

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

Repeal **Article X Zoning Board of Appeals** along with **Sections 247-74** thru **Section 247-78** in their entirety.

Article X Zoning Board of Appeals

§ 247-74 **Appointment and organization.**

The Board of Appeals shall be appointed and shall function in accordance with enabling law. The Board of Appeals shall consist of five members. No appointment shall be valid unless the appointee is a resident of the Town of Pendleton. The Board may prescribe rules for its affairs.

§ 247-75 **Powers and duties.**

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- A. Interpretation. To decide any question involving the interpretation of any provision of this chapter following an appeal filed by the aggrieved landowner from a decision made by the Code Enforcement Officer or the Planning Board. This includes the determination of the exact location of any district boundary, if there is uncertainty with respect thereto. **[Amended 8-24-1994]**
- B. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship and would deprive the owner of the reasonable use of the land or building involved, but for no other reason. No variance in the strict application of any provision of this chapter shall be granted by the Board of Appeals unless it finds:
 - (1) That there are special circumstances or conditions fully described in the findings of the Board of Appeals applying to such land or building and not applying generally to land or buildings in the neighborhood. The circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings for permitted uses in the zoning district.
 - (2) That, for reasons fully set forth in the findings of the Board of Appeals, the granting of the variance is necessary for the reasonable use of the land or building and that the variance will accomplish this purpose.
 - (3) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

§ 247-76 **Procedure.**

- A. The Board of Appeals shall act in strict accordance with procedure specified by law and by this chapter. All meetings shall be open to the public. All appeals and applications made to the Board of Appeals shall be in writing on forms prescribed by the Board of Appeals. Every appeal or application shall:

- (1) Refer to the specific provision of this ordinance involved.
 - (2) Exactly set forth the interpretation that is claimed.
 - (3) Be for the use for which the special exception permit is sought.
 - (4) State the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.
- B. At least 10 days before the date of the hearing required by law on an application or appeal to the Board of Appeals, the Secretary of said Board shall transmit to the Planning Board a copy of the application or appeal. The Planning Board shall submit a report of an advisory opinion prior to the date of the Board of Appeals' hearing. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board of Appeals on the particular case.
[Amended 8-24-1994]
- C. In addition to giving public notice as prescribed by Town Law, the Board of Appeals shall send notice by mail, phone or personal contact to all property owners as shown on the tax rolls of the Town of Pendleton who reside within 250 feet of all boundary lines of the premises on which application is made. In the absence of bad faith or deliberate intent, the failure to send such notice to less than 50% of the property owners shall not invalidate the action of the Board of Appeals.
- D. If the applicant files with the Board of Appeals a signed consent for such special permit or variance signed by more than 50% of the affected property owners or if the applicant files an affidavit stating that he has served notice by mail or in person to all such property owners, the Board of Appeals shall be relieved of the duty to mail or send notice to such property owners.

§ 247-77 Referral to Niagara County Planning Board.

- A. A referral shall be made to the Niagara County Planning Board before issuing a special exception permit or granting a variance affecting real property within a distance of 500 feet from a boundary of the Town of Pendleton; or from the boundary of any existing or proposed county or state park or other recreation area; or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or from the existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines); or from the existing or proposed boundary or any county or state owned land on which a public building or institution is situated.
- B. Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of said Planning Board shall report its recommendations to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Board of Appeals and after the adoption of a resolution fully

setting the reasons for such contrary action.

- C. Within seven days after final action on a referral by the Board of Appeals, the Board of Appeals shall file a report of the final action with the Niagara County Planning Board.

§ 247-78 Fees.

[Amended 8-24-1994]

Any application for an amendment or variance filed by or on behalf of the owner or owners of the property affected shall be accompanied by a fee designated in the fee schedule.

REPEALED

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

Repeal **Article XI Planning Board** along with Sections **247-79 thru Section 247-80** in their entirety.

Article XI Planning Board

§ 247-79 **Appointment.**

The Town Board shall appoint a Planning Board consisting of seven members as prescribed (§ 271 of the Town Law). No appointment shall be valid unless the appointee is a resident of the Town of Pendleton.

§ 247-80 **Duties.**

The Planning Board of the Town of Pendleton shall have the following duties:

- A. To investigate, study, hold hearings upon and submit reports on all appeals and matters referred to it by the Board of Appeals, Code Enforcement Officer and/or Town Board. **[Amended 8-24-1994]**
- B. To submit reports within 30 days after reference to it of any appeal or other matter, unless the time shall be extended by the Code Enforcement Officer or agency making the reference. **[Amended 8-24-1994]**
- C. To hold monthly meetings on a regularly prescribed date and time and at such other times as the Chairman of the Planning Board may deem necessary. All meetings of the Planning Board shall be open to the public. The Secretary of the Planning Board shall keep minutes of all meetings.
- D. To prepare and change the comprehensive master plan and map for the development of the entire area of the Town of Pendleton.
- E. To review, recommend and approve (prior to the issuance of a building permit or occupancy permit) site plans for mobile home parks. Such site plans shall be submitted through the Code Enforcement Officer to the Planning Board at least 10 days prior to its next scheduled meeting and shall consist of the following: **[Amended 8-24-1994]**
 - (1) A survey drawn to scale prepared by an engineer or surveyor (registered by the State of New York) showing the exact size, shape and dimensions of the lot to be built upon.
 - (2) The exact size and location on the lot of all existing buildings and structures.
 - (3) The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired or altered.
 - (4) All adjacent streets or alleys with traffic flow patterns.
 - (5) Areas to be utilized for storage of materials and type of architectural screen to be used.
 - (6) Such other information as may be required by the Planning Board to determine its recommendation or decision.
- F. To review, recommend and approve subdivision plans. **[Amended 8-24-1994]**
- G. To review, recommend and approve site plans for commercial and industrial development. **[Amended**

8-24-1994]

REPEALED

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

ADOPT NEW ORDINANCE ARTICLE XI TO BE KNOWN AS ZONING BOARD OF APPEALS AND PLANNING BOARD ADMINISTRATION.

