

**SPECIAL MEETING OF THE TOWN BOARD OF
THE TOWN OF NEW HARTFORD, NEW YORK
HELD IN BUTLER MEMORIAL HALL, 48 GENESEE
STREET, NEW HARTFORD ON TUESDAY, APRIL 28, 2009
AT 6:02 P.M.**

The Deputy Town Supervisor called the meeting to order at 6:02 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting:

TOWN BOARD MEMBERS: Councilman Robert A. Payne III
Councilman David M. Reynolds
Councilman Richard Woodland, Jr.
Councilwoman Christine Krupa

ABSENT: Supervisor Earle C. Reed

OTHER TOWN OFFICIALS: Codes Officer Joseph Booth
Dispatch Jeffrey Madden
Deputy Town Clerk I Melody K. Fancett

Thereafter, a quorum was declared present for the transaction of business. Supervisor Reed was unable to attend this special meeting due to prior commitments. In the absence of the Town Clerk who was attending the New York State Town Clerks Association Conference in Rochester, Deputy Fancett was present to record the minutes.

REPORTS OF TOWN OFFICIALS

CODES DEPARTMENT:

Local Law Introductory "D" of 2009

Codes Officer Joseph Booth explained that on April 23, 2009 an omission of text had been discovered with regard to Local law Introductory "I" of 2008 that had been introduced at the December 29, 2008 Town Board meeting. Local Law Introductory "I" of 2008 was subject to a public hearing on April 8, 2009 and was adopted the same date. To correct this matter, the Local Law procedure must begin again, including introduction of language, public hearing and then adoption. Councilwoman Krupa introduced the following legislation for the Town Board's consideration at a future Town Board meeting; co-sponsored by Councilman Woodland:

**Town of New Hartford, New York
Local Law Introductory "D" of 2009**

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A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF NEW HARTFORD, BY REPEALING THE EXISTING CHAPTER 65 THEREOF ENTITLED “FIRE PREVENTION”, AND REPLACING IT WITH A NEW CHAPTER 65

Be it enacted by the Town Board of the Town of New Hartford, in the County of Oneida, as follows:

SECTION 1. PURPOSE AND INTENT

Every city, village, town, and county charged under Subdivision 2 of section 381 of the Executive Law with administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”) shall provide for such administration and enforcement of the code by local law, ordinance, or other appropriate regulation.

This local law provides for the administration and enforcement of the Uniform Code, the Code of the Town of New Hartford, and the State Energy Conservation Construction Code (the Energy Code) in this Town. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

SECTION 2. DEFINITIONS

In this local law in addition to the definitions set forth in the Uniform Code and the Code of the Town of New Hartford, the Town further adopts the following definitions:

“Building and/or Site Grading Permit” shall mean a permit issued pursuant to section 4 of this local law. The term “Building and/or Site Grading Permit” shall also include a Building and/or Site Grading Permit which is renewed, amended or extended pursuant to any provision of this local law.

“Certificate of Occupancy” and “Certificate of Compliance” shall mean a certificate issued pursuant to subdivision (b) of section 7 of this local law.

“Town” shall mean the Town of New Hartford.

“Code Enforcement Officer” shall mean the Code Enforcement Officer and/or assistant Code Enforcement Officer and/or the Zoning Enforcement Officer responsible for the

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enforcement of the Code of the Town of New Hartford, the Uniform Code and the Energy Code appointed or approved pursuant to subdivision (a & b) of section 3 of this local law.

“Common Area” shall mean any area within a building that the public or tenants have access to or an area that accommodates electrical service equipment, furnaces, boilers or a common storage area

“Notice of Violation” shall mean an order issued in the form of a letter by the Code Enforcement Officer pursuant to subdivision (a) of section 17 of this local law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Operating Permit” shall mean a permit issued pursuant to section 12 of this local law. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this local law.

“Permit Holder” shall mean the Person to whom a Building and/or Site Grading Permit has been issued.

“Person” shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

“Stop Work Order” shall mean an order issued by the Code Enforcement Officer pursuant to section 6 of this local law.

“Temporary Certificate of Occupancy” shall mean a certificate issued pursuant to subdivision (i) of section 7 of this local law.

