

**TOWN BOARD SPECIAL MEETING
TOWN HALL, MAHOPAC, N.Y.**

A Special Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Kenneth Schmitt on the 11th day of May 2011 at 7:18 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Ravallo, Councilman Lombardi, Councilwoman McDonough and Supervisor Schmitt.

The Pledge of Allegiance to the Flag was observed prior to the start of official business and a moment of silence was observed to honor those serving in the United States Armed Forces.

**PUBLIC HEARING HELD - PROPOSED LOCAL LAW ENACTING CHAPTER 107 OF
THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED "OUTDOOR WOOD
BURNING FURNACES"**

Supervisor Schmitt asked the Town Clerk to read the following Notice of Public Hearing as published in the Town's official newspaper:

**LEGAL NOTICE
NOTICE OF PUBLIC
HEARING**

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, May 11, 2011 at 7:00 p.m. or as soon thereafter that evening as possible on a Local Law enacting Chapter 107, entitled "OUTDOOR WOOD BURNING FURNACES" of the Town Code of the Town of Carmel, as follows:

**TOWN OF CARMEL
PROPOSED LOCAL LAW
_____ OF THE YEAR
2011**

**A LOCAL LAW
PROHIBITING OUTDOOR
WOOD BURNING
FURNACES AND
ESTABLISHING
REGULATIONS FOR THE
ISSUANCE OF PERMITS
FOR EXISTING
OUTDOOR WOOD
BURNING FURNACES**

Be it enacted by the Town Board of the Town of Carmel, Putnam County, State of New York as follows:

Section 1: PURPOSE

The purpose of this local law is to amend the Town Code to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by

the Building Inspector for preexisting outdoor wood burning furnaces.

**Section 2: AMENDMENT
OF THE TOWN CODE**

The Town Code of the Town of Carmel is hereby amended by the addition of a new chapter entitled, "CHAPTER 107, OUTDOOR WOOD BURNING FURNACES" which shall read as follows:

**CHAPTER 107,
OUTDOOR WOOD
BURNING FURNACES**

§ 107 1. Purpose.

The Town Board of the Town of Carmel has received numerous complaints in regard to

outdoor wood burning furnaces concerning their pollution of the atmosphere and their safety. Although outdoor wood burning furnaces may provide an economical alternative to conventional heating systems, it is generally recognized that the types of fuel used, and

the scale and duration of burning by outdoor wood burning furnaces, creates noxious and

hazardous smoke, soot, fumes, odors and air pollution, can be detrimental to citizens health and can deprive neighboring residents of the enjoyment of their property or premises. Therefore, it is the intention of the Town Board of the Town of Carmel to establish and impose restrictions upon the construction and operation of outdoor wood burning furnaces for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the Town and its inhabitants This chapter

is intended to prohibit the construction and/or installation of any further outdoor wood burning furnaces and to ensure that existing outdoor wood burning furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town.

§ 107 2. Authority

This chapter is adopted pursuant to the authority, of Article 2, § 10 of the New York State

Municipal Home Rule Law,

§ 107 3. Enforcement

The Town of Carmel Director of Codes Enforcement, Building Inspector and Code Enforcement Officer, or any other person who may hereafter be designated by resolution

of the Town Board is hereby authorized in the name and on behalf of the

Town of Carmel to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this article including the issuance of appearance tickets.

§ 107 4. Definitions

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

FIREWOOD Trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than three inches in diameter.

**OUTDOOR WOOD
BURNING FURNACE**

Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of wood fuel to produce heat or energy used as a component of a heating system providing heat and/or hot water for any interior space in any principal structure or

any other interior or exterior site, building, or structure.

UNTREATED LUMBER

Dry wood which has been milled and dried but which has not

been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

**VIOLATOR OR ANY
PERSON WHO VIOLATES
ANY PROVISION OF THIS
ARTICLE**

Any person who owns or occupies the property at the time the outdoor wood boiler has been installed and/or operated.

STACK or CHIMNEY Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device; especially that part of such structure extending above the roof.

**§ 107 5. New construction
and operation prohibited.**

The construction and/or installation of any new outdoor wood burning furnaces are hereby prohibited in any zone within the Town of Carmel.

**§ 107 6. Existing outdoor
wood burning furnaces**

Except as hereinafter provided, the lawful use of any outdoor wood burning furnace which is legally permitted and existing at the time of the adoption of this chapter may be continued, subject to the provisions of the section

A. No outdoor wood boiler, lawfully existing or in existence at the time of the adoption of this chapter, shall thereafter be extended, enlarged or replaced with a new or previously owned unit or restored or repaired beyond 50% of its value.

B. Any existing outdoor wood burning furnace which is abandoned or discontinued for a period of seven consecutive months shall not be permitted

to be reestablished and must be immediately removed by the property owner from the subject premises. If the property owner fails to remove the outdoor

wood burning furnace by the end of said seven consecutive month period, the Town of Carmel Code Enforcement Officer/ Building Inspector shall give

written notice by certified mail or personal service to the owner of the property upon which the outdoor wood burning furnace is located. Such notice shall provide that said owner shall remove the outdoor wood burning furnace within 15 days of the date the notice is either postmarked or personally served upon the owner. Should the outdoor wood burning furnace not be removed within the time specified, the Code Enforcement Officer/ Building Inspector shall take reasonable steps to effect its removal. The costs incurred by the Town to effect said removal including attorney's fees shall be charged to the owner of said premises. Said expense shall be paid by the owner of the property so affected within 30 days from the date said costs are presented to the owner. If said expense is not paid within said thirty day time frame, then said expense shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

C. All outdoor wood burning furnaces lawfully permitted and in existence on the

effective date of this chapter shall be permitted to remain, provided that the owner applies for and receives a permit from the Town Building Inspector within one year of the effective date of this chapter to comply with provisions governing the use and existence of outdoor wood burning furnaces set forth herein. If the owner of an existing outdoor wood burning furnace does not receive a permit within one year of the effective date of this chapter, the outdoor wood burning furnace shall be removed. "Existing" or "in existence" means that the outdoor wood burning furnace is legally permitted, existing, in place and operational on the effective date of this chapter. Application for a permit shall be made to the Building Inspector on the forms provided.

(Cont.)

§ 107 7. Continuing requirements for the continuing use of existing outdoor wood burning furnaces.

All existing outdoor wood burning furnaces which receive permits from the Building Inspector shall be subject to the following regulations which constitute continuing conditions for the permit:

A. Permitted fuel. Only firewood and untreated lumber are permitted to be burned in any outdoor wood burning furnace. Burning of any and all other materials, including but not limited to trash, plastics, gasoline, rubber, household garbage, material treated with petroleum products such as particle board, railroad ties and pressure treated wood, leaves, paper products and cardboard, in an outdoor wood burning furnace is prohibited.

B. Stack height. Outdoor wood burning furnaces shall be equipped with a permanent stack extending a minimum of two feet above the peak of any roof structure located within 150 feet of the outdoor wood boiler and no less than 18 feet above ground level.

C. Months of operation. Outdoor wood burning furnaces shall be operated only between October 1 and April 30.

D. Spark arrestors. All outdoor wood burning furnaces shall be equipped with properly functioning spark arrestors which shall be maintained in proper working order at all times.

E. Lighter fluids, gasoline or chemicals may not be used to start the furnace are prohibited.

§ 107 8. Suspension of permit.

A. Any permit issued pursuant to this chapter may be suspended by the Code Enforcement Officer/ Building Inspector to protect the public health, safety and welfare of the residents of the Town of Carmel if any of the conditions in § 107 7 is violated. A suspended permit may be reinstated once the condition which resulted in suspension is remedied. Recurrence of a condition which has previously resulted in suspension of a permit shall be

considered a violation of this chapter subject to the penalties provided in § 107 9 hereof.

B. In addition to the provision set forth in subparagraph A above, Any permit issued pursuant to this chapter may be suspended when in the discretion of the Code Enforcement Officer/ Building Inspector, such suspension is warranted to protect and preserve the health, safety and welfare of the residents of the Town of Carmel.

§ 107 9. Penalties for offenses.

A. Failure to comply with any of the provisions of this chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not less than \$500 or imprisonment for a period of not more than 10 days, or both, for the first offense. Any subsequent offense shall be punishable by a fine of not less than \$1,000 or imprisonment for a period of not more than 30 days, or both. In addition, any permit issued pursuant to this chapter shall be revoked upon conviction of a second offense and the subject outdoor wood burning furnace shall not be eligible for another permit and shall be removed. Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this chapter.

B. Compliance with the provisions of this chapter may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction.

C. In the event the Town is required to take legal action to enforce the provisions of this chapter, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court.

D. Any fine imposed and any costs incurred hereunder shall constitute a lien upon the real property where the outdoor wood burning furnace is located. If such fine and/or costs assessed by the court are not paid in full within 30 days from the date determined and assessed by the Court, such fine and/or costs shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property §

§107 10. Effect on other regulations.

A. Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, New York State Department of Environmental Conservation, or any other federal, state, regional or

local agency. Outdoor wood burning furnaces, and any electrical, plumbing or other apparatus or device used in connection with an outdoor wood burning furnace, shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all local, state and federal codes, laws, rules and regulations. In case of a conflict between any provision of this chapter and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.

B. Any outdoor wood furnace must also comply with any other county, state or federal guidelines for the same.

Section 3: REPEAL OF SECTION 59 49 D OF THE TOWN CODE

§107-11
Section 59 49 D of the Town Code is hereby repealed.

Section 4: EFFECTIVE DATE

§107-12
This Local Law shall take effect immediately in accordance with the law of the State of New York.

At said Public Hearing, all interested persons shall be heard on the subject thereof.
By Order of the Town Board of the Town of Carmel
Ann Garris, Town Clerk

With no one objecting to the public notice as read, Supervisor Schmitt opened the Public Hearing for public comment at 7:34 p.m. Thirty-eight (38) people were in attendance.

(Cont.)

Christine Gartlan of Hillside Drive expressed her concerns about a neighbor's outdoor wood burning furnace which she believes is not in compliance with the proposed regulations. Ms. Gartlan commented on the large amount of smoke it emitted, noting that in the past, the smoke has set off smoke alarms in her home. She provided photographs of the furnace to the Town Board. Ms. Gartlan commented that she has no objection to compliant furnaces operating from October through April. She asked if adopted, when the Local Law will take effect.

Gregory Folchetti, Legal Counsel stated that the effective date of the proposed Local Law is immediately, upon the filing with the Department of State.

Kathy Augustino commented that she had no objection to her neighbor's outdoor wood burning furnace with the exception of the large amount of smoke emitted from it. She too noted that in the past, the smoke from the furnace has set off smoke alarms in her home.

Supervisor Schmitt asked if her home was over 150 feet from the referenced furnace.

Ms. Augustine said that it was slightly over.

Supervisor Schmitt explained that the owner of the outdoor wood furnace must comply with the provisions within the Local Law upon adoption which will be enforced by the Building Inspector.

Sally Bryson asked if there will be a window for those residents with outdoor wood burning furnaces currently without a permit, to obtain one.

Supervisor Schmitt replied, no.

Ms. Bryson asked if those residents who have currently have certificates of occupancy for their outdoor wood burning furnaces will be required to reapply for a permit.

Mr. Carnazza replied yes, because it must be ensured that the outdoor wood burning furnace complies with the provisions included in the new legislation.

Ms. Bryson commented that she did not have an issue with the months of operation included in the proposed Local Law. She then questioned if the Town Board was closing the door on future technology.

Supervisor Schmitt replied yes, for health and safety reasons.

Ms. Bryson pointed out that some of the new stoves, the gasifier models, are even more efficient than certain fireplace inserts currently used and asked if the Town Board would reconsider this at some later time.

Councilman Ravallo noted that a future Town Board may consider modifying the law unless there is a higher authority, such as the state or federal government prohibiting it.

Mr. Folchetti explained that the NYSDEC does not prohibit outdoor wood burning furnaces; however, authorizes two types of furnaces and maintains a list of approved models. The municipality is free to adopt legislation that is more restrictive in terms of the use, but not less than the NYSDEC's restrictions.

Ms. Bryson questioned why the stack height of her furnace would be required to be increased given that her neighbors' homes are hundreds of feet from it and no complaints have ever been registered.

Mr. Carnazza indicated that the increase would be required because of the barn next door.

(Cont.)

Ms. Bryson asked if the distance provision would apply to her own home.

Mr. Carnazza stated that the distance of 150 feet includes all structures, including her own home.

Ms. Bryson asked if the Town Board would consider modifying this provision if it relates to someone’s own home.

Councilman Ravallo stated that the Town Board views the furnaces as a health hazard for all residents, her included.

Ms. Bryson asked how long from the time of adoption of the Local Law, does she have to apply for a permit.

Supervisor Schmitt stated that the proposed Local Law as drafted indicates one year. However, it is the intent of the Town Board to change it to six months prior to adopting the Local Law.

Ms. Bryson inquired if she would be required to put up a stack within that period of time.

Mr. Carnazza replied, yes. All provisions must be complied with.

With no one else present wishing to be heard on the subject of the Public Hearing, on motion by Councilman Lombardi, seconded by Councilman Ravallo, with all members of the Town Board present and in agreement the Public Hearing was closed at 7:44 p.m.

SEQR REVIEW - PROPOSED LOCAL LAW ENACTING CHAPTER 107 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED “OUTDOOR WOOD BURNING FURNACES”

Gregory Folchetti, Legal Counsel, reviewed the following Short Environmental Assessment Form with the Town Board.

617.20
Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)	
1. APPLICANT/SPONSOR Town of Carmel	2. PROJECT NAME Chapter 107 Town Code "Outdoor Wood Burning Furnaces"
3. PROJECT LOCATION: Municipality Town of Carmel County Putnam	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Town-wide	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: This action involves enacting a local law to amend the Town Code to to amend the Town Code of the Town of Carmel to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by the Building Inspector for preexisting outdoor wood burning furnaces.	
7. AMOUNT OF LAND AFFECTED: Initially Town-wide acres Ultimately Town-wide acres	

(Cont.)