ADOPT NEW ORDINANCE SECTION 247-74 TO B KNOWN AS ZONING BOARD OF APPEALS IN ITS ENTIRETY.

Article XI Zoning Board of Appeals and Planning Board Administration

§247-74 Zoning Board of Appeals

A. Appointment and organization.

The Board of Appeals shall be appointed and shall function in accordance with enabling law. The Board of Appeals shall consist of five members. No appointment shall be valid unless the appointee is a resident of the Town of Pendleton. The Board may prescribe rules for its affairs.

B. Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- (1) Interpretation. To decide any question involving the interpretation of any provision of this chapter following an appeal filed by the Aggrieved landowner from a decision made by the Building Inspector/Code Enforcement Officer or the Planning Board. This includes the determination of the exact location of any district boundary, if there is uncertainty with respect thereto.
- (2) Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship and would deprive the owner of the reasonable use of the land or building involved, but for no other reason. No variance in the strict application of any provision of this chapter shall be granted by the Board of Appeals unless it finds:
 - a) That there are special circumstances or conditions fully described in the findings of the Board of Appeals applying to such land or building and not applying generally to land or buildings in the neighborhood. The circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings for permitted uses in the zoning district.
 - b) That, for reasons fully set forth in the findings of the Board of Appeals, the granting of the variance is necessary for the reasonable use of the land or building and that the variance will accomplish this purpose.
 - c) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise

detrimental to the public welfare. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

C. Procedure.

- (1) The Board of Appeals shall act in strict accordance with procedure specified by law and by this chapter. All meetings shall be open to the public. All appeals and applications made to the Board of Appeals shall be in writing on forms prescribed by the Board of Appeals. Every appeal or application shall:
 - a) Refer to the specific provision of this ordinance involved.
 - b) Exactly set forth the interpretation that is claimed.
 - c) Be for the use for which the special use permit is sought.
 - d) State the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.
- (2) If the Board of Appeals so determines a request for an advisory recommendation may be sent to the Planning Board.
- (3) In addition to giving public notice as prescribed by Town Law, the Board of Appeals shall send notice by mail, phone or personal contact to all property owners as shown on the tax rolls of the Town of Pendleton who reside within 250 feet of all boundary lines of the premises which application is made. In the absence of bad faith or deliberate intent, the failure to send such notice to less than 50% of the property owners shall not invalidate the action of the Board of Appeals.
- (4) If the applicant files with the Board of Appeals a signed consent for such special permit or variance signed by more than 50% of the affected property owners or if the applicant files an affidavit stating that he has served notice by mail or in person to all such property owners, the Board of Appeals shall be relieved of the duty to mail or send notice to such property owners.

D. Referral to Niagara County Planning Board.

- (1) A referral shall be made to the Niagara County Planning Board before issuing a special use permit or granting a variance affecting real property within a distance of 500 feet from a boundary of the Town of Pendleton; or from the boundary of any existing or proposed county or state park or other recreation area; or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or from the existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines); or from the existing or proposed boundary or any county or state owned land on which a public building or institution is situated.
- (2) Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of said Planning Board shall report its recommendations to the Board of Appeals, accompanied by a full statement of the

reasons for such recommendations. If the Niagara County Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Board of Appeals and after the adoption of a resolution fully setting the reasons for such contrary action.

- (3) Within seven days after final action on a referral by the Board of Appeals, the Board of Appeals shall file a report of the final action with the Niagara County Planning Board.

E. Fees.

Any application for an amendment or variance filed by or on behalf of the owner or owners of the property affected shall be accompanied by a fee designated in the fee schedule.

Code Section 247-75 Reserved

Code Section 247-76 Reserved

Code Section 247-77 Reserved

Code Section 247-78 Reserved

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

ADOPT NEW ORDINANCE SECTION 247-75 TO BE KNOWN AS PLANNING BOARD IN ITS ENTIRETY.

Article XI Zoning Board of Appeals and Planning Board Administration

§ 247-75 Planning Board

A. Appointment.

The Town Board shall appoint a Planning Board consisting of seven members as prescribed (§ 271 of the NYS Town Law). No appointment shall be valid unless the appointee is a resident of the Town of Pendleton.

B. Duties.

The Planning Board of the Town of Pendleton shall have the following duties:

- (1) To investigate, study, hold hearings upon and submit reports on all appeals and matters referred to it by the Board of Appeals, Building Inspector/Code Enforcement Officer and/or Town Board.
- (2) To submit reports within 30 days after reference to it of any appeal or other matter, unless the time shall be extended by the Building Inspector/Code Enforcement Officer or agency making the reference.
- (3) To hold monthly meetings on a regularly prescribed date and time and at such other times as the Chairman of the Planning Board may deem necessary. All meetings of the Planning Board shall be open to the public. The Secretary of the Planning Board shall keep minutes of all meetings.
- (4) To prepare and change the comprehensive master plan and map for the development of the entire area of the Town of Pendleton.
- (5) To review, recommend and approve (prior to the issuance of a building permit or occupancy permit) site plans for mobile home parks. Such site plans shall be submitted through the Building Inspector/Code Enforcement Officer to the Planning Board at least 10 days prior to its next scheduled meeting and shall consist of the following:
 - a) A survey drawn to scale prepared by an engineer or surveyor (registered by the State of New York) showing the exact size, shape and dimensions of the lot to be built upon.
 - b) The exact size and location on the lot of all existing buildings and structures.
 - c) The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired or altered.
 - d) All adjacent streets or alleys with traffic flow patterns.

- e) Areas to be utilized for storage of materials and type of architectural screen to be used.
- f) Such other information as may be required by the Planning Board to determine its recommendation or decision.

(6) To review, recommend and approve subdivision plans.

