placement at curb.
§ 208-12.	Junk; abandoned vehicles.
§ 208-13.	Authorized collectors.
§ 208-14.	Ownership of recyclables placed for collection.
§ 208-15.	Refusal by collector to remove.
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§ 208-17.	Issuance of permits; fees.
§ 208-18.	Collector stickers.
§ 208-19.	Denial of applications.
§ 208-20.	Liability.
§ 208-21.	Application for permit.
§ 208-22.	Reports.
§ 208-23.	Unacceptable waste.
§ 208-24.	Inspection of collection vehicles and containers.
§ 208-25.	Enforcement authority; issuance of tickets.
§ 208-26.	Failure to comply.
§ 208-27.	Penalties for offenses.
§ 208-28.	Other remedies.
§ 208-29.	Superintendent of Public Works to prepare rules and regulations.
§ 208-30.	Severability.

[HISTORY: Adopted by the Board of Trustees of the Village of Alden 2-9-2012 as L.L. No. 5-2012. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Fees -- See Ch. A220.

§ 208-1. Title.

This chapter shall be known as the "Wind Energy Conservation Systems Law of the Village of Alden, New York."

§ 208-2. Purpose.

The purpose of this local law for wind energy conversion systems (WECS) is to ensure that the development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Village. The Village of Alden recognizes that wind energy is an abundant, renewable and nonpolluting energy resource of the Village and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease air and water pollution that results from the use of conventional energy sources.

§ 208-3. Definitions.

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

HEIGHT -- When referring to a tower or other structure, the height shall be measured from existing or natural grade, whichever is lower, to the highest point on the tower or other structure, including the base pad and any antenna. The height of a WECS shall be measured from such grade to the apex of the blade in the vertical position.

SITE -- The physical location of a WECS, including the related tower and transmission equipment.

SMALL-SCALE (NONCOMMERCIAL) WIND ENERGY CONVERSION SYSTEM -- A wind energy conversion system consisting of one wind turbine that is incidental and subordinate to another use on the same parcel and that supplies electrical power solely for on-site use, except that when a parcel on which a small-scale WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the small-scale WECS, and not presently needed for on-site use, may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

SWEPT AREA -- The largest area of the WECS which extracts energy from the wind stream. In a conventional propeller-type WECS, there is a direct relationship

between swept area and the rotor diameter.

TOWER -- The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.

TOWER HEIGHT -- The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

UTILITY-SCALE (COMMERCIAL) WIND ENERGY CONVERSION SYSTEM -- A wind energy conversion system that is intended solely to generate electrical power for sale to the power grid.

WIND ENERGY CONVERSION SYSTEM (WECS) -- Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers and/or other maintenance or control facilities or other components used in the system. A WECS may be either a utility-scale wind energy conversion system or a small-scale wind energy conversion system.

WIND ENERGY FACILITY -- Any wind energy conversion system or wind measurement tower, including related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY SYSTEM -- The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.

WIND MEASUREMENT TOWER -- A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

§ 208-4. Land use tables.

Land use tables referenced herein shall pertain to utility-scale wind energy conversion systems in the Industrial District requiring a special use permit.

§ 208-5. Height regulations.

Height shall be in compliance with all fall zone limitations set forth in Chapter 193, Telecommunications.

§ 208-6. Application process for utility-scale systems.

A. Prior to construction of any utility-scale WECS, the project proponent shall first obtain site plan approval from the Village of Alden Planning Board, a building permit from the Building Inspector and a special use permit from the Board of Trustees. A detailed host agreement must also be submitted.

B. Initial application materials. All applications for a utility-scale WECS shall include the following information:

(1) Name and address of the applicant.

(2) Evidence that the applicant is the owner of the property or has the written permission of the owner to make such an application.

(3) A site plan drawn in sufficient detail to show the following:

(a) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.

(b) Utility lines, both aboveground and below-ground, within a radius equal to the proposed tower height, including the blades. Utility lines currently in place must be shown in the site plan.

(c) Property lot lines and the location and dimensions of all existing structures and uses on the site within 1,000 feet of the wind energy conversion systems.

(d) Surrounding land uses and all off-site structures within 1,000 feet, or 2.25 times the tower height, whichever is greater, of the wind energy conversion systems.

(e) Description of the various structural components of the tower construction, including the base and footing.

(f) Existing topography.

(g) Proposed plan for grading and removal of natural vegetation.

(h) Name, address and policy number of any insurance covering such structure;

(i) Name and address of any bonding company insuring the removal of such structure in the event of abandonment.

(4) A utility-scale WECS shall be treated as a Type I action under the State Environmental Quality Review Act and shall require the use of a full environmental assessment form.

(5) Notification of application for WECS to neighbors residing within 1,000 feet of the proposed location. Such notification must be made by certified mail, return receipt requested or hand delivered with the signature of the resident.

(6) Such additional information as may be reasonably required by the Village Engineer, Village Board and Planning Board for an adequate assessment of the proposed project.

C. Studies and information required prior to decision on the application.

(1) After a review of the environmental assessment form and the proposed project, the Village Board, upon the recommendation from the Planning Board, shall provide direction to the applicant on the methodology and parameters of the studies to be provided below:

(a) Proposed plan for site restoration after construction, prepared according to New York State Department of Agriculture and Markets and New York State Department of Environmental Conservation guidelines.

(b) Plan for ingress and egress to the proposed project site, including:

[1] A description of the access route from the nearest state-, county- and/or Village-maintained roads.

[2] Road surface material, stating the type and amount of surface cover.

[3] Width of a minimum of 30 feet and length of access route.

[4] Dust control procedures during construction and

transportation.

[5] A road maintenance schedule or program.

(c) Detailed construction plan, including but not limited to a construction schedule, hours of operation, a designation of heavy haul routes, a list of material equipment and loads to be transported; identification of temporary facilities intended to be constructed and a contact representative in the field with a name and phone number.

(d) Erosion and sediment control plan. [A stormwater pollution prevention plan (SWPPP) will meet this requirement.]

(e) Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of each utility-scale wind turbine model, each tower and electrical transmission equipment.

(f) Photographs and detailed drawings of each wind turbine model, including the tower and foundation.

(g) Visual assessment, including a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Village Board, with recommendation from the Planning Board shall determine which viewpoints the visual assessment shall include.

(h) Noise analysis. A noise analysis shall be furnished, which shall include the following:

[1] A description and map of the project's noise-producing features, including the range of noise levels expected and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone and repetitive/impulsive sound.

[2] A description and map of the noise-sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities,

within 1,000 feet, or 2.25 times the height, of the proposed facilities.

[3] A survey and report prepared by a qualified professional that analyzes the preexisting ambient sound level (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction and analyses at affected sensitive noise receptors located within 1,500 feet of the turbine, as identified by the Village Board, with recommendation from the Planning Board.

[4] A description and map showing the potential noise impacts, including estimates of expected noise impacts from both construction and operation and estimates of expected noise levels at sensitive receptor locations.

[5] A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors, consistent with the requirements of this chapter.

[6] Manufacturers' noise-design and field-testing data, both audible [dB(A)], and low frequency (deep bass vibration), for all proposed structures.

(i) A geotechnical report shall be furnished which shall, at a minimum, include the following:

[1] Soil and geologic characteristics of the site, based on on-site sampling and testing, to provide an assessment of the soil suitability for construction of the proposed WECS.

[2] Foundation design criteria for all proposed structures.

[3] Slope stability analysis.

[4] Grading criteria for ground preparation, cuts and fills and soil compaction.

(j) Engineer's report.

[1] Engineer's report, prepared by a professional engineer licensed in New York State, which provides information regarding the following potential risks:

[a] Ice-throw calculations: a report that calculates the maximum distance that ice from the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. The basis of the calculation and all assumptions must be disclosed.

[b] Blade-throw calculations: a report that calculates the maximum distance that pieces of the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. The basis of the calculation and all assumptions must be disclosed.

[c] Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand and the potential risk assessment for inhabitants and structures, including all assumptions.

[d] Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind-loading requirements for structures or as established by the New York State Building Code.

[2] The results of the engineer's report shall be used to determine the adequacy of setbacks from the property line to mitigate any effects from potential

ice throw, tower failure, or blade throw.

(k) Lighting plan. The applicant shall submit a lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include, but is not limited to, the planned number and location of lights, light color, whether any such lights will be flashing and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.

(l) Shadow flicker study. The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problem.

(m) Study of potential impacts to birds and bats using methodology approved by the New York State Department of Conservation or another agency acceptable to the Village Board, with recommendation from the Planning Board.

(n) Decommissioning and site restoration plan and decommissioning bond plan.

(o) FAA notification: a copy of written notification to the Federal Aviation Administration.

(p) Utility notification: utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

(q) Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.

(r) Other information: such additional information as may be reasonably required by the Village Engineer, Village Board

and Planning Board for an adequate assessment of the proposed project.

(2) The Village Board, with recommendation from the Planning Board may determine that not all of these application materials are necessary for a particular proposed project.

D. State environmental quality review (SEQR). Pursuant to Section 617.13 of New York State Environmental Quality Review Regulations, the Village may hire consultants to assist the Planning Board in its review of the potential impacts of a proposed project and the assessment of impacts provided by the applicant. The Village will charge the applicant for the cost of such consultant to the extent allowed herein.

§ 208-7. Criteria for approval of utility-scale systems.

A. The Village Board, with recommendation from the Planning Board, shall use the following criteria to evaluate all utility-scale wind energy conversion systems:

(1) Setbacks. All utility-scale WECS shall comply with the following setbacks:

(a) All wind turbines and towers shall be set back from property lines a minimum of 1.5 times the height of the structure, including to the tip of the blade, excluding adjoining lot lines where both lots are part of the proposed project.

(b) All wind turbines and towers shall be set back a minimum of 1,500 feet from the boundaries of any R-1 and/or R-2 Zoning District.

(c) All wind turbines and towers shall be set back a minimum of 1,000 feet, or 2.25 times the tower height, whichever is greater, from any residence that exists at the time that an application for a WECS is made to the Village. For purposes of this subsection, a residence shall be considered to be in existence if a building permit for such structure has been issued by the Building Inspector, even if construction is not yet completed and the residence is not yet occupied.

(d) All wind turbines and towers shall be set back from all structures and buildings, other than residences, that are in existence at the time of the application, or for which a building permit has been

issued, a minimum of 1.5 times the height of the tower, including to the tip of the blade. The Village Board, with recommendation from the Planning Board, may, at its discretion, exempt minor structures such as walls, fences, toolsheds and similar minor structures from this setback requirement.

(e) All wind turbines and towers shall be set back from any public road right-of-way a minimum of 1.5 times the height of the structure, including to the tip of the blade.

(2) Noise. A utility-scale WECS shall not be approved unless the applicant demonstrates that the proposed project complies with the following noise requirements. In order to enable the Village Board, with recommendation from the Planning Board, to make this determination, the applicant shall submit the noise assessment required in Section 5(C)(1)(h).

(a) Audible noise standards.

[1] Audible noise due to wind turbine operations shall not exceed 45 dB(A) for more than five minutes out of any one-hour time period or exceed 50 dB(A) for any time period at the boundary of the proposed project site.

[2] The sound level from the operation of a utility-scale WECS shall not increase, by more than three dB(A), the nighttime or daytime ambient sound level at any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities, within 1,500 feet of the turbine and/or at other sensitive receptor points that may be identified by the Village Board with recommendation from the Planning Board.

(b) Low-frequency noise. A utility-scale wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home or other sensitive noise receptor.

(c) Noise setbacks. The Village Board, with recommendation from the Planning Board, may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.

(d) Within one year of commencement of commercial operation, the project proponent shall submit a noise study of operational conditions to ensure that the project is in compliance with the standards of this section. The study shall be based on receptor points identified during the application review process. In addition to this noise study, the Village Board, with recommendation from the Planning Board, may require periodic additional noise studies.

(3) Noise and setback easements. In the event that a utility-scale WECS does not meet a setback requirement or exceeds the noise criteria of this chapter, the Village Board, with written recommendation from the Planning Board, may grant a waiver of the setback and/or noise criteria, subject to the following requirements:

(a) Each application shall be accompanied by proof of service of notice of the requested permit and waiver upon all the landowners immediately adjacent to the subject premises, extending 500 feet therefrom in all directions, stating that the noise and/or setback limitations contained in Chapter 210, Zoning, of the Code of the Village, may exceed the maximum limits otherwise allowed.

(b) In the form required for an easement, the waiver in regard to the setback shall be recorded in the Erie County Clerk's Office describing the benefitted and burdened properties in order to advise subsequent owners of the burdened properties of such waiver. Such easement shall be permanent and may not be amended or revoked without the consent of the Village Board, with the recommendation from the Planning Board, which waiver and consent shall be granted upon either the completion of the decommissioning of the benefitted WECS in accordance with this chapter or the acquisition of the burdened parcel by the owner of the benefitted parcel or the WECS.

(4) Interference with television, microwave and radio reception. The applicant must submit information that the proposed construction of the utility-scale WECS will not cause interference with microwave transmissions, cellular transmissions, residential television or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure and specific measures proposed to mitigate interference impacts.

(5) Interference with aviation navigational systems.

(a) The applicant shall provide documentation that the proposed WECS will not cause interference with the operation of any aviation facility.

(b) The applicant shall provide documentation that the proposed WECS complies with all Federal Aviation Administration (FAA) regulations.

(c) Locking mechanisms to limit radar interference required. All utility-scale WECS shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference. This provision does not apply while the WECS is free-wheeling during start-up and shutdown. The Village Board, with recommendation from the Planning Board, may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference will be caused by the utility-scale WECS.

(6) Safety and security requirements.

(a) Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

(b) Grounding. All structures shall be grounded according to applicable electrical codes.

(c) Wiring. All wiring between the wind turbines and the wind energy facility substation shall be placed underground unless the Village Board, with recommendation from the Planning Board, determines that this is not prudent or practicable due to site-specific constraints. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.

(d) Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.

(e) Climbability. Wind turbine towers shall not be climbable up to 25 feet above ground level.

(f) Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.

(g) Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers of the owner of the wind turbine in accordance with local, state and federal codes.

(7) Ice throw. The Village Board, with recommendation from the Planning Board, shall determine the acceptable ice-throw range based on the activities in the area, location and calculations of the ice throw.

(8) Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:

(a) Fireproof or fire-resistant building materials.

(b) Buffers or fire-retardant landscaping.

(c) Availability of water.

(d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment or transmission equipment without regular human occupancy.

(e) Provision of training and fire-fighting equipment for local fire-protection personnel and/or other emergency responders.

(9) Impact on wildlife species and habitat. Development and operation of a utility-scale wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife or plant species or their critical habitats, or other significant habitats as identified in the Village of

Alden Master Plan and/or the studies and plans of other regional agencies, based on criteria established by the federal or state regulatory agencies, as determined by the Village Board with recommendation from the Planning Board during SEQRA review. The impact of a utility-scale WECS on migratory birds and bats shall be evaluated and mitigated based on SEQRA findings.

(10) Visual impact.

(a) No advertising sign or logo shall be placed or painted on any part of any utility-scale WECS.

(b) Wind turbines shall be painted an unobtrusive (e.g., such as white, gray or beige) color that is nonreflective. In order to reduce any daytime lighting requirements by the FAA, the Village Board, with recommendation from the Planning Board, may require consultation with the FAA to determine an appropriate color for the structures.

(c) Where more than one wind turbine is proposed, the project shall use wind turbines whose appearance is similar, throughout the project, to provide reasonable uniformity in terms of overall size, geometry and rotational speed.

(d) Unless required by the FAA or by the Village Board with recommendation from the Planning Board, no lighting shall be installed on the WECS turbine or tower except for ground-level security lighting.

(11) Shadow flicker. The WECS shall be designed such that the project shall minimize shadow flicker onto adjacent existing residences. Mitigation measures, which may include landscaping, shall be incorporated into any special use permit approval. The required shadow flicker study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or minimize the problem.

§ 208-8. Decommissioning and site restoration plan; bond required.

A. The applicant shall submit a decommissioning and site restoration plan, including cost estimate, to the Village Board, with recommendation from the Planning Board, for its review and approval prior to the approval of any special use permit. The restoration plan shall identify the specific properties it applies to and shall

indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to 3.5 feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the utility-scale WECS. The restoration shall reflect the site-specific character, including topography, vegetation, drainage and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan. The decommissioning plan shall include information regarding the anticipated life of the project. Any variation from the submitted decommissioning plan must be approved by the Village Board, with recommendation from the Planning Board.

B. As a condition of special use permit approval, the Village Board, with recommendation from the Planning Board, shall require the project sponsor to execute and file with the Village Clerk a bond, or other form of security acceptable to the Village Board and Village Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower, wind turbine and other components of the WECS and the restoration of the site subsequent to such removal, in accordance with the approved decommissioning and site restoration plan.

C. The sufficiency of such bond shall be confirmed at least every five years by an analysis and report of the cost of removal and site restoration, such report to be prepared by a New York State licensed engineer. The project sponsor/operator shall pay the cost of such report. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and site restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report. The report and increased amount of the bond shall be filed with the Village Clerk.

D. All bond requirements shall be fully funded before a building permit is issued.

E. The decommissioning and site restoration bond shall be in effect for the entire duration of the special use permit.

F. The applicant and his/her successors or assigns in interest shall maintain the required bond funds for the duration of the special use permit.

§ 208-9. Effect on local roads; bond requirements.

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§ 208-10. Certifications required.

The applicant shall provide the following certifications:

A. Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the building code that has been adopted in New York State. This shall be provided prior to the issuance of the special use permit.

B. Certification post-construction. After completion of construction of the WECS, the applicant shall provide post-construction certification from a licensed professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been completed according to the design plans. This certification shall be provided to the Building Inspector and Village Engineer and shall be maintained in a permanent file.

C. Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the electric code that has been adopted by New York State. This shall be provided prior to the issuance of the special use permit.

D. Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices. This shall be provided prior to the issuance of the special use permit.

E. Certification of seismic design. The applicant shall provide post-construction certification from a licensed professional engineer registered in New York State that the design and construction protects against anticipated seismic hazards.

§ 208-11. Liability insurance requirements.

A. Prior to the issuance of a building permit, the project sponsor shall provide proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, that liability insurance has been obtained to cover damage or injury which might result from failure of the tower, turbine or other component of the WECS. Such policy shall provide coverage of not less than $3,000,000 and shall name the Village of Alden as co-insured. The sponsor shall provide the Village

annually with proof of continuing coverage in compliance with this requirement.

B. Liability insurance shall be carried for the life of the project through decommissioning. Proof of liability insurance shall be filed annually with the Village Clerk. Such policy shall provide coverage of not less than $3,000,000 and shall name the Village of Alden as co-insured. The sponsor shall provide the Village annually with proof of continuing coverage in compliance with this requirement.

§ 208-12. Transfer of ownership.

A. If the ownership of the WECS facility changes, the new owner shall present proof to the Village Clerk that all the required bonds and insurance policies remain in full force and effect. The new owner shall provide a written statement that he/she is aware of the conditions and requirements of the special use permit which continue to govern the operation of the facility.

B. In order to ensure compliance with this provision, the person/company to whom the special use permit is originally issued, and subsequent owners, shall provide notification to the Village Clerk 90 days prior to the change of ownership.

§ 208-13. Inspections; reports; fees.

A. Unless waived by the Village Board, with recommendation from the Planning Board, wind turbines or towers over 150 feet in height shall be inspected by a New York State licensed professional engineer, who has been approved by the Village, annually or at any other time upon a determination by the Village's Building Inspector and Village Engineer that the wind turbine, tower or pole may have sustained structural damage.

B. A copy of the inspection report shall be submitted to the Village's Building Inspector.

C. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

§ 208-14. Maintenance of system; permit revocation.

A. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. "Operational condition" includes meeting all noise requirements, all other standards and requirements of this chapter and other permit conditions.

B. Should a WECS become inoperative, or should any part of the WECS be damaged or become unsafe or should a WECS violate a permit condition or violate a standard or requirement of this chapter, the owner/operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer or Village Board may extend this period by another ninety-day period for a total period not to exceed 180 days.

C. Upon notice from the Code Enforcement Officer or Village Board that the WECS is not repaired or made operational or brought into permit compliance after said notice pursuant to Section 13(B) above, the Village Board shall hold a public hearing at which both the public and the owner/operator are given the opportunity to be heard and present evidence, including a plan to come into compliance. Following the close of the public hearing, the Village Board may either:

(1) Order compliance within a stated timeframe; or

(2) Revoke the special use permit and order removal of the WECS within 90 days and site remediation pursuant to the approved decommissioning and site restoration plan.

§ 208-15. Decommissioning; bond use.

A. Nonfunctional and/or inoperative WECS defined.

(1) If any utility-scale WECS remains nonfunctional or inoperative for a continuous period of one year, the permittee shall remove the WECS at his/her own expense and restore the site, in accordance with the approved decommissioning and site restoration plan. A utility-scale WECS shall be deemed nonfunctional and/or inoperative if it has not generated power within the preceding twelve months.

(2) The Code Enforcement Officer requires that the applicant quarterly submit documentation reporting the power output generated by each WECS.

B. Use of decommissioning bond.

(1) Any nonfunctional or inoperative WECS, or any WECS for which the special use permit has been revoked, shall be removed from the site, and the site restored in accordance with the approved decommissioning and site restoration plan, within 90 days of the date on which the facility becomes nonfunctional or inoperative, as defined above, or of the

revocation of the special use permit.

(2) If removal of the WECS is required and the applicant, permittee or successor fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the Village Board may contract for such removal and restoration and pay for the removal and restoration from the posted decommissioning and site restoration bond.

(3) If the bond is not sufficient, the Village shall charge the permit holder for the costs over and above the amount of the bond.

(4) If bond funds are used in reference to Section 14(B), the original bond amount must be restored within 90 days.

§ 208-16. Fees; host community agreements; escrow agreement.

All fees shall be determined by the Village Board. Nothing in this chapter shall be read as limiting the ability of the Village to enter into host community agreements with any applicant to compensate the Village for expenses or impacts on the community. The Village shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

§ 208-17. Planning Board action; granting of special use permits.

A. The Planning Board may recommend to the Village Board to grant the special use permit, deny the special use permit or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for each tower.

B. Prior to issuing a special use permit for a utility-scale WECS, the Planning Board shall make all of the following findings:

(1) The proposed utility-scale WECS project is consistent with the Village of Alden Code.

(2) The proposed utility-scale WECS project will not unreasonably interfere with the orderly land use and development plans of the Village of Alden.

(3) That the benefits to the applicant and the public of the proposed utility-

scale WECS project will exceed any burdens to the Village and residents therein.

(4) That the proposed utility-scale WECS project will not be detrimental to the public health, safety or welfare of the community.

(5) That the proposed utility-scale WECS project complies with all required provisions of the Village's Zoning

§ 208-18. WECS changes after special use permit approval; amendment required.

Any changes or alterations to the WECS, after approval of the special use permit and site plan, shall require an amendment to the special use permit. Such amendment shall be subject to all the requirements of this chapter.

§ 208-19. New York State Real Property Tax Law exemption.

The Village of Alden reserves the right, by local law, to provide that no exemption pursuant to the provisions of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.

§ 208-20. Application process for small-scale, non-commercial wind energy conservation systems.

A. Prior to construction of any small-scale WECS, the project proponent shall first obtain site plan approval from the Village of Alden Planning Board, a building permit from the Building Inspector and a special use permit from the Board of Trustees. A detailed host agreement must also be submitted.

B. Initial application materials. All applications for a small-scale WECS shall include the following information:

(1) Name and address of the applicant.

(2) Evidence that the applicant is the owner of the property or has the written permission of the owner to make such an application.

(3) A site plan drawn in sufficient detail to show the following:

(a) Location of the tower(s) on the site and the tower height, including

blades, rotor diameter and ground clearance.

(b) Utility lines, both aboveground and below-ground, within a radius equal to the proposed tower height, including the blades. Utility lines currently in place must be shown in the site plan.

(c) Property lot lines and the location and dimensions of all existing structures and uses on the site within 1,000 feet of the wind energy conversion systems.

(d) Surrounding land uses and all off-site structures within 1,000 feet, or 2.25 times the tower height, whichever is greater, of the wind energy conversion systems.

(e) Description of the various structural components of the tower construction, including the base and footing.

(f) Existing topography.

(g) Proposed plan for grading and removal of natural vegetation.

(h) Name, address and policy number of any insurance covering such structure;

(i) Name and address of any bonding company insuring the removal of such structure in the event of abandonment.

(4) A small-scale WECS shall be treated as a Type I action under the State Environmental Quality Review Act and shall require the use of a full environmental assessment form.

(5) Notification of application for WECS to neighbors residing within 1,000 feet of the proposed location. Such notification must be made by certified mail, return receipt requested or hand delivered with the signature of the resident.

(6) Such additional information as may be reasonably required by the Village Engineer, Village Board and Planning Board for an adequate assessment of the proposed project.

C. Studies and information required prior to decision on the application.

(1) After a review of the environmental assessment form and the proposed project, the Village Board, upon the recommendation from the Planning

Board, shall provide direction to the applicant on the methodology and parameters of the studies to be provided below:

(a) Proposed plan for site restoration after construction, prepared according to New York State Department of Agriculture and Markets and New York State Department of Environmental Conservation guidelines.

(b) Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of each small-scale wind turbine model, each tower and electrical transmission equipment.

(c) Photographs and detailed drawings of each wind turbine model, including the tower and foundation.

(d) Visual assessment, including a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Village Board, with recommendation from the Planning Board shall determine which viewpoints the visual assessment shall include.

(e) Noise analysis. A noise analysis shall be furnished, which shall include the following:

[1] A description and map of the project's noise-producing features, including the range of noise levels expected and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone and repetitive/impulsive sound.

[2] A description and map of the noise-sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities, within 1,000 feet, or 2.25 times the height, of the proposed facilities.

[3] A survey and report prepared by a qualified professional that analyzes the preexisting ambient sound level (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the

turbines, location of sensitive receptors relative to wind direction and analyses at affected sensitive noise receptors located within 1,500 feet of the turbine, as identified by the Village Board, with recommendation from the Planning Board.

[4] A description and map showing the potential noise impacts, including estimates of expected noise impacts from both construction and operation and estimates of expected noise levels at sensitive receptor locations.

[5] A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors, consistent with the requirements of this chapter.

[6] Manufacturers' noise-design and field-testing data, both audible [dB(A)], and low frequency (deep bass vibration), for all proposed structures.

(f) Engineer's report.

[1] Engineer's report, prepared by a professional engineer licensed in New York State, which provides information regarding the following potential risks:

[a] Ice-throw calculations: a report that calculates the maximum distance that ice from the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. The basis of the calculation and all assumptions must be disclosed.

[b] Blade-throw calculations: a report that calculates the maximum distance that pieces of the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. The basis of the calculation and all assumptions must be disclosed.

[c] Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand

and the potential risk assessment for inhabitants and structures, including all assumptions.

[d] Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind-loading requirements for structures or as established by the New York State Building Code.

[2] The results of the engineer's report shall be used to determine the adequacy of setbacks from the property line to mitigate any effects from potential ice throw, tower failure, or blade throw.

(g) Lighting plan. The applicant shall submit a lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include, but is not limited to, the planned number and location of lights, light color, whether any such lights will be flashing and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.

(h) Decommissioning and site restoration plan and decommissioning bond plan.

(i) FAA notification: a copy of written notification to the Federal Aviation Administration.

(j) Utility notification: utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

(k) Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.

(l) Other information: such additional information as may be reasonably required by the Village Engineer, Village Board and Planning Board for an adequate assessment of the proposed project.