8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?	
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No If No, describe briefly
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?	
<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other
Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/sponsor name: <u>Town of Carmel Town Board</u>	Date: <u>May 11, 2011</u>
Signature: <u>[Signature]</u>	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER
1

Reset

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)	
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:	
No	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:	
NO	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:	
NO	
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:	
NO	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:	
NO	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:	
NO	
C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:	
NO	
D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, explain briefly:
E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

11 MAY 2011
TOWN BOARD SPECIAL MEETING

(Cont.)

<input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination	
Town of Carmel Town Board	May 11, 2011
_____ Name of Lead Agency	_____ Date
Kenneth Schmitt	Town Supervisor
_____ Print or Type Name of Responsible Officer in Lead Agency	_____ Title of Responsible Officer
_____ Signature of Responsible Officer in Lead Agency	_____ Signature of Preparer (If different from responsible officer)

Reset

PROPOSED LOCAL LAW ENACTING CHAPTER 107 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED “OUTDOOR WOOD BURNING FURNACES” - SEQR DETERMINATION OF SIGNIFICANCE - NEGATIVE DECLARATION

WHEREAS, the Town Board of the Town of Carmel is considering enacting a local law to amend the Town Code of the Town of Carmel to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by the Building Inspector for preexisting outdoor wood burning furnaces; and

WHEREAS, this local law has been developed to promote the health, safety and general welfare of the persons and property of the Town of Carmel; and

WHEREAS, the project is defined as an Unlisted Action; and

NOW THEREFORE BE IT RESOLVED, that pursuant to Part 617 of the SEQR Regulations, the Town of Carmel Town Board hereby designates its intention to serve as Lead Agency for the SEQR Review of this Unlisted Action, and in this capacity will conduct an Uncoordinated Review.

BE IT FURTHER RESOLVED, that pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency has determined that the proposed Unlisted Action will not have a significant effect on the environment for the reasons enumerated in the attached Negative Declaration Form.

Resolution

Offered by: Councilman Lombardi
Seconded by: Councilman Ravallo

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Robert Ravallo	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

SEQR

617.21
Appendix F

**State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance**

Project Number _____ Date May 11, 2011

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

11 MAY 2011
TOWN BOARD SPECIAL MEETING

(Cont.)

The Town of Carmel, Town Board as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action:

A LOCAL LAW ENACTING CHAPTER 107 OF THE TOWN CODE
OF THE TOWN OF CARMEL, ENTITLED "OUTDOOR WOOD BURNING FURNACES."

SEQR Status:

Type I ☐ Unlisted ☒

Conditioned Negative Declaration: Yes ☐ No ☐

Description of Action:

The proposed action involves enacting a local law to amend the Town Code to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by the Building Inspector for preexisting outdoor wood burning furnaces.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

Town of Carmel, Putnam County

SEQR Negative Declaration

Page 2

REASONS SUPPORTING THIS DETERMINATION:

The action involves enacting a local law amend the Town Code to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by the Building Inspector for preexisting outdoor wood burning furnaces. As a result, it can be concluded that the proposed action will not result in any significant adverse environmental impacts.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

For Further Information:

Contact Person: Kenneth Schmitt, Supervisor
Address: Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541
Telephone Number: 845-628-1500

For Type I Actions and Conditioned Negative declarations, a Copy of the Notice sent to:

Commissioner, Dep't of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-0001
NYSDEC Region 3, 21 South Putt Corners Road, New Paltz, NY 12561
Supervisor, Town of Carmel, Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541

11 MAY 2011

TOWN BOARD SPECIAL MEETING

LOCAL LAW #3 OF THE YEAR 2011 - A LOCAL LAW ENACTING CHAPTER 107 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED "OUTDOOR WOOD BURNING FURNACES" - ADOPTED AS AMENDED, NOTICED, PUBLISHED AND PRE-FILED

Town of Carmel
Local Law # 3 of the Year 2011
A Local Law Enacting Chapter 107, Entitled "Outdoor Wood Burning Furnaces" of the
Town Code of the Town of Carmel

Be it enacted by the Town Board of the Town of Carmel, Putnam County, State of New York as follows:

Section 1: PURPOSE

The purpose of this local law is to amend the Town Code to prohibit the future use of outdoor wood burning furnaces and to establish regulations for the issuance of permits by the Building Inspector for preexisting outdoor wood burning furnaces.

Section 2: AMENDMENT OF THE TOWN CODE

The Town Code of the Town of Carmel is hereby amended by the addition of a new chapter entitled, "CHAPTER 107, OUTDOOR WOOD BURNING FURNACES" which shall read as follows:

CHAPTER 107, OUTDOOR WOOD BURNING FURNACES

§ 107-1. Purpose.

The Town Board of the Town of Carmel has received numerous complaints in regard to outdoor wood burning furnaces concerning their pollution of the atmosphere and their safety. Although outdoor wood burning furnaces may provide an economical alternative to conventional heating systems, it is generally recognized that the types of fuel used, and the scale and duration of burning by outdoor wood burning furnaces, creates noxious and hazardous smoke, soot, fumes, odors and air pollution, can be detrimental to citizens health and can deprive neighboring residents of the enjoyment of their property or premises. Therefore, it is the intention of the Town Board of the Town of Carmel to establish and impose restrictions upon the construction and operation of outdoor wood burning furnaces for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the Town and its inhabitants This chapter is intended to prohibit the construction and/or installation of any further outdoor wood burning furnaces and to ensure that existing outdoor wood burning furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town.

§ 107-2. Authority

This chapter is adopted pursuant to the authority, of Article 2, § 10 of the New York State Municipal Home Rule Law,

§ 107-3. Enforcement

The Town of Carmel Director of Codes Enforcement, Building Inspector and Code Enforcement Officer, or any other person who may hereafter be designated by resolution of the Town Board is hereby authorized in the name and on behalf of the Town of Carmel to undertake and prosecute any proceedings necessary or appropriate to enforce compliance with this article including the issuance of appearance tickets.

§ 107-4. Definitions

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

(Cont.)

FIREWOOD -- Trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than three inches in diameter.

OUTDOOR WOOD BURNING FURNACE -- Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of wood fuel to produce heat or energy used as a component of a heating system providing heat and/or hot water for any interior space in any principal structure or any other interior or exterior site, building, or structure.

UNTREATED LUMBER -- Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

VIOLATOR OR ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE
Any person who owns or occupies the property at the time the outdoor wood boiler has been installed and/or operated.

STACK or CHIMNEY- Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device; especially that part of such structure extending above the roof.

§ 107-5. New construction and operation prohibited.

The construction and/or installation of any new outdoor wood burning furnaces are hereby prohibited in any zone within the Town of Carmel.

§ 107-6. Existing outdoor wood burning furnaces

Except as hereinafter provided, the lawful use of any outdoor wood burning furnace which is legally permitted and existing at the time of the adoption of this chapter may be continued, subject to the provisions of the section

- A. No outdoor wood boiler, lawfully existing or in existence at the time of the adoption of this chapter, shall thereafter be extended, enlarged or replaced with a new or previously owned unit or restored or repaired beyond 50% of its value.
- B. Any existing outdoor wood burning furnace which is abandoned or discontinued for a period of seven consecutive months shall not be permitted to be reestablished and must be immediately removed by the property owner from the subject premises. If the property owner fails to remove the outdoor wood burning furnace by the end of said seven-consecutive-month period, the Town of Carmel Code Enforcement Officer/Building Inspector shall give written notice by certified mail or personal service to the owner of the property upon which the outdoor wood burning furnace is located. Such notice shall provide that said owner shall remove the outdoor wood burning furnace within 15 days of the date the notice is either postmarked or personally served upon the owner. Should the outdoor wood burning furnace not be removed within the time specified, the Code Enforcement Officer/Building Inspector shall take reasonable steps to effect its removal. The costs incurred by the Town to effect said removal including attorney's fees shall be charged to the owner of said premises. Said expense shall be paid by the owner of the property so affected within 30 days from the date said costs are presented to the owner. If said expense is not paid within said thirty-day time frame, then said expense shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property.

(Cont.)

- C. All outdoor wood burning furnaces lawfully permitted and in existence on the effective date of this chapter shall be permitted to remain, provided that the owner applies for and receives a permit from the Town Building Inspector within six (6) months of the effective date of this chapter to comply with provisions governing the use and existence of outdoor wood burning furnaces set forth herein. If the owner of an existing outdoor wood burning furnace does not receive a permit within six (6) months of the effective date of this chapter, the outdoor wood burning furnace shall be removed. "Existing" or "in existence" means that the outdoor wood burning furnace is legally permitted, existing, in place and operational on the effective date of this chapter. Application for a permit shall be made to the Building Inspector on the forms provided.

§ 107-7. Continuing requirements for the continuing use of existing outdoor wood burning furnaces.

All existing outdoor wood burning furnaces which receive permits from the Building Inspector shall be subject to the following regulations which constitute continuing conditions for the permit:

- A. Permitted fuel. Only firewood and untreated lumber are permitted to be burned in any outdoor wood burning furnace. Burning of any and all other materials, including but not limited to trash, plastics, gasoline, rubber, household garbage, material treated with petroleum products such as particle board, railroad ties and pressure treated wood, leaves, paper products and cardboard, in an outdoor wood burning furnace is prohibited.
- B. Stack height. Outdoor wood burning furnaces shall be equipped with a permanent stack extending a minimum of two feet above the peak of any roof structure located within 150 feet of the outdoor wood boiler and no less than 18 feet above ground level.
- C. Months of operation. Outdoor wood burning furnaces shall be operated only between October 1 and April 30.
- D. Spark arrestors. All outdoor wood burning furnaces shall be equipped with properly functioning spark arrestors which shall be maintained in proper working order at all times.
- E. Lighter fluids, gasoline or chemicals may not be used to start the furnace are prohibited.

§ 107-8. Suspension of permit.

- A. Any permit issued pursuant to this chapter may be suspended by the Code Enforcement Officer/Building Inspector to protect the public health, safety and welfare of the residents of the Town of Carmel if any of the conditions in § 107-7 is violated. A suspended permit may be reinstated once the condition which resulted in suspension is remedied. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this chapter subject to the penalties provided in § 107-9 hereof.
- B. In addition to the provision set forth in subparagraph A above, Any permit issued pursuant to this chapter may be suspended when in the discretion of the Code Enforcement Officer/Building Inspector, such suspension is warranted to protect and preserve the health, safety and welfare of the residents of the Town of Carmel.

(Cont.)

§ 107-9. Penalties for offenses.

- A. Failure to comply with any of the provisions of this chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not less than \$500 or imprisonment for a period of not more than 10 days, or both, for the first offense. Any subsequent offense shall be punishable by a fine of not less than \$1,000 or imprisonment for a period of not more than 30 days, or both. In addition, any permit issued pursuant to this chapter shall be revoked upon conviction of a second offense and the subject outdoor wood burning furnace shall not be eligible for another permit and shall be removed. Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this chapter.
- B. Compliance with the provisions of this chapter may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction.
- C. In the event the Town is required to take legal action to enforce the provisions of this chapter, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court.
- D. Any fine imposed and any costs incurred hereunder shall constitute a lien upon the real property where the outdoor wood burning furnace is located. If such fine and/or costs assessed by the court are not paid in full within 30 days from the date determined and assessed by the Court, such fine and/or costs shall be charged to the property so affected by including such expense in the next annual Town tax levy against the property §

§107-10. Effect on other regulations.

- A. Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, New York State Department of Environmental Conservation, or any other federal, state, regional or local agency. Outdoor wood burning furnaces, and any electrical, plumbing or other apparatus or device used in connection with an outdoor wood burning furnace, shall be installed, operated and maintained in conformity with the manufacturer's specifications and any and all local, state and federal codes, laws, rules and regulations. In case of a conflict between any provision of this chapter and any applicable federal, state or local ordinances, codes, laws, rules or regulations, the more restrictive or stringent provision or requirement shall prevail.
- B. Any outdoor wood furnace must also comply with any other county, state or federal guidelines for the same.

Section 3: REPEAL OF SECTION 59-49 D OF THE TOWN CODE

§107-11

Section 59-49 D of the Town Code is hereby repealed.

Section 4: EFFECTIVE DATE

§107-12

This Local Law shall take effect immediately in accordance with the law of the State of New York.

Offered by: Supervisor Schmitt
Seconded by: Councilman Lombardi

(Cont.)

Roll Call Vote	YES	NO
Robert Ravallo	X	
Frank Lombardi	X	
Suzanne McDonough	X	
Kenneth Schmitt	X	

Supervisor Schmitt offered the foregoing Local Law with the aforementioned amendment to § 107.6 C. "... provided that the owner applies for and receives a permit from the Town Building Inspector within **six (6) months** of the effective date of this chapter to comply with provisions governing the use and existence of outdoor wood burning furnaces set forth herein. If the owner of an existing outdoor wood burning furnace does not receive a permit within **six (6) months** of the effective date of this chapter..."

PUBLIC HEARING HELD - PROPOSED LOCAL LAW AMENDING ARTICLE 95 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED "GARBAGE, RUBBISH AND REFUSE"

Supervisor Schmitt asked the Town Clerk to read the following Notice of Public Hearing as published in the Town’s official newspaper:

LEGAL NOTICE
NOTICE OF PUBLIC HEARING
NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, May 11, 2011 at 7:00 p.m. or as soon thereafter that evening as possible on a Local Law amending Article 95 of the Town Code of the Town of Carmel, entitled "GARBAGE, RUBBISH AND REFUSE", as follows:

Proposed Local Law No. of the year 2011
CHAPTER 95 GARBAGE, RUBBISH AND REFUSE

GENERAL REFERENCES
Public Assemblies — See Ch. 43.
Boats — See Ch. 55.
Fees — See Ch. 80.
Property maintenance — See Ch. 114.