(7) To review, recommend and approve site plans for commercial and industrial development.

Code Section 247-79 Reserved

Code Section 247-80 Reserved

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

**ADOPT SECTION 247-76 PLANNING BOARD AND ZONING BOARD OF APPEALS
ALTERNATE MEMBERS IN ITS ENTIRETY:**

§247-76 Planning Board and Zoning Board of Appeals Alternate Members

A. Applicability.

This article shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board and on the Zoning Board of Appeals in the Town of Pendleton.

B. Declaration of policy.

It is hereby determined that it is in the best interest of the Town of Pendleton that an alternate member position be established for the Town of Pendleton Planning Board and the Town of Pendleton Zoning Board of Appeals because of the necessity for acting expeditiously on matters pending before the board; to enhance the ability to establish a quorum; to enable a full board participation in decisions whenever possible; to attract quality board members, without preventing public service because of travel commitments, vacations, sickness and possible conflicts; and to provide for greater flexibility in the scheduling of meetings.

C. Definitions.

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

ALTERNATE MEMBER

An individual appointed by the Town Board to serve on the Town of Pendleton Planning Board or the Town of Pendleton Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the board, as provided herein.

MEMBER

An individual appointed by the Town Board to serve on the Town of Pendleton Planning Board or the Town of Pendleton Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such planning board.

PLANNING BOARD

The Planning Board of the Town of Pendleton as established by the Town Board of the Town of Pendleton by local law or ordinance, pursuant to the provisions of § 271 of the Town Law and § 239-c of the General Municipal Law.

ZONING BOARD OF APPEALS

The Zoning Board of Appeals of the Town of Pendleton as established by the Town Board of the Town of Pendleton by local law or ordinance, pursuant to the provisions of § 267 of the Town Law and § 239-c of the General Municipal Law.

D. Authorization; effect.

The Town of Pendleton hereby enacts this article to provide a process for appointing alternate members of the Town of Pendleton Planning Board and the Town of Pendleton Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the board.

E. Substitution provisions.

The alternate member shall substitute for any member of the Board in the event such member does not attend or participate because of:

- (1) A conflict of interest.
- (2) Personal illness.
- (3) Family illness.
- (4) Vacation.
- (5) Family and professional obligations.
- (6) Failure to attend a scheduled meeting for any reason.

F. Planning Board Alternate Members.

- (1) Alternate members of the Planning Board shall be appointed by the Town Board for a term of one year. Alternate members shall be appointed at the first Town Board meeting of January and terminate on December 31 of the same year.
- (2) The alternate member of the Planning Board shall be entitled to attend all meetings of the Planning Board to sit with the Board; provided, however, that the alternate shall only participate by substituting for a member where a regular member of the Planning Board does not participate for one of the reasons set forth in §247-76E above. The alternate member shall receive the same compensation as regular members of the Board for every meeting attended, whether or not the alternate member actually participates.
- (3) The chairperson of the Planning Board may designate an alternate member to substitute for a member when such member is absent or unable to participate on an application or matter before the Planning Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

G. Zoning Board of Appeals alternate members.

- (1) Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board for a term of one year. Alternate members shall be appointed at the first Town Board meeting of January and terminate on December 31 of the same year.
- (2) The alternate member of the Zoning Board of Appeals shall be entitled to attend all meetings of the Zoning Board of Appeals to sit with the Board; provided, however, that the alternate shall only participate by substituting for a member where a regular member of the Appeals Board does not participate for one of the reasons set forth in § 247-76E above. The alternate member shall receive the same compensation as regular members of the Board for every meeting attended, whether or not the alternate member actually participates.
- (3) The chairperson of the Zoning Board of Appeals may designate an alternate member to substitute for a member when such member is absent or unable to participate on an application or matter before the Zoning Board of Appeals. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
- (4) All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

H. Supersession of Town Law.

This article is enacted pursuant to the authority set forth in the Municipal Home Rule Law §§ 10(1)(ii)(a)1I and 10(1)(ii)(d)(3) and Town Law § 271(15). To the extent that any provision of this article is inconsistent with any other Town Law, including § 271(15), such law is expressly superseded by the provisions of this article. It is the intent of this article to increase and set forth additional reasons for participation by an alternative board member in decisions than are set forth in Town Law § 271(15).

Article IX Administration

[Amended 3-6-1984; 8-24-1994]

§ 247-69 **Enforcement.**

This chapter shall be enforced by the Code Enforcement Officer who shall be appointed by the governing body of the Town of Pendleton. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except where there is compliance with all provisions of this chapter.

§ 247-70 **Duties of the Code Enforcement Officer.**

It shall be the duty of the Code Enforcement Officer in connection with this chapter to do the following:

- A. Make a record of nonconforming uses.
- B. Issue building permits and certificates of occupancy or refuse to issue the same and give the reasons for such refusal, in writing, to the applicant.
- C. Keep a record of all applications for building permits and a record of all building permits issued with a notation of all special conditions involved.
- D. Keep the Town Board informed and advised of all matters, other than routine matters, in connection with this chapter.
- E. Submit such reports as may be deemed necessary by the Town Board.
- F. Whenever possible, advise and assist persons applying for building permits with the preparation of their applications.
- G. Secure warrants and prosecute violators of the provisions of this chapter.
- H. Serve all notices that may be required to be served in connection with this chapter.
- I. Make recommendations for keeping this chapter and the accompanying Zoning Map up to date.
- J. Bring all applications for mobile home parks to the Planning Board for its review and recommendation, prior to the issuance of a building permit.
- K. Inspect new construction during and/or after construction and inspect changes of use to ensure conformity with the provisions of this chapter.

§ 247-71 **Building permits.**

- A. No excavation for a building or structure shall be made, no building materials shall be stored on the premises, nor shall any building or structure be erected, added to or structurally altered until a building permit has been issued by the Code Enforcement Officer. No building permit shall be issued for any building where such construction, additions, alteration or use would be in violation of any provision of

this chapter or the New York State Uniform Fire Prevention and Building Code for up to 30 days after a written variance is granted by the Board of Appeals and filed in the office of the Town Clerk. The Code Enforcement Officer may delay issuing the building permit for up to 30 days if an appeal of the variance action is pending.

