

**TOWN OF BOVINA**

**LOCAL LAW NO. \_\_ FOR THE YEAR 2022**

**A LOCAL LAW TO ADOPT THE NEW YORK STATE MINIMUM REQUIREMENTS FOR ENFORCEMENT OF THE NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE**

Be it enacted by the Town Board of the Town of Bovina as follows:

**Section 1.** **Legislative Intent:** It is the intent of this local law to provide for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) (collectively, the “Codes”) in the Town of Bovina, to accord with the newly enacted Part 1203 of Title 19 of the New York Codes, Rules and Regulations, which shall take effective December 30, 2022.

**Section 2.** **Authority:** This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, the Energy Code or other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this local law.

**Section 3.** **Amendment:** Local Law No. 4 of 2006 of the Town of Bovina is hereby amended as follows:

**(A) Section 10 shall be deleted in its entirety and replaced with the following:**

**SECTION 10 OPERATING PERMITS.**

(a) **Operating Permits Required.** Operating Permits shall be required for conducting the activities or using the categories of building listed below:

- (f) manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the FCNYS;
- (g) buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS listed and described in section 1203.3(g)(1)(ii) as follows:
  - i. Chapter 22, “Combustible Dust-Producing Operations.” Facilities where the operation produces combustible dust;

- ii. Chapter 24, “Flammable Finishes.” Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
- iii. Chapter 25, “Fruit and Crop Ripening.” Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
- iv. Chapter 26, “Fumigation and Insecticidal Fogging.” Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal fogging performed by the occupant of a detached one-family dwelling;
- v. Chapter 31, “Tents, Temporary Special Event Structures, and other Membrane Structures.” Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;
- vi. Chapter 32, “High-Piled Combustible Storage.” High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
- vii. Chapter 34, “Tire Rebuilding and Tire Storage.” Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire byproducts or operating a tire rebuilding plant;
- viii. Chapter 35, “Welding and Other Hot Work.” Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a one- or two-family dwelling.
- ix. Chapter 40, “Sugarhouse Alternative Activity Provisions.” Conducting an alternative activity at a sugarhouse.
- x. Chapter 56, “Explosives and Fireworks.” Possessing, manufacturing, storing, handling, selling, or using explosives, fireworks, or other pyrotechnic special effects materials except the outdoor use of sparkling devices as defined by Penal Law section 270;

xi. Section 307, “Open Burning, Recreational Fires and Portable Outdoor Fireplaces.” Conducting open burning, not including recreational fires and portable outdoor fireplaces;

xii. Section 308, “Open Flames.” Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies;

xiii. Section 319, “Mobile Food Preparation Vehicles.” Operating a mobile food preparation vehicle.

(h) energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in section R327.5 of the RCNYS.

(i) buildings containing one or more assembly areas;

(j) outdoor events where the planned attendance exceeds 1,000 people;

(k) facilities that store, handle or use hazardous production materials;

(l) parking garages as defined in section 1203.3(j) of the Uniform Code;

(m) 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 the Town of Bovina; and

(n) other processes or activities for operating any type of building, structure, or facility as determined by resolution adopted by the Town Board of the Town of Bovina.

(2) 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.

(3) Exemptions. Operating permits shall not be required for processes or activities, or the buildings, structures, or facilities listed in paragraphs (a) through (g) of subdivision (1) of this section, provided that the use is expressly authorized by a certificate of occupancy or certificate of compliance, fire safety and property maintenance inspections are performed in accordance with Section 11 (Fire Safety and Property Maintenance Inspections) of this local law, and condition assessments are performed in compliance with Section 14 (Condition Assessments of Parking Garages) of this local law, as applicable.]

**(B) Local Law No. 4 of 2006 shall be amended by adding a new Section 14 (“Condition Assessments of Parking Garages”)**

**SECTION 14 Condition Assessments of Parking Garages.**

A. Definitions. For the purposes of this section, the following terms shall be deemed to have the meanings shown in this paragraph:

i. Condition assessment. An on-site inspection and evaluation of a parking garage for evidence of deterioration of any structural element or building component of such parking garage, evidence of the existence of any unsafe condition in such parking garage, and evidence indicating that such parking garage is an unsafe structure.

ii. Deterioration. The weakening, disintegration, corrosion, rust, or decay of any structural element or building component or any other loss of effectiveness of a structural element or building component.