(2) The Village Board, with recommendation from the Planning Board may

determine that not all of these application materials are necessary for a particular proposed project.

D. State environmental quality review (SEQR). Pursuant to Section 617.13 of New York State Environmental Quality Review Regulations, the Village may hire consultants to assist the Planning Board in its review of the potential impacts of a proposed project and the assessment of impacts provided by the applicant. The Village will charge the applicant for the cost of such consultant to the extent allowed herein.

§ 208-21. Criteria for approval of small-scale, non-commercial wind energy conservation systems.

A. The Village Board, with recommendation from the Planning Board, shall use the following criteria to evaluate all small-scale wind energy conversion systems:

(1) Setbacks. All small-scale WECS shall comply with the following setbacks:

(a) All wind turbines and towers shall be set back from property lines a minimum of 1.5 times the height of the structure, including to the tip of the blade, excluding adjoining lot lines where both lots are part of the proposed project.

(2) Interference with television, microwave and radio reception. The applicant must submit information that the proposed construction of the utility-scale WECS will not cause interference with microwave transmissions, cellular transmissions, residential television or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure and specific measures proposed to mitigate interference impacts.

(3) Interference with aviation navigational systems.

(a) The applicant shall provide documentation that the proposed WECS will not cause interference with the operation of any aviation facility.

(b) The applicant shall provide documentation that the proposed WECS complies with all Federal Aviation Administration (FAA) regulations.

(c) Locking mechanisms to limit radar interference required. All utility-scale WECS shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference. This provision does not apply while the WECS is free-wheeling during start-up and shutdown. The Village Board, with recommendation from the Planning Board, may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference will be caused by the utility-scale WECS.

(4) Safety and security requirements.

(a) Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

(b) Grounding. All structures shall be grounded according to applicable electrical codes.

(c) Wiring. All wiring between the wind turbines and the wind energy facility substation shall be placed underground unless the Village Board, with recommendation from the Planning Board, determines that this is not prudent or practicable due to site-specific constraints. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.

(d) Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.

(e) Climbability. Wind turbine towers shall not be climbable up to 25 feet above ground level.

(f) Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.

(g) Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers of the owner of the wind turbine in accordance with local, state and federal codes.

(5) Ice throw. The Village Board, with recommendation from the Planning Board, shall determine the acceptable ice-throw range based on the activities in the area, location and calculations of the ice throw.

(6) Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:

(a) Fireproof or fire-resistant building materials.

(b) Buffers or fire-retardant landscaping.

(c) Availability of water.

(d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment or transmission equipment without regular human occupancy.

(e) Provision of training and fire-fighting equipment for local fire-protection personnel and/or other emergency responders.

(7) Impact on wildlife species and habitat. Development and operation of a small-scale wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife or plant species or their critical habitats, or other significant habitats as identified in the Village of Alden Master Plan and/or the studies and plans of other regional agencies, based on criteria established by the federal or state regulatory agencies, as determined by the Village Board with recommendation from the Planning Board during SEQRA review. The impact of a small-scale WECS on migratory birds and bats shall be evaluated and mitigated based on SEQRA findings.

(8) Visual impact.

(a) No advertising sign or logo shall be placed or painted on any part of any small-scale WECS.

(b) Wind turbines shall be painted an unobtrusive (e.g., such as white, gray or beige) color that is nonreflective. In order to reduce any daytime lighting requirements by the FAA, the Village Board, with recommendation from the Planning Board, may require consultation with the FAA to determine an appropriate color for the structures.

(c) Where more than one wind turbine is proposed, the project shall use wind turbines whose appearance is similar, throughout the project, to provide reasonable uniformity in terms of overall size, geometry and rotational speed.

(d) Unless required by the FAA or by the Village Board with recommendation from the Planning Board, no lighting shall be installed on the WECS turbine or tower except for ground-level security lighting.

(9) Shadow flicker. The WECS shall be designed such that the project shall minimize shadow flicker onto adjacent existing residences. Mitigation measures, which may include landscaping, shall be incorporated into any special use permit approval. The required shadow flicker study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or minimize the problem.

§ 208-22. Decommissioning and site restoration plan; bond required of small-scale non-commercial wind energy conservation systems.

A. The applicant shall submit a decommissioning and site restoration plan, including cost estimate, to the Village Board, with recommendation from the Planning Board, for its review and approval prior to the approval of any special use permit. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to 3.5 feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the utility-scale WECS. The restoration shall reflect the site-specific character, including topography, vegetation, drainage and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the

removal and site restoration plan. The decommissioning plan shall include information regarding the anticipated life of the project. Any variation from the submitted decommissioning plan must be approved by the Village Board, with recommendation from the Planning Board.

§ 208-23. Certifications required for small-scale, non-commercial wind energy conversion systems.

The applicant shall provide the following certifications:

A. Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the building code that has been adopted in New York State. This shall be provided prior to the issuance of the special use permit.

B. Certification post-construction. After completion of construction of the WECS, the applicant shall provide post-construction certification from a licensed professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been completed according to the design plans. This certification shall be provided to the Building Inspector and Village Engineer and shall be maintained in a permanent file.

C. Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the electric code that has been adopted by New York State. This shall be provided prior to the issuance of the special use permit.

D. Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices. This shall be provided prior to the issuance of the special use permit.

E. Certification of seismic design. The applicant shall provide post-construction certification from a licensed professional engineer registered in New York State that the design and construction protects against anticipated seismic hazards.

§ 208-24. Transfer of ownership for small-scale, non-commercial wind energy conversion systems.

A. In order to ensure compliance with this provision, the person/company to whom the special use permit is originally issued, and subsequent owners, shall provide notification to the Village Clerk 90 days prior to the change of ownership.

§ 208-25. Maintenance of system; permit revocation of small-scale, non-commercial wind energy conversion systems.

A. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. "Operational condition" includes meeting all noise requirements, all other standards and requirements of this chapter and other permit conditions.

B. Should a WECS become inoperative, or should any part of the WECS be damaged or become unsafe or should a WECS violate a permit condition or violate a standard or requirement of this chapter, the owner/operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer or Village Board may extend this period by another ninety-day period for a total period not to exceed 180 days.

C. Upon notice from the Code Enforcement Officer or Village Board that the WECS is not repaired or made operational or brought into permit compliance after said notice pursuant to Section 13(B) above, the Village Board shall hold a public hearing at which both the public and the owner/operator are given the opportunity to be heard and present evidence, including a plan to come into compliance. Following the close of the public hearing, the Village Board may either:

(1) Order compliance within a stated timeframe; or

(2) Revoke the special use permit and order removal of the WECS within 90 days and site remediation pursuant to the approved decommissioning and site restoration plan.

§ 208-26. Decommissioning; bond use of small-scale, non-commercial wind energy conversion systems.

A. Nonfunctional and/or inoperative WECS defined.

(1) If any small-scale WECS remains nonfunctional or inoperative for a continuous period of one year, the permittee shall remove the WECS at his/her own expense and restore the site, in accordance with the approved decommissioning and site restoration plan. A small-scale WECS shall be deemed nonfunctional and/or inoperative if it has not generated power within the preceding twelve months.

§ 208-27. Penalties for offenses.

A. A violation of this chapter is hereby declared to be an offense punishable by a fine not to exceed two hundred fifty dollars ($250.00) and/or imprisonment not to exceed fifteen (15) days. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense continues, a separate and distinct offense hereunder.

B. Any penalties or damages recovered or imposed under this chapter are in addition to any other remedies available at law or equity.

§ 208-28. Other remedies.

Nothing herein shall prevent the Village Justice from ordering any other form of remedial action or making any other such determination consistent with the purposes of this chapter in addition to the fines set forth herein.

§ 208-29. Severability.

If a court of competent jurisdiction finds any provision of this chapter or the corresponding rules and regulations invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of this chapter and the corresponding rules and regulations shall continue to be separate and fully effective.

Chapter 210

ZONING

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 6-27-1994 as L.L. No. 1-1994. Amended in its entirety 2-13-2003 by L.L. No. 21-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention -- See Ch. 78.
Flood damage prevention -- See Ch. 105.
Licenses and permits -- See Ch. 125.
Mobile home parks -- See Ch. 131.
Stormwater management – erosion & sediment control --See Ch. 175.
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Subdivision of land -- See Ch. 181.
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ARTICLE I
General Provisions

§ 210-1. Title.

This chapter and the corresponding rules and regulations shall be known and may be cited as "Chapter 210, Zoning, of the Code of the Village of Alden, Erie County, New York."

§ 210-2. Intent.

The purpose of this chapter, together with the corresponding rules and regulations, and the intent of the legislative authority in its adoption is to promote and protect to the fullest extent permissible the environment of the village and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating the bulk, height, design, lot coverage and location of structures; by regulating and limiting population density; and, for the aforesaid purposes, to divide the land within the limits of the village into districts of such number and dimensions in accordance with the objectives of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Chapter.

§ 210-3. Conflict with other provisions.

The provisions of this chapter shall not annul or in any way interfere with existing deed or plat restrictions, easements or other agreements between persons, codes, laws, rules, regulations or permits previously adopted or issued, except those ordinances or sections thereof which are contrary to and in conflict with this chapter.

§ 210-4. Greater restrictions to prevail.

Wherever this chapter imposes greater restrictions upon the use of structures or land, the height or bulk of buildings or requires larger land or building areas, yards or other open spaces than are otherwise required or imposed by deed or plat restrictions or laws, this chapter shall control; and conversely, other regulations shall control where they impose greater restrictions than this chapter; and for that purpose, it shall not annul, modify or impair the provisions of any existing deed or plat restrictions, easements or other agreements.

§ 210-5. Interpretation.

In interpreting and applying the provisions of this chapter, its provisions shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare and to accomplish the intent thereof. Except as specifically provided herein, it is not intended by the adoption of this chapter to repeal, abrogate or annul any existing provision of any law previously adopted relating to the use of structures and land and the design, erection, alteration or maintenance of structures thereon. Titles and headings have been inserted for convenience of reference and are not intended to define or limit the scope of or otherwise affect any provision in this chapter.

§ 210-6. Severability.

If a court of competent jurisdiction finds any provision of this chapter or the corresponding rules and regulations invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of this chapter and the corresponding rules and regulations shall continue to be separately and fully effective.

§ 210-7. Applicability.

If a court of competent jurisdiction finds the application of any provision of this chapter or the corresponding rules and regulations to any building, other structure or tract of land to be invalid, in whole or in part, the effect of such decision shall be limited to the person, property or situation involved in the controversy, and the application of any such provision of any other person, property or situation shall not be affected.

ARTICLE II
Terminology

§ 210-8. Rules of construction.

The following rules of construction of language shall apply to the text of this chapter:

A. Words used in the present tense include future tense.

B. Words used in the singular include the plural, and words used in the plural include the singular.

C. The word "lot" includes the word "plat" or "parcel."

D. The word "person" includes an individual, firm or corporation.

E. The word "shall" is always mandatory.

F. The word "may" is permissive.

G. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."

H. Any reference to an "R District" shall be interpreted to mean any district with the prefix letter "R."

I. A "building" or "structure" includes any part thereof.

J. Any reference to a "C District" shall be interpreted to mean any district with the prefix letter "C."

K. Any reference to an "I District" shall be interpreted to mean any district with the prefix letter "I."

L. "And" indicates that all connected items, conditions, provisions or events shall apply.

M. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

N. "Either...or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

§ 210-9. Word usage; definitions.

A. Word usage. The word "shall" is mandatory; the word "may" is permissive; "should" is to be interpreted as expressing that which is desired and essential.

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

ACCESSORY STRUCTURE -- A subordinate structure located on the same lot with the principal structure occupied by or devoted to an accessory use. When an "accessory structure" is attached to the principal structure in a substantial manner, as by a roof, such "accessory structure" shall be considered part of the principal structure.

ACCESSORY USE -- A use which is incidental and subordinate to the principal use of the property, located on the same lot therewith.

ALTERATIONS -- As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AREA VARIANCE -- The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

ARTERIAL STREET -- Provides for the through traffic movement between areas and across the village and direct access to abutting property; subject to necessary control of entrances, exits and curb use.

BASEMENT -- That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

BED-AND-BREAKFAST HOMES -- The furnishing of meals and/or living accommodations for five (5) or more persons on a daily basis for compensation.

BOARDINGHOUSE or ROOMING HOUSE -- The furnishing of meals and/or living accommodations for five (5) or more persons on a weekly or longer time basis for compensation.

BUFFER -- A strip of land required to separate different land uses from each other in order to:

(1) Eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs and unsightly buildings or parking areas; or

(2) Provide spacing to reduce adverse impacts of noise, odor or danger from fires or explosions.

BUILDABLE AREA -- That portion of the lot remaining after required yards have been provided.

BUILDING -- Any improvement having a roof supported by columns or walls for the housing or enclosure of persons, animals or property.

BUILDING AREA -- The maximum horizontal projected area measured from the exterior of the walls of the building and its accessory building(s).

BUILDING, DETACHED -- A building surrounded by open space on the same lot.

BUILDING HEIGHT -- See “height”.

BUILDING INSPECTOR -- The Building Inspector of the Village of Alden, New York.

BUILDING, PRINCIPAL -- A building in which the main or principal use of the lot is conducted.

BUILDING (SETBACK) LINE -- A line parallel to the street line, between which line and the street line no structure may be built.

CERTIFICATE OF OCCUPANCY -- As defined in Chapter 78 of this Code.

CLERK -- The Village Clerk of Alden, New York.

CLUB (PRIVATE) -- A not-for-profit organization, not including a fraternity or sorority house, whose premises are restricted to its members and their guests.

COLLECTOR STREET -- Provides for traffic movement between major arterials and local streets and direct access to abutting property.

CONDOMINIUM -- A combination of ownership in a building or structure, together with an interest in common facilities, as governed by the terms of the Real Property Law of the State of New York.

COOPERATIVE APARTMENTS -- Group ownership of multi-unit property, where title to the entire property is held by a corporation.

COUNTY -- Erie County, New York.

COURT, INNER -- An unroofed, open space enclosed by four (4) outer walls.

COURT, OUTER -- The same as an inner court, but with one (1) side open to a yard.
DEVELOPMENT AREA -- An area of land permitted by this chapter to be developed by a single owner or group of owners, acting jointly, which may consist of a parcel or assembled parcels planned and developed as an entity.

DWELLING -- A building or portion thereof designed or occupied exclusively for residential and permitted accessory uses.

DWELLING GROUP -- A group of two (2) or more dwellings located on the same lot and having any yard or open space in common.

DWELLING UNIT -- A room or group of rooms within a building forming a single habitable unit which may be occupied by a single family for living, sleeping, cooking and eating purposes. A dwelling unit may be attached or detached.

ENGINEER -- The Village Engineer of Alden, New York.

EXPRESSWAY -- A divided arterial highway for through traffic to which access from the abutting properties is prohibited and all street crossings are made by grade-separated intersections.

FAMILY -- Any number of individuals related by blood, marriage or adoption or individuals who are not so related, living together as a single housekeeping unit.

FARM -- A single parcel of land five (5) acres or more in size on which an owner or tenant carries on agricultural or dairying pursuits or the raising of livestock or poultry or the keeping of bees.

FENCE -- Any barrier enclosing or bordering a field, yard or piece of property which is used to prevent entrance or egress, to confine or to mark a boundary.

FLAMMABLE LIQUIDS -- Liquids having a flash point below two hundred degrees Fahrenheit (200° F), closed cup tester. Class 1 flammable liquids (e.g., gasoline, ether, liquid petroleum gas) are those having a flash point below twenty-five degrees Fahrenheit (25° F). Class 2 flammable liquids (e.g., alcohol, ethyl or methyl acetate) are those having a flash point below seventy degrees Fahrenheit (70° F) but not below twenty-five degrees Fahrenheit (25° F).

FLOOR AREA -- The total horizontal area of a building as outlined by its exterior main walls, not including built-in or attached garages, basements, crawl spaces, porches or terraces.

FRATERNITY OR SORORITY HOUSE -- A dwelling maintained exclusively for members of the fraternity or sorority enrolled in an academic college, university or other educational institution.

FRONT LOT LINE -- The line established at the edge of the front right-of-way of a property, or the front edge of the property line where it does not immediately adjoin a right-of-way. In the case of corner lots, the street of the street address in the tax rolls will be used as the right-of-way or the edge of the property line for determining this front lot line.

GARAGE, PRIVATE -- An enclosed structure accessory to a principal building for the purpose of storing motor vehicles and/or items incidental to the main building.

GARAGE, REPAIR -- A main or accessory building used or designed for repair purposes; a service garage, if accessory to an automobile salesroom.

GARAGE, STORAGE -- A main or accessory enclosed building with doors, other than a private garage, used for parking or temporary storage.

GASOLINE SERVICE STATION:

(1) A place, other than a collision shop or dismantler, where gasoline, oil, grease, batteries, tires and motor vehicle accessories may be supplied and dispensed at retail and where, in addition, the following services may be rendered and sales made:

(a) Sales and servicing of spark plugs, batteries and distributors and distributor parts.

(b) Tire servicing and repair, but not recapping or regrooving.

(c) Replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors and the like.

(d) Radiator cleaning and flushing.

(e) Washing and polishing and the sale of automotive washing and polishing materials.

(f) Greasing and lubrication.

(g) Providing and repairing of pumps and lines.

(h) Minor servicing and repair of carburetors.

(i) Wiring repairs.

(j) Adjusting and repairing brakes.

(k) Minor motor adjustments.

(l) Sale of beverages, packaged foods, tobacco and similar convenience goods.

(m) Provision of road maps and other informational material to customers; provision of rest room facilities.

(n) Trailer rental.

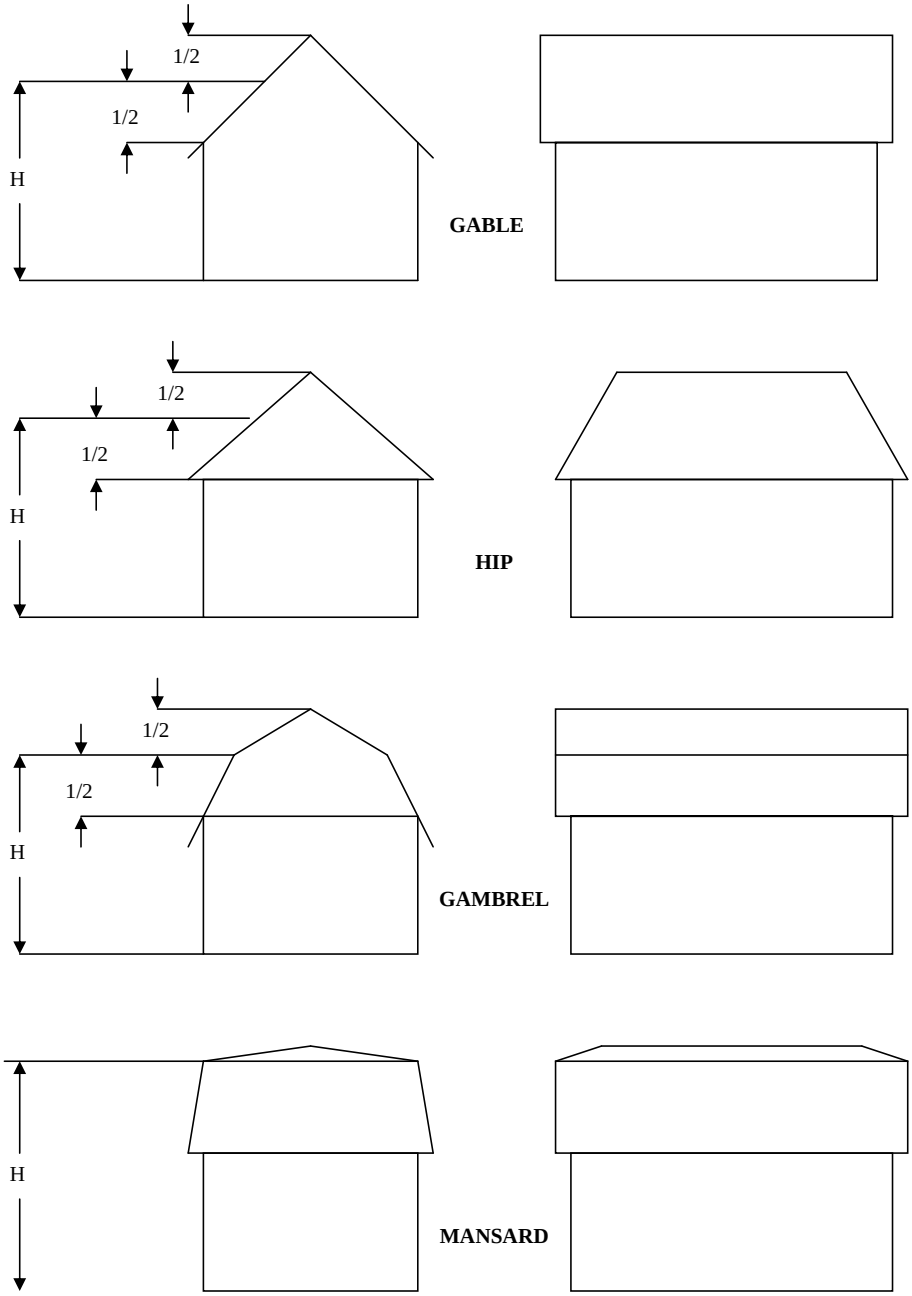
(2) Uses permissible at a service station do not include rental of motor vehicles, major mechanical and body work, straightening of body parts, painting, welding or storage of automobiles not in operating condition. A service station is not a repair garage nor a body shop.

GRADE, FINISHED -- The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs related thereto.

GROUND-FLOOR AREA -- The maximum horizontal area of a building at the ground level, excluding open porches, terraces and steps and attached or built-in garage areas.

GROUP DEVELOPMENT -- Two or more structures containing attached dwelling units. Structures need not be on individual lots.

HEIGHT, BUILDING -- The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. See illustration below.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HOME OCCUPATION -- An accessory use of a dwelling unit or accessory structure for gainful employment involving the manufacture, provision or sale of goods and/or services.

HOTEL or LODGING HOUSE -- A building containing sleeping rooms for five (5) or more persons, which rooms are available to the public for less than one (1) week at a time for compensation, with no cooking or dining facilities except a general kitchen and public dining room.

JUNKYARD – As defined in Chapter 120 of this Code. **[Amended 5-18-2006 by L.L. No. 13-2006]**

KENNEL -- Any premises on which four (4) or more dogs more than six (6) months old are kept.

LAW, ORDINANCE, RULE or REGULATION -- Pertains to the federal, state, county and village governments, as appropriate.

LOCAL STREET -- Provides for direct access to abutting land and for local traffic movements.

LOT -- A parcel of land for a structure, use and the accessory structures or uses customarily incidental to it, including such open spaces as are required by this chapter and such open spaces as are arranged and designed to be used in connection with such structure.

LOT, CORNER -- A lot at the junction of and fronting on two (2) or more intersecting streets.

LOT COVERAGE -- The percentage of the lot covered by the main and accessory structures.

LOT DEPTH -- The mean horizontal distance between the front and rear lot lines.

LOT, INTERIOR -- A lot other than a corner lot.

LOT LINE -- Any boundary line of a lot.

LOT, THROUGH -- An interior lot having frontage on two (2) parallel or approximately parallel streets.

LOT WIDTH -- The distance between the side lot lines measured along the required front building (setback) line. If the side property lines are parallel, the shortest distance between these side lines; or if the side property lines are not parallel, the width of the lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the front setback required for the district in which the lot is located. The axis of a lot shall be a line joining the midpoints of the front and rear property lines.

LOT OF RECORD -- Land designated as a separate parcel on a plat map or deed filed or recorded in the office of the Clerk of Erie County, New York.

MANUFACTURED HOME -- A factory-manufactured home incorporating structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site.

MOBILE HOME -- As defined in Chapter 131 of this Code.

MOBILE HOME PARK -- As defined in Chapter 131 of this Code.

MODULAR HOME -- See "manufactured home."

MOTEL -- A series of attached, semidetached or detached (one or more stories) dwelling units containing a bedroom, bathroom and closet space, where each unit has convenient access to a parking space for the use of the unit's occupants. The units, with the exception of the apartment of the manager or caretaker, are devoted to the use of automobile transients, and no cooking facilities are provided, and the site of the motel has direct and convenient access to the main traveled road.

MULTIFAMILY DWELLING -- A building or portion thereof containing three (3) or more dwelling units and designed or used for occupancy by three (3) or more families living independently of each other.

NONCONFORMING USE -- A building, structure or use of land existing at the time of enactment of this local law, and which does not conform to the regulations of the district or zone in which it is situated, either on the effective date of this local law or as a result of subsequent amendments hereto.

OPEN SPACE -- An area unobstructed by buildings from the ground upward, except for walks, paths, landscaping or other site features in public, common or other private ownership. Yards of individual lots occupied by dwellings shall not constitute open space.

OPEN SPACE, COMMON -- A parcel or parcels of land or an area of water or a combination of land and water within the site, privately owned and designed and intended for the use and enjoyment of two (2) or more households residing on the site or in specified portions thereof or other users, if permitted by the owners of the common open space. Common open space may contain such structures and improvements as are necessary and appropriate for the benefit and enjoyment of persons served by such common open space.

OVERLAY DISTRICT -- A district classification superimposed in addition to another (basic) district classification, further regulating or limiting structures and uses otherwise permitted and regulated pursuant to the basic district classification.

OWNER -- Includes, in addition to its usual meaning, tenant, lessee, occupant or other user.

PATIO HOME – A detached single-family home that is a single story measuring under 2,400 square feet in gross area that has two bedrooms or less and is located on a lot that is in common ownership of other patio homes on the same parcel of land. A patio home must maintain a minimum front yard setback of 20 feet, a minimum rear yard setback of 10 feet, and a minimum side yard setback of 7 feet. **[Amended 2-9-2012 by L.L. No. 5-2012]**.

PERSON -- Includes a firm, association, organization, partnership, company or corporation, as well as an individual.

PLANNING BOARD -- The Planning Board of the Village of Alden, New York.

RESIDENT PROFESSIONAL -- A health care professional, attorney, engineer, architect, community planner, landscape architect, land surveyor, accountant, insurance agent or broker, realtor, teacher and photographer only.

SELF-STORAGE FACILITY -- A public facility for dead storage of personal, household or business property which is serviced by the owner of the stored property or an agent of the owner. The term "self-storage facility" includes all similar uses and terms but shall not be construed to mean warehouse.

SETBACK -- The least horizontal distance from any building to the nearest street or highway right-of-way.

SIGN, BUSINESS -- A sign which directs attention to a business, profession or industry conducted upon the premises or to a commodity or service sold or offered by such business, profession or industry upon the premises where such sign is located.
SIGN, DIRECTIONAL -- A sign that directs attention to the location of a local service or places of business.

SIGN, FREESTANDING -- A sign or sign support structure that is not attached to or part of a building or structure.

SIGN, GROUND -- A sign supported by a pole, uprights or braces which are placed in or on the ground.

SIGN, ILLUMINATED -- A sign lighted by electricity, gas or other artificial light, including reflective or phosphorescent light, paint or tape.

SIGN, OUTDOOR ADVERTISING -- A sign which directs attention to a business, profession or industry conducted or a commodity or service sold or offered on a site other than upon the premises where such sign is located.

SIGN, PORTABLE OR MOBILE -- A sign that is designed and intended to be transported from place to place and is not permanently affixed to the ground or to a building or structure. Portable signs may or may not have wheels.