ARTICLE I Littering (§ 95 1 — § 95 13)
ARTICLE II Recycling (§ 95 14 — § 95 18)
ARTICLE III Storage, Collection and Disposal (§ 95 19 — § 95 39)
§ 95 19 Intent.
It is the purpose of this article to protect and enhance the public health and welfare of the Town of Carmel by regulating the storage, collection and transportation for disposal of solid waste and recyclable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation.

§ 95 20 Definitions.
For the purposes of this article, certain words and terms used herein are defined as follows:

COMMERCIAL CUSTOMER
Any customer of a refuse collector who stores refuse and garbage in the containers referred to in §95 21C herein. [Added 11/2006 by L.L. No. 7 2006]

C U R B S I D E COLLECTION
Placement of contained garbage or refuse designated for collection within ten (10) feet of a private, town, county or state right-of-way from which a residence derives access.

GARBAGE
All putrescible animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food or the storage and sale of produce.

HAZARDOUS WASTE
All those wastes that can cause serious injury or disease during the normal storage, collection and disposal cycle, including but not limited to explosives, inflammables, pathological and infectious wastes, radioactive materials, poisons, acids and dangerous chemicals or combinations of chemicals and any material designated as hazardous waste by federal and state agencies having jurisdiction.

PERSON
Any individual, group of individuals, partnership, firm, corporation or association.

RECYCLABLES OR RECYCLABLE MATERIALS
Raw or processed material that can be recovered from a waste stream for reuse as defined in Chapter 205, et seq of the Code of Putnam County New York as may be amended.

REFUSE
All putrescible and nonputrescible solid waste, including garbage, rubbish, rubble, trash, small dead animals, ashes, solid commercial and industrial waste, but not including human or rendering waste, junk motor vehicles, dirt or rocks.

REFUSE COLLECTOR
Any person duly licensed or authorized, pursuant to this article, to engage in the business of collecting, storing, hauling or transporting of refuse and garbage in the Town of Carmel.

RESIDENTIAL CUSTOMER
Any customer of a refuse collector who stores refuse and garbage in the manner described in § 95 21A and B herein.

SOLID WASTE
All matter of useless, unwanted or discarded solid or semisolid domestic, commercial, industrial, institutional, construction and demolition waste material, including garbage and refuse, but excepting human or rendering waste.

§ 95 21 Storage.
A. Except as otherwise provided, all garbage and refuse shall be stored in containers, commercially manufactured for that purpose, equipped with suitable handles and tight fitting covers and which shall be watertight and capable of being properly cleaned and sanitized. Such containers shall not exceed 90 (Ninety) in capacity.
B. Plastic (polyurethane) bags may be used for storage of all refuse, provided that such bags are securely tied or otherwise fastened at the top, are free from holes, rips or tears and are of sufficient strength to permit normal handling without rupture.
C. Containers, larger than those permitted in Subsection A of this section, may be used on commercial properties and other properties where the type of collection equipment and/or collection methods permit the handling of such containers without endangering health or safety.
D. Any waste material, other than garbage which cannot readily be deposited in containers, may be compacted and securely bundled, tied or packed so as not likely to be spilled or scattered and when so packed and secured.
E. Hazardous waste shall not be stored, placed for collection nor collected, except on special permission by the Town Board or approval by federal or state agencies having jurisdiction and only in conformance with the regulations applicable thereto.

§ 95 22 Point of collection.
A. Where collection is provided at the roadside, containers shall be placed in a visible and accessible area and shall not interfere with sidewalk or vehicular traffic or parking.
B. Where collection is provided at the roadside, the refuse collector shall place containers back onto the owner's property in a neat fashion with covers on.
C. The refuse collector shall not leave refuse or garbage upon streets or public or private property which may have dropped from containers or the collector's equipment.

§ 95 23 Collection hours.
Collection shall be restricted to the hours of 6:00 a.m. to 6:00 p.m., Monday through Saturday, and shall be carried on by the refuse collector with a minimum of discomfort to property owners and residents.

§ 95 24 Remedy of service.
Refuse collectors shall remedy any and all missed or improper service within 24 hours, excepting Sundays.

§ 95 25 Collection vehicles.
A. All vehicles used to collect, haul or transport refuse and garbage shall be of metal or other impervious material, shall be constructed and maintained to prevent refuse and garbage from accumulating in or on the body, shall be capable of being completely emptied and shall be kept in a clean and sanitary condition.
B. Any vehicle used to collect, haul or transport refuse and garbage shall be of such design and construction so as to prevent escape of refuse, garbage or recyclables or other contents, and such preventative design shall be implemented at all times during the hauling or transportation of refuse and garbage.
C. All vehicles used by any refuse collector shall display the name of the collector and vehicle number clearly printed and readily visible on each side of the vehicle, as well as display any Town of Carmel issued inspection/ license stickers as have been issued by the Town of Carmel, in a conspicuous location of designated by the Town of Carmel.
D. All vehicles used to collect, haul or transport refuse and garbage shall be subject to inspection by the Town of Carmel.

§ 95 26 License required.
A. Except as otherwise provided herein, it shall be unlawful for any person to operate, engage in, conduct or cause the operation of a business engaged in the collection and disposal of refuse and garbage in the Town of Carmel without first having obtained a license from the Town Board as well as any permits or approvals required by state and county agencies having jurisdiction, or to use in such collection of refuse and garbage any vehicle other than one approved in such license.
B. Nothing provided herein shall prohibit the actual producers of refuse and garbage, or the owners of

11 MAY 2011

TOWN BOARD SPECIAL MEETING

(Cont.)

premises upon which refuse and garbage has accumulated, from personally collecting, conveying and disposing of such refuse and garbage without the license provided herein, provided that it is done in compliance with all other relevant provisions of this article.

C. A copy of the current license must be kept in all vehicles used for the collection and disposal of garbage and refuse for any person or corporation licensed under this chapter.

§ 95 27 License application and Insurance Requirements.

A. Every person who desires to collect or engage in the business of collecting refuse and garbage within the Town of Carmel shall file a written, certified application for a license in form and content as approved by the Town Board of the Town of Carmel.

B. Before a license may be issued by the Town Board, each applicant shall file satisfactory proof of the following insurance coverage:

- (1) Worker's compensation insurance.
- (2) Disability benefits insurance.
- (3) Public liability insurance with minimum limits of \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.
- (4) Automobile liability insurance with minimum limits of \$500,000 per person and \$1,000,000 per accident for bodily injury and \$50,000 for property damage.

§ 95 28 Issuance of license.

If the Town Board shall find from the statements contained in the application and after investigation of other relevant factors that the applicant is qualified and able to conduct the business of collection of refuse and garbage and conforms to the provisions of this article and any other applicable rules and regulations of the Town of Carmel, and if it appears that the issuance of a license is in the public interest, then the Town Board shall issue a license stating the name and address of the applicant, the number of collection vehicles the applicant is authorized to operate the date of the issuance thereof and the effective date of the license.

§ 95-34 Suspension or revocation of license.

A. Any license issued under the provisions of this article may be suspended by the Town Board for a period not exceeding 30 days, or the Town Board may revoke such license, where one or more of the following situations is found to exist:

(1) That the licensee has failed to reasonably fulfill his obligations as a private refuse collector to a customer.

(2) That the licensee is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied.

§ 95 29 License fee.

Each application for a license or license renewal shall be accompanied by a nonrefundable annual fee, which license fee shall be established annually by the Town Board and shall be on file with the Office of the Clerk.

§ 95 30 Renewal of license.

A. All licenses shall, unless properly renewed, expire one year after the effective date thereof. In seeking a license renewal, the licensee shall submit an application pursuant to § 95 28 herein.

B. In seeking renewal of a license issued pursuant to this Chapter, the applicant shall submit a completed application pursuant to § 95-28, together with the applicable fee(s) no later than 45 (forty-five) calendar days prior to the expiration date of the current license. The submission of a completed application and fees pursuant to this section shall be deemed compliance with the licensing provisions of this chapter and shall be deemed a valid current license in the absence of any action to the contrary by the Town Board of The Town of Carmel.

C. The failure of the applicant to submit the renewal application in strict accordance with subsections A and B above shall be deemed a new license application pursuant to § 95-29 herein and any existing license shall expire on its expiration date.

§ 95 31 Collection fees and Service Requirements.

Every person or entity licensed pursuant to this chapter shall, in addition to all other requirements set forth within this Chapter, provide the following services with respect to residential refuse and garbage collection within the Town of Carmel:

A. Provide recyclable item pickup for items as defined in Article II of this Chapter for residential customers at a minimum interval of one (1) time per week.

B. Provide Curbside Bulk Pickup for residents' households at a minimum interval of two (2) times per year, subject to the following:

1. Curbside Bulk Pickup applies to household items only and must be at the curb by the night before the scheduled pickup;

(3) That a licensee has failed to keep and maintain records or has refused to allow the inspection thereof as provided herein.

(4) That a licensee has violated any of the provisions of this article.

(5) That a licensee has ceased to operate as a private refuse collector within the Town of Carmel.

B. No such suspension shall be sustained nor any license be revoked except after a hearing by the Town Board upon at least 10 days' written notice thereof to such licensee.

§ 95-35 Additional rules and regulations.

The Town Board of the Town of Carmel may adopt such further rules and regulations as it may deem

2. The Curbside Bulk Pickup requirement is limited to three (3) cubic yards per household per pickup. Any amount in excess of three (3) cubic yards per pickup shall be governed by private agreement between hauler and the property owner and/or occupant.

3. The following items are not included for Curbside Bulk Pickup: paint, chemicals, liquids, stumps, tree, masonry, lumber, logs, brick, used oil, batteries, stone, tires, propane tanks, construction, renovation or remodeling debris including kitchens, baths, decks and windows, as well as hazardous waste as defined herein.

4. Refuse Collector shall not be responsible for Curbside Bulk Pickup of refrigerators, freezers, air conditioners, etc., unless same have been de-charged and certified by an individual or entity licensed accordingly by the State of New York.

D. Provide discarded Christmas Tree pickup during the week of January 7 through January 14 each year. This provision shall not apply to artificial Christmas Trees.

E. Establish and maintain its periodic and/or unit-cost rates for household garbage and refuse pickup in accordance with and not exceeding the periodic and/or unit cost rates set by the Town Board of the Town of Carmel by resolution annually, subject to the following:

1. For once-per-week collection the rate established by the Town Board shall include pickup of 90 (ninety) gallons of refuse/garbage in quantity or less, collected at curbside.

2. For twice-per-week collection the rate established by the Town Board shall include pickup of the aggregate of 180 gallons of refuse/garbage in quantity or less, collected at curbside.

F. Any person or entity licensed pursuant to this chapter may provide collection containers to any residential customer at no additional charge.

G. Any person or entity licensed pursuant to this chapter may provide services in excess of those set forth in subsection (E) above at an agreed-upon cost with the residential customer, including but not limited to excess volume of garbage and refuse, or bulk pickup, increased frequency of collection, driveway service, etc.

H. Licensees shall provide a ten percent discount to all residential customers 65 years of age or older.

§ 95 32 Nontransferability of license.

No license issued hereunder shall be assigned, sold or transferred.

§ 95 33 Records.

A. Every licensee shall keep complete and accurate books of account with respect to the operation of his business in which shall be entered and which shall show, among other things, a current schedule of fees charged to customers, all income derived or received from each of his customers and all other sources, together with details of all expenses and disbursements made or incurred in the operation of his business in the Town of Carmel. Such books of account shall be kept current on a monthly or quarterly basis and brought up to date not later than 30 days after the expiration of such period. All such records shall be retained by the licensee for at least three years.

B. The Town of Carmel shall have the right to inspect such books of account and records maintained by the licensee.

C. Every licensee shall provide the Town of Carmel with a financial statement for the preceding calendar year which shall be certified by an accountant and which shall include the licensee's total income derived from customers in the Town of Carmel, the number of said customers, the sources of revenue relative to the Town of Carmel, together with the details of all expenses and disbursements made or incurred by the licensee in the operation of the licensee's business in the Town of Carmel. Said financial statement shall be filed with the Town Clerk within 90 days following each calendar year.

D. This chapter and its provisions shall be enforced by the Police Department of the Town of Carmel.

§ 95-37 When effective. This article shall take effect immediately.

At said Public Hearing, all interested persons shall be heard on the subject thereof. By Order of the Town Board of the Town of Carmel
Ann Garis, Town Clerk

necessary or expedient in the implementation and administration of this article.

§ 95-36 Penalties for offenses.

A. Any person committing an offense against this article shall be guilty of a violation punishable by fine not exceeding \$500 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.

B. Each day an offense against this article shall continue to exist shall constitute a separate offense.

C. In addition to the above-provided penalties, the Town of Carmel may also maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction any violation of this article.

11 MAY 2011
TOWN BOARD SPECIAL MEETING

(Cont.)

With no one objecting to the public notice as read, Supervisor Schmitt opened the Public Hearing for public comment at 8:10 p.m. Thirty-eight (38) people were in attendance.

James Constantino, general counsel for Panichi Holding Corp. presented the following series of comments submitted jointly with Sani-Pro Disposal Inc. with regard to the proposed Local Law.

STATEMENT TO TOWN BOARD OF THE TOWN OF CARMEL FOR MAY 11, 2011
PUBLIC HEARING CONCERNING AMENDMENTS TO CHAPTER 95 OF THE TOWN
CODE OF THE TOWN OF CARMEL

This statement is submitted on behalf of Sani-Pro Disposal Services Corp. and Panichi Holding Corp. Both corporations are licensed carters in the Town of Carmel. They do business under various assumed names.