iii. Parking garage. Any building or structure, or part thereof, in which any structural level, or part thereof is used for parking or storage of motor vehicles, excluding:

a. buildings in which the only level used for parking or storage of motor vehicle is entirely supported on soil or engineered fill, and not supported on structural framing;

b. an attached or accessory structure providing parking exclusively for a detached one- or two-family dwelling; and

c. a townhouse unit with attached parking exclusively for such unit.

iv. Professional engineer. An individual who is licensed or otherwise authorized under article 145 of the Education Law to practice the profession of engineering in the State of New York and who has at least three years of experience performing structural evaluations.

v. Responsible professional engineer. The professional engineer who performs a condition assessment, or under whose supervision a condition assessment is performed, and who signs and seals the condition assessment report.

vi. Unsafe condition. The conditions identified as unsafe in sections 304.1.1, 305.1.1, and 306.1.1 of the PMCNYS.

vii. Unsafe structure. A structure that is so damaged, decayed, dilapidated, or structurally unsafe, or is of such faulty construction or unstable foundation, that partial or complete collapse is possible.

B. Condition Assessments – general requirements. The owner or operator of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in

Uniform Code section 1203.3.(j)(4), periodic condition assessments as described in section Uniform Code 1203.3.(j)(5), and such additional condition assessments as may be required under Uniform Code section 1203.3(j)(6). Each condition assessment shall be conducted by or under the direct supervision of a responsible professional engineer. A written report of each condition assessment shall be prepared and provided to the Town, in accordance with the requirements of Uniform Code section 1203.(j)(7). Before performing a condition assessment (other than the initial condition assessment) of a parking garage, the responsible professional engineer for such condition assessment shall review all available previous condition assessment reports for said parking garage.

4. Initial Condition Assessment. Each parking garage shall undergo an initial condition assessment as follows:

i. Parking garages constructed on or after August 29, 2018, shall undergo an initial condition assessment following construction and prior to a certificate of occupancy or certificate of compliance being issued for the structure.

ii. Parking garages constructed prior to August 29, 2018, shall undergo an initial condition assessment as follows:

a. Parking garages constructed on or after August 29, 2018, shall undergo an initial condition assessment following construction and prior to a certificate of occupancy or certificate of compliance being issued to the customer.

b. If originally constructed prior to January 1, 1984, then prior to October 1, 2019;

c. If originally constructed between January 1, 1984, and December 31, 2002, then prior to October 1, 2020; and

d. If originally constructed between January 1, 2003, and August 23, 2018, then prior to October 1, 2021.

iii. Any parking garage constructed prior to the effective date of the local law enacting this provision that has not undergone an initial condition assessment prior to that effective date shall undergo an initial condition assessment within six (6) months of the effective date of this local law.

5. Periodic condition assessments. Following the initial condition assessment of a parking garage, such parking garage shall undergo periodic condition of assessments not intervals not to exceed the least of:

i. three years; or

ii. at such shorter period as may be fixed by the Town of Hamden code enforcement officer.

6. Additional condition assessments.

i. If the latest condition assessment report for a parking garage includes a recommendation by the responsible professional engineer that an additional condition assessment of such parking garage, or any portion of such parking garage, be performed before the date by which the next periodic condition assessment would be required under section 1203.3(j)(5), the Town shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of such parking garage identified by the responsible professional engineer) to undergo an additional condition assessment no later than the date recommended in such condition assessment report.

ii. If the Town becomes aware of any new or increased deterioration which, in the judgment of the Town, indicates that an additional condition assessment of the entire parking garage, or of the portion of the parking garage affected by such new or increased deterioration, should be performed before the date by which the next periodic condition assessment would be required under section 1203.(j)(5), the Town shall require the owner or operator of such parking garage to cause such parking garage (or, if applicable, the portion of the parking garage affected by such new or increased deterioration) to undergo an additional condition assessment no later than the date determined by the Town to be appropriate.

7. Condition assessment reports. The responsible professional engineer shall prepare, or directly supervise the preparation of, a written report of each condition assessment, and shall submit such condition assessment report to the Town within such time period as fixed by the Town. Such condition assessment report shall be sealed and signed by the responsible professional engineer, and shall include:

i. an evaluation and description of the extent of deterioration and conditions that cause deterioration that could result in an unsafe condition or unsafe structure;

ii. an evaluation and description of the extent of deterioration and conditions that cause deterioration that, in the opinion of the responsible professional engineer, should be remedied immediately to prevent an unsafe condition or unsafe structure;

iii. an evaluation and description of the unsafe conditions;

iv. an evaluation and description of the problems associated with the deterioration, conditions that cause deterioration, and unsafe conditions;