- B. The application for a building permit shall be made on a form obtained from the Code Enforcement Officer. It shall include a statement of the material to be used, an estimate of the cost, the location, the proposed use, and the sanitation facilities to be provided (if any are needed). Such permit shall be valid for a one-year period only. The fee for renewal of the permit shall be defined as the original application fee. **[Amended 6-7-2005]**
- C. All applications for building permits for mobile home parks along with two copies of a layout or plot plan, drawn to scale and showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and accessory buildings, the size and location of all new buildings that are to be erected and the location of adjoining street right-of-way lines and such other information as may be necessary to determine and provide for the enforcement of this chapter shall be transmitted by the Code Enforcement Officer to the Planning Board for its review and recommendation. The sanitation, sewerage and waste disposal facilities shall comply with the standards approved by the County and State Health Departments.
- D. One copy of the layout or plot plan shall be returned to the applicant when approved, in writing, by the Planning Board, and a building permit shall then be granted by the Code Enforcement Officer after the receipt of the appropriate fee (see fee schedule).
- E. All building permit fees shall be doubled when excavation for a building or structure is made without a permit or when building materials are stored on the premises without a permit or when any building or structure is erected, added to or structurally altered without a permit.
- F. The Code Enforcement Officer shall attempt to notify at least two adjacent property owners when an application for a building permit has been filed. Failure of such adjacent property owners to receive such notice prior to the Planning Board's review shall not be a basis for invalidating the building permit nor be a basis for contesting the actions of the Code Enforcement Officer, Town Clerk, Planning Board, Board of Appeals or the Town Board in regard to the issuance or withholding of the building permit. (This does not apply to single-family detached dwellings or two-family dwellings.)

§ 247-72 **Certificate of occupancy.**

- A. No building hereafter erected, altered or extended shall be used, occupied or changed in use nor shall any land hereafter be occupied if changed in use until a certificate of occupancy has been issued by the Code Enforcement Officer stating that the building or proposed use complies with the provisions of this chapter and the New York State Uniform Fire Prevention and Building Code.
- B. No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the Code Enforcement Officer.
- C. Certificates of occupancy shall be issued within 10 days after the erection, alteration or change in use has been inspected and approved by the Code Enforcement Officer as complying with the provisions of

this chapter.

- D. The Code Enforcement Officer shall maintain a record of all certificates of occupancy and copies be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected.

§ 247-73 Temporary certificate of occupancy.

A temporary certificate of occupancy for not more than 60 days for a part of a building may be issued by the Code Enforcement Officer.

REPEALED

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

ADOPT ARTICLE X TO BE KNOWN AS BUILDING DEPARTMENT ADMINISTRATION AND SECTION 247-73 TO BE KNOWN AS BUILDING CODE ADMINISTRATION AND FIRE PREVENTION IN THEIR ENTIRETY.

ARTICLE X - BUILDING DEPARTMENT ADMINISTRATION

REPEAL - [HISTORY: Adopted by the Town Board of the Town of Pendleton 12-11-2017 by L.L. No. 8-2017. Amendments noted where applicable.]

GENERAL REFERENCES

Fire Protection District — See Ch. 25.

Moving of buildings — See Ch. **110**.

Fees — See Ch. 131.

Plumbing — See Ch. 194.

Unsafe structures — § 247-35.

§ 247-73 Building Code Administration and Fire Prevention

A. Purpose and intent.

This chapter provides 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 this Town. This chapter is adopted pursuant to § 10 of the Municipal Home Rule Law. 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 of this chapter.

B. Definitions.

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

BUILDING PERMIT

A permit issued pursuant to § **247-73D** 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.

BUILDING INSPECTOR/CODE ENFORCEMENT OFFICER

The Building Inspector/Code Enforcement Officer appointed pursuant to § **247-73C(1)** of this chapter.

CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLIANCE

A certificate issued pursuant to § **247-73G(2)** of this chapter.

CODE ENFORCEMENT PERSONNEL

Shall include the Building Inspector/Code Enforcement Officer and all inspectors. 10

COMPLIANCE ORDER

An order issued by the Building Inspector/Code Enforcement Officer pursuant to §**247-730(1)** 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 § **247-73C (4)** of this chapter.

OPERATING PERMIT

A permit issued pursuant to § 247-**73J** 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

Shall include 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 § **247-73F of this chapter.**

TEMPORARY CERTIFICATE

A certificate issued pursuant to § **247-73G(4)** of this chapter.

TOWN

The Town of Pendleton.

UNIFORM CODE

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

C. Building Inspector/Code Enforcement Officer and inspectors.

- (1) The office of Building Inspector/Code Enforcement Officer is hereby created. The Building Inspector/Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this chapter. The Building Inspector/Code Enforcement Officer shall have the following powers and duties:

- a) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;
 - b) Upon approval of such applications, to issue building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits,
 - c) and to include in building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits such terms and conditions as the Building Inspector/Code Enforcement Officer may determine to be appropriate;
 - d) To conduct construction inspections, inspections to be made prior to the issuance of certificates of occupancy/certificates of compliance, 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;
 - e) To issue stop-work orders;
 - f) To review and investigate complaints;
 - g) To issue orders pursuant to § 247-73O(1) (compliance orders) of this chapter;
 - h) To maintain records;
 - i) To collect fees as set by the Town Board of this Town;
 - j) To pursue administrative enforcement actions and proceedings;
 - k) In consultation with this Town's 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; and
 - l) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this chapter.
- (2) The Building Inspector/Code Enforcement Officer shall be appointed by the Town Board. The Building Inspector/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 Building Inspector/Code enforcement personnel, and the Building Inspector/Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- (3) In the event that the Building Inspector/Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Building Inspector/Code Enforcement Officer. The Acting Building Inspector/Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Building Inspector/Code Enforcement Officer by this chapter.
- (4) One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Building Inspector/Code Enforcement Officer and to assist the Building Inspector/Code Enforcement Officer in the exercise of the powers and

fulfillment of the duties conferred upon the Building Inspector/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.