We offer the following comments concerning the proposed amendments to Chapter 95 of the Town Code:

- a. The proposed amendments to Chapter 95, Article III, are inextricably linked with the Town's rate setting legislation. It is not possible to offer meaningful comments on the provisions of the proposed legislation now before you for collection fees and service requirements without also being able to review the proposed rate making legislation which is referred to in the pending draft as providing for periodic and/or unit cost rates set by the Town Board. All other issues apart, it is requested that the public hearing be held open and that no action be taken on the pending legislation until a reasonable opportunity is had to receive, review and comment upon the proposed rate making legislation.
- b. Section 95-21 - there is a reference to 90 gallon containers (although the word "gallon" is missing). The reference should be changed to 96 gallon containers - 96 and not 90 is the industry standard.
- c. Section 95-24 - this provision to remedy missed or improper service should be amended to incorporate a force majeure clause as it is not reasonable to require a collector to remedy missed service within 24 hours if there are emergency storm conditions, washed out roads, or other items referred to under the heading "force majeure" that do not permit a 24 hour remedy.
- d. Section 96-26 (C) - the requirement to maintain a copy of the current license in all vehicles is unduly burdensome. It is suggested that each company be required to maintain a copy in their office and that the Town issue a sticker that is required to be placed on each truck - a sticker reciting the fact of a license.
- e. Section 95-30 (B) - we suggest that the provision be amended to require the Town to send out a reminder for prospective expiration of a license and a renewal application no longer than 90 days before expiration.

1

This is the norm on virtually all applications including, for example, drivers license or an automobile registration.

- f. Section 95-31 - subdivision (C) - there is no subdivision C. We do not know if this is an error in the order of lettering or whether there is a missing provision that is intended to be included.
- g. Section 95-31 (E) - we find the term "periodic and/or unit cost rates" ambiguous. We ask that you amend the legislation to specify the precise method of calculating the rate. Procedural requirements such as hearings and substantive issues such as a reasonable rate of return should be included in the legislation.
- h. Section 95-31 (E) - the reference to 90 gallons should be 96 gallons and the reference to 180 gallons should be 192 gallons.

11 MAY 2011
TOWN BOARD SPECIAL MEETING

(Cont.)

- i. Section 95-31 (F) and (G) - requiring services such as providing extra collection containers at no cost or providing extra services needs to be factored into any rate setting legislation and any rate to be determined pursuant to such legislation.
- j. Section 95-31 (H) - senior citizens historically are given discounts because they produce less refuse. A rate setting mechanism that is based upon the amount of refuse necessarily incorporates discounts for seniors who produce less refuse and a separate provision is unnecessary.
- k. Section 95-33 (C) - we find a reference to a "financial statement ... certified by an accountant" ambiguous. Please spell out what it is that you mean. If you mean a certified and audited statement by a certified public accountant, this is a very costly requirement. As drafted, it is mandatory. If it is not intended to be mandatory, it should be eliminated. The cost in question depending on the size of the company could well be \$30,000 or \$40,000;
- and 1. Section 95-34 (B) - the provisions for suspension need procedures. We suggest that you look at the Westchester County Code for examples of appropriate procedural requirements for suspension.

2

We note that we are very concerned about the rate making legislation that has yet to be presented. As previously noted in communications to the Town, there are substantial constitutional issues regarding how the rate set by the December, 2010 resolution was determined. In our opinion, the resolution was patently defective. We await receipt and an opportunity to review the proposed legislation for 2011.

Respectfully submitted,

Dated: May 11, 2011

Sani-Pro Disposal Services, Corp.

By: 
JOSEPH ORLANDO, VICE PRESIDENT

Dated: May 11, 2011

Panichi Holding Corp.

By: _____
JAMES P. POPOVICH, VICE PRESIDENT

We note that we are very concerned about the rate making legislation that has yet to be presented. As previously noted in communications to the Town, there are substantial constitutional issues regarding how the rate set by the December, 2010 resolution was determined. In our opinion, the resolution was patently defective. We await receipt and an opportunity to review the proposed legislation for 2011.

Respectfully submitted,

Dated: May 11, 2011

Sani-Pro Disposal Services, Corp.

By: _____
JOSEPH ORLANDO, VICE PRESIDENT

Dated: May 11, 2011

Panichi Holding Corp.

By: 
JAMES P. POPOVICH, VICE PRESIDENT

11 MAY 2011

TOWN BOARD SPECIAL MEETING

(Cont.)

Mr. Constantino concluded by asking the Town Board to consider the clarifications to the proposed Local Law to make it effective and operable not only for the carters, but also for the consumers. He added that this law which is designed to protect consumers may in the end, have a different impact. Mr. Constantino stated that Royal Carting, one of the largest privately owned garbage companies in New York State currently has twelve residential and two commercial customers in the Town of Carmel. They would like to compete in this market however, cannot because of the problems they foresee with the ambiguity in the proposed Local Law.

Councilman Lombardi responded to Mr. Constantino that if his client has twelve residential and two commercial customers in the Town of Carmel, perhaps it would not be financially feasible to operate in the Town of Carmel. He stated that Mr. Constantino's suggestions were de minimis changes and in his opinion, would not render the Town Board unable to enact the proposed Local Law tonight.

Councilman Lombardi went on to explain that the rate making procedure with regard to the legislation to be the Town Board's deliberations. A change from 90 gallon containers to 96 gallon containers would be minor. He did not consider the requirement to maintain a copy of the license in all vehicles as burdensome and it was not incumbent upon the Town of Carmel to notify licensees of their impending renewal. With regard to services provided, Councilman Lombardi noted that although carters may provide a container, it is not required.

Councilman Ravallo noted that certain comments made by Mr. Constantino may be appropriate. However, agreed with Councilman Lombardi that they would not prevent the Town Board from adopting the Local Law at this time. He did not have an issue with a change from 90 gallon containers to 96 gallon containers. Councilman Ravallo pointed out that the Town Board will make the determination with regard to setting rates and with regard to the requirement of a financial statement, it must be certified by an accountant, not specifically a CPA.

Supervisor Schmitt responded to Mr. Constantino's comment regarding the suspension or revocation of a license, that "may" was the operative word in the provision. He stated that the proposed Local Law is the result of much deliberation and research over the past two years. Supervisor Schmitt acknowledged former Councilman Anthony DiCarlo for his efforts.

Supervisor Schmitt expressed his support of moving forward with the proposed Local Law at this time. He clarified that the issue with the Local Law amending Chapter 95 that was adopted in December of 2010 with regard to once a week pickup has been addressed.

Brad Rank, representing Sani-Pro Disposal Services, Corp., seconded the comments made by Mr. Constantino. He added that this legislation raises constitutional issues because it provides for rate setting by the Town without defining the manner in which the rates are set. He urged the Town Board to hold the vote open on this legislation pending further review.

Peter Creegan commended the Town Board for their progress. However, in regard to setting the rates, he indicated that rather than making comparisons to the advertised fees set forth by local garbage companies, written guidelines should be established.

Councilman Ravallo stated that the Town Board is aware that they have to set the rates and the rates will not be arbitrarily set.

Councilman Lombardi noted that the statute states that the Town Board has the right to set the rates and the rates do not have to be set tonight. The rates will be set after careful deliberations and adequate comparisons with the inclusion of public participation. He compared the rate setting process to that of the City of New York's Taxi and Limousine Commission.

(Cont.)

Mr. Folchetti recommended that at a meeting in the near future, the Town Board by resolution, create an advisory committee consisting of a minimum of three people to set the rates. Then by resolution, establish an open comment period in which a Public Hearing may be held along with a period for written submissions from all concerned parties with the scope and parameters to be defined at a later date. The advisory committee will make recommendations to the Town Board, who in turn may or may not choose to adopt them.

David Gagliardi commented that there is nothing in the legislation that would limit the amount of carters collecting trash in the Town of Carmel. Noting the potential danger of having multiple trucks collecting garbage on a street at one time, he questioned whether or not there should be a limit.

Supervisor Schmitt indicated that he did not support limiting the amount of carters that do business in the Town of Carmel provided they comply with the rules and regulations set forth in Chapter 95 of the Town Code.

Mr. Folchetti stated that he would not recommend doing so.

Councilman Ravallo added that a greater problem would be if the Town of Carmel did not have enough competition.

Jerry Ravnitzky stated that the Zoning Compliance Committee initially recommended going out to public bid for garbage pickup, similar to the Town of Southeast. Therefore, when the Town Board sets the rates, they should consider the bids of nearby towns, such as the Town of Southeast.

Pat Capozza expressed her dissatisfaction with the length of time being taken with regard to this legislation, as well as the time it may take for an advisory committee to set the rates for pickups. She questioned how this proposed Local Law will provide a cost savings to residents.

Beverly Wallace inquired about lower rates for those residents requesting fewer services.

Councilman Lombardi explained that is why the proposed Local Law allows the option for once a week pickup. He added that the proposed Local Law includes a requirement for a senior citizen discount.

Michael Barile expressed his dissatisfaction that the Town Board did not complete the fact finding process commenced over a year ago to determine the cost of town-wide garbage pickup.

Anthony DiCarlo, former Town Councilman and former chairman of the Zoning Compliance Committee spoke regarding the process to enact legislation regulating garbage collection. He commented that establishing an advisory committee to set the rates would result in further delay and the Town Board should consider returning to the original discussions with regard to town-wide garbage pickup.

Phyllis Honig spoke in favor of town-wide garbage collection. She too expressed her frustration with the length of time it is taking to set the rates for garbage pickup.

Scott Friedman addressed the advantages of town-wide garbage collection. He stated that he would rather pay the fee for garbage pick-up to the government than to a private carter because then it becomes tax deductible to a certain extent.

Supervisor Schmitt stated that it is not tax deductible.

Mr. Friedman suggested that the Town Board consider the proposed Local Law as an interim measure toward town-wide garbage pickup.

(Cont.)

Doris Stahl, former Town Councilwoman, commented that the senior citizen discount with regard to the rates should be at least 25%, rather than 10%. Ms. Stahl spoke regarding the problems involved with the creation of the town-wide garbage district in 1985. She noted that town-wide garbage collection would put a burden on certain residents by charging them for a service they do not use. She cited those residents who share the service with others or dispose of their trash at their businesses.

With no one else present wishing to be heard on the subject of the Public Hearing, on motion by Councilman Lombardi, seconded by Councilman Ravallo, with all members of the Town Board present and in agreement the Public Hearing was closed at 9:02 p.m.

SEQR REVIEW - PROPOSED LOCAL LAW AMENDING ARTICLE 95 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED “GARBAGE, RUBBISH AND REFUSE”

Gregory Folchetti, Legal Counsel, reviewed the following Short Environmental Assessment Form with the Town Board.

617.20
Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)	
1. APPLICANT/SPONSOR Town of Carmel	2. PROJECT NAME Amending Ch. 95 Town Code "Garbage, Rubbish & Refuse"
3. PROJECT LOCATION: Municipality Town of Carmel County Putnam	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Town-wide	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: This action involves enacting a local law to amend the existing regulations concerning the storage, collection and transportation for disposal of solid waste and recyclable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation	
7. AMOUNT OF LAND AFFECTED: Initially <u>Town-wide</u> acres Ultimately <u>Town-wide</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	

(Cont.)

12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE
Applicant/sponsor name: <u>Town of Carmel Town Board</u> Date: <u>May 18, 2011</u>
Signature: <u>[Signature]</u>

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER
1

Reset

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly: No
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly: NO
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly: NO
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly: NO
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly: NO
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly: NO
C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly: NO
D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, explain briefly:
E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

<input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.
Town of Carmel Town Board
May 18, 2011
Name of Lead Agency
Date
Kenneth Schmitt
Town Supervisor
Print or Type Name of Responsible Officer in Lead Agency
Title of Responsible Officer
<u>[Signature]</u>
Signature of Responsible Officer in Lead Agency
Signature of Preparer (If different from responsible officer)

Reset

11 MAY 2011

TOWN BOARD SPECIAL MEETING

PROPOSED LOCAL LAW AMENDING ARTICLE 95 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED "GARBAGE, RUBBISH AND REFUSE" - SEQR DETERMINATION OF SIGNIFICANCE - NEGATIVE DECLARATION

WHEREAS, the Town Board of the Town of Carmel is considering enacting a local law to protect and enhance the public health and welfare of the Town of Carmel by regulating the storage, collection and transportation for disposal of solid waste and recyclable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation; and

WHEREAS, this local law has been developed to promote the health, safety and general welfare of the persons and property of the Town of Carmel; and

WHEREAS, the project is defined as an Unlisted Action; and

NOW THEREFORE BE IT RESOLVED, that pursuant to Part 617 of the SEQR Regulations, the Town of Carmel Town Board hereby designates its intention to serve as Lead Agency for the SEQR Review of this Unlisted Action, and in this capacity will conduct an Uncoordinated Review.

BE IT FURTHER RESOLVED, that pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency has determined that the proposed Unlisted Action will not have a significant effect on the environment for the reasons enumerated in the attached Negative Declaration Form.

Resolution

Offered by: Councilman Ravallo
Seconded by: Councilwoman McDonough

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Robert Ravallo	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

SEQR

617.21

Appendix F

State Environmental Quality Review

NEGATIVE DECLARATION

Notice of Determination of Non-Significance

Project Number

Date May 11,2011

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Carmel, Town Board as lead agency, has determined that the proposed action described below will not have a significant effect on the environmental and a Draft Environmental Impact Statement will not be prepared.

Name of Action:

A LOCAL LAW AMENDING CHAPTER 95 OF THE TOWN CODE
OF THE TOWN OF CARMEL, ENTITLED "GARBAGE, RUBBISH AND REFUSE."

(Cont.)

SEQR Status:

Type I ☐ Unlisted ☒

Conditioned Negative Declaration: Yes ☐ No ☐

Description of Action:

The proposed action involves enacting a local law to protect and enhance the public health and welfare of residents of the Town of Carmel by regulating the storage, collection and transportation for disposal of solid waste and recyclable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

Town of Carmel, Putnam County

SEQR Negative Declaration Page 2

REASONS SUPPORTING THIS DETERMINATION:

The action involves enacting a local law to protect and enhance the public health and welfare of the residents Town of Carmel by regulating the storage, collection and transportation for disposal of solid waste and recydable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation. This local law has been prepared to protect the health, safety and welfare of the residents of the Town of Carmel.