SIGN, TEMPORARY -- A sign which is intended to advertise community or civic projects, real estate for sale or lease or other special events on a temporary basis.

STORY -- The portion of a building between the surface of a floor and the next floor above or the ceilings next above under a roof, with an area greater than one hundred fifty (150) square feet.

STREET -- A public or private way which permits conducting of vehicular travel and/or affords a primary means of access by vehicles and pedestrians to abutting properties, including the entire area within the right-of-way. The term includes those ways as shown on plats filed in the office of the Erie County Clerk, whether improved or not.

STREET GRADE -- The elevation of the street as measured at its crown.

STREET LINE -- A common property line separating a public street or right-of-way from abutting properties.

STRUCTURAL ALTERATION -- Any change in the supporting members of a building or other structure, such as bearing walls, columns, beams or girders.

STRUCTURE -- A building or anything other than a fence constructed or erected which requires permanent location in or on the ground or attachment to something having such location.

SWIMMING POOL -- Any structure intended for swimming or recreational bathing that contains water over twenty-four (24) inches deep. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas.

TWO-FAMILY DWELLING -- A building designed for or occupied exclusively by two (2) families living independently of each other.

USE -- The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

USED or OCCUPIED -- Includes the words "intended, designed or arranged to be used or occupied."

USE VARIANCE -- The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

VILLAGE -- The Village of Alden, Erie County, New York.

WAREHOUSE -- The building, shed or structure or any part of the same for the storage of goods, merchandise, scrap materials, stock or other items.

YARD -- An open space on the same lot with the building unoccupied and unobstructed by any portion of the building from the ground upward, except as otherwise provided in this chapter.

YARD, FRONT -- An open space on the same lot with a principal building, extending the full width of the lot between the street line and the principal building.

YARD, REAR -- An open space on the same lot with a principal building, extending the full width of the lot between the rear lot line and the rear line of the building.

YARD, REQUIRED -- The minimum yard required between a lot line and building line or line of any parking, loading and stacking area or any other use requiring a yard in order to comply with the regulations of the district or zone in which the lot is located. A required yard shall be open and unobstructed from the ground upward, except for projections on buildings as permitted in this Chapter and except for walks, landscaping and other yard or site features.

YARD, SIDE -- An open space extending from the front yard to the rear yard and of a width established by this chapter; the width shall be measured at right angles to its side lot line.

ZONING BOARD OF APPEALS -- The Zoning Board of Appeals of the Village of Alden, New York.

§ 210-10. Interpretation of language.

When a question of language arises, the Zoning Board of Appeals shall interpret this chapter. Any interpretation or order, requirement, decision or determination in connection with this chapter shall be final except as otherwise provided by law.

§ 210-11. Records and reports.

The village shall keep or cause to be kept a record suitably indexed in regard to any decision or determination reached in connection with the interpretation or enforcement of this chapter.

ARTICLE III
Establishment of Districts

§ 210-12. Establishment of districts.

In order to carry out the purpose, intent and objectives of this chapter, the village is hereby divided into the following districts, which shall be designated on the Official Zoning Map[1] by symbols and boundaries, said districts to be known as:

R-O -- Residential/Open Space
R-1 -- Single-Family Residential
R-2 -- Two-Family Residential
R-C -- Residential Commercial
B-1 -- Business
C-1 -- Commercial
C-2 -- Commercial/Light Industrial
I-1 -- Industrial

§ 210-13. Official Zoning Map.

The aforesaid districts are designated by symbols, and the location and boundaries of said districts are shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this chapter.[2] If, in accordance with the provisions of this chapter, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map after the amendment has been adopted by the Village Board.

[1] **Editor's Note: The Official Zoning Map is on file in the village offices.**
[2] **Editor's Note: The Official Zoning Map is on file in the village offices.**

ARTICLE IV
District Regulations

§ 210-14. General applications.

The regulations set by this chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land therein and except as otherwise provided in this chapter or in any accompanying rules and regulations.

A. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except as permitted in the district and in conformity with all of the regulations herein specified.

B. No building or other structure shall hereafter be erected or altered which exceeds the height or bulk; accommodates or houses a greater number of families or occupies a greater part of the lot area; or has narrower or smaller rear yards, front yards, side yards or other open spaces than therein permitted or required.

C. No part of a yard or other open space or off-street parking, loading or stacking space required about or in connection with any structure for the purpose of complying with this chapter shall be included as part of a yard, open space or off-street parking, loading or stacking space required for any other structure.

D. No yard or lot existing at the time of passage of this chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter. No required yard area shall be separated in ownership from that portion of the lot on which a structure is located.

E. Interpretation of permitted uses.

(1) If any use could be construed to be incorporated within a general use listing, the more restrictive listing, if any, shall control.

(2) No use shall be permitted in any zoning district unless set forth in a list of permitted uses for such zoning district.

F. Public use exemptions.

(1) The regulations of this chapter shall not be so construed as to limit or interfere with the dedication, development or use of any land or building for public parks, public playgrounds or public schools required for compulsory education; or with the use of land or buildings zoned by the United States government, the State of New York, the County of Erie, the Town of Alden or the Village of Alden for governmental purposes; or with the construction, installation, operation and maintenance for public utility purposes of water or gas pipes, mains or conduits, electric power transmission lines, telephone or telegraph lines, oil pipe lines or sewers; or with any highway, railroad right-of-way existing or hereafter authorized by the State of New York, the County of Erie or the Village of Alden.

(2) These exceptions, however, shall not be interpreted to permit yards, garages or other buildings for service or storage by said public utilities which are not otherwise permitted by this chapter in appropriate districts.

§ 210-15. Interpretation of district boundaries.

A. Where uncertainty exists as to boundaries of districts, the following rules shall apply:

(1) Boundaries indicated as approximately following the center lines of streets or highways shall be construed to follow such center lines.

(2) Boundaries indicated as approximately following existing lot lines shall be construed as following such lot lines.

(3) Boundaries indicated as approximately following village boundaries shall be construed as following such boundaries.

(4) Boundaries indicated as following railroad lines shall be construed to follow a line midway between the main tracks.

(5) Boundaries indicated as approximately following the edge of streams, rivers, canals, lakes or other bodies of water shall be construed to follow the center lines thereof.

(6) Boundaries indicated as parallel to or extensions of features indicated in Subsection A(1) through (5) above shall be construed pursuant to those provisions.

B. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map,[3] or in other circumstances not covered above, the Board of Appeals shall interpret the district boundaries.

C. Where a lot is divided by any zoning district boundary so as to be in more than one zoning district and where such lot was an existing lot when such district boundary was established, a nonconforming use occupying 50% or more of the rear of such lot and having street frontage in the district where permitted may be extended on such lot no more than 25 feet, measured at right angles to the district boundary, into any district where such use is not permitted, subject to applicable required open space provisions relating to such use.

§ 210-16. Residential/Open Space District (R-O).

The following regulations shall apply in the Residential/Open Space District:

A. Permitted principal uses.

(1) Agricultural, floriculture and horticultural pursuits, including but not limited to general farms, greenhouses, plant nurseries, truck gardens, dairies and the raising of bees, poultry and livestock, together with all customary buildings and other structures necessary for the production and storage of the products of such pursuits, subject to the following:

(a) Buildings or structures used for the stabling of livestock (including but not limited to horses, cows, sheep, fowl or other animals) shall be located at least one hundred (100) feet from any street line.

(b) Fences enclosing any pen, corral, track or other such enclosure within which livestock are kept shall be a minimum of one hundred (100) feet from any street line.

(c) Minimum land area for horses shall be forty thousand (40,000) square feet per horse.

(2) Kennels, provided that pens and runways for animals shall be at least one hundred (100) feet from any adjoining lot line and a minimum of one hundred fifty (150) feet from any street line.

(3) Single-family dwellings.

[3] **Editor's Note: The Official Zoning Map is on file in the village offices.**

(4) Church or similar place of worship, parish house, convent, rectory or parsonage.

(5) Private, nonprofit elementary or secondary school accredited by the New York State Department of Education.

(6) Forest farming.

(7) Private wildlife reservation or conservation projects, including the usual buildings therefor.

(8) Veterinarian.

(9) Cemeteries.

(10) By special permit of the Board of Trustees (See § 210-28 for regulations):

(a) Gun clubs.

(b) Golf driving range.

(c) Public, private and municipal golf course catering exclusively to members and their guests, provided that any building thereon shall be at least one hundred (100) feet from any lot line and no commercial activity shall be conducted except for an accessory swimming pool, pro shop, tennis court or an accessory dining room with or without bar facilities.

(11) Any other use by special permit of the Board of Trustees (See § 210-28 for regulations).

B. Permitted accessory uses.

(1) As permitted and regulated in R-1 Districts.

(2) Seasonal roadside stands for the sale of farm products produced on the premises.

C. Lots: minimum requirements.

(1) Area: twenty thousand (20,000) square feet.

(2) Width: one hundred (100) feet.

D. Yard: minimum requirements.

(1) Front: thirty (30) feet from edge of right-of-way.

(2) Side.

(a) Ten (10) feet for each one-and-one-half-story dwelling.

(b) Fifteen (15) feet for a two-story dwelling.

(c) Twenty (20) feet each for any other main building.

(3) Rear: equal to twenty-five percent (25%) of lot depth, but need not exceed fifty (50) feet.

E. Buildings.

(1) Maximum height.

(a) Two (2) stories, not to exceed forty (40) feet for main buildings.

(b) One (1) story, not to exceed fifteen (15) feet for accessory buildings, except that there shall be no maximum height for nonresidential farm buildings.

(2) Minimum floor area of dwelling, not to include garages, breezeways or enclosed patios.

(a) One thousand four hundred (1,400) square feet at ground floor level for a one- or one-and-one-half-story dwelling.

(b) One thousand five hundred (1,500) square feet total for a two-story dwelling.

F. Signs: see Article V, Signs.

G. Parking: see § 210-27.

§ 210-17. Single-Family Residential District (R-1).

The following regulations shall apply in the Single-Family Residential District:

A. Permitted principal uses.

(1) Single-family dwellings.

(2) Church or similar place of worship, parish house, convent, rectory or parsonage.

(3) Private, nonprofit elementary or secondary school accredited by the New York State Department of Education.

B. Permitted accessory uses.

(1) Quarters for servants employed on premises.

(2) Buildings for private horticultural purposes.

(3) Private garages, off-street parking.

(4) Private family swimming pools.

(5) Storage of recreational or utility trailers or boats.

(6) A home occupation, provided a permit is secured therefor. This shall not include retail sales on the premises. See § 210-29 for regulations.

C. Lots: minimum requirements.

(1) Area.

(a) Fifteen thousand (15,000) square feet for an interior lot.

(b) Sixteen thousand five hundred (16,500) square feet for a corner lot.

(2) Width.

(a) One hundred (100) feet and one hundred fifty (150) feet deep for an interior lot.

(b) One hundred ten (110) feet and one hundred fifty feet (150) feet deep for a corner lot.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) Front: thirty (30) feet from edge of right-of-way.

(a) Six (6) feet each for a one- or one-and-one-half-story dwelling.

(b) Eight (8) feet each for a two-story dwelling.

(c) Ten (10) feet each for any other main building.

(2) Rear: equal to twenty-five percent (25%) of lot depth, but need not exceed fifty (50) feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) Maximum height.

(a) Two (2) stories, not to exceed thirty (30) feet for main buildings.

(b) One story, not to exceed fifteen (15) feet for accessory buildings.

(2) Minimum floor area of dwelling, not to include garages, breezeways or enclosed patios.

(a) One thousand four hundred (1,400) square feet at ground floor level for a one- or one-and-one-half-story dwelling.

(b) One thousand five hundred (1,500) square feet total for a two-story dwelling.

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-18. Two-Family Residential District (R-2).

The following regulations shall apply in the Two-Family Residential District:

A. Permitted principal uses.

(1) As permitted and regulated in R-1 Districts.

(2) Two-family dwellings.

(3) Keeping of not more than four (4) roomers, boarders or tourists, provided that the keeping thereof is incidental and accessory to the principal use of the house as a home by the family of the occupant.

(4) When approved by the Board of Trustees:

(a) The keeping of more than four (4) roomers, boarders or tourists, provided that the same is incidental to the use and occupancy of the premises as a home for the occupant thereof and consent or a permit therefor is obtained as provided in any other provisions of laws, ordinances or regulations of the village or other municipality, and provided that the building and the premises otherwise comply with the provisions of this chapter pertaining to the district in which said premises is situated.

(b) Dwelling groups, provided that open spaces are not less than would result from conventional lot development.

B. Permitted accessory uses.

(1) As permitted and regulated in R-1 Districts.

C. Lots: minimum requirements.

(1) Area.

(a) Fifteen thousand (15,000) square feet for an interior lot, single family dwelling.

(b) Sixteen thousand five hundred (16,500) square feet for an interior lot, two-family dwelling.

(c) Sixteen thousand five hundred (16,500) square feet for a corner lot, single-family dwelling.

(d) Eighteen thousand (18,000) square feet for a corner lot, two-family dwelling.

(2) Width.

(a) One hundred (100) feet and one hundred fifty (150) feet deep for an interior lot, single-family dwelling.

(b) One hundred ten (110) feet and one hundred fifty (150) feet deep for an interior lot, two-family dwelling.

(c) One hundred ten (110) feet for a corner lot, single-family dwelling.

(d) One hundred twenty (120) feet for a corner lot, two-family dwelling.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) Front: thirty (30) feet from edge of right-of-way.

(2) Side.

(a) Six (6) feet each for a one- or one-and-one-half-story dwelling.

(b) Eight (8) feet each for a two-story dwelling.

(c) Ten (10) feet each for any other main building.

(3) Rear: equal to twenty-five percent (25%) of lot depth, but need not exceed fifty (50) feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) Maximum height.

(a) Two (2) stories, not to exceed thirty (30) feet for main buildings.

(b) One story, not to exceed fifteen (15) feet for accessory buildings.

(2) Minimum floor area of dwelling, not to include garages, breezeways or enclosed patios.

(a) One thousand four hundred (1,400) square feet at ground floor level for a one- or one-and-one-half-story dwelling.

(b) One thousand five hundred (1,500) square feet total for a two-story dwelling.

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-19. Residential Commercial District (R-C). [Amended 2-9-2012 by L.L. No. 5-2012]

The following regulations shall apply in the Residential Commercial District:

A. Permitted principal uses.

(1) As permitted and regulated in R-2 Districts.

(2) Multifamily dwellings.

(3) By special permit of the Board of Trustees (See § 210-28 for regulations):

(a) Condominiums and cooperatives.

(b) Gift shops.

(c) Cafes and similar eating establishments which do not serve alcoholic beverages and do not prepare food for retail sale other than on premises (e.g., bakery, delicatessen, etc.).

(d) Telephone exchange.

(e) Real estate or insurance offices.

(f) Medical buildings consisting of offices or clinics for medical doctors, dentists, chiropractors, osteopaths, chiropodists, opticians or optometrists.

(g) Nonprofit institutions for charitable, religious, cultural, or community social purposes.

(h) Other administrative, professional or executive offices, but not including the selling, manufacturing, servicing or storing of merchandise upon the premises.

(i) Government uses and buildings.

(j) Mobile home parks. See Chapter 131, Mobile Home Parks, for regulations.

(k) Patio homes.

B. Permitted accessory uses.

(1) As permitted and regulated in R-2 Districts.

C. Lots: minimum requirements.

(1) As regulated in R-2 Districts, except for multifamily dwellings.

(2) Area for multifamily dwellings.

(a) Where no more than ten percent (10%) of the dwelling units have three (3) or more bedrooms, there shall be no less than five thousand (5,000) square feet of lot area per unit for the first four (4) units and two thousand five hundred (2,500) square feet for every unit thereafter, but under no circumstances shall there be less than a total of twenty thousand (20,000) square feet of lot area.

(b) Where more than ten percent (10%) of the dwelling units have three (3) or more bedrooms, there shall be no less than six thousand (6,000) square feet of lot area per unit for the first four (4) units and three thousand (3,000) square feet for every unit thereafter, but under no circumstances shall there be less than twenty thousand (20,000) square feet of lot area.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) Front: thirty (30) feet from edge of right-of-way.

(2) Side.

(a) Six (6) feet each for a one- or one-and-one-half-story dwelling.

(b) Eight (8) feet each for a two-story dwelling.

(c) Ten (10) feet each for any other main building.

(3) Rear: equal to twenty-five percent (25%) of lot depth, but need not exceed fifty (50) feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) Maximum height.

(a) Two (2) stories, not to exceed thirty (30) feet for main buildings.

(b) One story, not to exceed fifteen (15) feet for accessory buildings.

(2) Minimum floor area of dwelling.

(a) Multi family dwellings, not to include garages, breezeways or enclosed patios: six hundred (600) square feet per family, plus one hundred (100) square feet for each roomer, boarder or tourist.

(b) One-family dwellings: As permitted and regulated in R-1 Districts.

(c) Two-family dwellings: As permitted and regulated in R-2 Districts.

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-20. Business District (B-1). [Amended 6-23-2011 by L.L. No. 4-2011]

The following regulations shall apply in the Business District:

A. Permitted principal uses.

(1) Retail sales, service businesses.

(2) Cafes, restaurants, taverns or hotels.

(3) Commercial recreation establishments when conducted only indoors and when lights and sound are controlled to prevent nuisance.

(4) Dry-cleaning pickup stations or dry-cleaning plants using only nonflammable fluids in self-contained solvent-reclaiming units.

(5) Hand laundries or laundromats.

(6) Shops for making articles for sale only on the premises and not employing more than ten (10) persons.

(7) Art, dance, music or photographic studios.

(8) By special permit of the Board of Trustees (See **§** 210-28 for regulations):

(a) Assembly halls.

(b) Gasoline filling stations or public garages provided that same shall not create a hazard to health, safety, traffic flow, pedestrians, or the general welfare of the public.

(c) Veterinary offices which service domesticated animals but do not otherwise house the same except for medical treatment or boarding of small animals not to exceed two weeks in duration, and further provided that there are no exterior facilities utilized for the housing or exercise of animals.

B. Permitted accessory use.

(1) Residential dwelling units, provided they are not located on the ground floor level of any structure.

(2) Customary business accessory uses.

C. Lots, minimum requirements:

(1) Area

(a) Twenty thousand (20,000) square feet for an interior lot.

(b) Thirty thousand (30,000) square feet for a corner lot.

(2) Width.

(a) One hundred (100) feet wide and two hundred (200) feet deep for an interior lot.

(b) One hundred fifty (150) feet wide and two hundred (200) feet deep for a corner lot.

D. Yards: minimum requirements. See § 210-27 for exceptions.

(1) Front: five (5) feet from edge of right-of-way.

(2) Side.

(a) Five (5) feet.

(b) Where a side yard abuts a lot in an R District, its width shall be not less than thirty (30) feet or a distance equal to the height of the principal building, whichever is greater.

(c) Where a side yard is used for either vehicular ingress or egress, it shall be at least fifteen (15) feet wide.

(d) Where a side yard is used for vehicular ingress and egress, it shall be at least thirty (30) feet wide.

(3) Rear: 10 feet, but where the rear yard abuts an R District, 30 feet.

E. Yards: maximum requirements. See § 210-27 for exceptions.

(1) Front: fifteen (15) feet from edge of right-of-way.

F. Buildings. See § 210-27 for exceptions.

(1) Maximum height: four (4) stories, not to exceed seventy (70) feet.

(2) Minimum height (building façade only): twenty (20) feet, for all portions of the building facade that face a public street.

(3) Minimum floor area: one thousand five hundred (1,500) square feet

G. Signs: see Article V, Signs.

H. Parking: see § 210-27.

§ 210-21. Commercial District (C-1). [Amended 1-19-2006 by L.L. No. 1-2006]

The following regulations shall apply in the Commercial District:

A. Permitted principal uses.

(1) Any use permitted in the R-C Districts, except one-family dwellings, two-family dwellings, and mobile home parks, which shall be specifically excluded.

(a) A special permit by the Board of Trustees is not required for the permitted uses from the R-C district.

(2) Retail sales, service businesses.

(3) Cafes, restaurants, taverns or hotels.

(4) Commercial recreation establishments when conducted only indoors and when lights and sound are controlled to prevent nuisance.

(5) Dry-cleaning pickup stations or dry-cleaning plants using only nonflammable fluids in self-contained solvent-reclaiming units.

(6) Hand laundries or laundromats.

(7) Shops for making articles for sale only on the premises and not employing more than five persons.

(8) Art, dance, music or photographic studios.

(9) Assembly halls.

(10) Nursing or convalescent homes.

(11) By special permit of the Board of Trustees (See **§** 210-28 for regulations):

(a) Golf driving range.

(b) Drive-in theater.

(d) Gasoline filling stations or public garages provided that same shall not create a hazard to health, safety, traffic flow, pedestrians, or the general welfare of the public.

(e) Storage facilities.

(f) Veterinary offices which service domesticated animals but do not otherwise house the same except for medical treatment or boarding of small animals not to exceed two weeks in duration, and further provided that there are no exterior facilities utilized for the housing or exercise of animals.

B. Permitted accessory use.

(1) As permitted and regulated in R-C Districts.

(2) Customary business accessory uses.

C. Lots, minimum requirements:

(1) As regulated in R-C Districts for multifamily dwellings.

(2) Area

(c) Twenty thousand (20,000) square feet for an interior lot.

(d) Thirty thousand (30,000) square feet for a corner lot.

(3) Width.

(c) One hundred (100) feet and two hundred (200) feet deep for an interior lot.

(d) One hundred fifty (150) feet and two hundred (200) feet deep for a corner lot.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) As regulated in R-C Districts for multifamily dwellings.

(2) Front: thirty (30) feet from edge of right-of-way.

(3) Side.

(a) Ten (10) feet.

(b) Where a side yard abuts a lot in an R District, its width shall be not less than thirty (30) feet or a distance equal to the height of the principal building, whichever is greater.

(c) Where a side yard is used for either vehicular ingress or egress, it shall be at least fifteen (15) feet wide.

(d) Where a side yard is used for vehicular ingress and egress, it shall be at least thirty (30) feet wide.

(e) For dwellings, they shall be as regulated in R-C Districts.

(4) Rear: 10 feet, but where the rear yard abuts an R District, 30 feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) As regulated in R-C Districts for multifamily dwellings.

(2) Maximum height: two (2) stories, not to exceed forty (40) feet.

(3) Minimum floor area: one thousand five hundred (1,500) square feet

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-22. Commercial/ Light Industrial District (C-2).

The following regulations shall apply in the Commercial/Light Industrial District:

A. Permitted principal uses.

(1) Any nonresidential use permitted and regulated in C-1 Districts.

(2) Machine shops.

(3) Manufacturing and industrial uses contained wholly inside buildings on the premises.

(4) Dry-cleaning plants or laundries.

(5) Grain storage or feed mills.
(6) Warehouses or storage facilities.

B. Permitted accessory uses.

(1) Customary accessory uses.

C. Lots, minimum requirements: as regulated in C-1 Districts.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) Front: thirty (30) feet from edge of right-of-way.

(2) Side.

(a) Ten (10) feet for a one-story building, except that where a side yard abuts an R District, it shall be not less than fifty (50) feet.

(b) Twenty (20) feet for a two-story building, except that where a side yard abuts an R District, it shall be not less than fifty (50) feet.

(c) Fifteen (15) feet each for any other main building.

(3) Rear: equal to twenty-five percent (25%) of lot depth, but need not exceed fifty (50) feet, except that where a rear yard abuts an R District, it shall be no less than fifty (50) feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) Maximum height.

(a) Three (3) stories, not to exceed fifty (50) feet for main buildings.

(b) One (1) story, not to exceed twenty (20) feet for accessory buildings.

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-23. Industrial District (I-1). [Amended 5-18-2006 by L.L. No. 14-2006]

The following regulations shall apply in the Industrial District:

A. Permitted principal uses.

(1) Any non-residential use permitted in the C-2 District.

(2) Baking plants, bottling works or creameries.

(3) Building materials yard or coal yards.

(4) Concrete products or ready-mix plants.

(5) Contractor's equipment storage yards.

(6) Dry-cleaning plants or laundries.

(7) Freight or truck terminals; overnight parking of trucks, tractors or trailers.

(8) Grain storage or feed mills.

(9) Warehouses or storage facilities.

(10) Junkyards. (See Chapter 120, Junkyards, for regulations).

(11) By special permit of the Board of Trustees (See § 210-27 for regulations):

(a) Unobjectionable manufacturing or processing so conducted that no unreasonable light, smoke, odor, dust, dirt, noxious gas, waste, vibration, fire hazard, traffic hazard or congestion results therefrom.

B. Permitted accessory uses.

(1) Customary accessory uses.

C. Lots: no minimum area.

D. Yards: minimum requirements. See **§** 210-27 for exceptions.

(1) Front: thirty (30) feet from edge of right-of-way, except that where used for off-street parking or when opposite an R District, its depth shall be no less than fifty (50) feet.

(2) Side: ten (10) feet each, except that where a side yard abuts an R District, it shall be not less than fifty (50) feet.

(3) Rear: ten (10) feet, except that where a rear yard abuts an R District, it shall be no less than fifty (50) feet.

E. Buildings. See **§** 210-27 for exceptions.

(1) Maximum height: the same as in C-2 Districts, except that greater height may be permitted by the Village Board.

F. Signs: see Article V, Signs.

G. Parking: see **§** 210-27.

§ 210-24. Conservation Sector.

A. Purpose. A Conservation Sector is hereby established within the Village of Alden to limit development on flood-prone lands abutting Ellicott Creek, including its tributaries, for the following purposes:

(1) To allow Ellicott Creek to carry and store its maximum amount of water without restrictions.

(2) To prevent encroachments on its floodplain which would increase floodwater levels.

(3) To prevent any increased threat to health, safety and property to the immediate area as well as to those downstream.

(4) To protect the water quality and general ecology of the above watercourse by controlling land use which might have adverse effects thereon by location in or on its floodplain.

B. Extent. Instead of being confined to any single zoning district, the Conservation Sector is superimposed over any district lying within the floodplain of Ellicott Creek, including its tributaries. Conservation Sector boundaries are comprised of flood-prone areas as determined by the Soil Conservation Service (United States

Department of Agriculture Soil Conservation Service and Cornell University Agricultural Experiment Station, in cooperation with Erie Soil and Water Conservation District) and as delineated on the Zoning Map[4] by a gray tone.

C. Use limitations.

(1) Horticultural uses, where permitted by the district regulations, not requiring permanent or temporary structures for human habitation, including but not limited to vegetable farms, orchards and nurseries shall be permitted.

(2) Recreational uses, where permitted by the district regulations, including parks, swimming areas, playgrounds, golf courses and driving ranges, picnic grounds, wildlife and nature preserves, hunting, fishing and hiking areas and such transient amusement enterprises as circuses, rides and shows shall be permitted.

(3) Structures accessory to the above-permitted uses which would not be adversely affected by flooding and whose presence would not significantly affect the efficiency or storage capacity of the floodplain or floodway or which would not tend to increase flood heights shall be permitted.

(4) No structure for human habitation shall be permitted.

(5) No structure (temporary or permanent), fill, deposit, obstruction, excavation, storage of materials or other use shall be permitted in this district which would adversely affect the efficiency or storage capacity of the floodplain or which would tend to increase flood heights.

D. Procedures.

(1) Any proposed development in the Conservation Sector must have the written approval of both the Planning Board and the Village Board before any building permit is issued.

(2) The above use limitations may be modified or even waived if, in the judgment of both the Planning Board and the Village Board, the proposed development would not violate the purpose of the Conservation Sector as set forth above in this section under Subsection A. Engineering studies may be required to substantiate this, the costs of which shall be borne by the applicant.