- (5) The compensation for the Building Inspector/Code Enforcement Officer and inspectors shall be fixed from time to time by the Town Board of this Town.

D. Building permits.

- (1) Building permits required. Except as otherwise provided in Subsection (2) 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 Building Inspector/Code Enforcement Officer.
- (2) Exemptions. No building permit shall be required for work in any of the following categories:
 - a) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 50 square feet;
 - b) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - c) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
 - d) Construction of retaining walls, unless such walls support a surcharge or impound Class I, II or IIIA liquids;
 - e) Construction of temporary motion picture, television and theater stage sets and scenery;
 - f) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - g) Installation of partitions or movable cases less than five feet nine inches in height;
 - h) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - i) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - j) 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
 - k) Repairs, provided that such repairs do not involve:

- 1) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
 - 2) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
 - 3) The enlargement, alteration, replacement or relocation of any building system; or
 - 4) The removal from service of all or part of a fire protection system for any period of time.
- (3) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection (2) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.
- (4) Applications for building permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Building Inspector/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 Building Inspector/Code Enforcement Officer deems sufficient to permit a determination by the Building Inspector/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:
- a) A description of the proposed work;
 - b) The Tax Map number and the street address of the premises where the work is to be performed;
 - c) The occupancy classification of any affected building or structure;
 - d) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - e) At least two sets of construction documents (drawings and/or specifications) which:
 - 1) Define the scope of the proposed work;
 - 2) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - 3) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - 4) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
 - 5) Where applicable, include a site plan 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.
- (5) Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection 4(d) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Building

Inspector/Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Building Inspector/Code Enforcement Officer, and one set of the accepted 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 accepted 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.

- (6) Issuance of building permits. 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 Building Inspector/Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- (7) Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- (8) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Building Inspector/Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Building Inspector/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.
- (9) Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Building Inspector/Code Enforcement Officer.
- (10) Revocation or suspension of building permits. If the Building Inspector/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 Building Inspector/Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that 1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and 2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

- (11) Fee. The fee specified in or determined in accordance with the provisions set forth in § 237-73P (Fees) of this chapter must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

E. Construction inspections.

- (1) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Building Inspector/Code Enforcement Officer or by an inspector authorized by the Building Inspector/ Code Enforcement Officer. The permit holder shall notify the Building Inspector/Code Enforcement Officer when any element of work described in Subsection (2) of this section is ready for inspection.
- (2) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- a) Work site, prior to the issuance of a building permit;
 - b) Footing and foundation;
 - c) Preparation for concrete slab;
 - d) Framing;
 - e) Building systems, including underground and rough-in;
 - f) Fire-resistant construction;
 - g) Fire-resistant penetrations;
 - h) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - i) Energy Code compliance; and
 - j) A final inspection after all work authorized by the building permit has been completed.
- (3) Inspection results. 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, re-inspected, and found satisfactory as completed.
- (4) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73P (Fees) of this chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

F. Stop-work orders.

- (1) Authority to issue. The Building Inspector/Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Building Inspector/Code Enforcement Officer shall issue a stop-work order to halt:
- a) Any work that is determined by the Building Inspector/Code Enforcement Officer to be contrary to any provision of the applicable building laws, ordinances, rules or regulations or not in conformity with the provisions of the application, and 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
- b) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Building Inspector/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
 - c) 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.
- (2) Content of stop-work orders. Stop-work orders shall:
- a) Be in writing;
 - b) Be dated and signed by the Building Inspector/Code Enforcement Officer;
 - c) State the reason or reasons for issuance; and
 - d) If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- (3) Service of stop-work orders. The Building Inspector/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 Building Inspector/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.
- (4) Effect of stop-work order. 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.
- (5) Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection 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 § 247-730 (Enforcement; penalties for offenses) 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.

G. Certificates of occupancy/certificates of compliance.

- (1) A certificates of occupancy/certificates of compliance is required. A certificate of occupancy/certificate of compliance 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 sub classification 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/certificate of compliance.

- (2) Issuance of certificates of occupancy/certificates of compliance. The Building Inspector/Code Enforcement Officer shall issue a certificate of occupancy/certificate of compliance 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, the structure, building or portion thereof that was converted from one use or occupancy classification or sub classification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Building Inspector/Code Enforcement Officer or an inspector authorized by the Building Inspector/Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy/certificate of compliance. 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 Building Inspector/Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy/certificate of compliance, shall be provided to the Building Inspector/Code Enforcement Officer prior to the issuance of the certificate of occupancy/certificate of compliance:
 - a) A written statement of structural observations and/or a final report of special inspections; and
 - b) Flood hazard certifications.

- (3) Contents of certificates of occupancy/certificates of compliance. A certificate of occupancy/certificate of compliance shall contain the following information:
 - a) The building permit number, if any;
 - b) The date of issuance of the building permit, if any;
 - c) The name, address and Tax Map number of the property;
 - d) If the certificate of occupancy/certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy/certificate of compliance is issued;
 - e) The use and occupancy classification of the structure;
 - f) The type of construction of the structure;
 - g) The assembly occupant load of the structure, if any;
 - h) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
 - i) Any special conditions imposed in connection with the issuance of the building permit; and
 - j) The signature of the Building Inspector/Code Enforcement Officer issuing the certificate of occupancy/certificate of compliance and the date of issuance.

- (4) Temporary certificate. The Building Inspector/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 Building Inspector/Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines 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, and 3) that all required means of egress from the building or structure have been provided. The Building Inspector/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 six months, which shall be determined by the Building Inspector/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.