As a result, it can be concluded that the proposed action will not result in any significant adverse environmental impacts.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

For Further Information:

Contact Person: Kenneth Schmitt, Supervisor
Address: Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541
Telephone Number: 845-628-1500

For Type I Actions and Conditioned Negative declarations, a Copy of the Notice sent to:

Commissioner, Dep't of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-0001
NYSDEC Region 3, 21 South Putt Corners Road, New Paltz, NY 12561
Supervisor, Town of Carmel, Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541

11 MAY 2011

TOWN BOARD SPECIAL MEETING

LOCAL LAW #4 OF THE YEAR 2011 - A LOCAL LAW AMENDING ARTICLE 95 OF THE TOWN CODE OF THE TOWN OF CARMEL ENTITLED "GARBAGE, RUBBISH AND REFUSE" - ADOPTED AS AMENDED, NOTICED, PUBLISHED AND PRE-FILED

Town of Carmel
Local Law #4 of the Year 2011
A Local Law Amending Chapter 95 of the Town Code of the Town of Carmel
Entitled, "Garbage, Rubbish and Refuse"

GENERAL REFERENCES

Public assemblies — See Ch. 43.

Boats — See Ch. 55.

Fees — See Ch. 80.

Property maintenance — See Ch. 114.

ARTICLE I Littering (§ 95-1 — § 95-13)

ARTICLE II Recycling (§ 95-14 — § 95-18)

ARTICLE III Storage, Collection and Disposal (§ 95-19 — § 95-39)

§ 95-19 Intent.

It is the purpose of this article to protect and enhance the public health and welfare of the Town of Carmel by regulating the storage, collection and transportation for disposal of solid waste and recyclable materials within the Town of Carmel, including the licensing and regulation of persons and vehicles engaged in such collection and transportation.

§ 95-20 Definitions.

For the purposes of this article, certain words and terms used herein are defined as follows:

COMMERCIAL CUSTOMER

Any customer of a refuse collector who stores refuse and garbage in the containers referred to in §95-21C herein.[Added 11-1-2006 by L.L. No. 7-2006]

CURBSIDE COLLECTION

Placement of contained garbage or refuse designated for collection within ten (10) feet of a private, town, county or state right-of-way from which a residence derives access.

GARBAGE

All putrescible animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food or the storage and sale of produce.

HAZARDOUS WASTE

All those wastes that can cause serious injury or disease during the normal storage, collection and disposal cycle, including but not limited to explosives, inflammables, pathological and infectious wastes, radioactive materials, poisons, acids and dangerous chemicals or combinations of chemicals and any material designated as hazardous waste by federal and state agencies having jurisdiction.

PERSON

Any individual, group of individuals, partnership, firm, corporation or association.

RECYCLABLES OR RECYCLABLE MATERIALS

Raw or processed material that can be recovered from a waste stream for reuse as defined in Chapter 205, et seq of the Code of Putnam County New York as may be amended.

(Cont.)

REFUSE

All putrescible and nonputrescible solid waste, including garbage, rubbish, rubble, trash, small dead animals, ashes, solid commercial and industrial waste, but not including human or rendering waste, junk motor vehicles, dirt or rocks.

REFUSE COLLECTOR

Any person duly licensed or authorized, pursuant to this article, to engage in the business of collecting, storing, hauling or transporting of refuse and garbage in the Town of Carmel.

RESIDENTIAL CUSTOMER

Any customer of a refuse collector who stores refuse and garbage in the manner described in § 95-21A and B herein.

SOLID WASTE

All matter of useless, unwanted or discarded solid or semisolid domestic, commercial, industrial, institutional, construction and demolition waste material, including garbage and refuse, but excepting human or rendering waste.

§ 95-21 Storage.

A. Except as otherwise provided, all garbage and refuse shall be stored in containers, commercially manufactured for that purpose, equipped with suitable handles and tight-fitting covers and which shall be watertight and capable of being properly cleaned and sanitized. Such containers shall not exceed 96 (Ninety-six gallons) in capacity.

B. Plastic (polyurethane) bags may be used for storage of all refuse, provided that such bags are securely tied or otherwise fastened at the top, are free from holes, rips or tears and are of sufficient strength to permit normal handling without rupture.

C. Containers, larger than those permitted in Subsection A of this section, may be used on commercial properties and other properties where the type of collection equipment and/or collection methods permit the handling of such containers without endangering health or safety.

D. Any waste material, other than garbage which cannot readily be deposited in containers, may be compacted and securely bundled, tied or packed so as not likely to be spilled or scattered and when so packed and secured.

E. Hazardous waste shall not be stored, placed for collection nor collected, except on special permission by the Town Board or approval by federal or state agencies having jurisdiction and only in conformance with the regulations applicable thereto.

§ 95-22 Point of collection.

A. Where collection is provided at the roadside, containers shall be placed in a visible and accessible area and shall not interfere with sidewalk or vehicular traffic or parking.

B. Where collection is provided at the roadside, the refuse collector shall place containers back onto the owner's property in a neat fashion with covers on.

C. The refuse collector shall not leave refuse or garbage upon streets or public or private property which may have dropped from containers or the collector's equipment.

§ 95-23 Collection hours.

Collection shall be restricted to the hours of 6:00 a.m. to 6:00 p.m., Monday through Saturday, and shall be carried on by the refuse collector with a minimum of discomfort to property owners and residents.

§ 95-24 Remedy of service.

Refuse collectors shall remedy any and all missed or improper service within 24 hours, excepting Sundays.

(Cont.)

§ 95-25 Collection vehicles.

A. All vehicles used to collect, haul or transport refuse and garbage shall be of metal or other impervious material, shall be constructed and maintained to prevent refuse and garbage from accumulating in or on the body, shall be capable of being completely emptied and shall be kept in a clean and sanitary condition.

B. Any vehicle used to collect, haul or transport refuse and garbage shall be of such design and construction so as to prevent escape of refuse, garbage or recyclables or other contents, and such preventative design shall be implemented at all times during the hauling or transportation of refuse and garbage.

C. All vehicles used by any refuse collector shall display the name of the collector and vehicle number clearly printed and readily visible on each side of the vehicle, as well as display any Town of Carmel issued inspection/license stickers as have been issued by the Town of Carmel, in a conspicuous location of designated by the Town of Carmel.

D. All vehicles used to collect, haul or transport refuse and garbage shall be subject to inspection by the Town of Carmel

§ 95-26 License required.

A. Except as otherwise provided herein, it shall be unlawful for any person to operate, engage in, conduct or cause the operation of a business engaged in the collection and disposal of refuse and garbage in the Town of Carmel without first having obtained a license from the Town Board as well as any permits or approvals required by state and county agencies having jurisdiction, or to use in such collection of refuse and garbage any vehicle other than one approved in such license.

B. Nothing provided herein shall prohibit the actual producers of refuse and garbage, or the owners of premises upon which refuse and garbage has accumulated, from personally collecting, conveying and disposing of such refuse and garbage without the license provided herein, provided that it is done in compliance with all other relevant provisions of this article.

C. A copy of the current license must be kept in all vehicles used for the collection and disposal of garbage and refuse for any person or corporation licensed under this chapter.

§ 95-27 License application and Insurance Requirements.

A. Every person who desires to collect or engage in the business of collecting refuse and garbage within the Town of Carmel shall file a written, certified application for a license in form and content as approved by the Town Board of the Town of Carmel.

B. Before a license may be issued by the Town Board, each applicant shall file satisfactory proof of the following insurance coverage:

(1) Worker's compensation insurance.

(2) Disability benefits insurance.

(3) Public liability insurance with minimum limits of \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.

(4) Automobile liability insurance with minimum limits of \$500,000 per person and \$1,000,000 per accident for bodily injury and \$50,000 for property damage.

§ 95-28 Issuance of license.

If the Town Board shall find from the statements contained in the application and after investigation of other relevant factors that the applicant is qualified and able to conduct the business of collection of refuse and garbage and conforms to the provisions of this article and any other applicable rules and regulations of the Town of Carmel, and if it appears that the issuance of a license is in the public interest, then the Town Board shall issue a license stating the name and address of the applicant, the number of collection vehicles the applicant is authorized to operate the date of the issuance thereof and the effective date of the license.

(Cont.)

§ 95-29 License fee.

Each application for a license or license renewal shall be accompanied by a nonrefundable annual fee, which license fee shall be established annually by the Town Board and shall be on file with the Office of the Clerk.

§ 95-30 Renewal of license.

A. All licenses shall, unless properly renewed, expire one year after the effective date thereof. In seeking a license renewal, the licensee shall submit an application pursuant to § 95-28 herein.

B. In seeking renewal of a license issued pursuant to this Chapter, the applicant shall submit a completed application pursuant to §95-28, together with the applicable fee(s) no later than 45 (forty-five) calendar days prior to the expiration date of the current license. The submission of a completed application and fees pursuant to this section shall be deemed compliance with the licensing provisions of this chapter and shall be deemed a valid current license in the absence of any action to the contrary by the Town Board of The Town of Carmel.

C. The failure of the applicant to submit the renewal application in strict accordance with subsections A and B above shall be deemed a new license application pursuant to §95-29 herein and any existing license shall expire on its expiration date.

§ 95-31 Collection fees and Service Requirements.

Every person or entity licensed pursuant to this chapter shall, in addition to all other requirements set forth within this Chapter, provide the following services with respect to residential refuse and garbage collection within the Town of Carmel:

- A. Provide recyclable item pickup for items as defined in Article II of this Chapter for residential customers at a minimum interval of one (1) time per week.
- B. Provide Curbside Bulk Pickup for residents' households at a minimum interval of two (2) times per year, subject to the following:
 - 1. Curbside Bulk Pickup applies to household items only and must be at the curb by the night before the scheduled pickup;
 - 2. The Curbside Bulk Pickup requirement is limited to three (3) cubic yards per household per pickup. Any amount in excess of three (3) cubic yards per pickup shall be governed by private agreement between hauler and the property owner and/or occupant.
 - 3. The following items are not included for Curbside Bulk Pickup: paint, chemicals, liquids, stumps, tree, masonry, lumber, logs, brick, used oil, batteries, stone, tires, propane tanks, construction, renovation or remodeling debris including kitchens, baths, decks and windows, as well as hazardous waste as defined herein.
 - 4. Refuse Collector shall not be responsible for Curbside Bulk Pickup of refrigerators, freezers, air conditioners, etc., unless same have been de-charged and certified by an individual or entity licensed accordingly by the State of New York.
- C. Provide discarded Christmas Tree pickup during the week of January 7 through January 14 each year. This provision shall not apply to artificial Christmas Trees.
- D. Establish and maintain its periodic and/or unit-cost rates for household garbage and refuse pickup in accordance with and not exceeding the periodic and/or unit cost rates set by the Town Board of the Town of Carmel by resolution annually, subject to the following:
 - 1. For once-per-week collection the rate established by the Town Board shall include pickup of 96 (ninety-six) gallons of refuse/garbage in quantity or less, collected at curbside.
 - 2. For twice-per-week collection the rate established by the Town Board shall include pickup of the aggregate of 192 (one hundred ninety-two) gallons of refuse/garbage in quantity or less, collected at curbside.

(Cont.)

- E. Any person or entity licensed pursuant to this chapter may provide collection containers to any residential customer at no additional charge.
- F. Any person or entity licensed pursuant to this chapter may provide services in excess of those set forth in subsection (E) above at an agreed-upon cost with the residential customer, including but not limited excess volume of garbage and refuse, or bulk pickup, increased frequency of collection, driveway service, etc.
- G. Licensees shall provide a ten-percent discount to all residential customers 65 years of age or older.

§ 95-32 Nontransferability of license.

No license issued hereunder shall be assigned, sold or transferred.

§ 95-33 Records.

A. Every licensee shall keep complete and accurate books of account with respect to the operation of his business in which shall be entered and which shall show, among other things, a current schedule of fees charged to customers, all income derived or received from each of his customers and all other sources, together with details of all expenses and disbursements made or incurred in the operation of his business in the Town of Carmel. Such books of account shall be kept current on a monthly or quarterly basis and brought up to date not later than 30 days after the expiration of such period. All such records shall be retained by the licensee for at least three years.

B. The Town of Carmel shall have the right to inspect such books of account and records maintained by the licensee.

C. Every licensee shall provide the Town of Carmel with a financial statement for the preceding calendar year which shall be certified by an accountant and which shall include the licensee's total income derived from customers in the Town of Carmel, the number of said customers, the sources of revenue relative to the Town of Carmel, together with the details of all expenses and disbursements made or incurred by the licensee in the operation of the licensee's business in the Town of Carmel. Said financial statement shall be filed with the Town Clerk within 90 days following each calendar year.

§ 95-34 Suspension or revocation of license.

A. Any license issued under the provisions of this article may be suspended by the Town Board for a period not exceeding 30 days, or the Town Board may revoke such license, where one or more of the following situations is found to exist:

- (1) That the licensee has failed to reasonably fulfill his obligations as a private refuse collector to a customer.
- (2) That the licensee is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied.
- (3) That a licensee has failed to keep and maintain records or has refused to allow the inspection thereof as provided herein.
- (4) That a licensee has violated any of the provisions of this article.
- (5) That a licensee has ceased to operate as a private refuse collector within the Town of Carmel.

B. No such suspension shall be sustained nor any license be revoked except after a hearing by the Town Board upon at least 10 days' written notice thereof to such licensee.

§ 95-35 Additional rules and regulations.

The Town Board of the Town of Carmel may adopt such further rules and regulations as it may deem necessary or expedient in the implementation and administration of this article.

(Cont.)

§ 95-36 Penalties for offenses.

- A. Any person committing an offense against this article shall be guilty of a violation punishable by fine not exceeding \$500 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.
- B. Each day an offense against this article shall continue to exist shall constitute a separate offense.
- C. In addition to the above-provided penalties, the Town of Carmel may also maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction any violation of this article.
- D. This chapter and its provisions shall be enforced by the Police Department of the Town of Carmel.