§ 210-25. Planned unit development (PUD) and cluster development (CD).

[4] **Editor's Note: The Official Zoning Map is on file in the village offices.**

A. Intent.

(1) The intent of the planned unit development (PUD) and the cluster development (CD) is to:

(a) Promote greater flexibility and consequently more creative and imaginative design for the development of residential areas than is generally possible under conventional residential zoning districts.

(b) Meet the growing demand for housing by greater variety in type, design and setting of dwellings.

(c) Encourage conservation and more efficient use of land in such developments and maintenance of high environmental quality throughout the development.

(d) Encourage the most skillful planning of parts of the community in accordance with the objectives of the Comprehensive Plan.

(e) Provide for the utilization of planning criteria in the arrangements of buildings related to common open space.

(f) Utilize topography and other site features to best advantage to obtain creative and coordinated designs.

(g) Expand the scope of land planning and development beyond a concept of homogeneous use within formally defined districts and beyond a concept of individual lots and structures thereon by the planning and development of larger areas with groups of structures erected thereon to create a diversified and coordinated entity.

(2) The planned unit development may transcend district boundaries and thereby permit a nonconforming development within more than one district.

B. Purpose. The purpose of the cluster development is to provide for:

(1) Conservation of land, permitting more usable open space for recreation, community activities and the preservation of unique features.

(2) The more economical development of land with lower installation and maintenance costs of streets and utilities.

(3) Safer accommodations for both pedestrian and vehicular traffic.

(4) An increase in privacy and to create a stronger sense of community.

(5) A desirable alternative to strip development.

C. Objectives. In order to carry out the intent of this section, a planned unit development (hereafter referred to as "PUD") shall achieve the following objectives:

(1) A varied choice in the types of environment, occupancy, tenure, types and costs of housing, lot sizes and community facilities available to existing and potential village residents.

(2) A more efficient and economical arrangement of land uses, buildings, circulation systems and utilities, resulting in smaller networks of utilities and streets and lessened burden of traffic on streets and highways, thereby lowering utility and maintenance costs borne by new development.

(3) Convenience in location of commercial and community service areas.

(4) Sufficient civic and community facilities, carefully integrated with adjoining areas.

(5) Extensive usable open space and recreation areas, appropriate in terms of location, size and suitability for intended function.

(6) The comprehensive design of stormwater retention and proper drainage systems.

(7) Guidance and control of development in flood hazard areas so that life and property within and abutting such areas are protected.

(8) Increased safety for all modes of travel, including pedestrian and bicycle.

(9) Preservation, to the greatest extent possible, of such features as trees or outstanding or unique natural topography, including marshlands and other geological features.

(10) Utilization to the best advantage of trees and soil characteristics to prevent soil erosion and to create and preserve natural and man-made features which will give increased environmental quality, encourage uses which will maintain high environmental quality and provide an attractive

community design. These may include natural woodlands, grassland, marshlands and lakes.

(11) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.

(12) An appropriate balancing or accommodation of the effect of major public or private development elsewhere in the village or its vicinity.

(13) Provision for the orderly updating of long-term, large-scale development plans to reflect changing circumstances within an overall village-approved planning framework.

(14) A more desirable environment than would be possible through the strict application of other sections of this chapter.

D. Application procedures.

(1) Initiation of proceedings. Proceedings to create a PUD or CD may be initiated either by the Village Board or by application of the owner, as defined in Subsection D(3)(a)[2] below. Accordingly, the provisions of Subsection D(2), (3)(a) and (3)(b) are applicable only to proceedings initiated upon application of the owner or owners of the proposed PUD or CD site.

(2) Preapplication conference. To obtain information, each applicant shall confer with the Planning Board and interested department heads in connection with the preparation of the PUD and CD application. It shall be the responsibility of the Planning Board to contact and invite these department heads to a joint meeting. The applicant shall submit a concept plan showing the proposed location and components of the PUD or CD. Thereafter, the Planning Board shall furnish the applicant with its written comments regarding such conference, including appropriate recommendations and information concerning the procedure and criteria for approval to inform and assist the applicant prior to his or her preparing the components of the PUD or CD application.

(3) Application for development plan approval. Formal application for a PUD or CD shall be initiated by filing 10 copies of the information enumerated below with the Village Clerk and paying the required fee.[5]

(a) Documents. The following shall be required:

[5] **Editor's Note: See Ch. A220, Fees.**

[1] A legal description of the total site proposed for development and present proposed zoning.

[2] Evidence that the applicant owns the property to be included in the PUD or CD. The word "own" shall, in addition to its customary meaning, include the right to purchase by contract or option or any other form of firm commitment to the lands.

[3] The name of the developer of the proposed PUD or CD.

[4] A land survey of the total site prepared by a land surveyor or professional engineer licensed by the State of New York.

[5] A statement of how the proposed plan meets the intent and objectives of the PUD or CD. This statement should include a description of the character of the proposed development, the rationale behind the assumptions and choices made by the applicant and a discussion of how the development meets the objectives of the Comprehensive Plan.

[6] A general statement as to how open space is to be owned and maintained, showing that criteria in **§** 210-25S(4) are met.

[7] A statement indicating the approximate date when construction of the PUD or CD can be expected to begin and be completed.

[8] A statement of the applicant's intentions with regard to the future selling or leasing of the PUD or CD, the improvements to be erected therein or portions thereof, such as land areas, dwelling units, etc.

[9] A general description of the proposed provision of other community and cultural facilities.

[10] Quantitative data for the following:

[a] The total number and type of dwelling units, indicating distribution by dwelling unit type (i.e.,

single-family detached, single-family attached, apartments).

[b] A calculation of residential density in dwelling units per gross acre less the total area to be used exclusively for commercial or institutional purposes.

[c] The total amount of open space, with a breakdown by general uses proposed.

[d] Estimated future population of school-age children by age level.

[11] Any environmental quality review analysis (SEQRA).

(b) Development plan and supporting maps. The development plan must be to a scale not greater than one inch equals 200 feet, although it need not be to the precision of finished engineering drawings and must show the major details of the PUD or CD and contain the following minimum information, unless waived by the Planning Board as not being applicable:

[1] The existing site conditions, including property lines, contours at five-foot intervals, watercourses, including drainage ditches in the village storm drainage system floodplains areas subject to flooding at one-hundred-year frequency, unique natural features, wetlands, tree cover, soil information and evaluation for the uses proposed.

[2] Proposed land use arrangement and acres by use.

[3] The location and type of all existing structures.

[4] The location and size in acres or square feet of all areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites and similar public and semipublic uses, including pathways, drainage ditches and water storage areas.

[5] The existing and proposed vehicular circulation system, showing major points of access to public rights-of-way, including major points of ingress and egress to the

development. Notations of proposed ownership, public or private, should be included where appropriate.

[6] The existing and proposed bikeway and pathway circulation system, including its interrelationships with the vehicular circulation system.

[7] The existing and proposed major storm drainage system, to include:

[a] The direction and quantity of flow.

[b] The location of major existing and proposed storm sewers and drainageways.

[c] A description of stormwater storage and movement features.

[d] Treatment of floodways and drainageways.

[e] Treatment thereof with the rest of the village.

[8] The existing and proposed sanitary sewage disposal system serving the development, including its projected load and the effect the load will have on the existing and proposed village disposal system.

[9] Existing and proposed waterlines and linkages with the village system and the effect the demand therefrom will have on the existing and proposed water supply system.

[10] Information on land areas for 500 feet beyond the perimeter of the proposed PUD showing the relationships between the proposed development, including land uses, zoning classifications, densities, circulation systems, public facilities and unique natural features of the landscape.

[11] The proposed treatment of the buffer zone of the PUD or CD.

[12] Sketches or pictorial representation of typical structures sufficient to relay the basic architectural intent of the proposed improvements, but need not be encumbered with final detail.

E. Planning Board Review/Zoning Board of Appeals Review.

(1) Upon receipt of a proposed development plan for a PUD or CD, the Village Clerk shall transmit a copy of the plan and accompanying documentation to the Village Engineer, the Superintendent of Public Works, the school district and such other agencies as he or she may deem appropriate for their review, report and recommendation. Such officials and agencies shall each, within 30 days from receiving the development plan and supporting documents, furnish to the Planning Board a report pertinent to their respective jurisdictions.

(2) The Planning Board shall review the development plan and related documents and evaluate the reports enumerated above. Within 60 days following the submission of the development plan and data to the Planning Board, the Planning Board shall furnish to the Zoning Board of Appeals and the applicant either its finding that the development plan complies with the regulations, standards and criteria prescribed by this chapter or a finding of any failure of such compliance and recommendation that the development plan be approved, disapproved or modified.

(3) If in any such evaluation the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this chapter are inapplicable because of unusual conditions of the planned residential development or the nature and quality of the proposed design, it may recommend to the Village Board that an adjustment in such regulations, standards or criteria be made for the development or a proposed site in the development.

(4) Upon completion of the Planning Board review and submission of a report, whether favorable or unfavorable, the Zoning Board of Appeals shall review the development plan and related documents and evaluate the reports enumerated above. Within 30 days following the submission of the development plan and data to the Zoning Board of Appeals, the Zoning Board of Appeals shall furnish to the Village Board and applicant either its finding that the development plan complies with the regulations, standards and criteria prescribed by this chapter and regulations or a finding of any failure of such compliance and recommendation that the development plan be approved, disapproved or modified. If in any such evaluation the Zoning Board of Appeals finds that submission requirements, regulations, standards or criteria prescribed by this regulation are inapplicable because of unusual conditions of the planned unit development or the nature and quality of the proposed design, it may

recommend to the Village Board that an adjustment in such regulations, standards or criteria be made for the development or a proposed site in the development.

(5) Favorable report.

(a) A favorable report shall include a recommendation to the Village Board that a public hearing be held for the purpose of considering the creation of a PUD or CD.

(b) It shall be based on the following findings which shall be included as part of the report:

[1] The proposed development plan meets the intent and objectives of a PUD or CD as expressed in Subsections A and C of this section.

[2] The proposed development plan meets all the requirements of Subsection O of this section.

[3] There are adequate services and utilities available or proposed to be made available for the construction of the development.

[4] The proposed development plan is consistent with the objectives of the Village of Alden's Comprehensive Plan.

(6) Unfavorable report. An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what changes are necessary in order to receive a favorable report. The applicant may, within 30 days after receiving an unfavorable report, file an application with the Village Clerk for a hearing. The Village Board then shall hold a public hearing for a PUD or CD and shall render a decision within 60 days after the hearing on such application.

F. Village Board action; public hearing and decision. The Village Board shall take action:

(1) Upon receiving a favorable report from the Planning Board and/or the Zoning Board of Appeals or an application following an unfavorable report as described in Subsection E(6) of this section; or

(2) At any time following the submission of a proposed development plan meeting the applicable requirements of Subsection C of this section by the Planning Board in the case of proceedings on the Village Board's initiative, the Village Board shall set a date for a public hearing for the purpose of considering the creation of a PUD or CD in accordance with the procedures established under this chapter, the Village Law or other applicable law. The Village Board shall hold a public hearing for a PUD or CD and render a decision within 60 days following the hearing. The published notice of any public hearing scheduled to consider the creation of a PUD or CD shall state that the proposed development plan, with a list of all property ownerships within the district (listed by house number, name of owner, street name and tax number), and a map of the proposed district, showing proposed use classification areas and property lines of all parcels included in district areas, are available for public examination in the office of the Village Clerk prior to the hearing and thereafter until such time as the Village Board shall act to approve or disapprove the creation of the district and shall describe any adjustments in any regulations, standards or criteria of this chapter proposal pursuant to Subsection E(3) hereof.

G. Zoning.

(1) The determination by the Village Board of whether to create a PUD or CD or adjust any regulation, standards or criteria of this chapter shall be based on its review of the proposed development plan, the report of the Planning Board and any matters brought forth at the hearing and approval or rejection of a development plan where the Village Board has acted on its own initiative. Such approval shall include the making of the findings specified in Subsection E(4). Upon the creation of a PUD or CD in such a manner, the Zoning Map[6] shall be notated. The Village Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its zoning resolution additional conditions or requirements consistent with the intent and objectives of this section for the applicant to meet. If such additional conditions or requirements are proposed, the applicant shall be given notice, in writing, of such additional conditions or requirements at least 15 days prior to the creation of the PUD or CD, and the Zoning Map shall not be amended until the applicant has filed with the Village Clerk written consent to the development plan, as modified.

[6] **Editor's Note: The Zoning Map is on file in the village offices.**

(2) Amending the Zoning Map to indicate a PUD or CD does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after approval of the site plan.

H. Amendment of development plan. A development plan amendment (other than as provided in Subsection L hereof) may be initiated in the same manner as provided in Subsection E hereof. The application shall be filed with the Village Clerk, accompanied by such supporting material as may be necessary to enable the Planning Board and the Village Board to review the request for amendment except as hereinafter provided. Review of and action upon the request by the Planning Board and the Village Board shall comply with the requirements of Subsections E through G hereof. A public hearing thereon shall only be required if the amendment contemplates a change in the provisions of this section or in the boundaries of the PUD or CD or a change in a use classification of the development plan.

I. Application for site plan approval. Application for site plan approval shall be to the Planning Board and may include all or a portion of the area included in a PUD or CD. The information required by Subsection I(1) shall be furnished with respect to the entire PUD or CD and shall be submitted at or before the first site plan application. The application shall be accompanied by 10 copies of the following information prepared by a New York State licensed lawyer, engineer, surveyor, architect or landscape architect, as appropriate, and payment of the required fee:[7]

(1) Information required for entire PUD or CD:

(a) A detailed breakdown of total open space by uses and as to how it is to be owned and maintained, showing that the criteria of Subsection P(3) hereof are met.

(b) A development schedule indicating when construction of the site(s) can be expected to begin and be completed and showing that the phasing criteria of Subsection M(1) hereof are met.

(c) Total land and/or building area to be used for nonresidential purposes by category.

(d) A plan or program indicating provisions for management and protection of existing topographic features, soil, water, woodland, wetland, marshland, grassland and wildlife resources.

[7] **Editor's Note: See Ch. A220, Fees.**

(e) Materials and treatment proposed to be used for the perimeter of the PUD or CD.

(f) An area map showing the entire PUD or CD and the proposed site area.

(g) A plan of the site area, including the following information:

[1] The title of the drawing, including the name of the development, the name of the applicant and the person who prepared the drawing.

[2] North point, the scale and the date.

[3] Topography at one-foot contour intervals.

[4] Boundaries of the proposed site area and its acreage.

[5] The lines of existing and proposed streets and bicycle or pedestrian ways within, connecting to and immediately adjoining the proposed site and the names of all proposed streets. No street name change shall be made following site plan approval unless approved by the Planning Board.

[6] The layout of proposed property and lot lines, including property which is to be offered for dedication or other disposition for public ownership and use with the purpose indicated and property that is proposed to be reserved by deed covenant for common use.

[7] The location, proposed use, floor area and height of all buildings and the location of all parking and service areas with access drives.

[8] The location and proposed development of all open spaces, including parks, playgrounds and open reservations.

[9] Existing and proposed wet and dry watercourses and direction of flow.

[10] The location of all existing or proposed site improvements, including stormwater systems, culverts, retaining walls and fences; a description of the method of water supply and

sewage disposal and the capacity and location of such facilities; and the location of fire hydrants.

[11] The use and proposed use of all adjacent property, including elevations within 25 feet of perimeters.

[12] The location, size, materials, color and design of lighting facilities, signs and monuments.

[13] A tracing overlay showing all soil areas and their stratification and those areas, if any, with moderate to high susceptibility to ponding or flooding and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation and the program to be undertaken to correct potential erosion problems.

[14] Provisions for all stormwater management, including but not limited to location and type of floodproofing measures where needed, retention areas, open stormwater facilities and underground tiled drainage, as well as drainage channels, both proposed and to remain, including data of gradients of the new system relative to existing facilities and a time schedule for the provision of such facilities. This shall include all ditches, swales, ponds and like facilities, including the acre-feet and/or cubic-foot-per-second (cfs) capacity of such facilities, where applicable. Such facilities shall provide, by the combination of storage and/or improved stream flow, completely for the stormwater on the proposed site plan area and shall provide the land or other facilities necessary to permit water movement from adjacent properties supporting calculations for all stormwater runoff and conveyance giving peak flow data. To meet this requirement, such facilities may be augmented by appropriate facilities located outside the development area which are committed to be in service upon the completion of the development described by the site plan.

(2) Planting plan.

(a) A planting plan pursuant to the requirements as set forth by the Planning Board indicating the location of trees and other materials

planted and of existing trees and other materials to be preserved or those to be removed and information regarding preservation or creation of unique natural areas, grassland, wetland, marshland and wildlife resources shall be required.

(b) In cases where the Planning Board finds that, due to the size, topography or location of the PUD or CD, land for a park, playground or other recreational purposes cannot be properly located therein or if, in the opinion of the Board, it is not desirable, the Board may waive the requirement that the plans show land for such purposes.

(3) Public improvement plans. Prior to the granting of a village permit for public improvements, preliminary construction plans and specifications for all public improvements, including construction detail sheets which shall show the following information:

(a) Preliminary profiles showing existing and proposed elevations along the center lines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the center line of the existing street or streets, within 100 feet of the intersection, shall be shown. A plan of all roadway intersections with finish grade elevations in sufficient detail for evaluating drainage of the permanent area and transition impact to motorists, etc., drawn to a scale of one inch equals 20 feet or larger shall be shown. All elevations must be referenced to established United States Geologic Survey (USGS) or approved local bench marks where they exist within 1/2 mile of the boundary of the site plan area.

(b) Preliminary plans and profiles showing the locations and a typical cross section of street pavements, including curbs and gutters, sidewalks, manholes and catch basins; the location of street trees, streetlighting standards and street signs; the locations, size and invert elevations of existing and proposed waterlines, sanitary sewers, stormwater drains and fire hydrants; and the location and size of all underground utilities or structures.

(4) Building plans. Construction drawings in sufficient detail to permit review and approval under the Village Building and Construction Code.[8]

[8] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**

(5) Covenants. The proposed forms of covenants running with the land, deed restrictions (including those with respect to the use of the common land); covenants, restrictions or easements proposed to be recorded; and covenants proposed for maintenance.

(6) Development schedule. An updated development schedule covering the site plan area. The schedule shall include the improvement of open space, the construction of buildings and structures in the open space and construction of other improvements in the site plan area and the proposed coordination of such activities.

J. Site plan review. Review of the site plan shall be designed to ensure that the detailed planning for a development area is in substantial conformance with the objectives of this section and the development plan and shall be based upon consideration of the following factors:

(1) The adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structure and traffic control.

(2) The adequacy and arrangement of pedestrian traffic access, walkway structures and control of intersections with vehicular traffic and pedestrian convenience.

(3) The location, arrangement, appearances and sufficiency of off-street parking and loading.

(4) The location, arrangement, size and design of buildings, lighting, signs and monuments.

(5) The conformance of improvement plans with village specifications and the conformance of building plans to applicable village codes.

(6) The relation of the various uses to one another and their scale.

(7) The adequacy of usable space for active and passive recreation.

(8) The adequacy of existing and proposed facilities for sanitary waste disposal and stormwater storage and disposal, including drainage channels, ponds and water storage in relation to location in the watershed.

(9) The adequacy of open space lands for public ownership and use offered for dedication or other disposition to the village or other public entity.

(10) The adequacy of structures, roadways, utilities and landscaping in areas with moderate to high susceptibility to flooding, ponding and/or erosion.

(11) The adequacy of school sites and facilities to serve the PUD or CD.

(12) The adequacy of other existing public facilities and services to serve projected needs of the PUD.

(13) The capacity of other proposed public facilities to serve uses located within the appropriate service areas of such facilities.

(14) The protection of adjacent properties against noise, glare, unsightliness or other objectionable features; and the adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-deterring buffer or weather buffer between adjacent uses and adjoining lands.

K. Planning Board action on site plan application. Within 62 days of the receipt of the application for site plan approval, the Planning Board shall act on it and notify the Village Board and the applicant of its action. In determining its action, the Planning Board shall seek advice and assistance from the Village Attorney with respect to all covenants, restrictions and easements to be recorded and covenants for maintenance; the Village Engineer and Superintendent of Public Works with respect to improvement plans; the Village Building Inspector with respect to building plans; and any other persons or committees.

(1) If, in its review of the site plan, the Planning Board finds that any regulations, standards or criteria prescribed by this section are inapplicable because of unusual or unforeseen conditions affecting the proposed site plan development or because of the nature or quality of the proposed design, it may recommend to the Village Board that an adjustment be made in such regulations, standards or criteria consistent with the purposes of this section as applied to the proposed site plan development. The Village Board also may recommend and/or approve such adjustments upon its own initiative.

(2) The Planning Board's report shall state whether or not the site plan is approved and shall include a detailed statement of the basis for any Planning Board determination of noncompliance with any substantive criterion, standard or regulation of this section. In such case, the Planning Board may recommend further study of the site plan after it has been revised or redesigned.

(3) A copy of such report shall be immediately filed with the Village Clerk and delivered to the applicant following such approval or disapproval of the site plan.

(4) When the Planning Board disapproves a site plan, it will be sent to the Village Board for final action only on the written request of the applicant.

L. Conformity to development plan.

(1) It is expected that the site plan will be in conformance with the goals and objectives of the development plan approved by the Village Board. However, if in preparing the site plan it becomes apparent that certain elements of the development plan, as it was approved by the Village Board, were unfeasible and in need of significant modification or have become so since such approval, the applicant may incorporate said modifications in the site plan. The Planning Board shall then determine whether the modified site plan is in keeping with the intent of this section. The Planning Board, as part of its report referred to in Subsection K hereof above, shall notify the Village Board and the applicant of its recommendation in such regard, stating all of the factors involved and its reasons for recommending approval or disapproval of any such modifications.

(2) All such site plans shall be both prepared and signed by a New York State licensed professional engineer who shall so verify conformity of the site plan to the development plan.

M. Village Board action.

(1) Within 62 days of receiving an application, the Village Board shall either approve or disapprove the site plan. The basis for such a decision shall be the conformance of the site plan to the approved or modified development plan, to other applicable village ordinances and to the objectives of the community development plan and this section.

(2) If the Village Board determines that a site plan does not comply with any substantive criterion, standard or regulation of this section, then the record of such determination shall be delivered to the applicant, including a separate statement setting forth in detail the exact nature of such noncompliance and all factors included in the basis for the Village Board's determination.

(3) The applicant shall be afforded a reasonable opportunity, on one or more occasions as circumstances require, to appear before the Village Board and/or the Planning Board on reasonable notice to present his or her position concerning compliance of the proposed site plan with the substantive criteria, standards and regulations of this section.

(4) The Village Board may require the issuance of a performance bond on all or part of any such PUD or make such other requirements as deemed necessary.

(5) In no event may an applicant commence any development until such time as final approval is issued.

(6) In the event that an applicant does not complete any such development, the Village Board, in its discretion, may, in addition to the retention of the performance bond, require that the applicant return the site to the original condition prior to the commencement of the development.

N. Other regulations applicable to PUD or CD Districts.

(1) Development phasing. If the development is to be implemented in phases, each phase must have adequate provision for access, parking, open space, recreation areas and stormwater management and other public improvements to serve the development in accordance with the applicable criteria set forth for PUDs or CDs in the event that other phases are not constructed. Where the overall development of an entire PUD or CD site will require more than 24 months to complete, such development shall be required to be phased. Each phase shall be provided with temporary or permanent transitional features, buffers or protective areas in order to prevent damage to completed phases, to future phases and to adjoining property.

(2) Subdivision review. Site plan review under the provisions of this chapter shall suffice for Planning Board and Village Board review and approval of subdivisions, subject to the following conditions:

(a) The PUD or CD shall be platted as a subdivision; however, if the district is being developed in stages, it may be platted and filed in corresponding components.

(b) The applicant shall prepare sets of subdivision plats suitable for filing with the office of the Erie County Clerk in addition to the drawings required above. Subdivision plats shall be approved by

the Planning Board prior to certification by the Village Clerk and recording by the Erie County Clerk's office.

(3) Regulation after initial construction and occupancy. For the purposes of regulating the development and use of property after completion of initial construction and occupancy, all use changes shall be based upon a special permit granted by the Village Board after receiving a recommendation from the Planning Board.

(4) Changes in site plan.

(a) If, subsequent to the approval of a site plan by the Village Board, the applicant proposes any modification (other than to correct minor or technical omissions or inaccuracies) of the site plan, the procedures set forth in Subsections I and J shall be applicable to such modification, except that the materials submitted to the Planning Board and the Village Board shall relate only to such modification.

(b) At any time within 40 days following the initial site plan submission to the Planning Board, the applicant may submit to the Planning Board modifications which do not materially affect the fundamental character of a proposed site plan, and the time periods stated herein shall continue to apply.

(5) Commencement of construction. No construction or site improvement work may commence until site plan approval has been granted.

O. Permitted uses, criteria, standards and regulations. Uses, criteria, standards and regulations are hereby established with respect to planning of land and the arrangements of buildings and open spaces for those areas which are included in a PUD or CD and which require development and site plan approval. The application of the criteria, uses, standards and regulations set forth in this subsection are intended to result in the optimum development and use of land in the village. They are intended to ensure full consideration of every planning element pertinent to the objectives of this section and the community development plan.

(1) Minimum area. The minimum area required to qualify for a PUD or CD shall be 7 ½ contiguous acres of land. This requirement shall not apply to boundary change amendments under Subsection H above. For purposes of this subsection, lands separated by streams or drainage courses, highways, streets or other public rights-of-way shall be deemed contiguous.

Boundaries should assume reasonably regular configurations, taking advantage of natural features, public rights-of-way and other clearly defined features as outer perimeters in order to facilitate buffering between the PUD and CD and adjacent areas and in order to minimize the development obstacles created by sharply irregular boundaries resulting from noncontiguous ownership patterns.

(2) Maximum area shall be 50 acres.

(3) Location of planned unit development or cluster development. The PUD or CD shall be applicable to any area of the village where the applicant can demonstrate or the Village Board, on its own initiative or upon recommendation of the Planning Board, determines that the characteristics of the proposed site will meet the objectives of this section.

(4) Permitted uses. A PUD or CD designed in accordance with the regulations, standards and design criteria set forth herein and in other applicable provisions of this section may include:

(a) Principal buildings and uses.

[1] All types of single-family dwellings. In developing a balanced community, the use of a variety of housing types, styles and construction methods shall be deemed most important in keeping with this section.

[2] Multifamily dwellings.

[3] Small convenience retail and service facilities, except for automobile drive-in restaurants and office facilities designed to serve the needs of residents of the neighborhood and having no advertising outside the building except identification signs as permitted by this section. Commercial uses shall be provided in appropriate relation to the location and concentration of dwelling units to be served thereby. Limited commercial development designed to be compatible with residential development may be within a primarily residential building or within a building used for commercial purposes only. Such commercial facilities shall be allowed as follows:

Area of PUD (acres)	Maximum Gross Floor Area (square feet)
Under 10	None allowed
10 to 20	4,000
20.1 to 30	10,000
30.1 to 40	15,000
40.1 to 50	20,000

[4] Recreation areas and facilities, except activities producing excessive noise.

[5] Community facilities, including schools, fire and police protection services, cultural and religious facilities and day-care centers.

(b) Accessory building uses.

[1] Private garages and parking areas for the use of guests.

[2] Gardens, fences, walls, pools and other recreation facilities on private or common land.