- (5) Revocation or suspension of certificates. If the Building Inspector/Code Enforcement Officer determines that a certificate of occupancy/certificate of compliance 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 Building Inspector/Code Enforcement Officer within such period of time as shall be specified by the Building Inspector/Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- (6) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73-P (Fees) of this chapter must be paid at the time of submission of an application for a certificate of occupancy/certificate of compliance or for a temporary certificate.

H. Notification regarding fire or explosion.

The chief of any fire department providing fire-fighting services for a property within this Town shall promptly notify the Building Inspector/Code Enforcement Officer of any fire or explosion involving any structural damage, fuel-burning appliance, chimney or gas vent.

I. Unsafe buildings and structures.

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by § 247-35 of the Town Code of the Town of Pendleton, as now in effect or as hereafter amended from time to time.

J. Operating permits.

- (1) Operating permits required.
 - 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 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 100 persons or more; and
 - 5) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town.
- b) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection A shall be required to obtain an operating permit prior to commencing such activity or operation.
- (2) Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Building Inspector/Code Enforcement Officer. Such application shall include such information as the Building Inspector/Code Enforcement Officer deems sufficient to permit a determination by the Building Inspector/Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Building Inspector/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 Building Inspector/Code Enforcement Officer, at the expense of the applicant.
- (3) Inspections. The Building Inspector/Code Enforcement Officer or an inspector authorized by the Building Inspector/Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- (4) Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Building Inspector/Code Enforcement Officer may require a separate operating permit for each such activity, or the Building Inspector/Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- (5) (Duration of operating permits. 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 Building Inspector/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 Building Inspector/Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Building Inspector/Code Enforcement Officer.

- (6) Revocation or suspension of operating permits. If the Building Inspector/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.
- (7) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73P Fees) of this chapter must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

K. Fire safety and property maintenance inspections.

- (1) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Building Inspector/Code Enforcement Officer or an inspector designated by the Building Inspector/Code Enforcement Officer at the following intervals:
 - a) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
 - b) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - c) Fire safety and property maintenance inspections of all multiple dwellings not included in Subsection A(1) or (2) of this subsection, and all nonresidential buildings, structures, uses and occupancies not included in Subsection A(1) or (2) of this subsection, shall be performed at least once every 36 months.
- (2) Inspections permitted. In addition to the inspections required by Subsection 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 Building Inspector/Code Enforcement Officer or an inspector designated by the Building Inspector/Code Enforcement Officer at any time upon: 1) the request of the owner of the property to be inspected or an authorized agent of such owner; 2) receipt by the Building Inspector/Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or 3) receipt by the Building Inspector/Code Enforcement Officer of any other information, reasonably believed by the Building Inspector/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; provided, however, that nothing in this subsection 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.
- (3) OFPC inspections. 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 § 156-e and Education Law § 807-b.

Notwithstanding any other provision of this section to the contrary:

- a) The Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every 12 months;
- b) The Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every 12 months;
- c) The Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in Subsection A(1) or (2) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in Subsection A(3) of this section; and
- d) The Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a nonresidential building, structure, use or occupancy not included in Subsection A(1) or (2) of this section if OFPC performs fire safety and property maintenance inspections of such nonresidential building, structure, use or occupancy at intervals not exceeding the interval specified in Subsection A(3) of this section.
- e) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73P (Fees) of this chapter must be paid prior to or at the time each inspection is performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

L. Complaints.

The Building Inspector/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 local 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 such of the following steps as the Building Inspector/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 § 247-73O (Enforcement; penalties for offenses) 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.

M. Record keeping.

- (1) The Building Inspector/Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code enforcement personnel, including records of:
 - a) All applications received, reviewed and approved or denied;
 - b) All plans, specifications and construction documents approved;
 - c) All building permits, certificates of occupancy/certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - d) All inspections and tests performed;
 - e) All statements and reports issued;
 - f) All complaints received;
 - g) All investigations conducted;
 - h) All other features and activities specified in or contemplated by § 247-73D through § 247-73L, inclusive, of this chapter; and
 - i) All fees charged and collected.
- (2) 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.

N. Program review and reporting.

- (1) The Building Inspector/Code Enforcement Officer shall annually submit to the Town Board of this Town a written report and summary of all business conducted by the Building Inspector/Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in §247-73M (Record keeping) of this chapter and a report and summary of all appeals or litigation pending or concluded.
- (2) The Building Inspector/Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.
- (3) The Building Inspector/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 this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code.

O. Enforcement; penalties for offenses.

- (1) Compliance orders. The Building Inspector/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 Building Inspector/Code Enforcement Officer shall issue a compliance order. The compliance order shall 1) be in writing; 2) be dated and signed by the Building Inspector/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 Building Inspector/Code Enforcement Officer deems to be reasonably necessary for achieving compliance; 6) direct that compliance be achieved within the specified period of time; and 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 Building Inspector/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 Building Inspector/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.
- (2) Appearance tickets. The Building Inspector/Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- (3) Civil penalties. In addition to those penalties prescribed 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/certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Building Inspector/Code Enforcement Officer pursuant to any provision of this chapter, shall be liable to a civil penalty of not more than \$250 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- (4) Injunctive relief. An action or proceeding may be instituted in the name of this Town, 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/certificate of compliance, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Building Inspector/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 this Town, 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 subsection shall be commenced without the appropriate authorization from the Town Board of this Town.

- (5) Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty 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 § 247-73F (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 § 247-73F (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 § 382 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 § 382 of the Executive Law.

P. Fees.

The fee schedule set forth in Chapter **131** of the Town Code of the Town of Pendleton shall be applicable to this chapter, and as thereafter amended from time to time. 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/certificates of compliance, temporary certificates, operating permits, fire safety and property maintenance inspections, and other actions of the Building Inspector/Code Enforcement Officer described in or contemplated by this chapter.

Q. Inter- Municipal Agreements.

The Town Board of this Town may, by resolution, authorize the Supervisor of this Town to enter into an agreement, in the name of this Town, 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.