§ 95-37 When effective.

This article shall take effect immediately.

Offered by: Councilwoman McDonough
Seconded by: Councilman Lombardi

Roll Call Vote	YES	NO
Robert Ravallo	X	
Frank Lombardi	X	
Suzanne McDonough	X	
Kenneth Schmitt	X	

Councilwoman McDonough offered the foregoing Local Law as amended to include the technical changes: §95-21 A. from 90 to 96 gallons in capacity, §95-31 D. to §95-31 C., E. to D., F. to E., G. to F. and H. to G. §95-31 D. 1. ...pickup of 90 to 96 gallons... D. 2. ...aggregate of 180 to 192 gallons ...

With all members of the Town Board present and in agreement, a recess was taken at 9:12 p.m. The meeting resumed at 9:23 p.m.

PUBLIC HEARING HELD - PROPOSED LOCAL LAW ADOPTING A NEW CHAPTER OF THE TOWN CODE, PROPOSED AS CHAPTER 53, ENTITLED “BLASTING” OF THE TOWN CODE OF THE TOWN OF CARMEL

Supervisor Schmitt asked the Town Clerk to read the following Notice of Public Hearing as published in the Town’s official newspaper:

LEGAL NOTICE
NOTICE OF PUBLIC HEARING
NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at the Town Hall, 60 Mc Alpin Avenue, Mahopac, New York 10541 on Wednesday, May 11, 2011 at 7:00 p.m. or as soon thereafter that evening as possible on a Local Law enacting Chapter 53 of the Town Code of the Town of Carmel, entitled “BLASTING”, as follows:

Proposed Local Law No. of the year 2011

CHAPTER 53

BLASTING

§52-1. Intent.
The Town Board of the Town of Carmel takes recognition of requests by residents of Town of Carmel to impose regulations on the discharge of explosives within the town so as to promote the peace, good order and safety of the community.

§52-2. Statutory authority.
This chapter is adopted pursuant to Article 2, § 10, of the Municipal Home Rule Law of the State of New York and Article 16 of the Labor Law Of the State of New York.

§52-3. Definitions.
As used in this chapter, the following terms shall have the meanings indicated:

BLAST AREA/BLAST SITE - The specific parcel(s) or property(ies) where explosive charges are set and detonated.

BLAST LOCATION - The actual physical location within a blast area or blast site where explosive charges are set and detonated.

BUILDING INSPECTOR --Unless otherwise specified, the Town of Carmel Building Inspector or his/her designated representative.
E N F O R C E M E N T AGENCY OR AUTHORITY - The Town Engineer of the Town of Carmel, the Building Inspector of the Town of Carmel or his/her designated representatives.
ENGINEER - Unless otherwise specified, the

(Cont.)

Town Engineer or his designated representative.

EXPLOSIVES - Gunpowder, powders used for blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder and any chemical compound or any mechanical mixture containing any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that ignition by fire, friction, concussion, percussion or detonation any part thereof may and is intended to cause an explosion, but shall not include gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol and all quantities of black powder not exceeding five pounds for use in firing of antique firearms or artifacts or replicas thereof. Fixed ammunition and primers for small arms, firecrackers, safety fuses and matches shall not be deemed to be explosives when the individual units contain any of the above-mentioned articles or substances in such limited quantity, of such nature and so packed that it is impossible to produce an explosion of such units to the injury of life, limb or property.

FIRE INSPECTOR - Unless otherwise specified, the Town of Carmel Building Inspector or his designated representative.

ROCK - All ledge or bedrock, boulders or masonry larger than 1/4 cubic yard in volume and any material requiring blasting, barring, chipping, wedging or other methods for removal from its original bed.

§53-4. Permit required.
No person shall blast or use any explosives in blasting operations in the Town of Carmel unless he/she is a holder of a blaster's license issued by the State of New York and unless he/she obtains a permit for the proposed work from the Building Inspector of the Town of Carmel.

§53-5. Blaster's permit and fees.

A. A blaster's permit shall be issued by the Building Inspector of the Town of Carmel upon application on forms prescribed by him. Applicants shall be at least 21 years of age and shall satisfy the Building Inspector as to their experience in handling explosives and ability to use the same without undue risk. Applicants shall submit proof of a state certificate of competence and a license to purchase, own, possess, transport or use explosive as required by the New York State Department of Labor and its regulations by § 482 of the General Business Law.

B. The permit shall not be issued until the applicant shall furnish a bond in a sum to be fixed by the Town Engineer and in a form acceptable to the Town Attorney. After such approval, said bond shall be filed with the Town Clerk. In addition, each applicant shall secure and deliver to the Building Inspector a liability insurance policy in an amount set by resolution of

the Town Board (Suggested \$3,000,000 per incident /\$10,000,000 aggregate) with the Town named as an additional insured. Each application shall be accompanied by a fee in an amount set by resolution of the Town Board. Permits shall expire on December 31 next following the date of their issuance and may be renewed by the Building Inspector for a period of one year on the payment of a registration fee in an amount set by resolution of the Town Board for each renewal. The current permit License and Fee Schedule is on file in the Town Clerk's Office. Each applicant for renewal of license shall furnish a bond as herein above provided. A license permit may be revoked if, in the opinion of the Building Inspector, the holder of such permit has proven himself incompetent or careless. If so revoked, no new permit shall be issued to the same person for a period of three months, and then only upon satisfying the Building Inspector of his fitness for such permit.

§53-6. Conditioning of bonds and insurance.

All bonds herein required shall be conditioned for the payment to the Town of Carmel, in full or in part, or to any person entitled thereto, for any loss, damage or injury resulting to persons or property by reason of any use of any explosives in blasting operations, and for the strict and full compliance with the provisions of this chapter and with such other regulations pertaining to explosives as may hereinafter be lawfully made and enacted. The period or duration of bond shall expire no earlier than one (1) year after the completion of all proposed blasting activity.

§53-7. Blasting permit.

A. Any person, firm or corporation intending to detonate explosives within Town of Carmel shall, prior to such detonation, apply for a permit to detonate such explosives from the Building Department of the Town of Carmel. Such person, firm or corporation shall supply the Building Department with the following information:

(1) The name of the owner of the property upon which the detonation of explosives is intended to occur.

(2) The business address of the person, firm or corporation proposing to detonate explosives on the subject property.

(3) Evidence of the fact that the person, firm or corporation intending to detonate explosives is duly licensed pursuant to § 458 of the Labor Law of the State of New York.

(4) The precise location of the intended detonation of explosives, as well as the size of charges intended to be detonated and the proposed schedule for detonation of explosives.

(5) Evidence that the person, firm or corporation intending to detonate explosives has sufficient insurance coverage, as described in §53-5 & 53-

6. Bond and insurance requirements, to provide payment for damages to any person suffering damages by virtue of the detonation of the explosives.

(6) Adjacent structures. A description of all structures and utilities, including residential dwellings, garages, swimming pools, tennis courts, etc., located within five hundred (500) feet of the blast site and a list of the names and addresses of the owner or owners of any parcel within five hundred (500) feet of the blast site on which the blasting is to take place, as shown on the most recent tax rolls of the Town of Carmel.

(7) Notice Provisions. As an express condition of issuance of any permit sought hereunder, the applicant shall submit proof of written notice of its intent to commence or conduct blasting operations at the proposed site(s) to all property owners with a 500 foot radius of any proposed blasting operation, either by hand delivery, certified mail, or in such manner as the building inspector shall deem appropriate to confer sufficient notice on the aforesaid property owners. Such notice shall include the proposed date(s) and time(s) of and locations the proposed blasting activity

B. The permit shall state the location for which it is approved, the date issued, the name of the person or persons authorized to do the blasting and such other information as the Building Inspector may deem necessary. The permit shall be good only for the one location designated therein, shall not be transferable and shall expire not later than one year from the date thereof. Application for such permit shall be accompanied by an inspection fee in an amount set by resolution of the Town Board. The current License and Fee Schedule is on file in the Town Clerk's office.

C. If the Building Inspector finds, upon reviewing an application for a blasting permit, that the conduct of such blasting operation will require the Town to hire an outside expert or consultant to review the permit application, to monitor the activity or to offer advice on the placing and firing of the charges, the estimated cost of the services of such outside expert or consultant will be added to the permit fee, and, if the actual fee exceeds the estimate, the licensee shall be required to pay said excess to the Town as part of the conditions of the permit.

D. Pre-blast inspection/ Post-blast inspection.

(1) When any actual blast location is proposed or planned to occur within a five hundred (500) foot radius of any existing home, structure, roadway, pool, utility or other facility, including but not limited

to septic systems, sewer lines/mains/collectors, water distribution mains or services and/or water wells and distribution lines, the Building Inspector shall require that a pre-blast inspection be performed by the applicant. The pre-blast inspection should provide reports, photographs and video documentation delineating the existing conditions of such buildings,

structures, utilities or facilities. The cost of said inspections shall be born by the applicant and/or permittee.

(2) Upon review of the pre-blast inspection reports and field visits, the Building Inspector may determine that a blasting plan be prepared.

(3) The Building Inspector shall require post-blast inspection with regard to all blast locations which occur within a five hundred (500) foot radius of any existing home, structure, roadway, pool, utility or other facility, including but not limited to septic systems, sewer lines/mains/collectors, water distribution mains or services and/or water wells and distribution lines. Such post-blast inspection shall be in accordance with the requirements of section D(1) herein and shall be completed within 12 (twelve) months of completion of all blasting activity.

(Cont.)

(4) The Building Inspector, in his discretion may direct or require potable water testing be conducted and that the cost of said testing be born by the applicant and/or permittee.

E. Blasting plan. When determined necessary by the Town Building Inspector, the applicant shall have prepared a blasting plan for the proposed work. The blasting plan shall be prepared by a professional engineer licensed in New York State and provide the following information:

(1) A performance specification outlining the spacing, diameter and depth of drill holes; number of drill holes to be loaded during any blast; caps, delays, charge weight and sequence per blast; peak particle velocity computations; vibration monitoring program; removal methods; safety measures to protect vehicles and pedestrians; and impacts and mitigation proposed to neighboring properties due to noise, dust, traffic and blasts.

(2) The design of exposed rock faces based on factual representation of bedrock stability as determined by a geotechnical consultant. The design should include profiles of existing and proposed conditions; location of varying stability of bedrock; improvements to control drainage and groundwater; and details of walls, cribbing, rock pinning or other methods proposed to stabilize face.

E. Review. The Town Building Inspector, in his review of applications, shall from time to time, as he finds necessary, request the opinion of the Town Engineer in the review of applications, pre-blast inspections, reports and blasting plans.

§53-8. Restrictions Hours of Activity

It shall be unlawful to blast or carry on any blasting operation after 3:00 p.m. or before 9:00 a.m., nor shall any blasting operation be done on Holidays, Saturday or Sunday, except with the approval of the Building Inspector.

§53-9. Quantity of explosives; storage.

No person shall use for a blasting operation a quantity of explosives greater than necessary to properly start the rock. It shall be unlawful to store explosives, fuses, electrical equipment or other apparatus necessary to blast or any equipment involved with exploding or blasting charge, except for covering materials on site overnight.

§53-10. Covering of material to be blasted.

Before firing any blasts, except where the same is in a tunnel, the material to be blasted shall be covered on the top and sides with timber, held securely together by strong chains or ropes of iron or steel, and covered with sheets of tin or heavy woven material of rope or wire.

§53-11. Firing; warning.

It shall be unlawful to explode a blasting charge by means of time fuse, slow-burning or safety fuse or by any means other than some form of electrical apparatus. At least three minutes before firing a blast, the blaster shall give warning thereof by causing a competent person carrying a red flag to be stationed at a reasonable distance from the blast at each avenue of approach or point of danger.

§53-12. Shoring of weak structures.

The blasting of rock contiguous to any structure shall be so conducted as not to cause damage thereto. To this end, weak walls or other supports shall be shored up, and rotten or decomposed

rock shall be removed only by the use of gads, picks or crowbars. When blasting in the vicinity of a weak structure is unavoidable, only light-face blasts with short lines of resistance and small charges shall be used.

§53-13. Tamping.

Blasting charges shall be tamped only by means of wooden tamping rods, and explosives shall be pressed or set into place by steady, even pressure only. All strokes or blows with the tamping rods are forbidden, and no tamping rod shall be used which is frayed or split at the end.

§53-14. Unexploded charges.

Immediately after firing a blast, the blaster shall cause all debris to be removed and shall thoroughly examine the rock and the drill holes to ascertain whether there remains any unexploded charge, and until this is done, no drills shall be set up. In case a charge shall fail to explode, it must be exploded by drilling one hole at least 12 inches away, which shall be loaded and fired in the usual manner, but in no case shall the charge and tamping be removed from the hole without the special permission of the Building Inspector. In case a blast shall fail to carry away the entire drill hole and leaves the lower part intact, no further drilling shall be done in that hole.

§53-15. Blaster's helpers.

No person shall load holes in blasting operations except the blaster authorized in the permit; provided, however, that while holes are being actually loaded, drillers and drill-helpers may act as blaster's helpers under the direct supervision and responsibility of the blaster.

§53-16. Capping cartridges.

Cartridges, while being capped, shall be removed from any magazine to a distance of not less than 50 feet, and, after being capped, shall not be returned to a magazine. Cartridges shall be capped only as required for the work and for immediate use.

§53-17. Maintenance and Submission of Records

Any applicant issued a permit pursuant to the terms of this chapter shall be responsible for conducting seismic monitoring and generating records of all seismic readings for any and all blasting activity conducted pursuant to said permit(s). True and exact copies of all such records of seismic readings, as well as pre-blast surveys, shall be submitted to the Town of Carmel Building Department and shall also be retained by the permittee(s) for a duration of at least 5 years from the date of issuance of the permit(s).

§53-18. Penalties for offenses.