[3] Vehicular, pedestrian and bicycle circulation systems.

[4] Storage yards and open equipment structures compatible with the above uses and suitably screened, fenced and buffered from adjacent uses in accordance with the performance standards hereof. Storage yards for house trailers, boats and similar equipment and for open-space maintenance equipment are included in this classification.

[5] Other accessory buildings and uses consistent with the intent, objectives and criteria of this section.

(c) Similar main uses. Uses not specifically enumerated above may be permitted by the Village Board if determined to be similar to and compatible with uses permitted hereunder and in accordance with the standards and criteria hereof.

(5) PUD area density. The overall residential density of a PUD shall not exceed five dwelling units per gross acre less the total area to be used exclusively for commercial or institutional purposes as authorized by this section.

(6) CD area density. The overall residential density of a CD shall not exceed four dwelling units per gross acre less the total area to be used exclusively for commercial or institutional purposes as authorized by this section.

(7) Dwelling unit distribution. To assure the construction of a variety of housing types within each PUD or CD, single-family dwelling units or single-family attached dwelling units connected by nonhabitable structures shall comprise a minimum of 25% of the total dwelling units of said district.

(8) Dwelling unit area. All dwelling units and rooms included therein shall have sufficient floor area to meet the following minimum requirements:

(a) Single-family detached and single-family attached dwelling units, connected by nonhabitable structures:

[1] Under two stories: 1,000 square feet.

[2] Two stories and over: 1,200 square feet.

(b) Other single-family attached:

[1] One- and two-bedroom units: 800 square feet.

[2] Three-bedroom units: 1,000 square feet.

[3] Multifamily dwelling units:

[a] One-bedroom dwelling units: 650 square feet.

[b] Two-bedroom dwelling units: 850 square feet.

[c] Three-or-more-bedroom dwelling units: 1,000 square feet.

P. Landscape features and building arrangements.

(1) The design criteria set forth in this subsection are intended to provide considerable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open space and landscape features.

Dwellings may be arranged in various groups, courts, sequence or clusters with open spaces organized and related to the dwellings so as to provide privacy and to form a unified composition of buildings and space. Although latitude in design is provided and encouraged, the following design conditions shall, however, be assured in any PUD or CD. Yards, building setback and spacing and building height and shape, landscape features and building arrangement shall be designed in a manner to assure:

(a) Proper light, air and views for the residents.

(b) Safety in the accommodating pedestrian and vehicular circulation and vehicular storage and service.

(c) Usability of and convenient access to open space by residents of adjacent dwellings without loss of privacy for the residents of such dwellings.

(d) Availability of open land for landscaped features, recreation or other private uses.

(e) Privacy between adjacent buildings and intersecting wings of buildings, from streets, parking and recreation areas.

(f) The creation of a variety of common open spaces and private areas through the planning of landscape features such as walls, fences, hedges and other features.

(2) Landscaping. Landscaping plans shall meet the following standards:

(a) Landscaping shall provide privacy and screening between uses, with visual, noise and air quality factors considered.

(b) Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.

(c) Landscape treatment for public and private plazas, roads, paths and service and parking areas shall be designed as an integral part of an entire project and shall combine with walks and street surfaces, and such requirements shall be in lieu of any other village requirement for trees in public street rights-of-way.

(d) The area covered by impervious surfaces such as buildings and paved areas must be accompanied by planted areas as well as other features to hold or carry stormwater runoff. Outdoor planted or grassed areas within parking lots must be not less than 5% of the total vehicular area in parking lots designed for 10 cars or more and shall be suitably distributed so as to relieve any unsightliness and monotony of parked cars.

(e) Landscape materials shall be appropriate to the growing conditions on the site and the village's environment.

(f) Natural features such as streams, rock outcrops, escarpments, marshlands, wetlands, topsoil, trees and shrubs, natural contours and outstanding vegetational, topographical and geological features shall be preserved and incorporated in the open space areas and in the landscaping of the development.

(g) Plastic or other types of artificial plantings or vegetation shall not be permitted. Trees shall be planted adjacent to all residential units so as to provide no less than three trees of a minimum two-and-one-half-inch caliper, measured two feet above the ground, per residential unit, including trees previously existent on the site which are preserved. Trees to be planted throughout the district and along the vehicular ways shall include both deciduous and coniferous species in adequate density and design to provide year-round benefit of such plantings.

(h) Trees shall be of numerous species as to minimize the impact and spread of disease.

(3) Aesthetics.

(a) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained.

(b) The sides and rear of all buildings shall be designed in such manner as to avoid undue sacrifice of amenity and design values when viewed from side and rear vantage points.

(c) Screening. Visual and noise screening devices shall be designed and maintained to serve their intended purposes set forth in this subsection. Artificial planting materials shall not be allowed.

Landscape screening should be given priority where effective, easily maintained and botanically feasible. Decorative masonry walls in conjunction with berms and plant materials shall be given consideration.

Q. Local circulation system. Both vehicular and pedestrian access shall be provided to each dwelling, school, recreation area and commercial area.

(1) Vehicular circulation.

(a) The vehicular circulation systems and parking facilities shall also be designed to fully accommodate the automobile with safety and efficiency, without allowing it to dominate and destroy the form of the area, with screening and buffering as may be required to satisfy the environmental standards of this section.

(b) Dwellings and other buildings shall be served by streets, drives or emergency accessways planned so as to assure access by service and emergency vehicles.

(c) Driveways and streets serving group and cluster developments shall be connected to collector and arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial and collector streets, bicycle routes and pedestrianways.

(d) Streets may be either private or public.

(e) Standards of design and construction for all roads shall meet applicable village standards unless specifically modified as part of the site plan approval. The right-of-way and pavement widths, locations and designs for private ways, roads and alleys shall conform to the planning and engineering practices as determined by the designee of the Village Board, taking into account the estimated needs of the full proposed development.

(f) There shall be provision of safe bicycling routes throughout the district which may be coincident with pedestrianways, but which shall be separated from the motorized vehicle system wherever feasible.

(2) Pedestrian circulation.

(a) Pedestrianways shall connect residential areas with other residential areas, community facilities, schools, recreational areas, commercial areas and public transportation.

(b) The system of pedestrian walks, malls and landscaped spaces shall be of such extent and the elements of such system shall be distributed in location and number so as to assure safety of pedestrians from vehicular traffic and encourage pedestrian travel within such system instead of in vehicular rights-of-way, without restraints imposed by public, private or common ownerships.

(c) Major pedestrian walks, malls and public transportation loading places where feasible shall be separated from general vehicle circulation.

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided, particularly from building entrances to adjacent buildings, play areas, parking areas and streets.

(e) Sidewalks, pathways and bikeways to be located within a public right-of-way shall meet village standards as to width, location and materials unless specifically modified as a part of the site plan approval.

R. Topography and site appearance. PUDs or CDs shall be designed to take maximum advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. Significant natural features and other characteristics of the site shall be preserved and incorporated as distinctive features of the development.

S. Open space.

(1) Defined.

(a) "Open space" includes:

[1] Uncovered and unpaved lands or water areas in public, common or other private ownership, except lots under single-family ownership.

[2] Lands covered by structures or other improvements may also be deemed to constitute "open space" under the limited conditions specified in this subsection.

[3] Large areas of land in a natural state.

[4] Areas for active and passive recreation.

[5] Parks and large landscaped or wooded areas.

[6] Drainage, runoff areas and floodplain areas and areas for stormwater storage and protection of water quality.

[7] Connectors between major open space areas.

[8] Pedestrian and bicycle circulation systems.

[9] Areas for preservation of wildlife, woodlands, wetlands and outstanding natural features, including geologic and topographic.

[10] Areas for public or private recreation, public education and community and cultural facilities, when approved by the Village Board.

[11] Conservation facilities and areas.

(b) "Open space" does not include areas covered by roads, buildings, parking areas and driveways, service areas, except for buildings, parts of buildings or parking lots providing natural preservation, recreational or cultural services in conjunction with adjoining open space and school sites.

(c) As used in this subsection, the term "common open space" shall mean a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a PUD or CD, privately owned and designed and intended for the use and enjoyment of two or more households residing in the PUD or CD or in specified portions thereof or other users if permitted by the owners of the common open space. Common open space may contain such structures and improvements as are necessary and appropriate for the benefit and enjoyment of persons served by such common open space.

(2) Such proposed uses must be appropriate to the scale and character of the new district, considering its size, density, expected population, topography and the number and types of dwelling units.

(3) The use of a piece of open space land for more than one of these open space uses shall be encouraged, yet a balance of such uses shall be maintained such that, for example, all of the open space shall not be buffers along noisy transportation corridors, but shall include areas suitable for quiet respite.

(4) Area and location.

(a) In any PUD or CD, a minimum of 25% of the total land area, less the amount used exclusively for nonresidential purposes, must be in open space.

[1] At least 70% of this total open space shall be in private ownership open to the public or in public or common ownership.

[2] Any part of the total open space, either in a natural state or improved as permitted by and meeting the standards of this section, may be offered for dedication or other disposition, without cost to the village or other public entity, for recreation and other open space uses for use by the public and acceptable to the Village Board and other public entity and to the owner and, if accepted, constitutes a credit to Subsection S(4)(a) above. Offers for dedication or other disposition of major open space for public use may be made at any time after approval of the development plan.

(b) Any public or common open space shall be located and organized to be readily accessible by foot and bicycle to residential populations served thereby (preferably without their having to cross limited access and arterial roadways). In addition, access and parking for vehicles shall be provided where appropriate.

(c) The location, condition, size and configuration of the open space must be suitable for its use as contemplated and as proposed in the development plan and/or site plan. Lakes or other water areas may not occupy so large a proportion of the major common open space that other open space and recreational uses cannot be adequately provided for.

(5) Open space alterations. The continued use of common open space for the purposes contemplated in this subsection shall be assured through appropriate deed restrictions which shall include a provision that such open space use shall not be materially altered or abridged without the approval of the Village Board.

(6) Physical improvements.

(a) Open space must be suitably improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved.

(b) The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.

(7) Maintenance of open space.

(a) Arrangements must be made for the improvement, operation and maintenance of such common open space and facilities. The developer shall provide for and establish an organization for the ownership, operation and maintenance of common open space.

(b) In reviewing the organization for the ownership and maintenance of any common open space, the Planning Board shall consider, in addition to other applicable requirements of this section, the following:

[1] The time when the organization is to be created.

[2] The mandatory or automatic nature of membership in the organization by residents.

[3] The permanence of arrangements intended to assure continued use of lands as common open space.

[4] The liability of the organization for insurance, taxes and maintenance of all facilities.

[5] The provision for pro rata sharing of costs and assessments.

[6] The capacity of the organization to administer common facilities.

[7] The availability of the open space to residents from areas adjoining the development where requested by the developer.

(8) Public open space. The standards for the Planning Board's determination whether to recommend Village Board approval of an offer for the dedication or other disposition to the village or other public entity of public open space lands shall, without excluding any other applicable requirements of this section, include the following:

(a) The need for public open space in the PUD or CD. In determining the manner of public ownership, the usage by the village outside the PUD or CD shall be considered.

(b) The potential for an open space connection with other public open space areas.

(c) The desirability of public access due to the special physical and biological characteristics of the area which make it suitable for public open space uses.

(d) The desirability of public acquisition of floodways, drainageways and areas subject to flooding for water management and recreational uses.

(e) Review and acceptability of covenants or similar provisions proposed for inclusion in dedication instrument, intended to assure that public use remains consistent with the objectives of the development plan and site plan.

T. Perimeter treatment. The design of improvements and landscaping along the boundaries of a PUD or CD should be visually harmonious and functionally compatible with adjoining developments. Extensive parking areas, service areas and other features likely to have adverse effects on surrounding property (due, e.g., to adverse views, lights, noise) shall be screened against viewing from first stories both inside and outside the district. Screening shall also be provided to protect against lights, noise or other undesirable conditions in the surroundings.

U. Utilities. New public and private utilities and those relocated or replaced shall be entirely underground.

V. Off-street parking and loading. The design criteria set forth in this subsection are intended to provide desirable latitude and freedom to encourage variety in the location arrangement and type of uses, to encourage convenience in accessibility to these uses through provisions of pedestrian and bicycle pathways and public transportation services and to achieve the efficient sharing of parking and loading facilities by multiple uses. Therefore, in lieu of specific minimum parking and loading requirements and other similar considerations, the following performance standards shall apply:

(1) Parking facilities shall be landscaped and screened to minimize unsightliness and monotony of parked cars.

(2) Pedestrian connections between parking areas and buildings shall be along walkways to the extent necessary to assure pedestrian safety.

(3) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design.

(4) Any above-grade loading facility shall be screened from public view to the extent necessary to eliminate unsightliness and should be separate from private vehicles and pedestrians where feasible.

(5) The design of buildings and parking facilities shall take advantage of the topography of the site where appropriate to provide separate levels of access.

(6) Parking areas in all use areas except open space shall meet the requirements of the Village Code.

(7) Off-street parking and loading spaces shall be provided for all new buildings at the time of erection and for all enlargements of existing buildings and shall be maintained in usable shape and good condition.

(8) Off-street parking and loading spaces shall be provided so as to prevent overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights-of-way.

W. Signs.

(1) Freestanding signs in a PUD or CD shall be limited to traffic and pedestrian directional and control signs, street signs and signs identifying the development.

(2) One identification sign shall be permitted for each nonresidential use, identifying the use on the premises as permitted on the site plan, of not more than 20 square feet, not projecting beyond the building to which it is attached more than 12 inches and not projecting more than 10 feet in height above grade.

(3) Any illuminated sign visible from any public street or from adjoining property used for residential purposes shall be so shaded, shielded, directed or maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect neighboring premises nor the safe vision of operators of vehicles moving on public roads or highways.

(4) Signs shall be designed as an integral part of a comprehensive site and landscape plan, which shall include a sign system specifying the general type, design, size and location of all signs and all sign controls to be instituted by the developer.

X. Enclosure and residential outside storage.

(1) All permitted principal and accessory uses and operations which, as a result of not being enclosed, would constitute a nuisance or offense beyond the lot line or which as a result of not being enclosed would conflict with any of the specific performance standards set forth in this subsection shall be performed wholly within an enclosed building or buildings.

(2) Outside storage or parking of commercial or recreation vehicles, camper bodies, boats and trailers on lands occupied for residential purposes shall be prohibited.

Y. Other provisions. Except for the definitions contained therein, no other procedural or substantive provision of any other section of the this chapter shall apply to the establishment of or development within a PUD or CD.

§ 210-26. Condominiums and cooperatives.

A. Intent. The intent of this section is to promote greater flexibility and consequently more creative and imaginative design for the development of residential areas; to meet the growing demand for housing by greater variety and type, design and setting of dwellings; to encourage conservation and more efficient use of land in such developments and maintenance of high environmental quality throughout the development; to provide for the utilization of planning criteria in the arrangements

of buildings related to common open space; and to utilize topography and other site features to their best advantage to obtain creative and coordinated designs.

B. Application and procedures.

(1) Initiation of proceedings. Proceedings to create condominiums and/or cooperatives may be initiated either by the Village Board or by application of the owner, as defined in **§** 210-25D(3)(a)[2]. Accordingly, the provisions of Subsections B(2) and B(3)(a) are applicable only to proceedings initiated upon application of the owner or owners of the proposed condominium and/or cooperative site.

(2) Preapplication conference. To obtain information, each applicant shall confer with the Planning Board and interested department heads in connection with the preparation of the condominium and/or cooperative application. It shall be the responsibility of the Planning Board to contact and invite these department heads to a joint meeting. The applicant shall submit a concept plan showing the proposed location and components of the condominium and/or cooperative. Thereafter, the Planning Board shall furnish the applicant with its written comments regarding such conference, including appropriate recommendations and information concerning the procedure and criteria for approval to inform and assist the applicant prior to his or her preparing the components of the condominium and/or cooperative application.

(3) Application for development plan approval. Formal application for the condominium and/or cooperative shall be initiated by filing 10 copies of the information enumerated below with the Village Clerk and paying the required fee[9].

(a) Documents; developmental plan and supporting maps. The development plan must be to a scale not greater than one inch equals 200 feet, although it need not be to the precision of finished engineering drawings, and must show the major details of the condominiums and/or cooperatives and contain the following minimum information, unless waived by the Planning Board as not being applicable:

[1] The existing site conditions, including property lines, contours at five-foot intervals, watercourses, including drainage ditches in the village storm drainage system floodplains areas subject to flooding at the one-hundred-

[9] **Editor's Note: See Ch. A220, Fees.**

year frequency, unique natural features, wetlands, tree cover, soil information and evaluation for the uses proposed.

[2] The proposed land use arrangement and acres by use.

[3] The location and type of all existing structures.

[4] The location and size in acres or square feet of all areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites and similar public and semipublic uses, including pathways, drainage ditches and water storage areas.

[5] The existing and proposed vehicular circulation system, showing major points of access to public rights-of-way, including major points of ingress and egress to the development. Notations of proposed ownership, public or private, should be included where appropriate.

[6] The existing and proposed bikeway and pathway circulation system, including its interrelationships with the vehicular circulation system.

[7] The existing and proposed major storm drainage system, to include:

[a] The direction and quantity of flow.

[b] The location of major existing and proposed storm sewers and drainageways.

[c] A description of stormwater storage and movement features.

[d] Treatment of floodways and drainageways.

[e] Treatment thereof with the rest of the village.

[8] The existing and proposed sanitary sewage disposal system serving the development, including its projected load and the effect the load will have on the existing and proposed village disposal system.

[9] Existing and proposed waterlines and linkages with the village system and the effect the demand therefrom will have on the existing and proposed water supply system.

[10] Information on land areas for 500 feet beyond the perimeter of the proposed development, showing the relationships between the proposed development, including land uses, zoning classifications, densities, circulation systems, public facilities and unique natural features of the landscape.

[11] The proposed treatment of the buffer zone of the development.

[12] Sketches or pictorial representation of typical structures sufficient to relay the basic architectural intent of the proposed improvements, but need not be encumbered with final detail.

C. Planning Board Review/Zoning Board of Appeals Review.

(1) Upon receipt of a proposed development plan for condominiums and/or cooperatives, the Village Clerk shall transmit a copy of the plan and accompanying documentation to the Village Engineer, the Superintendent of Public Works, the school district and such other agencies as he or she may deem appropriate for their review, report and recommendation. Such officials and agencies shall each, within 62 days from receiving the development plan and supporting documents, furnish to the Planning Board a report pertinent to their respective jurisdictions.

(2) The Planning Board shall review the development plan and related documents and evaluate the reports enumerated above. Within 62 days following the submission of the development plan and data to the Planning Board, the Planning Board shall furnish to the Zoning Board of Appeals and the applicant, if any, either its finding that the development plan complies with the regulations, standards and criteria prescribed by this chapter or a finding of any failure of such compliance and recommendation that the development plan be approved, disapproved or modified.

(3) If in any such evaluation the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this chapter are inapplicable because of unusual conditions of the planned residential development or the nature and quality of the proposed design, it may

recommend to the Village Board that an adjustment in such regulations, standards or criteria be made for the development or a proposed site in the development.

(4) Upon completion of the Planning Board review and submission of a report, whether favorable or unfavorable, the Zoning Board of Appeals shall review the development plan and related documents and evaluate their reports enumerated above. Within 62 days following the submission of the development plan and data to the Zoning Board of Appeals, the Zoning Board of Appeals shall furnish to the Village Board and the applicant, if any, either its finding that the development plan complies with the regulations, standards and criteria prescribed by this chapter and regulations or a finding of any failure of such compliance and recommendation that the development plan be approved, disapproved or modified.

(5) If in any such evaluation the Zoning Board of Appeals finds that submission requirements, regulations, standards or criteria prescribed by this regulation are inapplicable because of unusual conditions of the condominiums and cooperatives or the nature and quality of the proposed design, it may recommend to the Village Board that an adjustment in such regulations, standards or criteria be made for the development or a proposed site in the development.

(6) Favorable report. A favorable report shall include a recommendation to the Village Board that a public hearing be held for the purpose of considering the creation of the development. It shall be based on the following findings, which shall be included as part of the report:

(a) The proposed development plan meets the intent and objectives of condominiums and/or cooperatives as expressed in Subsections A hereof.

(b) The proposed development plan meets all the requirements of Subsection M hereof.

(c) There are adequate services and utilities available or proposed to be made available for the construction of the development.

(d) The proposed development plan is consistent with the objectives of the Village of Alden's Comprehensive Plan.

(7) Unfavorable report. An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what changes are

necessary in order to receive a favorable report. The applicant may, within 30 days after receiving an unfavorable report, file an application with the Village Clerk for a hearing. The Village Board then shall hold a public hearing for the development and shall render a decision within 62 days after the hearing on such application.

D. Village Board action; public hearing and decision. The Village Board shall take action:

(1) Upon receiving a favorable report from the Planning Board and/or the Zoning Board of Appeals or an application following an unfavorable report as described in Subsection C(7); or

(2) At any time following the submission of a proposed development plan meeting the applicable requirements of Subsection B hereof by the Planning Board in the case of proceedings on the Village Board's initiative, the Village Board shall set a date for a public hearing for the purpose of considering the creation of condominiums and/or cooperatives in accordance with the procedures established under this chapter, the Village Law or other applicable law. The Village Board shall hold a public hearing and render a decision within 62 days following the hearing. The published notice of any public hearing scheduled to consider the creation of condominiums and/or cooperatives shall state that the proposed development plan, with a list of all property ownerships within the district (listed by house number, name of owner, street name and tax number), and a map of the proposed district, showing proposed use classification areas and property lines of all parcels included in district areas, are available for public examination in the office of the Village Clerk prior to the hearing and thereafter until such time as the Village Board shall act to approve or disapprove the creation of the district and shall describe any adjustments in any regulations, standard or criteria of this chapter proposal pursuant to Subsection C(3) hereof.

E. Zoning.

(1) The determination by the Village Board of whether to create condominiums and/or cooperatives or adjust any regulation, standards or criteria of this chapter shall be based on its review of the proposed development plan, the report of the Planning Board and any matters brought forth at the hearing and approval or rejection of a development plan where the Village Board has acted on its own initiative. Such approval shall include the making of the findings specified in Subsection C(4). Upon the creation of

condominiums and/or cooperatives in such a manner, the Zoning Map[10] shall be notated. The Village Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its zoning resolution additional conditions or requirements consistent with the intent and objectives of this section for the applicant to meet. If such additional conditions or requirements are proposed, the applicant shall be given notice, in writing, of such additional conditions or requirements at least 15 days prior to the creation of the condominiums and/or cooperatives, and the Zoning Map shall not be amended until the applicant has filed with the Village Clerk written consent to the development plan as modified.

(2) Amending the Zoning Map[11] to indicate condominiums and/or cooperatives does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after approval of the site plan.

F. Amendment of development plan. A development plan amendment (other than as provided in Subsection J hereof) may be initiated in the same manner as provided in Subsection B(3) hereof. The application shall be filed with the Village Clerk, accompanied by such supporting material as may be necessary to enable the Planning Board and the Village Board to review the request for amendment except as hereinafter provided. Review of and action upon the request by the Planning Board and the Village Board shall comply with the requirements of Subsections C through E hereof. A public hearing thereon shall only be required if the amendment contemplates a change in the provisions of this section or in the boundaries of the condominiums and/or cooperatives or a change in a use classification of the development plan.

G. Application of site plan approval. Application for site plan approval shall be to the Planning Board and may include all or a portion of the area included in condominiums and/or cooperatives. The information required by this subsection shall be furnished with respect to the entire condominium and/or cooperative and shall be submitted at or before the first site plan application. The application shall be accompanied by 10 copies of the following information required for entire condominiums and cooperatives, prepared by a New York State licensed lawyer, engineer, surveyor, architect or landscape architect, as appropriate, and payment of the required review fee. Information required for entire condominiums and/or cooperatives shall include:

[10] **Editor's Note: The Official Zoning Map is on file in the village offices.**
[11] **Editor's Note: The Official Zoning Map is on file in the village offices.**

(1) A detailed breakdown of total open space by uses and as to how it is to be owned and maintained, showing that the criteria of Subsection Q hereof are met.

(2) A development schedule indicating when construction of the site(s) can be expected to begin and be completed and showing that the phasing criteria of Subsection L(1) hereof are met.

(3) Total land and/or building area to be used for nonresidential purposes by category.

(4) A plan or program indicating provisions for management and protection of existing topographic features, soil, water, woodlands, wetlands, marshlands, grasslands and wildlife resources.

(5) Materials and treatment proposed to be used for the perimeter of the condominiums and/or cooperatives.

(6) Area map. An area map showing the entire condominiums and/or cooperatives and the proposed site area.

(7) Site plan. A plan of the site area, including the following information:

(a) The title of the drawing, including the name of the development, the name of applicant and the person who prepared the drawing.

(b) North point, the scale and the date.

(c) The topography at one-foot contour intervals.

(d) The boundaries of the proposed site area and its acreage.

(e) The lines of existing and proposed streets and bicycle or pedestrian ways within, connecting to and immediately adjoining the proposed site and the names of all proposed streets. No street name change shall be made following site plan approval unless approved by the Planning Board.

(f) The layout of proposed property and lot lines, including property which is to be offered for dedication or other disposition for public ownership and use with the purpose indicated, and property that is proposed to be reserved by deed covenant for common use.

(g) The location, proposed use, floor area and height of all buildings and the location of all parking and service areas with access drives.

(h) The location and proposed development of all open spaces, including parks, playgrounds and open reservations.

(i) Existing and proposed wet and dry watercourses and the direction of flow.

(j) The location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; a description of the method of water supply and sewage disposal and the capacity and location of such facilities; and the location of fire hydrants.

(k) The use and proposed use of all adjacent property, including elevations within 25 feet of perimeters.

(l) The location, size, materials, color and design of lighting facilities, signs and monuments.

(m) A tracing overlay showing all soil areas and their stratification and those areas, if any, with moderate to high susceptibility to ponding or flooding and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation and the program to be undertaken to correct potential erosion problems.

(n) Provisions for all stormwater management, including but not limited to the location and type of floodproofing measures where needed, retention areas, open stormwater facilities and underground tiled drainage, as well as drainage channels, both proposed and to remain, including data of gradients of the new system relative to existing facilities and a time schedule for the provision of such facilities. This shall include all ditches, swales, ponds and like facilities, including the acre-feet and/or cubic-foot-per-second (cfs) capacity of such facilities where applicable. Such facilities shall provide, by the combination of storage and/or improved stream flow, completely for the stormwater on the proposed site plan area and shall provide the land or other facilities necessary to permit water movement from adjacent properties. To meet this requirement, such facilities may be augmented by appropriate facilities located outside the development area which

are committed to be in service upon the completion of the development described by the site plan.

(8) Planting plan.

(a) A planting plan pursuant to the requirements as set forth by the Planning Board shall indicate the location of trees and other materials planted and of existing trees and other materials to be preserved or those to be removed and information regarding the preservation or creation of unique natural areas, grasslands, wetlands, marshlands and wildlife resources.

(b) In cases where the Planning Board finds that due to the size, topography or location of the condominiums and/or cooperatives, land for a park, playground or other recreational purposes cannot be properly located therein or if, in the opinion of the Board, it is not desirable, the Board may waive the requirement that the plans show land for such purposes.

(9) Public improvement plans. Prior to the granting of a village permit for public improvements, preliminary construction plans and specifications for all public improvements, including construction detail sheets which shall show the following information:

(a) Preliminary profiles showing existing and proposed elevations along the center lines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the center line of the existing street or streets, within 100 feet of the intersection, shall be shown. All elevations must be referenced to established United States government or approved local bench marks where they exist within 1/2 mile of the boundary of the site plan area.