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

Repeal **Article XIII Excavations** along with **Section 247-85 Excavations Restricted** in its entirety.

Article XIII Excavations

[Adopted 11-8-2000]

§ 247-85 **Excavations restricted.**

Excavations for the removal of topsoil, except as stated in Chapter **220**, and/or mining of any type, are not permitted by right in the Town of Pendleton.

REPEALED

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

Repeal Article XIV Stormwater Management along with Section 247-86 thru Section 247-91 in their entirety.

Article XIV Stormwater Management

[Added 10-2-2007 by L.L. No. 2-2007]

§ 247-86 **Findings; purpose.**

A. Findings. It is hereby determined that:

- (1) 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;
- (2) This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) 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;
- (9) 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.

B. Purpose. The purpose of this article 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 § 247-86A of this article. This article seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (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 New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. 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 ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 247-87 Applicability; exemptions; requirements.

A. Applicability. This article shall be applicable to all land development activities.

B. Exemptions. The following activities shall be exempt from review under this article:

- (1) Agriculture, except that the construction of new structures associated with unlimited agriculture and the operation of a dude ranch or similar operation shall not be exempt from review under this article;
- (2) Silvicultural activity, except that landing areas and log haul roads are subject to this article;
- (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
- (4) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer;
- (5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Pendleton on or before the effective date of this article;
- (6) Land development activities for which a building permit has been approved on or before the effective

date of this article;

- (7) Cemetery graves;
 - (8) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 - (9) Emergency activity immediately necessary to protect life, property or natural resources;
 - (10) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family;
 - (11) Landscaping and horticultural activities in connection with an existing structure.
- C. Conflict. Where the conditions imposed by any provisions of this article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- D. All land development activities subject to review and approval by the Building Inspector, Town Highway Superintendent, Code Enforcement Officer, Planning Board, or Town Board of the Town of Pendleton under floodplain development permit, public improvement permit, mobile home park development, subdivision, drainage or site plan regulations shall be reviewed subject to the standards contained in this article. The applicant shall submit a SWPPP prepared in accordance with the standards contained in this article to the SMO, who shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such agency, committee, employee or board of the Town of Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.
- E. For all land development activities not subject to review by the Building Inspector, Town Highway Superintendent, Code Enforcement Officer, Planning Board, or Town Board of the Town of Pendleton as stated in § 247-87B of this article, the applicant or developer shall be required to submit a SWPPP prepared in accordance with the standards contained in this article to the SMO. The SMO shall approve, conditionally approve, or disapprove the SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In conditionally approving or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a conditionally approved or disapproved SWPPP in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

§ 247-88 Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the SMO or such agency, committee, employee, or board of the Town of

Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP prepared in accordance with the specifications in this article.

B. Contents of stormwater pollution prevention plans.

- (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including the location, type and size of the project.
 - (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. 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 off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
 - (c) Description of the soil(s) present at the site;
 - (d) 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 Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (e) 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;
 - (f) 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;
 - (g) 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 closeout;
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (j) Temporary practices that will be converted to permanent control measures;
 - (k) 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;

- (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);
 - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) 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
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in § **247-88B(3)** of this article, as applicable:
- (a) 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.
 - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP requirements for Conditions A, B or C:
- (a) All information in § **247-88B(1)** of this article;
 - (b) Description of each postconstruction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;

- (h) 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;
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 247-91 of this article; and
- (4) 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 meets the requirements in this article.
- C. 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.
- D. Contractor certification.
- (1) 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."
 - (2) 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.
 - (3) The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.
- E. 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.

§ 247-89 Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this section, 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 section:
 - (1) The Design Manual; and
 - (2) The Erosion Control Manual.
- B. Equivalence to 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 § **247-89A** of this article.

- C. 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.

§ 247-90 **Maintenance, inspection and repair of stormwater facilities.**

A. Maintenance and inspection during construction.

- (1) The applicant or developer of the land development activity or his or her 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 article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) For land development activities meeting Condition A, B or C in § **247-88B(2)** of the this article, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

B. 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 Town of Pendleton to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Pendleton.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. 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 article.
- (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 § **247-89** of this article.
- (4) Maintenance agreements. The Town of Pendleton 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 maintenance agreement shall be consistent with the terms and conditions of Appendix B of this chapter, entitled "Sample Stormwater Control Facility Maintenance Agreement." The Town of Pendleton, 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 section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 247-91 **Administration and enforcement.**

A. Construction inspection.

(1) Erosion and sediment control inspection.

(a) The SMO may require such inspections as necessary to determine compliance with this article 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 article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:

- [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; or
- [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 SMO.

(2) Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs 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.

(3) 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.

- (4) Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
- (5) Right-of-entry for inspection. 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 Town of Pendleton the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 247-91A(3) of this article.

B. Performance guarantee.

- (1) 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 Town of Pendleton in its approval of the SWPPP, the Town of Pendleton 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 Town of Pendleton as the beneficiary. The security shall be in an amount to be determined by the Town of Pendleton 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 Town of Pendleton, provided that such period shall not be less than one 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 Town of Pendleton. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- (2) 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 Town of Pendleton 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 Town of Pendleton may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- (3) Recordkeeping. The Town of Pendleton may require entities subject to this article to maintain records demonstrating compliance with this article.

C. Enforcement and penalties.

- (1) Notice of violation. When the Town of Pendleton determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
 - (a) The name and address of the landowner, developer or applicant;
 - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - (c) A statement specifying the nature of the violation;
 - (d) A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action;
 - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
 - (f) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- (2) Stop-work orders. The Town of Pendleton may issue a stop-work order for violations of this article. 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 Town of Pendleton 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 article.
- (3) Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
- (4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six 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 years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article 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.
- (5) Withholding of certificate of occupancy. If any building or land development activity is installed or

conducted in violation of this article, the SMO may prevent the occupancy of said building or land.