Any person or corporation violating any of the provisions of this chapter, upon conviction of a first offense thereof, shall be subject to a fine of not more than \$2,500 or imprisonment for a term of not more than 15 days, or both, for each offense. Upon conviction of each subsequent offense thereof, shall be subject to a fine of not more than \$5,000 or imprisonment for a term of not more than 15 days, or both, for each offense. Every violation of any provision of this chapter shall be a separate and distinct offense, and, in case of continuing violation, every day's continuance thereof shall be deemed to be a separate and distinct offense.

This chapter may be enforced by the Building Inspector/Director of Code Enforcement, Property Compliance Officer, and/or Zoning Officer or any other individual designated by duly authorized resolution of the Town of Carmel Town Board.

§53-19 Repeal of Existing Laws

Immediately upon the enactment of this section, §59-30 of the Town Code of the Town of Carmel is hereby repealed.

At said Public Hearing, all interested persons shall be heard on the subject thereof.

By Order of the Town Board of the Town of Carmel
Ann Garriss, Town Clerk

With no one objecting to the public notice as read, Supervisor Schmitt opened the Public Hearing for public comment at 9:45 p.m. Twenty-eight (28) people were in attendance.

Doris Stahl recommended changing the penalties for offenses included in the proposed Local Law, from not more than \$2,500 to not less than \$2,500 and from not more than \$5,000 to not less than \$5,000, depending on the offense. She inquired why the proposed Local Law fails to address a minimum distance requirement between the blasting operations and surrounding homes or building structures, a suggestion made at the last Public Hearing with regard to the matter.

Mr. Carnazza explained that not all blasting takes place on a large scale. If a minimum distance was included in the legislation, blasts necessary for residential additions, septic system repairs and pool installations for example, may not be permitted because of the location of a neighbor. The proposed Local Law allows in those cases, for less blasting agents to be used and different types of blasts to be performed.

(Cont.)

Ms. Stahl suggested to avoid ambiguity in its interpretation, certain exceptions or conditions should be written into the proposed Local Law that would prevent major development blasting within 50 feet from a house and still allow for minor blasting for a swimming pool. She commented that the proposed Local Law fails to protect the residents of the Town of Carmel.

David Gagliardi asked the Town Board to consider that the proposed Local Law does not address the impact that blasting operations may have on landscape aesthetics.

Beverly Wallace spoke in opposition of blasting operations within 500 feet of a residential structure. She commented that a fine of \$2,500 would not be sufficient to remedy damage to a home or property.

Ann Fanizzi read a statement from Joyce Lambert which expressed her outrage with the proposed Local Law given that there were no limitations on where or how much blasting may be allowed. She stated that too much power is given to the Building Inspector and blasting operations would be allowed to occur within zero feet of a home.

Ms. Fanizzi presented photographs of a site on Route 6 where blasting operations had recently taken place. Citing the removal of large rocks in excessive amounts, she inquired how this project received approvals for what she considered mining. She commented that the proposed Local Law does not prevent further blasting destruction to the Town and residents need a Local Law that will protect them, as well as protect the aesthetics of the land.

Ms. Fanizzi commented on behalf of herself, that blasting legislation requires teeth. She agreed that too much power is invested in the Building Inspector in the proposed Local Law. Ms. Fanizzi expressed her concern that the requirement of a blasting plan was subjective and commented that it should be mandatory for all blasts, large or small. She commented against allowing blasting to occur within 500 feet from a residential structure.

Ms. Fanizzi commented that certain recommendations made by residents at the last Public Hearing were not included in the proposed Local Law and asked the Town Board to reconsider them. Ms. Fanizzi concluded that the Town of Carmel should have steep slope, ridge line protection and tree preservation legislation in effect.

Lori Kemp stated that her recommendations made at the prior Public Hearing with regard to the matter, to limit the amount of rock removed and subject the removal of large amounts of rock to different standards were ignored.

Ms. Kemp provided a personal account of the effect that blasting operations near her home taking place over a period of years had on her health and her property.

Ms. Kemp spoke regarding the comments she made at the prior Public Hearing. She inquired why her past recommendations to the Town with regard to blasting, such as a minimum distance requirement, requirement for air and water monitoring, or if a major system or structural integrity of a home was compromised that construction is halted for remediation, were not included in the proposed Local Law.

Ms. Kemp went on to urge once again that that Town Board enact the most stringent legislation possible to protect residents from the dangerous activity of blasting especially in the removal of large quantities of rock in excess of 750 cubic yards and/or 1,000 tons. She commented that restrictions should increase exponentially with the amount of rock to be removed. For technical aspects of blasting and performance standards, the Town should look to Amherst, New York. There should be a minimum advanced notice of any excavation of at least ten business days.

(Cont.)

Ms. Kemp further commented that the existing nuisance control legislation should be enhanced and/or vigorously enforced to protect residents from intolerable levels of noise, dust and vibration.

Ms. Kemp commented that this proposed Local Law contains little change from the previous draft. She went on to report on her research regarding the dangerous impact that blasting operations may have on public health, safety and property.

Jerry Ravnitzky spoke regarding the blasting operations that occurred at the home of Lori Kemp. He commented that not only should blasting regulations provide for damages or penalties if there is a problem, it should do everything possible to prevent the damage from occurring, and this he continued, is something that this proposed Local Law does not do.

Mr. Ravnitzky recommended that the proposed Local Law should include provisions stating that if damage occurs, blasting should be stopped immediately. There should be notification to residents over 500 feet from blasting operations. No blasting should be permitted within 500 feet of a residential structure. Residents should not have to wait for damage compensation for a post blast inspection. An independent blasting consultant should be required at the applicant's expense to continuously monitor the blasting operations, rather than involving the Building Inspector. The removal of large quantities of rock should not be permitted.

Mr. Ravnitzky spoke regarding the need for legislative enforcement and concluded that the proposed Local Law does not meet the requirements of protecting the public.

Kathleen Delamere stated that when her family constructed the Delamere Building on Route 6 in Mahopac, they went beyond compliance with beautification requirements for landscaping. She noted that their first concern was not for profit but for the enhancement of the community. However, in stark contrast, she commented that the Town has permitted her neighbor along Route 6 to mine and this mining has defaced the Route 6 corridor.

Mrs. Delamere requested that the Town set different boundaries for blasting as well as address the issues of mining and scenic vista preservation.

Mrs. Delamere spoke regarding the damage that the neighbor's blasting has had on her property throughout the last two years. She stated that the neighbor's insurance would not cover her claims and asked if the costs could be recovered from the neighbor's bond on file with the Town.

Mr. Folchetti replied no. He explained that insurance is required to protect and indemnify the Town if there is a lawsuit and the Town is named as a party. The bond is to ensure the completion of the work.

Mrs. Delamere expressed her frustration that she has no recourse.

Mr. Folchetti explained that her recourse is a private right of action against the contractor who caused damage to her property.

Scott Friedman spoke against the Town Board and Planning Board meetings being held at the same time. He questioned why some recommendations made at the last Public Hearing with regard to blasting were not incorporated into the new legislation. Mr. Friedman inquired about the process with regard to the modifications made to the Local Law and stated that he was not aware that the subject was discussed by the Town Board at a meeting since the last Public Hearing.

Supervisor Schmitt stated that many changes to the original draft made by the Town Board members, Building Inspector and public were forwarded to Legal Counsel and imbedded in the proposed Local Law.

(Cont.)

Mr. Friedman replied that some changes were not. He spoke regarding the dangers of blasting and commented that the Town Board is not acting on behalf of the residents.

Supervisor Schmitt spoke in support of the proposed Local Law noting that it gives the Town regulatory strength and enforcement powers it did not have before. He believed that the proposed Local Law addresses the concerns of the residents, maybe not to the satisfaction of those who spoke tonight.

Mr. Friedman commented that the proposed Local Law does contain positive measures. However, there are things that it does not address. He questioned the intent of the proposed Local Law, whether it be to have a better law than the Town had before, or to compensate individuals who have suffered damage from blasting operations and assure that it will never occur again.

Mr. Friedman commented that the proposed Local Law does not contain specifics with regard to minor and major blasting operations and that records with regard to blasting operations should be available in the Building Department on a daily or weekly basis.

Councilman Ravallo stated that the proposed Local Law gives the Building Inspector or his designee, enforcement powers. The proposed Local Law provides for penalties to be granted as well as the ability to cease blasting operations.

Mr. Friedman commented that the discretion granted to the Building Inspector in the proposed Local Law is too broad and cited the potential for political pressure to be placed on him/her with regard to certain projects.

Councilman Ravallo stated that there is no better person to empower because Civil Service Law protects the Building Inspector. He added that in the blasting legislation reviewed from other towns, the Building Inspector is the enforcement authority.

Mr. Carnazza commented that he believed Mr. Friedman is suggesting that "may" should be replaced with "shall" in the proposed Local Law thereby removing any discretion on the part of the Building Inspector.

Mr. Friedman commented that the reason that specifics are included in a statute is because at some point discretion is inappropriate. He then went on to inquire why the Town Board did not wish to enact legislation that would limit the amount of rock that may be removed and if the Town Board considered the Pulte Homes project to have enhanced the quality of the community.

Supervisor Schmitt commented with regard to the Pulte Homes site. He noted that he was against reducing their bond until certain issues and concerns are addressed.

Beverly Wallace asked if the residents' comments made at this Public Hearing will be included in the blasting legislation.

Ms. Fanizzi commented that certain areas of the Town should be declared off limits to the kind of development that occurred at the Pulte Homes site.

Mrs. Delamere commented that the proposed Local Law will not protect the residents of the Town of Carmel.

Supervisor Schmitt stated that the proposed Local Law addresses the health, safety, welfare and property of the residents.

Ms. Delamere inquired about protecting the Town's scenic vistas.

Supervisor Schmitt stated that it would be a matter for discussion at another time.

(Cont.)

With no one else present wishing to be heard on the subject of the Public Hearing, on motion by Councilman Ravallo, seconded by Councilwoman McDonough, with all members of the Town Board present and in agreement the Public Hearing was closed at 11:15 p.m.

SEQR REVIEW - PROPOSED LOCAL LAW ADOPTING A NEW CHAPTER OF THE TOWN CODE, PROPOSED AS CHAPTER 53, ENTITLED “BLASTING” OF THE TOWN CODE OF THE TOWN OF CARMEL

Gregory Folchetti, Legal Counsel, reviewed the following Short Environmental Assessment Form with the Town Board.

617.20
Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Town of Carmel	2. PROJECT NAME Chapter 53 Town Code "Blasting"
3. PROJECT LOCATION: Municipality Town of Carmel County Putnam	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Town-wide	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: This action involves enacting a local law to amend the Town Code to impose regulations on the discharge of explosives within the Town of Carmel.	
7. AMOUNT OF LAND AFFECTED: Initially Town-wide acres Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: Town of Carmel Town Board Date: May 12, 2011 Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

(Cont.)

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.

☐ Yes ☒ No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.

☐ Yes ☒ No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
NO

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
NO

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
NO

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:
NO

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:
NO

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:
NO

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

☐ Yes ☒ No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

☐ Yes ☒ No If Yes, explain briefly:


PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.


☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

Town of Carmel Town Board
Name of Lead Agency
Kenneth Schmitt
Print or Type Name of Responsible Officer in Lead Agency



Signature of Responsible Officer in Lead Agency

May 18, 2011
Date
Town Supervisor
Title of Responsible Officer



Signature of Preparer (If different from responsible officer)

Reset

PROPOSED LOCAL LAW ADOPTING A NEW CHAPTER OF THE TOWN CODE, PROPOSED AS CHAPTER 53, ENTITLED “BLASTING” OF THE TOWN CODE OF THE TOWN OF CARMEL - SEQR DETERMINATION OF SIGNIFICANCE - NEGATIVE DECLARATION

WHEREAS, the Town Board of the Town of Carmel is considering enacting a local law to amend the Town Code to impose regulations on the discharge of explosives within the town so as to promote the peace, good order and safety of the community and residents of the Town of Carmel; and

WHEREAS, this local law has been developed to promote the health, safety and general welfare of the persons and property of the Town of Carmel; and

WHEREAS, the project is defined as an Unlisted Action; and

11 MAY 2011

TOWN BOARD SPECIAL MEETING

(Cont.)

NOW THEREFORE BE IT RESOLVED, that pursuant to Part 617 of the SEQR Regulations, the Town of Carmel Town Board hereby designates its intention to serve as Lead Agency for the SEQR Review of this Unlisted Action, and in this capacity will conduct an Uncoordinated Review.

BE IT FURTHER RESOLVED, that pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency has determined that the proposed Unlisted Action will not have a significant effect on the environment for the reasons enumerated in the attached Negative Declaration Form.

ResolutionOffered by: Councilwoman McDonoughSeconded by: Councilman Ravallo

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Robert Ravallo	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

SEQR

617.21

Appendix F

**State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance**

Project Number Date May 11, 2011

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Carmel, Town Board as lead agency, has determined that the proposed action described below will not have a significant effect on the environmental and a Draft Environmental Impact Statement will not be prepared.

Name of Action:

A LOCAL LAW ENACTING CHAPTER 53 OF THE TOWN CODE
OF THE TOWN OF CARMEL, ENTITLED "BLASTING"

SEQR Status:Type I Unlisted **X****Conditioned Negative Declaration:**Yes No **Description of Action:**

The proposed action involves enacting a local law to impose regulations on the discharge of explosives within the town so as to promote the peace, good order and safety of the community and residents of the Town of Carmel.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

Town of Carmel, Putnam County

(Cont.)

SEQR Negative Declaration

Page 2

REASONS SUPPORTING THIS DETERMINATION:

The action involves enacting a local law to impose regulations on the discharge of explosives within the town so as to promote the peace, good order and safety of the community.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

For Further Information:

Contact Person: Kenneth Schmitt, Supervisor
Address: Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541
Telephone Number: 845-628-1500

For Type I Actions and Conditioned Negative declarations, a Copy of the Notice sent to:

Commissioner, Dep't of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-0001
NYSDEC Region 3, 21 South Putt Corners Road, New Paltz, NY 12561
Supervisor, Town of Carmel, Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541

LOCAL LAW #5 OF THE YEAR 2011 - A LOCAL LAW ADOPTING A NEW CHAPTER OF THE TOWN CODE, PROPOSED AS CHAPTER 53, ENTITLED "BLASTING" OF THE TOWN CODE OF THE TOWN OF CARMEL - ADOPTED AS NOTICED, PUBLISHED AND PRE-FILED

Town of Carmel
Local Law #5 of the Year 2011
A Local Law Enacting Chapter 53, Entitled "Blasting"
of the Town Code of the Town of Carmel

§52-1. Intent.