(b) Preliminary plans and profiles showing the locations and a typical cross section of street pavements, including curbs and gutters, sidewalks, manholes and catch basins; the location of street trees, streetlighting standards and street signs; the locations, size and invert elevations of existing and proposed waterlines, sanitary sewers, stormwater drains and fire hydrants; and the location and size of all underground utilities or structures.

(10) Building plans. Construction drawings in sufficient detail to permit review and approval under the Village Building Code.[12]

(11) Covenants. The proposed forms of covenant running with the land, deed restrictions (including those with respect to the use of the common land); covenants, restrictions or easements proposed to be recorded; and covenants proposed for maintenance.

(12) Development schedule. An updated development schedule covering the site plan area. The schedule shall include the improvement of open space, the construction of buildings and structures in the open space and the construction of other improvements in the site plan area and the proposed coordination of such activities.

H. Site plan review. Review of the site plan shall be designed to ensure that the detailed planning for a development area is in substantial conformance with the objectives of this section and the development plan and shall be based upon consideration of the following factors:

(1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structure and traffic control.

(2) Adequacy and arrangement of pedestrian traffic access, walkway structures and control of intersections with vehicular traffic and pedestrian convenience.

(3) The location, arrangement, appearances and sufficiency of off-street parking and loading.

(4) The location, arrangement, size and design of buildings, lighting, signs and monuments.

(5) The conformance of improvement plans with village specifications and the conformance of building plans to applicable village codes.

(6) The relation of the various uses to one another and their scale.

(7) The adequacy of usable space for active and passive recreation.

[12] **Editor's Note: See Ch. 78, Building Construction and Fire Prevention.**

(8) The adequacy of existing and proposed facilities for sanitary waste disposal and stormwater storage and disposal, including drainage channels, ponds and water storage in relation to location in the watershed.

(9) The adequacy of open space lands for public ownership and use offered for dedication or other disposition to the village or other public entity.

(10) The adequacy of structures, roadways, utilities and landscaping in areas with moderate to high susceptibility to flooding, ponding and/or erosion.

(11) The adequacy of school sites and facilities to serve the condominiums and/or cooperatives.

(12) The adequacy of other existing public facilities and services to serve projected needs of the condominiums and/or cooperatives.

(13) The capacity of other proposed public facilities to serve uses located within the appropriate service areas of such facilities.

(14) The protection of adjacent properties against noise, glare, unsightliness or other objectionable features; and the adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-deterring buffer or weather buffer between adjacent uses and adjoining lands.

I. Planning Board action on site plan application.

(1) Within 62 days of the receipt of the application for site plan approval, the Planning Board shall act on it and notify the Village Board and the applicant of its action. In determining its action, the Planning Board shall seek advice and assistance from the Village Attorney with respect to all covenants, restrictions and easements to be recorded and covenants for maintenance; the Village Engineer and the Superintendent of Public Works with respect to improvement plans; the Village Building Inspector with respect to building plans; and any other persons or committees.

(2) If, in its review of the site plan, the Planning Board finds that any regulations, standards or criteria prescribed by this section are inapplicable because of unusual or unforeseen conditions affecting the proposed site plan development or because of the nature or quality of the proposed design, it may recommend to the Village Board that an adjustment be made in such regulations, standards or criteria consistent with the purposes of this section

as applied to the proposed site plan development. The Village Board also may allow such adjustments upon its own initiative.

(3) The Planning Board's report shall state whether or not the site plan is approved and shall include a detailed statement of the basis for any Planning Board determination of noncompliance with any substantive criterion, standard or regulation of this section. In such case, the Planning Board may recommend further study of the site plan after it has been revised or redesigned.

(4) A copy of such report shall be immediately filed with the Village Clerk and delivered to the applicant following such approval or disapproval of the site plan.

(5) When the Planning Board disapproves a site plan, it will be sent to the Village Board for final action only on the written request of the applicant.

J. Conformity to development plan.

(1) It is expected that the site plan will be in conformance with the goals and objectives of the development plan approved by the Village Board. However, if in preparing the site plan it becomes apparent that certain elements of the development plan, as it was approved by the Village Board, were unfeasible and in need of significant modification or have become so since such approval, the applicant may incorporate said modifications in the site plan. The Planning Board shall then determine whether the modified site plan is in keeping with the intent of this section. The Planning Board, as part of its report referred to in Subsection I above, shall notify the Village Board and the applicant of its recommendation in such regard, stating all of the factors involved and its reasons for recommending approval or disapproval of any such modifications.

(2) All such site plans shall be both prepared and signed by a New York State licensed professional engineer who shall so verify conformity of the site plan to the development plan.

K. Village Board action.

(1) Within 62 days of receiving an application, the Village Board shall either approve or disapprove the site plan. The basis for such a decision shall be the conformance of the site plan to the approved or modified development plan, to other applicable village ordinances and to the objectives of the community development plan and this section.

(2) If the Village Board determines that a site plan does not comply with any substantive criterion, standard or regulation of this section, then the record of such determination shall be delivered to the applicant, including a separate statement setting forth in detail the exact nature of such noncompliance and all factors included in the basis for the Village Board's determination.

(3) The applicant shall be afforded a reasonable opportunity, on one or more occasions as circumstances require, to appear before the Village Board and/or the Planning Board on reasonable notice to present his or hers position concerning compliance of the proposed site plan with the substantive criteria, standards and regulations of this section.

(4) The Village Board may require the issuance of a performance bond on all or part of any such condominium and/or cooperative or make such other requirements as deemed necessary.

(5) In no event may an applicant commence any development until such time as final approval is issued.

(6) In the event that an applicant does not complete any such development, the Village Board, in its discretion, may, in addition to the retention of the performance bond, require that the applicant return the site to the original condition prior to the commencement of the development.

L. Other regulations applicable to condominium or cooperative districts.

(1) Development phasing. If the development is to be implemented in phases, each phase must have adequate provision for access, parking, open space, recreation areas and stormwater management and other public improvements to serve the development in accordance with the applicable criteria set forth for condominiums and/or cooperatives in the event that other phases are not constructed. Where the overall development of an entire condominiums and/or cooperatives site will require more than 24 months to complete, such development shall be required to be phased. Each phase shall be provided with temporary or permanent transitional features, buffers or protective areas in order to prevent damage to completed phases, to future phases and to adjoining property.

(2) Subdivision review. Site plan review under the provisions of this chapter shall suffice for Planning Board and Village Board review and approval of subdivisions, subject to the following conditions:

(a) The condominiums and/or cooperatives shall be platted as a subdivision; however, if this is being developed in stages, it may be platted and filed in corresponding components.

(b) The applicant shall prepare sets of subdivision plats suitable for filing with the office of the Erie County Clerk in addition to the drawings required above. Subdivision plats shall be approved by the Planning Board prior to certification by the Village Clerk and recording by the Erie County Clerk's office.

(3) Regulation after initial construction and occupancy. For the purposes of regulating the development and use of property after completion of initial construction and occupancy, all use changes shall be based upon a special permit granted by the Village Board after receiving a recommendation from the Planning Board.

(4) Changes in site plan.

(a) If, subsequent to the approval of a site plan by the Village Board, the applicant proposes any modification (other than to correct minor or technical omissions or inaccuracies) of the site plan, the procedures set forth in Subsections G and H of this section shall be applicable to such modification, except that the materials submitted to the Planning Board and the Village Board shall relate only to such modification.

(b) At any time within 40 days following the initial site plan submission to the Planning Board, the applicant may submit to the Planning Board modifications which do not materially affect the fundamental character of a proposed site plan, and the time periods stated herein shall continue to apply.

(5) Commencement of construction. No construction or site improvement work may commence until site plan approval has been granted.

M. Permitted uses; criteria; standards and regulations. Uses, criteria, standards and regulations are hereby established with respect to planning of land and the arrangements of buildings and open spaces for those areas which are included in a condominium and/or cooperative and which require development and site plan approval. The application of the criteria, uses, standards and regulations set forth in this section are intended to result in the optimum development and use of land in the village. They are intended to ensure full consideration of every planning

element pertinent to the objectives of this section and the community development plan.

(1) Minimum area. The minimum area required to qualify for a condominium and/or cooperative shall be 7 1/2 contiguous acres of land. This requirement shall not apply to boundary change amendments under Subsection F above. For purposes of this subsection, lands separated by streams or drainage courses, highways, streets or other public rights-of- way shall be deemed contiguous. Boundaries should assume reasonably regular configurations, taking advantage of natural features, public rights-of-way and other clearly defined features as outer perimeters in order to facilitate buffering between the PUD and CD and adjacent areas and in order to minimize the development obstacles created by sharply irregular boundaries resulting from noncontiguous ownership patterns.

(2) Maximum area shall be 50 acres.

(3) Accessory building uses.

(a) Private garages and parking areas for the use of guests.

(b) Gardens, fences, walls, pools and other recreation facilities on private or common land.

(c) Vehicular, pedestrian and bicycle circulation systems.

(d) Storage yards and open equipment structures compatible with the above uses and suitably screened, fenced and buffered from adjacent uses in accordance with the performance standards hereof. Storage yards for house trailers, boats and similar equipment and for open-space maintenance equipment are included in this classification.

(e) Other accessory buildings and uses consistent with the intent, objectives and criteria of this section.

(4) Similar main uses. Uses not specifically enumerated above may be permitted by the Village Board if determined to be similar to and compatible with uses permitted hereunder and in accordance with the standards and criteria hereof.

(5) Dwelling unit area. All dwelling units and rooms included therein shall have sufficient floor area to meet the following minimum requirements:

(a) Single-family detached and single-family attached dwelling units, connected by nonhabitable structures.

(b) Other single-family attached.

[1] One- and two-bedroom units: 800 square feet.

[2] Three-bedroom units: 1,000 square feet.

N. Landscape features and building arrangements.

(1) The design criteria set forth in this subsection are intended to provide considerable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open space and landscape features. Dwellings may be arranged in various groups, courts, sequence or clusters with open spaces organized and related to the dwellings so as to provide privacy and to form a unified composition of buildings and space. Although latitude in design is provided and encouraged, the following design conditions shall, however, be assured in any condominiums and/or cooperatives. Yards, building setback and spacing and building height and shape, landscape features and building arrangement shall be designed in a manner to assure:

(a) Proper light, air and views for the residents.

(b) Safety in the accommodating pedestrian and vehicular circulation and vehicular storage and service.

(c) Usability of and convenient access to open space by residents of adjacent dwellings without loss of privacy for the residents of such dwellings.

(d) Availability of open land for landscaped features or recreation or other private uses.

(e) Privacy between adjacent buildings and intersecting wings of buildings from streets, parking and recreation areas.

(f) The creation of a variety of common open spaces and private areas through the planning of landscape features such as walls, fences, hedges and other features.

(2) Landscaping. Landscaping plans shall meet the following standards:

(a) Landscaping shall provide privacy and screening between uses, with visual, noise and air quality factors considered.

(b) Landscaping shall contribute to the prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.

(c) Landscape treatment for public and private plazas, roads, paths, service and parking areas shall be designed as an integral part of an entire project and shall combine with walks and street surfaces, and such requirements shall be in lieu of any other village requirement for trees in public street rights-of-way.

(d) The area covered by impervious surfaces such as buildings and paved areas must be accompanied by planted areas as well as other features to hold or carry stormwater runoff. Outdoor planted or grassed areas within parking lots must be not less than 5% of the total vehicular area in parking lots designed for 10 cars or more and shall be suitably distributed so as to relieve any unsightliness and monotony of parked cars.

(e) Landscape materials shall be appropriate to the growing conditions on the site and the village's environment.

(f) Natural features such as streams, rock outcrops, escarpments, marshlands, wetlands, topsoil, trees and shrubs, natural contours and outstanding vegetational, topographical and geological features shall be preserved and incorporated in the open space areas and in the landscaping of the development.

(g) Plastic or other types of artificial plantings or vegetation shall not be permitted. Trees shall be planted adjacent to all residential units so as to provide no less than three trees of a minimum two-and-one-half-inch caliper, measured six inches above the ground, per residential unit, including trees previously existent on the site which are preserved. Trees to be planted throughout the district and along the vehicular ways shall include both deciduous and coniferous species in adequate density and design to provide year-round benefit of such plantings.

(h) Trees shall be of numerous species as to minimize the impact and spread of disease.

(3) Aesthetics.

(a) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained.

(b) The sides and rear of all buildings shall be designed in such manner as to avoid undue sacrifice of amenity and design values when viewed from side and rear vantage points.

(4) Screening. Visual and noise screening devices shall be designed and maintained to serve their intended purposes set forth in this section. Artificial planting materials shall not be allowed. Landscape screening should be given priority where effective, easily maintained and botanically feasible. Decorative masonry walls in conjunction with berms and plant materials shall be encouraged.

O. Local circulation system. Both vehicular and pedestrian access shall be provided to each dwelling, school, recreation area and commercial area.

(1) Vehicular circulation.

(a) The vehicular circulation systems and parking facilities shall also be designed to fully accommodate the automobile with safety and efficiency, without allowing it to dominate and destroy the form of the area, with screening and buffering as may be required to satisfy the environmental standards of this section.

(b) Dwellings and other buildings shall be served by streets, drives or emergency accessways planned so as to assure access by service and emergency vehicles.

(c) Driveways and streets serving group and cluster developments shall be connected to collector and arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial and collector streets, bicycle routes and pedestrianways.

(d) Streets may be either private or public.

(e) Standards of design and construction for all roads shall meet applicable village standards unless specifically modified as part of the site plan approval. The right-of-way and pavement widths,

locations and designs for private ways, roads and alleys shall conform to the planning and engineering practices as determined by the designee of the Village Board, taking into account the estimated needs of the full proposed development.

(f) There shall be provision of safe bicycling routes throughout the district which may be coincident with pedestrianways but which shall be separated from the motorized vehicle system wherever feasible.

(2) Pedestrian circulation.

(a) Pedestrianways shall connect residential areas with other residential areas, community facilities, schools, recreational areas, commercial areas and public transportation.

(b) The system of pedestrian walks, malls and landscaped spaces shall be of such extent and the elements of such system shall be distributed in location and number so as to assure safety of pedestrians from vehicular traffic and encourage pedestrian travel within such system instead of in vehicular rights-of-way, without restraints imposed by public, private or common ownerships.

(c) Major pedestrian walks, malls and public transportation loading places where feasible shall be separated from general vehicle circulation.

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided, particularly from building entrances to adjacent buildings, play areas, parking areas and streets.

(e) Sidewalks, pathways and bikeways to be located within a public right-of-way shall meet village standards as to width, location and materials unless specifically modified as a part of the site plan approval.

P. Topography and site appearance. Condominiums and/or cooperatives shall be designed to take maximum advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. Significant natural features and other characteristics of the site shall be preserved and incorporated as distinctive features of the development.

Q. Open space.

(1) Defined.

(a) "Open space" includes:

[1] Uncovered and unpaved lands or water areas in public, common or other private ownership, except lots under single-family ownership.

[2] Lands covered by structures or other improvements may also be deemed to constitute "open space" under the limited conditions specified in this section.

[3] Large areas of land in a natural state.

[4] Areas for active and passive recreation.

[5] Parks and large landscaped or wooded areas.

[6] Drainage, runoff areas and floodplain areas and areas for stormwater storage and protection of water quality.

[7] Connectors between major open space areas.

[8] Pedestrian and bicycle circulation systems.

[9] Areas for preservation of wildlife, woodlands, wetlands and outstanding natural features, including geologic and topographic.

[10] Areas for public or private recreation, public education and community and cultural facilities, when approved by the Village Board.

[11] Conservation facilities and areas.

(b) "Open space" does not include areas covered by roads, buildings, parking areas and driveways, service areas, except for buildings, parts of buildings or parking lots providing natural preservation, recreational or cultural services in conjunction with adjoining open space and school sites.

(c) As used in this section, the term "common open space" shall mean a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for condominiums and/or cooperatives, privately owned and designed and intended for the use and enjoyment of two or more households residing in the condominiums and/or cooperatives or in specified portions thereof or other users if permitted by the owners of the common open space. Common open space may contain such structures and improvements as are necessary and appropriate for the benefit and enjoyment of persons served by such common open space.

(2) Such proposed uses must be appropriate to the scale and character of the new district, considering its size, density, expected population, topography and the number and types of dwelling units.

(3) The use of a piece of open space land for more than one of these open space uses shall be encouraged, yet a balance of such uses shall be maintained such that, for example, all of the open space shall not be buffers along noisy transportation corridors, but shall include areas suitable for quiet respite.

(4) Open space alterations. The continued use of common open space for the purposes contemplated in this subsection shall be assured through appropriate deed restrictions which shall include a provision that such open space use shall not be materially altered or abridged without the approval of the Village Board.

(5) Physical improvements.

(a) Open space must be suitably improved for its intended use, but open space containing natural features worthy or preservation may be left unimproved.

(b) The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.

(6) Maintenance of open space.

(a) Arrangements must be made for the improvement, operation and maintenance of such common open space and facilities. The

developer shall provide for and establish an organization for the ownership, operation and maintenance of common open space.

(b) In reviewing the organization for the ownership and maintenance of any common open space, the Planning Board shall consider, in addition to other applicable requirements of this section, the following:

[1] The time when the organization is to be created.

[2] The mandatory or automatic nature of membership in the organization by residents.

[3] The permanence of arrangements intended to assure continued use of lands as common open space.

[4] The liability of the organization for insurance, taxes and maintenance of all facilities.

[5] The provision for pro rata sharing of costs and assessments.

[6] The capacity of the organization to administer common facilities.

[7] The availability of the open space to residents from areas adjoining the development where requested by the developer.

R. Perimeter treatment. The design of improvements and landscaping along the boundaries of condominiums and/or cooperatives should be visually harmonious and functionally compatible with adjoining development. Extensive parking areas, service areas and other features likely to have adverse effects on surrounding property (due, e.g., to adverse views, lights, noise) shall be screened against viewing from first stories both inside and outside the district. Screening shall also be provided to protect against lights, noise or other undesirable conditions in the surroundings.

S. Utilities. New public and private utilities and those relocated or replaced shall be entirely underground.

T. Off-street parking and loading. The design criteria set forth in this section are intended to provide desirable latitude and freedom to encourage variety in the

location arrangement and type of uses, to encourage convenience in accessibility to these uses through provision of pedestrian and bicycle pathways and public transportation services and to achieve the efficient sharing of parking and loading facilities by multiple uses. Therefore, in lieu of specific minimum parking and loading requirements and other similar considerations, the following performance standards shall apply:

(1) Parking facilities shall be landscaped and screened to minimize unsightliness and monotony of parked cars.

(2) Pedestrian connection between parking areas and buildings shall be along walkways to the extent necessary to assure pedestrian safety.

(3) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design.

(4) Any above-grade loading facility shall be screened from public view to the extent necessary to eliminate unsightliness and should be separate from private vehicles and pedestrians where feasible.

(5) The design of buildings and parking facilities shall take advantage of the topography of the site where appropriate to provide separate levels of access.

(6) Parking areas in all use areas except open space shall meet the requirements of the Village Code.

(7) Off-street parking and loading spaces shall be provided for all new buildings at the time of erection and for all enlargements of existing buildings and shall be maintained in usable shape and good condition.

(8) Off-street parking and loading spaces shall be provided so as to prevent overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights-of-way.

U. Signs.

(1) Freestanding signs in condominiums and/or cooperatives shall be limited to traffic and pedestrian directional and control signs, street signs and signs identifying the development.

(2) One identification sign shall be permitted for each nonresidential use, identifying the use on the premises as permitted on the site plan, of not more than 20 square feet, not projecting beyond the building to which it is attached more than 12 inches and not projecting more than 10 feet in height above grade.

(3) Any illuminated sign visible from any public street or from adjoining property used for residential purposes shall be so shaded, shielded, directed or maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect neighboring premises nor the safe vision of operators of vehicles moving on public roads or highways.

(4) Signs shall be designed as an integral part of a comprehensive site and landscape plan, which shall include a sign system specifying the general type, design, size and location of all signs and all sign controls to be instituted by the developer.

(5) Freestanding signs for apartment complexes, condominiums and/or cooperatives shall be permitted by special permit of the Board of Trustees after submission to the Planning Board as part of the comprehensive site and landscape plan. The location, illumination and size of such signs shall be at the sole discretion of the Board of Trustees.

V. Enclosure and residential outside storage.

(1) All permitted principal and accessory uses and operations which, as a result of not being enclosed, would constitute a nuisance or offense beyond the lot line or which as a result of not being enclosed would conflict with any of the specific performance standards set forth in this subsection shall be performed wholly within an enclosed building or buildings.

(2) Outside storage or parking of commercial or recreation vehicles, camper bodies, boats and trailers on lands occupied for residential purposes shall be prohibited.

§ 210-27. Supplementary regulations. [Amended 12-20-2007 by L.L. No. 12-2007]

A. Lots and yards.

(1) Lot frontage on street. No building or structure shall be erected on any lot which does not have a minimum of thirty (30) feet of immediate frontage on an existing or platted street or highway.

(2) Driveway and parking in front yard. No more than thirty percent (30%) of the total area of a front yard may be utilized for a driveway and/or parking area in any R District.

(3) Front yard or setback exceptions.

(a) Where a widening or extension of an existing street or highway right-of-way or the establishment of a new street or highway is indicated on the Zoning Map or an Official Map[13] adopted by the Village Board, any front yard or building setback required by this chapter shall be measured from such widened, extended or new right-of-way. Unless otherwise indicated on the map, any widened right-of-way shall be assumed to be centered on the former street or highway center line.

(b) In any R District, a building need not have a greater setback line than that established by existing buildings, if any, on the same side of the street as the proposed building.

(c) In any R District, in the case of corner lots with coinciding rear lot lines, the minimum setback from the side street shall be fifteen (15) feet.

(4) Area and width for lot of record. The requirements of this chapter with respect to lot area and lot width shall not be construed to prevent the erection of a single-family dwelling on any lot of record and, in ownership, separate from that of any and all adjacent lots at the effective date of this chapter, provided that the sanitation, yard and setback requirements are complied with.

[13] **Editor's Note: The maps are on file in the village offices.**

(5) Projections into yards. The following structures shall be allowed within required yards:

(a) In any R-O, R-1, R-2 or R-C District, a wall or fence not over three feet (3) feet high in any front or side street yard, provided all fencing is a minimum of five (5) feet from any existing sidewalk or right-of-way.

(b) In any C-1, C-2, or I-1 District, a wall or fence not over seven (7) feet high in any front or side street yard, provided all fencing is a minimum of five (5) feet from any existing sidewalk or right-of-way. Where a fence may obstruct visibility at driveways, it shall be no more than three (3) feet high for a distance of forty (40) feet from any sidewalk or existing right-of-way.

(c) A wall or fence not over seven (7) feet high in any other yard.

(d) A retaining wall of any necessary height.

(e) Balconies, bay windows, chimneys and roof projections not exceeding three (3) feet.

(6) Fences.

(a) All such fences shall be kept in good and proper working order and the same shall not be allowed to deteriorate or be so designed, erected, placed, maintained or painted so as to constitute a nuisance, obstruction or annoyance to any resident within the Village of Alden. All such fences shall be of one uniform color and shall not be constructed of any scrap or junk materials.

(b) All such fences shall be so designed, constructed and placed so as to have all support beams, posts, etc., on the interior of the yard upon which such fence is placed. No such support features or posts shall be so placed as to be in the view of any adjoining land owners.

(7) Decks and porches in R Districts.

(a) Decks and porches shall be permitted to encroach into the minimum required rear yard a maximum of twenty-five percent (25%), but not closer than fifteen (15) to the rear lot line.

(b) The minimum side yard setback for any deck shall be seven (7) feet.

B. Visibility at intersections. No fence, wall, hedge, shrub planting or tree foliage which obstructs sight lines at elevations between two (2) and ten (10) feet above the roadway or sidewalk shall be placed or permitted to remain on any corner lot in the triangular area formed by intersecting street property lines and a line connecting them at points forty (40) feet distant from their intersection or, in the case of a rounded or cutoff corner, from the intersection of such lines extended.

C. Accessory use limitations.

(1) A use specified in one district shall not be permitted as an accessory use in another district unless such use is also specified in such other district.

(2) In any R District, the total gross floor area of all detached accessory structures shall not be more than seventy-five percent (75%) of the gross floor area of the main building.

(3) In any R District, the permitted accessory uses shall not include:

(a) Establishment of any new access driveway to business or industrial premises for use by any vehicles weighing five (5) tons or more,

(b) Private garages with vehicular entrance headroom more than ten (10) feet high,

(c) Storage of flammable liquids of Class I or Class II in quantities greater than three hundred (300) gallons on any lot,

(d) Any home occupation for which a business or trade license is required or which is noxious or offensive by reason of dust, fumes, gas, noise, odor, refuse matter, smoke, vibration, unreasonable use of lights or nighttime operation. The foregoing restrictions with respect to licensing shall be waived to allow the resident office of a licensed real estate or insurance agent or broker or licensed professional person in any district where expressly permitted.

(4) Storage of flammable liquid or gas. No storage of Class I or Class II flammable liquid or gas in quantities exceeding three hundred (300) gallons shall be hereafter established except in a district where permitted and in conformance with the recommendations of all applicable codes, rules and regulations.

(5) Removal of topsoil. Without the approval of the Building Inspector, no person shall remove topsoil for sale or for use other than on the premises from which the same shall be taken.

D. Accessory use location limitations.

(1) In any R District, no accessory building shall be erected or altered so as to be:

(a) In any front yard.

(b) In any required side yard.

(c) Nearer than ten (10) feet to any dwelling unless attached thereto and considered part thereof for purposes of yard measurements.

(2) In any R District, accessory buildings located in the rear yard shall be at least three (3) feet from the side or rear lot line.

(3) Accessory buildings may occupy a total of not more than twenty-five percent (25%) of the required rear yard area of any lot in an R District.

(4) In any R District, swimming pools must be a minimum ten (10) feet from any side or rear lot line, and a minimum of ten (10) feet from any building or structure, unless attached thereto by a deck or porch. The minimum distance shall be measured from the exterior edge of the pool structure not including walkways or sidewalks.

E. Exceptions to height limitations.

(1) The height limitations of this chapter shall not apply to chimneys, church spires and belfries, water tanks or necessary mechanical features not occupying more than one-tenth (1/10) of the roof area.

(2) In any R or C District, a public or nonprofit institutional building may be erected to a height greater than that specified for the district, provided that

each front, side and rear year is increased one (1) foot for each one (1) foot of such additional height.

F. Off-street parking. **[Amended 6-23-2011 by L.L. No. 7-2011]**

(1) At the time any main building is erected, physically altered or changed in use, parking spaces, as specified herein, shall be provided on the same lot therewith, but not in any required front yard or side street side yard in any R District, unless upon a driveway of blacktop or concrete. Each parking space shall be at least ten (10) feet wide and twenty (20) feet long, exclusive of driveways. When parking is required by this Part, all parking areas, loading areas, drive areas and driveways shall be covered in either blacktop or concrete. Parking is required as follows:

(a) Two (2) parking spaces for each family.

(b) One (1) parking space for each roomer or boarder.

(c) One (1) parking space for each two hundred (200) square feet of resident professional office floor area.

(d) For an auditorium stadium, theater or other places of public assembly, at least one (1) parking space for each eight (8) occupants, based on the maximum occupant load as determined by the New York State Building and Fire Prevention Code.