- (6) 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 Town of Pendleton may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- D. Fees for services. The Town of Pendleton may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Pendleton or performed by a third party for the Town of Pendleton. The fee shall be set by the Town Board by resolution.

REPEALED

Adopted October 26, 2020 by Town of Pendleton Resolution 182-20

ADOPT ARTICLE XIII STORMWATER MANAGEMENT REGULATIONS AND DRAINAGE

Article XIII Stormwater Management Regulations and Drainage

§247-85 Stormwater Management

A. Findings; purpose.

(1) Findings. It is hereby determined that:

- 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 waterborne 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 streambank 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.

(2) Purpose. The purpose of this article 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 § 247-85A(1) of this article. This article seeks to meet those purposes by achieving the following objectives:

- a) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination

- System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- b) Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-02-01, or as amended or revised;
 - c) 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;
 - d) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
 - e) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
 - f) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

B. Applicability; exemptions; requirements.

- (1) Applicability. This article shall be applicable to all land development activities.
- (2) Exemptions. The following activities shall be exempt from review under this article:
 - a) Agriculture, except that the construction of new structures associated with unlimited agriculture and the operation of a dude ranch or similar operation shall not be exempt from review under this article;
 - b) Silvicultural activity, except that landing areas and log haul roads are subject to this article;
 - c) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
 - d) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer;
 - e) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Pendleton on or before the effective date of this article;
 - f) Land development activities for which a building permit has been approved on or before the effective date of this article;
 - g) Cemetery graves;
 - h) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 - i) Emergency activity immediately necessary to protect life, property or natural resources;
 - j) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family;
 - k) Landscaping and horticultural activities in connection with an existing structure.

- (3) Conflict. Where the conditions imposed by any provisions of this article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- (4) All land development activities subject to review and approval by the Building Inspector/Code Enforcement Officer, Town Highway Superintendent, Planning Board, or Town Board of the Town of Pendleton under floodplain development permit, public improvement permit, mobile home park development, subdivision, drainage or site plan regulations shall be reviewed subject to the standards contained in this article. The applicant shall submit a SWPPP prepared in accordance with the standards contained in this article to the SMO, who shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such agency, committee, employee or board of the Town of Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.
- (5) For all land development activities not subject to review by the Building Inspector/Code Enforcement Officer, Town Highway Superintendent, Planning Board, or Town Board of the Town of Pendleton as stated in § 247-85B(2) of this article, the applicant or developer shall be required to submit a SWPPP prepared in accordance with the standards contained in this article to the SMO. The SMO shall approve, conditionally approve, or disapprove the SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In conditionally approving or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a conditionally approved or disapproved SWPPP in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

C. Stormwater pollution prevention plans.

- (1) Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the SMO or such agency, committee, employee, or board of the Town of Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP prepared in accordance with the specifications in this article.
- (2) 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 the location, type and size of the project.
- 2) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. 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 off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
- 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 Erosion Control Manual, not more than five 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 closeout;
- 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 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 § 247-85B(3)(c) of this article, 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 or more acres.
 - 3) Condition C: stormwater runoff from land development activity disturbing between one and five 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 Conditions A, B or C:
 - 1) All information in § 247-85B(3)(a) of this article;
 - 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 predevelopment 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 § 247-85E of this article; and
 - d) 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 meets the requirements in this article.
- (3) 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.
- (4) 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 be included with and become part of the SWPPP for the land development activity.

- (5) 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.

D. Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

- (1) Technical standards. For the purpose of this section, 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 section:
 - a) The Design Manual; and
 - b) The Erosion Control Manual.
- (2) Equivalence to 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 § 247-85D(1) of this article.
- (3) 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.

E. Maintenance, inspection and repair of stormwater facilities.

- (1) Maintenance and inspection during construction.
 - a) The applicant or developer of the land development activity or his or her 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 article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 - b) For land development activities meeting Condition A, B or C in § 247-85C(2)(b) of this article, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every

seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

- (2) 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 Town of Pendleton to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Pendleton.
- (3) Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:
 - a) 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 article.
 - b) Written procedures for operation and maintenance and training new maintenance personnel.
 - c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 247-85D of this article.
 - d) Maintenance agreements. The Town of Pendleton 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 maintenance agreement shall be consistent with the terms and conditions of Appendix B of this chapter, entitled "Sample Stormwater Control Facility Maintenance Agreement." The Town of Pendleton, 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 section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

F. Administration and enforcement.

- (1) Construction inspection.
 - a) Erosion and sediment control inspection.
 - b) The SMO may require such inspections as necessary to determine compliance with this article 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 article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:
 - 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; or
 - 8) Successful establishment of landscaping in public areas.
- c) 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 SMO.
 - d) Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs 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.
 - e) 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.
 - f) Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
 - g) Right-of-entry for inspection. 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 Town of Pendleton the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 247-85F(1)(c) of this article.
- (2) Performance guarantee.
- a) 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 Town of Pendleton in its approval of the SWPPP, the Town of Pendleton 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 Town of Pendleton as the beneficiary. The security shall be in an amount to be determined by the Town of Pendleton 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 Town of Pendleton, provided that such period shall not be less than one 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 Town of Pendleton. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- b) 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 Town of Pendleton 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 Town of Pendleton may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
 - c) Record keeping. The Town of Pendleton may require entities subject to this article to maintain records demonstrating compliance with this article.

(3) Enforcement and penalties.

- a) Notice of violation. When the Town of Pendleton determines that a land development activity is not being carried out in accordance with the requirements of this article, 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 article 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; and
 - 6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- b) Stop-work orders. The Town of Pendleton may issue a stop-work order for violations of this article. 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 Town of Pendleton 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 article.
- c) Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
 - d) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six 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 years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article 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.
 - e) Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.
 - f) 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 Town of Pendleton may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- (4) Fees for services. The Town of Pendleton may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Pendleton or performed by a third party for the Town of Pendleton. The fee shall be set by the Town Board by resolution.