The Town Board of the Town of Carmel takes recognition of requests by residents of Town of Carmel to impose regulations on the discharge of explosives within the town so as to promote the peace, good order and safety of the community.

§52-2. Statutory authority.

This chapter is adopted pursuant to Article 2, § 10, of the Municipal Home Rule Law of the State of New York and Article 16 of the Labor Law Of the State of New York.

§52-3. Definitions.

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

BLAST AREA/BLAST SITE – The specific parcel(s) or property(ies) where explosive charges are set and detonated.

BLAST LOCATION – The actual physical location within a blast area or blast site where explosive charges are set and detonated.

11 MAY 2011

TOWN BOARD SPECIAL MEETING

(Cont.)

BUILDING INSPECTOR --Unless otherwise specified, the Town of Carmel Building Inspector or his/her designated representative.

ENFORCEMENT AGENCY OR AUTHORITY – The Town Engineer of the Town of Carmel, the Building Inspector of the Town of Carmel or his/her designated representatives.

ENGINEER – Unless otherwise specified, the Town Engineer or his designated representative.

EXPLOSIVES – Gunpowder, powders used for blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder and any chemical compound or any mechanical mixture containing any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that ignition by fire, friction, concussion, percussion or detonation any part thereof may and is intended to cause an explosion, but shall not include gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol and all quantities of black powder not exceeding five pounds for use in firing of antique firearms or artifacts or replicas thereof. Fixed ammunition and primers for small arms, firecrackers, safety fuses and matches shall not be deemed to be explosives when the individual units contain any of the above-mentioned articles or substances in such limited quantity, of such nature and so packed that it is impossible to produce an explosion of such units to the injury of life, limb or property.

FIRE INSPECTOR – Unless otherwise specified, the Town of Carmel Building Inspector or his designated representative.

ROCK – All ledge or bedrock, boulders or masonry larger than ½ cubic yard in volume and any material requiring blasting, barring, chipping, wedging or other methods for removal from its original bed.

§53-4. Permit required.

No person shall blast or use any explosives in blasting operations in the Town of Carmel unless he/she is a holder of a blaster's license issued by the State of New York and unless he/she obtains a permit for the proposed work from the Building Inspector of the Town of Carmel.

§53-5. Blaster's permit and fees.

A. A blaster's permit shall be issued by the Building Inspector of the Town of Carmel upon application on forms prescribed by him. Applicants shall be at least 21 years of age and shall satisfy the Building Inspector as to their experience in handling explosives and ability to use the same without undue risk. Applicants shall submit proof of a state certificate of competence and a license to purchase, own, possess, transport or use explosive as required by the New York State Department of Labor and its regulations by § 482 of the General Business Law.

B. The permit shall not be issued until the applicant shall furnish a bond in a sum to be fixed by the Town Engineer and in a form acceptable to the Town Attorney. After such approval, said bond shall be filed with the Town Clerk. In addition, each applicant shall secure and deliver to the Building Inspector a liability insurance policy in an amount set by resolution of the Town Board (Suggested \$3,000,000 per incident /\$10,000,000 aggregate) with the Town named as an additional insured. Each application shall be accompanied by a fee in an amount set by resolution of the Town Board. Permits shall expire on December 31 next following the date of their issuance and may be renewed by the Building Inspector for a period of one year on the payment of a registration fee in an amount set by resolution of the Town Board for each renewal. The current permit License and Fee Schedule is on file in the Town Clerk's Office. Each applicant for renewal of license shall furnish a bond as herein above provided. A license permit may be revoked if, in the opinion of the Building Inspector, the holder of such permit has proven himself incompetent or careless. If so revoked, no new permit shall be issued to the same person for a period of three months, and then only upon satisfying the Building Inspector of his fitness for such permit .

§53-6. Conditioning of bonds and insurance.

All bonds herein required shall be conditioned for the payment to the Town of Carmel, in full or in part, or to any person entitled thereto, for any loss, damage or injury resulting to persons or property by reason of any use of any explosives in blasting operations, and for the strict and full compliance with the provisions of this chapter and with such other regulations pertaining to explosives as may hereinafter be lawfully made and enacted. The period or duration of bond shall expire no earlier than one (1) year after the completion of all proposed blasting activity.

§53 -7. Blasting permit.

- A. Any person, firm or corporation intending to detonate explosives within Town of Carmel shall, prior to such detonation, apply for a permit to detonate such explosives from the Building Department of the Town of Carmel. Such person, firm or corporation shall supply the Building Department with the following information:
- (1) The name of the owner of the property upon which the detonation of explosives is intended to occur.
 - (2) The business address of the person, firm or corporation proposing to detonate explosives on the subject property.
 - (3) Evidence of the fact that the person, firm or corporation intending to detonate explosives is duly licensed pursuant to § 458 of the Labor Law of the State of New York.
 - (4) The precise location of the intended detonation of explosives, as well as the size of charges intended to be detonated and the proposed schedule for detonation of explosives.
 - (5) Evidence that the person, firm or corporation intending to detonate explosives has sufficient insurance coverage, as described in §53-5 & 53-6, Bond and insurance requirements, to provide payment for damages to any person suffering damages by virtue of the detonation of the explosives.
 - (6) Adjacent structures. A description of all structures and utilities, including residential dwellings, garages, swimming pools, tennis courts, etc., located within five hundred (500) feet of the blast site and a list of the names and addresses of the owner or owners of any parcel within five hundred (500) feet of the blast site on which the blasting is to take place, as shown on the most recent tax rolls of the Town of Carmel.
 - (7) Notice Provisions. As an express condition of issuance of any permit sought hereunder, the applicant shall submit proof of written notice of its intent to commence or conduct blasting operations at the proposed site(s) to all property owners with a 500 foot radius of any proposed blasting operation, either by hand delivery, certified mail, or in such manner as the building inspector shall deem appropriate to confer sufficient notice on the aforesaid property owners. Such notice shall include the proposed date(s) and time(s) of and locations the proposed blasting activity
- B. The permit shall state the location for which it is approved, the date issued, the name of the person or persons authorized to do the blasting and such other information as the Building Inspector may deem necessary. The permit shall be good only for the one location designated therein, shall not be transferable and shall expire not later than one year from the date thereof. Application for such permit shall be accompanied by an inspection fee in an amount set by resolution of the Town Board. The current License and Fee Schedule is on file in the Town Clerk's office.
- C. If the Building Inspector finds, upon reviewing an application for a blasting permit, that the conduct of such blasting operation will require the Town to hire an outside expert or consultant to review the permit application, to monitor the activity or to offer advice on the placing and firing of the charges, the estimated cost of the services of such outside expert or consultant will be added to the permit fee, and, if the actual fee exceeds the estimate, the licensee shall be required to pay said excess to the Town as part of the conditions of the permit.

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D. Pre-blast inspection/Post-blast inspection.

(1) When any actual blast location is proposed or planned to occur within a five hundred (500) foot radius of any-existing home, structure, roadway, pool, utility or other facility, including but not limited to septic systems, sewer lines/mains/collectors, water distribution mains or services and/or water wells and distribution lines, the Building Inspector shall require that a pre-blast inspection be performed by the applicant. The pre-blast inspection should provide reports, photographs and video documentation delineating the existing conditions of such buildings, structures, utilities or facilities. The cost of said inspections shall be born by the applicant and/or permittee.

(2) Upon review of the pre-blast inspection reports and field visits, the Building Inspector may determine that a blasting plan be prepared.

(3) The Building Inspector shall require post-blast inspection with regard to all blast locations which occur within a five hundred (500) foot radius of any-existing home, structure, roadway, pool, utility or other facility, including but not limited to septic systems, sewer lines/mains/collectors, water distribution mains or services and/or water wells and distribution lines. Such post-blast inspection shall be in accordance with the requirements of section D(1) herein and shall be completed within 12 (twelve) months of completion of all blasting activity.

(4) The Building Inspector, in his discretion may direct or require potable water testing be conducted and that the cost of said testing be born by the applicant and/or permittee.

E. Blasting plan. When determined necessary by the Town Building Inspector, the applicant shall have prepared a blasting plan for the proposed work. The blasting plan shall be prepared by a professional engineer licensed in New York State and provide the following information:

(1) A performance specification outlining the spacing, diameter and depth of drill holes; number of drill holes to be loaded during any blast; caps, delays, charge weight and sequence per blast; peak particle velocity computations; vibration monitoring program; removal methods; safety measures to protect vehicles and pedestrians; and impacts and mitigation proposed to neighboring properties due to noise, dust, traffic and blasts.

(2) The design of exposed rock faces based on factual representation of bedrock stability as determined by a geotechnical consultant. The design should include profiles of existing and proposed conditions; location of varying stability of bedrock; improvements to control drainage and groundwater; and details of walls, cribbing, rock pinning or other methods proposed to stabilize face.

F. Review. The Town Building Inspector, in his review of applications, shall from time to time, as he finds necessary, request the opinion of the Town Engineer in the review of applications, pre-blast inspections, reports and blasting plans.

§53-8. Restrictions Hours of Activity

It shall be unlawful to blast or carry on any blasting operation after 3:00 p.m. or before 9:00 a.m., nor shall any blasting operation be done on Holidays, Saturday or Sunday, except with the approval of the Building Inspector.

§53-9. Quantity of explosives; storage.

No person shall use for a blasting operation a quantity of explosives greater than necessary to properly start the rock. It shall be unlawful to store explosives, fuses, electrical equipment or other apparatus necessary to blast or any equipment involved with exploding or blasting charge, except for covering materials on site overnight.

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§53-10. Covering of material to be blasted.

Before firing any blasts, except where the same is in a tunnel, the material to be blasted shall be covered on the top and sides with timber, held securely together by strong chains or ropes of iron or steel, and covered with sheets of tin or heavy woven material of rope or wire.

§53-11. Firing; warning.

It shall be unlawful to explode a blasting charge by means of time fuse, slow-burning or safety fuse or by any means other than some form of electrical apparatus. At least three minutes before firing a blast, the blaster shall give warning thereof by causing a competent person carrying a red flag to be stationed at a reasonable distance from the blast at each avenue of approach or point of danger.

§53-12. Shoring of weak structures.

The blasting of rock contiguous to any structure shall be so conducted as not to cause damage thereto. To this end, weak walls or other supports shall be shored up, and rotten or decomposed rock shall be removed only by the use of gads, picks or crowbars. When blasting in the vicinity of a weak structure is unavoidable, only light-face blasts with short lines of resistance and small charges shall be used.

§53-13. Tamping.

Blasting charges shall be tamped only by means of wooden tamping rods, and explosives shall be pressed or set into place by steady, even pressure only. All strokes or blows with the tamping rods are forbidden, and no tamping rod shall be used which is frayed or split at the end.

§53-14. Unexploded charges.

Immediately after firing a blast, the blaster shall cause all debris to be removed and shall thoroughly examine the rock and the drill holes to ascertain whether there remains any unexploded charge, and until this is done, no drills shall be set up. In case a charge shall fail to explode, it must be exploded by drilling one hole at least 12 inches away, which shall be loaded and fired in the usual manner, but in no case shall the charge and tamping be removed from the hole without the special permission of the Building Inspector. In case a blast shall fail to carry away the entire drill hole and leaves the lower part intact, no further drilling shall be done in that hole.

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§53-15. Blaster's helpers.

No person shall load holes in blasting operations except the blaster authorized in the permit; provided, however, that while holes are being actually loaded, drillers and drill-helpers may act as blaster's helpers under the direct supervision and responsibility of the blaster.

§53-16. Capping cartridges.

Cartridges, while being capped, shall be removed from any magazine to a distance of not less than 50 feet, and, after being capped, shall not be returned to a magazine. Cartridges shall be capped only as required for the work and for immediate use.

§53-17. Maintenance and Submission of Records

Any applicant issued a permit pursuant to the terms of this chapter shall be responsible for conducting seismic monitoring and generating records of all seismic readings for any and all blasting activity conducted pursuant to said permit(s). True and exact copies of all such records of seismic readings, as well as pre-blast surveys, shall be submitted to the Town of Carmel Building Department and shall also be retained by the permittee(s) for a duration of at least 5 years from the date of issuance of the permit(s).

§53-18 Penalties for offenses.

Any person or corporation violating any of the provisions of this chapter, upon conviction of a first offense thereof, shall be subject to a fine of not more than \$2,500 or imprisonment for a term of not more than 15 days, or both, for each offense. Upon conviction of each subsequent offense thereof, shall be subject to a fine of not more than \$5,000 or imprisonment for a term of not more than 15 days, or both, for each offense. Every violation of any provision of this chapter shall be a separate and distinct offense, and, in case of continuing violation, every day's continuance thereof shall be deemed to be a separate and distinct offense.

i This chapter may be enforced by the Building Inspector/Director of Code Enforcement, Property Compliance Officer, and/or Zoning Officer or any other individual designated by duly authorized resolution of the Town of Carmel Town Board.

§53-19 Repeal of Existing Laws

Immediately upon the enactment of this section, §59-30 of the Town Code of the Town of Carmel is hereby repealed.

Offered by: Councilman Lombardi
Seconded by: Councilwoman McDonough

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Robert Ravallo	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

ADJOURNMENT

All agenda items having been addressed, on motion by Councilman Ravallo, seconded by Councilman Lombardi, with all members present and in agreement, the Special Meeting was adjourned at 11:21 p.m. to the scheduled Work Session.

Respectfully submitted,

Ann Garris, Town Clerk