(e) For a hospital, sanitarium or nursing home, at least one (1) parking space for each five (5) patients and employees.

(f) For restaurants or other eating places, at least one (1) parking space for each five (5) seats, except when it is in a building which provides parking spaces, in which case the number of places already provided may be taken to be available for the restaurant or other eating place.

(g) For retail stores, parking spaces at least equal to the building floor area.

(h) For other commercial uses, parking spaces at least equal to the building floor area, unless quantitive data, acceptable to the Village of Alden in its sole discretion, is presented showing fewer parking spaces are necessary.

(i) In any C-2 or I District, parking is required as stated in § 210-27F(h), but need not exceed one (1) parking space per employee in warehouses or similar uses with limited need for customer parking.

(j) In any B-1 District, all parking spaces shall be located in the rear yard of the property.

§ 210-28. Permitted special uses. [Amended 1-19-2006 by L.L. No. 2-2006]

A. General provisions. The special uses for which conformance to additional standards is required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

(1) Application. Application for a special permit shall be made upon a prescribed form supplied by the Village of Alden. Applicable fees[14] must be paid at the time application is made.

(2) Required site plan. A site plan, as specified in Article VII, shall be submitted with each application for a special permit from the Board of Trustees.

(3) Expiration. A special permit shall be deemed to authorize only one particular special use and shall expire if the special use shall cease for more than six (6) months for any reason.

(4) Existing violations. No permit shall be issued for a special use for a property where there is an existing violation of this chapter.

B. Standards applicable to all special uses.

(1) The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it shall be such that it will be in harmony with the orderly development of the district, and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings nor impair the value thereof.

[14] **Editor's Note: See Ch. A220, Fees.**

(2) Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or flashing lights than would be the operations of any permitted use.

C. Standards applicable to specific uses.

(1) Mobile home parks.

(a) Standards for mobile home parks shall be in compliance with Chapter 131, Mobile Home Parks.

(2) Golf driving range.

(a) A golf driving range shall be so laid out that there is no danger to surrounding properties or to traffic on any street, and it shall be suitably fenced to assure protection.

(b) One (1) off-street parking space shall be provided for each golf driving tee.

(c) Landscaped screening shall be provided along all side and rear lot lines of a character and depth deemed necessary to screen buildings, structures, lights and signs from nearby residences.

(d) No golf driving range shall be developed on a lot smaller than ten (10) acres, except that the Board of Trustees may approve a smaller site if the particular design proposed will, in its judgment, carry out the purposes of these regulations.

(3) Gun clubs.

(a) The required development plan shall be specific concerning the relationship of proposed improvements to adjacent development. Areas used for intensive outdoor activities, especially those involving the use of firearms, shall be delineated and adequate measures for safety and noise control specified.

(4) Drive-in theater.

(a) The site shall be located on either a state or county highway.

(b) The site shall be designed to provide for safe and efficient traffic circulation. Entrances or exits on state roads shall be approved by

the Regional Design Engineer of the State Department of Transportation. Entrances or exits on county roads shall be approved by the Deputy Commissioner of Highways of the Erie County Department of Public Works.

(c) All driveways, parking areas and structures shall be located at least one hundred (100) feet from any residence district boundary.

(d) All driveways, parking areas and structures shall be landscaped in a manner which will make them compatible with surrounding land uses, existing or future.

(e) The screen shall be so oriented as not to create a distracting influence on vehicle drivers on the adjacent highways or a nuisance for residents in residence districts.

(5) Gasoline service station or public garage, subject to the following limitations:

(a) No part of any building used as a gasoline service station or public garage and no filling pump, lift or other service appliance shall be erected within twenty-five (25) feet of any R District boundary.

(b) No gasoline or fuel pump, no oiling or greasing mechanism and no other service appliance shall be installed in connection with any gasoline station or public garage within fifty (50) feet of any street line.

(c) Two (2) reservoir spaces, ten (10) feet wide by twenty (20) feet deep for each gasoline pump, shall be provided on the lot for waiting vehicles. Such reservoir spaces shall not include space at the pump or required parking spaces.

(d) Storage of gasoline shall be as required by all applicable codes, rules, and regulations.

(e) There shall not be any use of the lot except for landscaping or screening within twenty (20) feet of any R District.

(f) Gasoline filling stations or public garages shall not create a hazard to health, safety, traffic flow, pedestrians, or the general welfare of the public. Such language shall be liberally construed to effectuate

the best interests of the residents of the Village of Alden and to implement the zoning ordinances and master plan.

(g) For all dispensing devices.

(1) Signs reading "No smoking—shut off motor" shall be conspicuously posted at each dispensing station or pump.

(2) Gasoline storage tanks shall be limited to three (3) storage tanks of not over 3,000 gallons' capacity each, and all fuel, oil or similar substances are to be stored at least 75 feet from any street line, including said gasoline storage tank, and 50 feet from any building.

(6) Self-storage facilities.

(a) Self-storage facilities shall be limited to dead storage use only. No activities other than rental of storage units and pick up and deposit of dead storage shall be allowed. Examples of activities prohibited in a self-service storage facility include but are not limited to the following: commercial wholesale or retail sales; auctions, garage sales or flea markets; servicing, repair or fabrication of motor vehicles, boats, trailers, lawn mowers, appliances or similar equipment; the operation of power tools, spray-painting equipment, table saws, lathes, compressors, welding equipment, kilns or other similar equipment; the establishment of transfer storage business; and any use that is noxious or offensive because of odors, dust, noise, fumes or vibrations, but nothing contained herein prohibit enforcement of the provisions of the New York State Lien Law.

(b) All rental contracts shall include clauses prohibiting:

[1] The storage of flammable liquids and highly combustible, radioactive or explosive materials or hazardous chemicals.

[2] Pets or any animals.

[3] The use of property for uses other than dead storage.

[4] The owner shall inspect each and every storage unit a minimum of once every ninety (90) days and maintain a record of the results of such inspection together with

whether any hazardous products or other items in violation of this ordinance exist. Such records shall be made available upon demand by the Board of Trustees, the Superintendent of Public Works and/or the Code Enforcement Officer.

(c) Interior parking lanes shall be provided adjacent to the storage units. Such lanes shall be a minimum of ten (10) feet in width.

(d) Interior maneuvering lanes shall be provided around all buildings. For one-way circulations, twelve (12) feet shall be provided. For two-way circulation, twenty-four (24) feet shall be provided. Drives shall be surfaced with asphalt or oil and chip or some other hard-packed material capable of sustaining the weight of fire equipment.

(e) Landscaping and security. Plantings shall be provided in all yards facing public roadways. These and other plantings shall both screen and visually interrupt the linear extent of the buildings so as to reduce the appearance of massive structures. When utilized, an effective living screen of evergreen type shall consist of nursery stock a minimum of eight feet in height at the time of installation. The entire site shall be fenced to prevent vandalism or criminal activity. Any fencing for security or aesthetic purposes shall be approved by the Planning Board as to material, height and color. Site lighting shall be provided and shall be directed or shielded to prevent glare on adjacent properties or roadways.

(f) Signs shall be installed in accordance with applicable provisions of this Code; however, no signs shall be permitted on any portions of the security fencing.

(g) Rental unit size shall be limited to a maximum of four hundred (400) square feet, and no single tenant shall be permitted to rent or lease more than four thousand (4,000) square feet.

(h) No building shall exceed one (1) story in height, nor shall it be longer than two hundred fifty (250) feet in length.

(i) Site plan review by the Planning Board shall be required pursuant to Article VII of this Chapter.

§ 210-29. Home occupations.

A. Conditions

(1) The Village Board of Trustees may, upon application and a public hearing thereon, permit a home occupation in any R District subject to the applicant's ability to provide reasonable evidence that all of the following conditions will be met. A home occupation shall be limited to one (1) per single-family dwelling.

(a) The occupation will be conducted entirely within a dwelling or existing accessory structure.

(b) The occupation is clearly incidental and secondary to the principal use of the building and premises.

(c) The establishment and conduct of a home occupation shall not change the principal character or use of the dwelling unit and premises involved.

(d) No more than one (1) person other than the members of the immediate family residing on the premises may be employed by the home occupation business.

(e) Not more than twenty-five percent (25%) of the floor area of one (1) story of the dwelling is devoted to such home occupation.

(f) No stock-in-trade is kept or commodities sold, other than incidental supplies necessary for and consumed in the conduct of such home occupation.

(g) No storage or display of materials, goods, supplies or equipment related to the operation of a home occupation shall be visible from the outside of any structure located on the premises.

(h) No mechanical equipment is used except such as may be used for domestic or household purposes (or as deemed similar to power and type).

(i) Such home occupation shall not require internal or external alteration or invoke construction features not customarily in a dwelling.

(j) The use shall not generate noise, vibration, glare, fumes, odors or electrical interference beyond what normally occurs in the applicable zoning district.

(k) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard, unless upon a concrete or blacktop driveway.

(l) A sign identifying a home occupation may be permitted, provided a permit is secured therefore, and that such sign shall not be larger than six (6) square feet in area. If such signs are freestanding, they shall not be located closer to any lot line than one-half (1/2) of the required setback nor exceed four (4) feet in height above the ground level at the sign's location. Illuminated signs shall comply with § 210-30, Artificial Illumination.

B. Procedure.

(1) Application.

(a) Application for a home occupation permit shall be made by the resident to the Village Board of Trustees on a form provided by the Village of Alden and shall be accompanied by a filing fee[15] as set by the Village Board.

(2) Planning Board review.

(a) All applications for a home occupation permit shall be reviewed by the Village Planning Board, which shall report its recommendations to the Village Board.

(3) Village Board review and public hearing.

(a) After considering the Planning Board's recommendation and after a duly scheduled public hearing, the Village Board may issue a home occupation permit. The Village Board may place any restrictions or conditions on the permit to protect the interests of

[15] **Editor's Note: See Ch. A220, Fees.**

the public and the Village of Alden. Notices of the public hearing shall be mailed by the Village Clerk to adjacent property owners.

(4) Permit renewal.

(a) The time limit for the home occupation permit shall be one (1) year.

(b) Requests for renewal shall be submitted in writing to the Village Board, accompanied by a fee[16] as set by the Village Board, a minimum of thirty (30) days prior to the expiration of the currently valid home occupancy permit.

(c) The request shall be reviewed and an inspection made of the property by the Code Enforcement Officer to verify continued compliance with the necessary criteria and conditions established with the initial approval.

(d) The Code Enforcement Officer shall report his or her findings to the Village Board, which, upon a determination of compliance and a duly scheduled public hearing, may renew the home occupation permit for one (1) year.

(5) Voiding of permit.

(a) The Village Board may void any home occupation permit for noncompliance with the conditions set forth in approving the permit.

(b) Failure of applicant to renew permit shall result in automatic termination of the home occupation. For renewal, applicant must pay initial application fee and reapply for another permit.

§ 210-30. Nonconforming uses.

A. Intent. Within the districts established by this chapter or amendments that may be adopted, there exist lots, structures, uses of land and characteristics of uses which were lawful before this chapter or amendments thereto were passed, but which would be prohibited, regulated or restricted under terms of this chapter or future amendments. Regulations for the continuance, maintenance, repair, restoring,

[16] **Editor's Note: See Ch. A220, Fees.**

moving and discontinuance of nonconforming lots, structures, land and uses are established for the following purposes:

(1) To permit these nonconformities to continue, but to minimize any adverse effect on the adjoining properties and development.

(2) To regulate their maintenance and repair.

(3) To restrict their rebuilding if substantially destroyed.

(4) To require their permanent discontinuance if not operated for certain periods of time.

(5) To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objective of the community development plan and this Zoning Chapter of the village.

B. Nonconforming lots of record.

(1) In any R-O or R-1 District in which single-family detached dwellings are permitted, a single-family detached dwelling and customary accessory structures may be erected on any single lot of record at the effective date of adoption or amendment of this chapter, notwithstanding limitations imposed by other provisions of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.

(2) This provision shall apply even though such lot fails to meet the requirements of area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals.

(3) If two (2) or more lots or combinations of lots or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter and if all or part of the lots do not meet the requirements established for width and area, the lands involved shall be considered an undivided parcel for the purposes of this chapter. The provisions of this section shall not apply if any portion of said parcel shall, after the adoption of this chapter or amendment, be used or divided in a manner which prevents or diminishes compliance with the requirements established by this chapter or amendment thereto.

C. Nonconforming uses and structures.

(1) Except as hereinafter authorized, no conforming use of land shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or an amendment of this chapter; nor shall any existing conforming structure devoted to a use not permitted by this chapter in the district in which it is located or a nonconforming structure itself or its use, if nonconforming, be enlarged, extended, constructed, reconstructed or moved, except in changing the use of the structure to a use permitted in the district in which it is located or to make the structure conforming.

(2) Restoration of a damaged use or structure. If a nonconforming use or structure is destroyed or damaged by fire, other casualty, act of God or by the public enemy to the extent of less than seventy-five percent (75%) of its value immediately prior to the occurrence, it may thereafter be reconstructed or repaired and occupied. In all other cases, the nonconforming use shall be terminated and any nonconforming structure shall be demolished. Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as herein authorized must be made within six (6) months of the occurrence, and the repair, replacement or reconstruction must be completed within six (6) months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated, and any nonconforming structure then remaining shall be demolished.

(3) Nonconforming single-family detached dwelling units may be enlarged, provided that the enlargement does not create a nonconformity.

(4) Superseding a nonconforming use by a permitted use. Any structure, land or structure and land in combination in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations of the district.

(5) Moving a nonconforming use or structure. A nonconforming use or structure shall not be moved for any reason other than to conform to the regulations for the district in which it is located after it is moved.

(6) Discontinuance or abandoning a nonconforming use or structure.

(a) A nonconforming use or structure discontinued or abandoned for twelve (12) consecutive months or for eighteen (18) months during any three (3) year period shall not thereafter be used or occupied

except in conformity with the regulations of the district in which it is located.

(b) Discontinuance of the active and continuous operation of a nonconforming use or a part or portion thereof for a period of twelve (12) consecutive months or eighteen (18) months during any three (3) year period, as the case may be, is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon the same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidence of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than twelve (12) consecutive months, and all rights to reestablish or continue such nonconforming use shall thereupon terminate.

(7) Nonconforming parking, loading and stacking facilities. A structure, use or occupancy existing lawfully at the time this chapter or any amendment thereto becomes effective, but which does not conform with the off-street parking, loading and stacking regulations, may be occupied or continued without such parking and/or loading spaces being provided. Any such spaces that may be provided thereafter shall comply with the regulations of this chapter. If an existing structure, use or occupancy is altered so that there is an increase of the number of dwelling units, seating capacity or floor area or if the use or occupancy is changed to one requiring more off-street facilities, then off-street parking, stacking and loading spaces shall be provided at least equal to the number required for the increased area for the structure or use in accordance with all provisions of this chapter.

(8) Repair and maintenance.

(a) On any nonconforming structure or portion of a structure containing a nonconforming use or occupancy, ordinary repair work may be done or repairs or replacements of nonbearing walls, fixtures, wiring or plumbing may be made, provided that the cubic content existing when it became nonconforming shall not be increased.

(b) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical

condition, it may be strengthened or restored to a safe condition upon order of an official charged with protecting the public safety.

§ 210-31. Artificial illumination.

A. In addition to any approvals under a site plan review by the Planning Board, all plans with respect to artificial illumination shall be presented to the Board of Trustees prior to final site plan approval.

B. With respect to any artificial illumination on any property abutting and/or adjoining property located within any residential zone, steps shall be taken by the owner of the property seeking to utilize such artificial illumination to ensure that all such lights and other illumination devices are sufficiently shielded as to prevent any excessive illumination into such residential zone.

ARTICLE V
Signs
[Amended 5-18-2006 by L.L. No. 15-2006]

§ 210-32. Purpose

The intent of these regulations is to promote and protect public health, welfare and safety by regulating and restricting the location, construction, repair, removal, alteration and maintenance of signs and other advertising devices in the village. It is intended to promote public safety, to protect property values, to create a more attractive economic climate and to enhance the scenic and natural beauty of the village.

§ 210-33. General conditions and regulations. [Amended 6-23-2011 by L.L. No. 5-2011]

The following requirements will apply to any signs not otherwise provided for in the Article:

A. Except for those signs specifically identified in § 210-37, §210-38 and §210-39, no sign shall be erected in the Village of Alden without a permit issued by the Code Enforcement Officer.

B. The provisions and regulations specified herein apply only to exterior signs which are visible from the public right-of-way.

C. All signs shall be securely attached to a building or a structurally sound support, and their display surfaces shall be kept neatly painted and in good repair at all times.

D. No illuminated signs or outdoor illumination shall direct light in a way which would create a traffic hazard or nuisance or be unreasonably detrimental to adjoining or neighboring properties.

E. Except for time and temperature signs, no sign shall be illuminated by or contain a flashing, intermittent, rotating or moving light or lights. Lighting devices shall employ only lights emitting light of constant intensity.

F. No sign shall project over a public right-of-way or sidewalk.

G. A flush-mounted building sign shall not project more than twelve (12) inches from the face of the building to which it is attached.

H. No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or similar fluttering devices.

I. No sign shall consist of animated or moving parts.

J. No movable or portable signs shall be permitted to be placed on any premises in the village. Temporary signs approved under § 210-39 are exempt from this provision.

K. No signs shall be attached to trees.

L. No signs shall be attached to fences or utility poles for a period of more than seventy-two (72) hours.

M. No sign shall be erected or maintained upon the roof of any building or structure.

N. No motor vehicle, mobile home or trailer on which is placed or painted any sign shall be parked or stationed in a manner primarily intended to display the sign.

O. No sign shall be erected or maintained within the public right-of-way of any street, nor within fifteen (15) feet of the pavement of any public street or within ten (10) feet of any property line unless flush-mounted to a building.

P. Except when otherwise provided for in this chapter, not more than one (1) sign shall be permitted which advertises a business use or service other than that which exists on the premises on which said sign is located. The primary function of the sign must be to advertise the principal use of the business on the property on which the sign is located.

Q. The regulations specified herein shall not apply to any sign or directional device erected by any governmental agency, nonadvertising signs identifying underground utility lines or posted or preserve signs erected pursuant to the Environmental Conservation Law of the State of New York.

R. No sign shall be erected in such a manner as to confuse or obstruct the view of any traffic sign, signal or device.

S. No sound amplifiers, public address systems or other sound devices shall be used as a means of advertising or to attract attention to a sign.

T. Awnings, as defined by this chapter, may be permitted, provided that they comply with the following standards and regulations:

(1) No awning shall extend out more than six (6) feet from the building surface from which it is attached.

(2) No awning shall be less than seven (7) feet above the sidewalk or entranceway over which it is attached.

U. Flower boxes, which extend over or rest on a public right-of-way, shall not extend more than nine (9) inches from the façade of the building to which they are accessory. Flower boxes shall not contain any lettering, logos, or pictorial matter and may not be illuminated, except indirectly.

§ 210-34. Business uses in R-C, B-1, C-1, C-2 and I-1 Districts. [Amended 6-23-2011 by L.L. No. 5-2011]

A. The total area of all signs erected on a single property to advertise a specific business activity of that property, including freestanding and building signs, shall not exceed an area of two (2) square feet for each linear foot of building frontage of the principal structure, measured along the street or off-street parking area, whichever is greater, that provides the principal access for the use.

B. Directional signs that do not exceed four (4) square feet in sign area and are limited to such texts as “Office,” “Entrance,” “Exit,” “Parking” and “No Parking” shall be excluded from the limitation on the total area of signs permitted.

C. No freestanding sign shall be more than twenty-five (25) feet in height, measured from the highest level of natural ground immediately beneath the sign to the highest point of the sign or the supporting structure thereof. The Planning Board shall establish the setback for freestanding signs to ensure that such signs do not obstruct the view of motorists or create a nuisance to adjacent properties.

§ 210-35. Conduct of more than one principal activity.

A. Notwithstanding the standard governing the total area of signs permitted to be erected or maintained on any parcel of real property set forth in § 210-34 above, the following standards shall guide the regulation of all signs associated with projects when more than one (1) principal building or business use or activity is proposed to be conducted upon a single parcel of real property, such as in the case of a shopping center, plaza or mall or other multiple commercial use facility or industrial park.

(1) A single freestanding sign of up to thirty-two (32) square feet in area and not more than twenty-five (25) feet in height may be erected which identifies the name of the center or facility as a whole and does not advertise any individual business activity.

(2) One (1) sign identifying individual businesses or uses may be erected for each separate principal activity. Individual business signs may be attached to the face of the building. Such signs shall not exceed the lesser of two (2) square feet of area for each linear foot of store frontage or twenty percent (20%) of the surface area of the building face on which the sign is to be attached.

(3) In a multiple commercial use facility or industrial park, there may be one (1) directory sign at any location therein which shall not exceed five (5) square feet for each acre of land in such commercial area or industrial park, provided that no such sign shall exceed twenty (20) square feet in area. In addition, at each point of entrance and exit for vehicular traffic into such multiple commercial use facility or industrial park, one (1) other directory sign shall be permitted which does not exceed four (4) square feet for each acre of land in such multiple commercial use facility or industrial park. Such signs shall not exceed a total area of twelve (12) square feet.

(4) An overall sign design plan for any such center or facility shall be submitted with the application for site plan approval. The sign design plan shall include plans for each principal activity therein and shall reflect a reasonable uniformity of design, lettering and material.

§ 210-36. Non-business uses in R-O, R-1, R-2 and R-C Districts.

A. For multiple-family dwellings, churches, libraries, social clubs, public buildings and other similar uses, a single identification sign not exceeding sixteen (16) square feet in area and indicating only the name and address of the building may be displayed. Signs identifying churches, libraries and other similar public buildings may, in addition to the name and address, include the times that services are provided. Such signs shall not be located closer to any lot line than one-half (1/2) of the required setback nor project more than four (4) feet in height above grade. Illuminated signs shall comply with § 210-31, Artificial Illumination.

B. No more than two (2) signs advertising the sale, lease or rental of a property may be placed on the site which is available. Said signs shall be removed from the

premises within seven (7) days after the property has been leased or title transferred.

C. A permanent sign may be erected to indicate a subdivision. Said sign shall be approved by the Planning Board.

D. A sign advertising the sale of property within an approved subdivision may be permitted, provided that said sign does not exceed an area of thirty-two (32) square feet. Said sign shall be located at the entranceway to the subdivision and may be placed on the property for a period of three (3) years from the time of subdivision approval or thirty (30) days following the sale of the last lot in the subdivision, whichever is first.

§ 210-37. Off-premises signs. [Amended 6-23-2011 by L.L. No. 5-2011]

Off-premises signs that advertise a business use or service located on a property other than that of the advertised business use or service shall comply with the following:

A. Signs shall only be erected on property located in B-1, C-1, C-2 and I-1 Districts.

B. No vacant property containing an off-premises sign shall have any structure placed upon it until such time said sign has been removed.

C. No sign on vacant property shall have more than two (2) sides. The maximum size of any one (1) side of a sign shall be one hundred (100) square feet.

D. The maximum height of any sign on vacant property shall not exceed thirty (30) feet when measured from the ground at the point of the nearest public right-of-way (for these purposes determined to be the shoulder of the road immediately adjacent to the paved portion of the right-of-way) to the top of the sign or structure containing the sign, whichever is higher.

E. No sign on vacant property shall be located closer than one hundred fifty (150) feet to any public right-of-way and/or any lot line of an adjoining lot located in a B-1, C-1, C-2 or I-1 Zoning District.

F. No sign on vacant property shall be located closer than three hundred (300) feet to any lot line of an adjoining lot located in an R-O, R-1, R-2 or R-C Zoning District.

G. The maximum number of signs permitted on any single property shall be one (1) sign.

H. In the event an off-premises sign is located on property which is not vacant, same shall only be allowed as a temporary sign pursuant to § 210-39 of this code.

§ 210-38. Signs permitted in all districts without permit.

A. The following signs are permitted in all districts without a permit:

(1) Signs bearing the name of the principal occupant and/or the street address of a private dwelling which do not exceed three (3) square feet in area.

(2) Professional nameplates which do not exceed three (3) square foot in area.

(3) Signs advertising the sale, lease or rental of the premises upon which the sign is located, as regulated in § 210-36B and § 210-36D of this code.

§ 210-39. Temporary signs. [Amended 2-9-2012 by L.L. No. 6-2012]

A. Temporary signs advertising any educational, charitable, civic, religious or like event may be erected or displayed without a permit for a consecutive period not to exceed thirty (30) days in any calendar year with Village Board approval. Approved signs shall not exceed thirty-two (32) square feet in area. Temporary signs advertising any business use not on the property owened by that business may be erected with a permit for a consecutive period not to exceed thirty (30) days in any calendar year upon the approval of the Village Board. Such sign must meet the conditions set forth in subdivision B herein.

(1) The actual location of any such sign shall be approved by the Code Enforcement Officer and Board of Trustees prior to its erection and/or placement.

(2) The owner of such sign shall provide proof of insurance satisfactory to the Code Enforcement Officer and Board of Trustees prior to the granting of any approvals.

(3) Upon seeking a permit, the owner of such sign shall pay an annual registration fee[17] as determine by the Board of Trustees

[17] **Editor's Note: See Ch. A220, Fees.**

B. One (1) temporary sign advertising a business use may be displayed in front of said business, provided the following conditions are met:

(1) A permit for each sign must be obtained from the Village of Alden, and shall be valid for one (1) year from the date of issuance. An application for a temporary business sign, on forms obtained from the Village of Alden, must be submitted to the Village Board of Trustees with the following information:

(a) The name and address of the applicant.

(b) The address of the location of the proposed sign.

(c) A plat plan of the premises showing all buildings, right-of-ways, easements, sidewalks, and the proposed location of the sign with distances to the above items indicated on the plan.

(d) Dimensions of the sign and all of its components.

(e) The graphic design of the sign, including symbols, letters, materials and colors.

(f) The visual message, copy, text or content of the sign.

(g) Additional information as necessary to show compliance with this Section.

(2) Signs shall not have more than two (2) sides. The maximum size of any one side of a sign shall be eight (8) square feet.

(3) All signs must be maintained in good repair at all times.

(4) Signs shall not be illuminated in any fashion.

(5) No sign shall be placed upon or project over a public right-of-way or sidewalk unless formal plans and specifications for same have been prepared by a professional engineer, contractor, architect, or similar profession which adequately depict the size, location, and configuration of such sign. Such plans, drawings, photographs and/or renditions, shall be clearly certified to the effect that the placement, configuration, and size of the sign shall not impede the public thoroughfare and/or sidewalk nor pose

any danger and/or potential risk to any user of the sidewalk and/or public thoroughfare.

(6) No sign shall consist of banners, vinyl signs, posters, penants, ribbons, streamers, spinners or similar fluttering devices.

(7) No sign shall consist of animated or moving parts.

(8) No sign shall be attached to trees.

(9) No signs shall be attached to fences or utility poles.

(10) No sign shall be placed in such a manner so as to confuse or obstruct the view of a traffic sign, signal or device.

(11) No sign shall be placed in such a manner so as to obstruct the view of any motor vehicle operator.

(12) No sound amplifiers, public address systems or other sound devices shall be used as part of a sign.

C. Notwithstanding the above, political signs may be displayed without Village Board approval for a period not to exceed thirty (30) days prior to the date of election, special election and/or primary election. Said signs shall be removed within seven (7) calendar days after the election.

(1) The removal of such signs shall be the responsibility of the particular candidate and it shall not be a defense to any alleged violation that such sign was not specifically placed on the property by the candidate.