v. an evaluation and description of the corrective options available, including the recommended timeframe for remedying the deterioration, conditions that cause deterioration, and unsafe conditions;

vi. an evaluation and description of the risks associated with not addressing the deterioration, conditions that cause deterioration, and unsafe conditions;

vii. the responsible professional engineer's recommendation regarding preventative maintenance;

viii. except in the case of the report of the initial condition assessment, the responsible professional engineer's attestation that he or she reviewed all previously prepared condition assessment reports available for such parking garage, and considered the information in the previously prepared reports while performing the current condition assessment and while preparing the current report; and

ix. the responsible professional engineer's recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed. In making the recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed, the responsible professional engineer shall consider the parking garage's age, maintenance history, structural condition, construction materials, frequency and intensity of use, location, exposure to the elements, and any other factors deemed relevant by the responsible professional engineer in his or her professional judgment.

8. The Town of Bovina shall review each condition assessment report. The Town shall take such enforcement action or actions in response to the information in such condition assessment report as may be necessary or appropriate to protect the public from the hazards that may result from the conditions described in such report. In particular, but not by way of limitation, the Town shall, by order to remedy or such other means of enforcement as the Town may deem appropriate, require the owner or operator of the parking garage to repair or otherwise remedy all deterioration, all conditions that cause deterioration, and all unsafe conditions identified in such condition assessment report pursuant to section 1203.3(j)(7)(ii) and section 1203.3(j)(7)(iii). All repairs and remedies shall comply with the applicable provisions of the Uniform Code. Neither this paragraph nor the provisions of the code enforcement program of the Town that implement this paragraph shall limit or impair the right of the Town to take any other enforcement action, including but not limited to placing a do not occupy order or suspension or revocation of a parking garage's operating permit, as may be necessary or appropriate in response to the information in a condition assessment report.

9. The Town shall retain all condition assessment reports for the life of the parking garage. Upon request by a professional engineer who has been engaged to perform a condition assessment of a parking garage, and who provides the Town with a written statement attesting to the fact that he or she has been so engaged, the Town shall make the previously prepared condition assessment reports for such parking garage (or copies of such reports) available to such professional engineer. The Town shall be permitted to require the owner or operator of the subject parking garage to pay all costs and expenses associated with making such previously prepared condition assessment reports (or copies thereof) available to the professional engineer.

10. Neither this subdivision nor the provisions of the code enforcement program of the Town that implement this subdivision shall limit or impair the right or the obligation of the Town:

(i) to perform such construction inspections as are required by the stricter of Uniform Code section 1203.3(b) or the code enforcement program of the Town;

(ii) to perform such periodic fire safety and property maintenance inspections as are required by the stricter of Uniform section 1203.3 (h) or the code enforcement program of the Town; and/or

(iii) to take such enforcement action or actions as may be necessary or appropriate to respond to any condition that comes to the attention of the Town by means of its own inspections or observations, by means of a complaint, or by any other means other than a condition assessment or a report of a condition assessment.

11. The use of the term responsible professional engineer in this subdivision shall not be construed as limiting the professional responsibility or liability of any professional engineer, or of any other licensed professional, who participates in the preparation of a condition assessment without being the responsible professional engineer for such condition assessment.

**(C) Local Law #4 of 2006 shall be amended by adding a new Section 15 (“Climatic and Geographic Design Criteria”) as follows:**

**SECTION 15. Climatic and Geographic Design Criteria.**

(a) The Code Enforcement Officer shall determine the climatic and geographic design criteria for buildings and structures constructed within the Town as required by the Uniform Code. Such determinations shall be made in the manner specified in the Uniform Code using, where applicable, the maps, charts, and other information provided in the Uniform Code. The criteria to be so determined shall include but shall not necessarily be limited to, the following:

(1) design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termite; winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;

(2) heating and cooling equipment design criteria for structures within the scope of the RCNYS. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and

(3) flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:

- (i) the accompanying Flood Insurance Rate Map (FIRM);
- (ii) Flood Boundary and Floodway Map (FBFM); and

(iii) related supporting data along with any revisions thereto.

(b) The Code Enforcement Officer shall prepare a written record of the climatic and geographic design criteria determined pursuant to subdivision (a) of this section, shall maintain such record within the office of the Code Enforcement Officer, and shall make such record readily available to the public.

**Section 4.**     **Severability:** If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**Section 5.**     **Repeal:** All local laws or ordinances or parts of local laws or ordinances in conflict with any part of this Local Law are hereby repealed.

**Section 6.**     **Effective date:** This local law shall take effect immediately upon filing with the Secretary of State.