D. Temporary signs advertising a special event, promotion, opening, or similar limited business event may be authorized for a period not to exceed fourteen (14) calendar days within a calendar year, when prior approval is granted by the Village of Alden Board of Trustees based on the following requirements:

(1) An application for a special event sign approval, on forms obtained from the Village of Alden, must be submitted to the Village Board of Trustees with the following information:

(a) The name and address of the applicant.
(b) The address of the location of the proposed sign(s).

(c) A plat plan of the premises showing all buildings, right-of-ways, easements, sidewalks, and the proposed location of the sign(s) with distances to the above items indicated on the plan.

(d) Dimensions of the sign(s) and all of its components.

(e) The graphic design of the sign(s), including symbols, letters, materials and colors. If any sign is proposed to be illuminated, whether directly or indirectly, details on the lighting and intensity must also be provided. If any sign is proposed with movable parts, details on the movement and type must also be provided.

(f) The visual message, copy, text or content of the sign(s).

§ 210-40. Permit required.

A. Except as otherwise provided, no person shall erect, alter or relocate any sign without first obtaining a permit from the Code Enforcement Officer. No permit shall be required for the general repair or maintenance of any permitted sign.

§ 210-41. Application procedure.

A. Applications shall be made in writing to the Code Enforcement Officer on forms obtained from the Village of Alden and shall contain the following information:

(1) The name, address and telephone number of the applicant.

(2) The name, address and telephone number of the property owner.

(3) The location of the building, structure and/or land upon which the sign now exists or is to be erected.

(4) A plan, drawn to scale, as well as a description of the sign, sign structure and placement and should include the following:

(a) Its location on the premises, specifically its position in relation to existing buildings, structures, property lines, roadways, driveways, parking lots and any other existing or proposed signage, and indicating such distances.

(b) Dimensions of the building or buildings on the property where the sign is proposed.

(c) The method of illumination, if any, and the position of lighting or other extraneous devices.

(d) Graphic design, including symbols, letters, materials and colors.

(e) The visual message, copy, text or content of the sign.

(f) Any other information the Code Enforcement Officer may deem necessary to confirm compliance with all applicable laws and codes.

§ 210-42. Issuance of permit.

A. It shall be the duty of the Code Enforcement Officer, upon the filing of the application for said permit, to examine all of the data submitted to him with the application and, if necessary, the building or premises upon which it is proposed to erect the sign or other advertising structure. If it shall appear that the proposed sign is in compliance with all of the requirements of this chapter and other rules and regulations of the Village of Alden, the Village Board of Trustees has reviewed the sign for compliance with the comprehensive plan, and all other approvals have been granted, a permit for the erection of the proposed sign shall be issued upon payment of all applicable fees[18] as set from time to time by the Village Board of Trustees. If the sign authorized under any such permit has not been completed within one (1) year from the date of issuance of such permit, the permit shall become null and void.

§ 210-43. Removal of signs.

A. The Code Enforcement Officer shall notify the owner of any sign which no longer serves the purpose for which a permit was granted or is unsafe, insecure, in a state of disrepair, or is a menace to the public or has been erected or installed in violation of this chapter, in writing, to remove or correct the unsatisfactory condition of said sign within five (5) days from the date of such notice.

B. The Code Enforcement Officer may cause any sign which is a source of immediate peril to persons or property to be removed summarily upon written notice to that effect. Failure to comply within twenty-four (24) hours of such notice shall serve as an authorization to the Code Enforcement Officer to remove

[18] **Editor's Note: See Ch. A220, Fees.**

or cause the removal of such sign, with all costs and expenses charged as provided for above.

ARTICLE VI
Administration and Enforcement

§ 210-44. Administrative authorities.

This chapter shall be administered by the Village Engineer, the Planning Board, the Village Clerk and such other agencies as the Village Board shall direct and shall be enforced by the Code Enforcement Officer. Those departments and agencies shall be provided with the assistance of such persons as the Village Board may direct.

§ 210-45. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer.

§ 210-46. Construction and use.

Building permits authorize only the use, arrangement and construction which is in compliance with this chapter and other applicable laws. Use, arrangement or construction not in compliance with this chapter or other applicable laws shall be a violation of this chapter.

§ 210-47. Determination of similar uses.

A. The Planning Board and any other designee of the Village Board may determine that a use not specifically listed in any of the permitted building and use classifications in any districts established by this chapter is a similar use to those enumerated in a specific district. In making a determination that a use is similar, the Planning Board shall first determine that:

(1) The use is not listed in any other classification of permitted buildings or uses.

(2) The use is appropriate and conforms to the basic characteristics of the classification to which it is to be added.

(3) The use does not create dangers to health and safety and does not create offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences to an extent greater than that resulting from other uses listed in the classification to which it is to be added.

(4) Such a use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.

B. The determination as to whether a use is similar to uses permitted by right shall be considered as an expansion of the use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be included in the enumerations of uses permitted by right.

ARTICLE VII

Site Plan Review

[Amended 6-26-2004 by L.L. No. 5-2004]

§ 210-48. Intent.

The following site plan review provisions are intended to secure compliance with the requirements and standards set forth in this chapter and with the objectives of the master plan

§ 210-49. Application. [Amended 12-20-2007 by L.L. No. 13-2007]

A. All applications for building permits shall be accompanied by an approved site plan, with the following exceptions:

(1) single- or two-family dwellings or their accessory buildings or structures.

(2) Accessory buildings, equipment, or structures that do not exceed three hundred (300) square feet in area, or in the case of fencing, two hundred (200) total feet in length.

B. Applications for building permits for which all proposed work is wholly contained on the interior of the structure and no modifications or improvements are proposed on the exterior of the structure or property, except for replacement or maintenance of siding, doors, windows and other exterior property maintenance features, shall be exempt from these provisions, provided:

(1) A plat plan, as outlined in 210-49C of this Section, is submitted showing compliance with the requirements of off-street parking as provided in this Code; and

(2) No additions or modifications are proposed to exterior artificial illumination; and

(3) No natural landscaping features are being disturbed or removed; and

(4) No modifications are proposed that will affect the ingress or egress of motor vehicles on the property or adjoining streets.

C. In the case of single- or two-family dwellings or their accessory buildings or structures, one (1) copy of a plat plan showing dimensions of the lot and the size and location of all existing and proposed buildings or structures on the lot shall be required with the application for building permit. Distances to lot lines for all existing and proposed buildings or structures must also be provided on the plat plan.

§ 210-50. Reviewing agency.

The Village of Alden Planning Board is hereby authorized to review and to recommend to the Village Board approval, approval with modification or disapproval of site plans prepared in accordance with such standards as are duly adopted by the Planning Board.

§ 210-51. Review procedures. [Amended 12-20-2007 by L.L. No. 18-2007]

A. Site plan. An application for site plan review shall be made for review by the Planning Board, Village Engineer, Superintendent of Public Works, and Building Department, on a form supplied by the Village of Alden, and shall be accompanied by the applicable fee[19], a cover letter addressed to the Village of Alden requesting a review of the proposed project with a thorough description of the nature of the project, and ten (10) copies of a plat plan showing dimensions of the lot and the size and location of all existing and proposed buildings or structures on the lot.

B. Preliminary site plan submission and review. Upon receipt of the required documents as specified in § 210-51A and § 210-53, a preliminary review shall be conducted at a scheduled Planning Board Meeting wherein the applicant, Planning Board, Village Engineer, Superintendent of Public Works, and Building Department will attend and discuss the scope of the project and those aspects of the project that will require further information for the Village of Alden to make a determination on the project. These aspects of the project may include, but are not limited to:

(1) The preparation and certification of drawings, documents and information by a qualified professional engineer, architect, planner or surveyor, as appropriate.

(2) The title of the drawing, name of the development, name of the applicant, name and seal of the person preparing drawing, North point, scale and date, to be included on all drawings.

(3) Boundary survey.

(4) Existing topography of the site with a contour interval of not more than two (2) feet.

[19] **Editor's Note: See Ch. A220, Fees.**

(5) The location of all existing watercourses, wooded areas, easements, rights-of-way, roads, railroads, canals, rivers, buildings, structures or any other physical feature directly on the site or beyond the site which would exert any impact on the proposed development.

(6) Land use information regarding all contiguous and neighboring properties within one thousand (1,000) feet of the proposed development.

(7) The location of all utilities, including sanitary and storm sewers and water, gas and electric facilities, serving the site.

(8) The location with setbacks, size and height of proposed buildings and structures, including first floor elevation.

(9) Preliminary architectural plans for proposed buildings or structures.

(10) The location and description of any existing or proposed fences or outdoor signs.

(11) The location of all proposed roads, access drives, pedestrian walks and off-street parking areas.

(12) A general landscaping plan and planting schedule.

(13) A plan for grading.

(14) A plan for exterior lighting. See § 210-31, Artificial Illumination.

(15) Provisions for water supply, sewage disposal and storm drainage.

(16) Location of outdoor storage, if any, including dumpster and compactor enclosures.

(17) The general nature and location of public and private utilities, including maintenance facilities.

(18) The nature and plans for buffer zones between residential and nonresidential properties and uses, when applicable.

(19) The sanitary sewer plan showing rim and invert elevations.

(20) A statement as to the daily estimated sanitary sewer flow.

(21) Conformance to any approved federal, state and county standards.

(22) Record of application for and status of all necessary permits from other government bodies.

(23) An estimated project construction schedule.

C. After the preliminary site plan review, the determination of the requirements for the formal site plan shall be sent in letter form from the Planning Board Chairperson to the applicant, Village Board of Trustees, Village Engineer, Superintendent of Public Works, and Building Department. Said letter shall be mailed within seven (7) calendar days after the Planning Board meeting where the determination of requirements is made.

D. Formal site plan submission and review. After the preliminary review has been conducted, the applicant shall submit twelve (12) copies of a formal site plan, including all required information and documentation required from the preliminary review, to the Village of Alden for formal site plan review.

E. The Village of Alden shall refer the formal site plan to the Planning Board, Village Engineer, Superintendent of Public Works, Building Department and, as deemed necessary, to all other officials and agencies for their review and recommendations.

F. The Planning Board may conduct a public hearing on the site plan if considered desirable by the majority of its members.

G. A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Chapter 175 and Chapter 176 of this Code shall be required for Formal Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards in Chapter 175 and 176 of this Code. The approved Site Plan shall be consistent with the provisions of this Chapter.

§ 210-52. Review Standards.

The Planning Board's review of the site plan shall include, as appropriate, but is not limited to the following considerations:

A. Zoning compliance and compatibility with the Master Plan.

B. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

C. Location, arrangement, appearance and sufficiency of off-street parking and loading.

D. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.

E. Adequacy of stormwater and drainage facilities. Adeqaucy of water supply and sewage disposal facilities.

F. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.

G. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.

H. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

I. Overall impact on the neighborhood, including compatibility of design considerations.

§ 210-53. Time of submission.

The time of submission of the site plan shall be considered to be the date of the regular monthly meeting of the Planning Board, at least ten (10) days prior to which the application for site plan approval, complete and accompanied by the required fee[20] and all other data required by these regulations, has been filed with the Village Clerk.

§ 210-54. Planning Board action.

Within sixty (60) days from the time of submission of the formal site plan , the Planning Board, Village Engineer, Superintendent of Public Works, and Building Department shall render their ~~its~~ recommendations to the Village Board for approval, conditional approval or disapproval of those aspects of the formal site plan which fall under the jurisdiction of their respective departments. This time period may be extended by mutual consent of the applicant and the Planning Board.

[20] **Editor's Note: See Ch. A220, Fees.**

§ 210-55. Village Board action.

Within ninety (90) days of the time of submission of the formal plan, complete with Planning Board, Village of Alden department head and all other relevant agency recommendations, the Village Board shall render a decision of approval, conditional approval or disapproval.

A. Approval.

(1) Upon approval, the Village Board, by signature of the Mayor or Deputy Mayor, shall endorse its approval on six (6) copies of the site plan and shall immediately file one (1) copy and a written statement of approval with the Village Clerk. One (1) copy of the endorsed site plan and a copy of the written statement of approval shall be mailed to the applicant, one (1) copy of the endorsed site plan shall be filed with the Planning Board, one (1) copy shall be given to the Department of Public Works and the remaining two (2) copies of the approved site plan shall be filed with the Building Department.

B. Conditional Approval.

(1) The Village Board may conditionally approve the site plan. Upon demonstration by the applicant that all conditions have been met, the Village Board, by signature of the Mayor or Deputy Mayor, shall endorse its approval on six (6) copies of the site plan and shall immediately file one (1) copy and a written statement of approval with the Village Clerk. One (1) copy of the endorsed site plan and a copy of the written statement of approval shall be mailed to the applicant, one (1) copy of the endorsed site plan shall be filed with the Planning Board, one (1) copy shall be given to the Department of Public Works and the remaining two (2) copies of the approved site plan shall be filed with the Building Department.

C. Disapproval.

(1) Upon disapproval of the site plan the decision of the Village Board shall immediately be filed with the Village Clerk and a copy thereof mailed to the applicant.

§ 210-56. Fee.

An application for site plan review shall be accompanied by a fee in an amount as determined from time to time by the Village Board of Trustees.[21]

§ 210-57. Reimbursable costs.

Costs incurred by the Planning Board or the Village Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

§ 210-58. Improvements.

A. No 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.

B. In the case of projects designed and approved to be completed in parts or phases, no certificate of occupancy shall be issued until all improvements shown on the approved site plan for a given part or phase are installed and completed, or sufficient monies are placed in escrow with the Village of Alden for completion of the unfinished items.

C. The Building Department shall be responsible for the overall inspection of site improvements, including coordination with other officials and agencies, as appropriate.

D. The applicant shall provide a map satisfactory to the Building Department indicating locations of monuments marking all underground utilities as actually installed. No performance bonds shall be released nor certificates of occupancy issued until such map is provided by the developer.

§ 210-59. Expiration and nullification of site plan approval.

A. No site plan approval shall be valid for more than six (6) months from the date of such approval, unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion or an occupancy permit is obtained and a use commenced within that period.

B. The subsequent sale of any portion of property within a previously approved site plan shall nullify approval for said site plan.

[21] **Editor's Note: See Ch. A220, Fees.**

ARTICLE VIII
Penalties

§ 210-60. Penalties for offenses.

A. A violation of this chapter is hereby declared to be an offense punishable by a fine not to exceed three hundred fifty dollars ($350.00) or imprisonment for a period not to exceed six (6) months, or both, for a conviction of a first offense; for a conviction of a second offense, both of which were committed within a period of five (5) years, punishable by a fine of not less than three hundred fifty dollars ($350.00) nor more than seven hundred dollars ($700.00) or imprisonment for a period not to exceed six (6) months, or both; and upon conviction of a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine of not less than seven hundred dollars ($700.00) nor more than one thousand dollars ($1,000.00) or imprisonment for a period not to exceed six (6) months, or both. Each week's continued violation shall constitute a separate additional violation.

B. A person shall be subject to the penalties imposed by this section in any case where an order to remove any violation of any of the provisions of this chapter has been served by the Code Enforcement Officer upon the owner, general agent, lessee or tenant of the building, other structure or tract of land or any part thereof or upon the architect, building, contractor or anyone who commits or assists in any such violation and where such person shall fail to comply with such order within ten (10) days after the service thereof. Each week's continued violation shall constitute a separate additional violation and shall be punishable hereunder.

§ 210-61. Other remedies.

In addition to the foregoing remedies, the Village of Alden may institute any appropriate action or proceeding to prevent, correct or restrain any violation of this chapter.

ARTICLE IX
Zoning Board of Appeals
[Amended 5-18-2006 by L.L. No. 17-2006]

§ 210-62. Creation and organization; vacancies. [Amended 6-23-2011 by L.L. No. 1-2011]

A. The Zoning Board of Appeals. The Zoning Board of Appeals shall consist of five (5) members appointed by the Village Board upon the recommendation of the Mayor. The members of the Zoning Board of Appeals as now constituted shall continue in office until the expiration of their present terms. Thereafter, their successors shall be appointed for terms of five (5) years each. Vacancies shall be filled as provided for in the Village Law.

B. Zoning Board of Appeals Clerk. The Village Clerk or his/her designee shall be the Zoning Board of Appeals Clerk and shall perform such duties as required by it. The Village Board may appoint additional clerks or other employees serving at its pleasure to assist the Zoning Board of Appeals.

C. Zoning Board of Appeals Secretary. The Zoning Board of Appeals Secretary shall keep minutes of all proceedings before the Zoning Board of Appeals.

D. Training requirements. All Zoning Board of Appeals members must complete a minimum of twelve (12) hours of in-service training every three (3) years. In-service training hours in excess of twelve (12) hours in every three years can be rolled over into subsequent years to satisfy the requirement for those subsequent years. All in-service training must be relevant to the functions of the Zoning Board of Appeals, as determined by the Village of Alden Board of Trustees. All in-service training must receive prior approval by the Village of Alden Board of Trustees to be eligible for credit and any applicable reimbursement.

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E. Removal of members. The mayor shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause. Any Zoning Board of Appeals member may be removed for absence at three (3) or more scheduled meetings of the Zoning Board of Appeals in any calendar year. Any Zoning Board of Appeals member may be removed if he/she fails to obtain the minimum in-service training hours as set forth in this Code.

§ 210-63. Powers and duties.

A. The Board shall have all the powers and perform all of the duties established by statute and this chapter.

(1) The Board shall adopt rules for the conduct of its business consistent with statute and this chapter.

(2) The Board shall, upon a favorable vote of a majority of its members, designate an Acting Chairperson to act as Chairperson in the absence of the appointed Chairperson.

(3) The Chairman of the Board or, in his or her absence, the Acting Chairman may administer oaths and compel the attendance of witnesses in the manner and to the extent permitted by the Village Law and the Civil Practice Law and Rules.

B. Interpretation. Upon an appeal from a decision by an administrative official, the Board shall decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

C. Application.

(1) Applications for a hearing of the Zoning Board of Appeals may be obtained from the Village Clerk.

(2) All such applications shall contain the following information:

(a) The name, address and telephone number of the applicant.

(b) The name, address and telephone number of the property owner.

(c) The location of the property for which the hearing is requested.

(d) The present zoning and applicable area restrictions.

(e) A description of the area variance requested, together with the reasons for the conflict with the present zoning criteria.

(f) Names of abutting property owners and all other property owners directly across the street.

(g) A list and description of any and all easements, encumbrances and other restrictions on the property.

(h) An attached copy of the survey and title deed.

(i) The application fee[22].

D. Area variances.

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

(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 Zoning Board of Appeals shall also consider:

(a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(c) whether the requested are variance is substantial;

(d) whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district; and

(e) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance; and

(f) whether it will create a hazard to health, safety or general welfare. Such language shall be liberally construed to effectuate the best interests of the residents of the Village of Alden and to implement the zoning ordinances and master plan.

[22] **Editor's Note: See Ch. A220, Fees.**

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

E. Use variances.

(1) The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of this Chapter, shall have the power to grant use variances, as defined in this Chapter.

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

(a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(b) 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;

(c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) That the alleged hardship has not been self-created; and

(e) That it will not create a hazard to health, safety or general welfare. Such language shall be liberally construed to effectuate the best interests of the residents of the Village of Alden and to implement the zoning ordinances and master plan.

(3) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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.

F. Imposition of conditions.

(1) The Zoning Board of Appeals shall, in the granting of both area variances and use 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. Decision of the Zoning Board of Appeals.

(1) A decision shall be made within sixty-two (62) days after a hearing by the Zoning Board of Appeals.

(2) The decision of the Zoning Board of Appeals shall be filed in the Village Clerk's Office within five (5) business days after the rendering of such decision, and a copy thereof shall be mailed to the applicant.

§ 210-64. Zoning Board of Appeals procedures.

A. The Zoning Board of Appeals shall, consistent with the Village Law and this local law, determine its own rules and procedures and all its deliberations, resolutions and orders shall be in accordance therewith; provided, however, that all hearings shall be public and that the Board shall keep complete minutes of its proceedings, showing its findings and reasons for its decisions, and said minutes shall be a public record.

B. Notification for all public meetings and public hearings shall be consistent with the Open Meetings Law. The Zoning Board of Appeals shall notify, by regular mail with a certificate of mailing, the owner of record on the most recent Village of Alden Tax Rolls for the property set for review under this Article, and the applicant if different from the property owner. The Zoning Board of Appeals shall also notify, by regular mail with a certificate of mailing, all properties immediately adjoining and directly across the street from a subject property set for review under this Article.

§ 210-65. Amendment procedures.

A. Initiation of zoning amendments. The regulations, restrictions and boundaries herein provided may from time to time be amended, supplemented, changed,

modified or repealed as provided by law. The provisions hereinafter contained shall apply to amendments, supplements, changes or modifications to district boundaries or classifications thereof. If any area is transferred from one district to another district, any nonconforming use thereby created may be continued to the extent permitted pursuant to the provisions of this chapter regulating nonconforming uses generally.

B. Such proposed amendments, supplements, changes or modifications, whether initiated by the Village Board or by petition, shall be referred to the Planning Board for review and recommendation.

C. When a petition has been filed and permitted to be processed within ten (10) days prior to the scheduled public hearing and is thereafter withdrawn or is withdrawn or denied after the hearing, a petition seeking substantially the same relief shall not be considered or voted on by the Village Board, except for a vote to table or to receive and file, within one (1) year from the date of such previous filing, unless the Planning Board shall first find that there have been substantial changes which would merit a hearing or rehearing, in which case the Planning Board shall, in its recommendation, set forth the grounds for its determination. This restriction shall not apply where the Village Board has not finally determined the proceeding within sixty-two (62) days following the public hearing.

§ 210-66. Application for rezoning.

The following are required for an application for rezoning:

A. The name, address and telephone number of the applicant and, if he or she is not the owner, his or her interest in the property.

B. The name, address and telephone number of the owner(s) of the property proposed for rezoning.

C. A legal description and existing street address of the total site proposed for rezoning.

D. A land survey of the total site prepared by a licensed person.

E. Identification of existing and proposed zoning.

F. A statement of planning objectives to be achieved by the rezoning. This statement should include a description of the character of the proposed development, the rationale behind the assumptions and choices made by the applicant and a statement of how the development meets the objectives of the Comprehensive Plan.

G. A general statement as to how open space is to be owned and maintained, if relevant.

H. A development schedule indicating the approximate date when construction can be expected to begin and be completed and any stages thereof.

I. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the proposed development.

J. Quantitative data for the following: the total number and type of dwelling units indicating distribution by dwelling unit type.

K. Calculation of the residential density and dwelling units per gross acre for the entire development.

L. The total amount of open space.

M. Proposed nonresidential floor area.

N. A development plan, if required by the Planning Board, in order to assure that the proposed zoning is consistent with the Comprehensive Plan and the intent and objectives of this chapter.

§ 210-67. Development plan.

The following are required for a development plan:

A. The existing site conditions, including property lines, contours, water sources, floodplains, type of soil and subsoil, unique natural features and tree cover.

B. Proposed land use arrangement.

C. The location of all existing and proposed structures and other improvements, including maximum heights, types of dwelling units and the location of nonresidential floor area.

D. The location and size, in acres or square feet, of all use areas and areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites and similar public and semipublic areas.

E. The existing and proposed circulation system of arterial, collector and local streets, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, including major points of ingress and egress to the development. Notations of proposed ownership, public or private, should be included where appropriate.

F. The existing and proposed pedestrian circulation system, including its interrelationships with the vehicular circulation system.

G. The existing utilities systems, including sanitary sewers, storm sewers, stormwater retention areas and waterlines.

H. Information on lands owned by the applicant within five hundred (500) feet of the perimeter of the area proposed to be rezoned.

I. Sketches or other representations of typical structures and improvements sufficient to relay the basic architectural intent of the proposed improvements.

J. Any additional information as might be required by the Planning Board to evaluate the character and impact of the proposed rezoning.

§ 210-68. Planning Board review.

A. Upon receipt of a petition for rezoning, the Village Clerk shall transmit it to the Village Board for distribution to officials and agencies as it may deem appropriate for their review, report and recommendation. Such officials and agencies shall each, within thirty (30) days from receiving the petition, furnish the Village Board with a report pertinent to their respective jurisdictions.

B. The Planning Board shall review the petition and development plan and evaluate reports received from reviewing officials and agencies. Within sixty-two (62) days following receipt by the Village Board of the petition, the Planning Board shall furnish to the Village Board and applicant either its findings that the proposed rezoning complies with the Comprehensive Plan and the regulations, standards, intent and objectives of this chapter or a finding of any failure of such compliance and a recommendation that the rezoning be approved, disapproved or modified.

C. If the petitioner does not request a public hearing as provided for by this chapter within six (6) months after the Planning Board makes its report, the petition shall be deemed withdrawn.

§ 210-69. Village Board proceedings.

A. Public hearing.

(1) Following completion of Planning Board review and upon written request by the petitioner, the Village Board shall set a date for a public hearing for the purpose of considering the application and cause notice to be given as required by law.

(2) The Village Board shall hold the public hearing and render a decision within sixty-two (62) days thereafter.

B. Village Board action.

(1) If the Village Board approves the amendment, supplement, change or modification to district boundaries or classifications thereof, the Zoning Map[23] shall be amended after publication as required by law.

(2) The Village Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its resolution approving an application additional conditions or requirements consistent with the intent and objectives of the Comprehensive Plan and this chapter. The notice of the adoption of the resolution shall not be published, nor shall the Zoning Map[24] be amended until the applicant has filed with the Village Clerk written consent to those conditions.

ARTICLE X
Planning Board

§ 210-70. Creation and organization; vacancies. [Amended 6-23-2011 by L.L. No. 1-2011]

[23] **Editor's Note: The Official Zoning Map is on file in the village offices.**
[24] **Editor's Note: The Official Zoning Map is on file in the village offices.**

A. The Planning Board. The Planning Board shall consist of seven (7) members appointed by the Village Board upon the recommendation of the Mayor. The members of the Planning Board as now constituted shall continue in office until the expiration of their present terms. Thereafter, their successors shall be appointed for terms of seven (7) years each. Vacancies shall be filled as provided for in the Village Law.

B. Planning Board Clerk. The Village Clerk or his/her designee shall be the Planning Board Clerk and shall perform such duties as required by it. The Village Board may appoint additional clerks or other employees serving at its pleasure to assist the Planning Board.

C. Planning Board Secretary. The Planning Board Secretary shall keep minutes of all proceedings before the Planning Board.

~~D.~~D. Training requirements. All Planning Board members must complete minimum of twelve (12) hours of in-service training every three (3) years. In-service training hours in excess of twelve (12) hours in every three years can be rolled over into subsequent years to satisfy the requirement for those subsequent years. All in-service training must be relevant to the functions of the Planning Board, as determined by the Village of Alden Board of Trustees. All in-service training must receive prior approval by the Village of Alden Board of Trustees to be eligible for credit and any applicable reimbursement.

E. Removal of members. The mayor shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for absence at three (3) or more scheduled meetings of the Planning Board in any calendar year. Any Planning Board member may be removed if he/she fails to obtain the minimum in-service training hours as set forth in this Code.

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§ 210-71. Powers and duties.

A. The Board shall have all the powers and perform all of the duties established by statute and this chapter.

(1) The Board shall adopt rules for the conduct of its business consistent with statute and this chapter.

(2) The Board shall, upon a favorable vote of a majority of its members, designate an Acting Chairperson to act as Chairperson in the absence of the appointed Chairperson.

(3) The Chairperson of the Board or, in his or her absence, the Acting Chairperson may administer oaths and compel the attendance of witnesses in the manner and to the extent permitted by the Village Law and the Civil Practice Law and Rules.