“Uniform Code” shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

SECTION 3. CODE ENFORCEMENT OFFICER AND INSPECTORS

- a) The Code Enforcement Officer shall be appointed in accordance with the New York State Civil Service Law and the personnel policies of the Town of New Hartford.

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(b) The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated there under.

(c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(d) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board of this Town.

(e) The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, the Code of the Town of New Hartford, including this local law. The Code Enforcement Officer shall have the following powers and duties:

(1) to receive, review, and approve or disapprove applications for Building and/or Site Grading Permits, Certificates of Occupancy and Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;

(2) upon approval of such applications, to issue Building and/or Site Grading Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in Building and/or Site Grading Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate including, but not limited to, the posting of a bond, letter of credit, or certified check in a reasonable amount as determined by the Code Enforcement Officer;

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

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- (4) to issue Stop Work Orders;
- (5) to review and investigate complaints;
- (6) to issue orders pursuant to subdivision (a) of section 17 (Violations) of this local law;
- (7) to maintain records;
- (8) to collect fees as set by the Town Board of this Town;
- (9) to pursue administrative enforcement actions and proceedings;
- (10) in consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and the Code of the Town of New Hartford including this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code, the Code of the Town of New Hartford or this local law; and
- (11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this local law.

SECTION 4. BUILDING/SITE GRADING PERMITS.

(a) Building and/or Site Grading Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building and/or Site Grading Permit shall be required for any work which must conform to the Uniform Code, the Energy Code and/or the Code of the Town of New Hartford, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. Additionally, a Building and/or Site Grading Permit is required for installation of all fences, installation of retaining walls exceeding five (5) feet in height, excavation, grading and clearing for any building or use. No Person shall commence any work for which a Building/Site Grading Permit is required without first having obtained a Building/Site Grading Permit from the Code Enforcement Officer.

(b) The Officer shall act upon all applications for Building/Site Grading Permits within 30 days. Notice of refusal to issue any permit shall be given to the

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applicant or to his or her authorized representative in writing and shall state the reasons for such refusal

(c) The Officer may issue temporary permits for structures incidental to a building permit. Such permits shall expire after one year.

(d) At the discretion of the Officer or the Officer's designee, the permittee shall be required to have on the lot a receptacle of one cubic yard minimum size to provide temporary (in excess of 24 hours) storage of construction and demolition debris, except tree and brush stumps. The receptacle shall be provided with a tarp or other cover. The receptacle must be removed from the lot, as well as all trees, brush, stumps and other debris within 60 days of completion of construction.

(e) The applicant for any Building/Site Grading Permit(s) shall, if required by the Code Enforcement Officer, submit a plot plan showing sufficient data on proposed site grading, final proposed ground elevations and the discharge location of any proposed sump pump, all of which shall be approved by the Town Engineer prior to the issuance of any such permit(s).

(f) Exceptions. No Building/Site Grading Permit shall be required for work in any of the following categories:

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

(2) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;

(3) construction of temporary motion picture, television and theater stage sets and scenery;

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

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

(6) painting, wallpapering, tiling, carpeting, or other similar finish work;

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(7) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;

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

(9) repairs, provided that such repairs do not involve (i) the removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(g) Exception not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (f) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code, the Energy Code or Code of the Town of New Hartford.

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

- (1) a description of the proposed work;
- (2) the tax map number and the street address of the premises where the work is to be performed;
- (3) the occupancy classification of any affected building or structure;
- (4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and

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(5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code, the Energy Code and the Code of the Town of New Hartford; and (v) where applicable, provide a licensed survey that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(6) All Site Grading Permits must be approved by the Town Engineer prior to the Code Enforcement Officer issuing said permit.

(i) Construction documents. Construction documents will not be accepted as part of an application for a Building and/or Site Grading Permit unless they satisfy the requirements set forth in paragraphs (5) and (6) of subdivision (h) of this section. Construction documents which are accepted as part of the application for a Building and/or Site Grading Permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Officer. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building and/or Site Grading Permit will be issued. Work shall not be commenced until and unless a Building and/or Site Grading Permit is issued.

(j) Issuance of Building/Site Grading Permits. An application for a Building and/or Site Grading Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code, Energy Code and the Code of the Town of New Hartford. The Code Enforcement Officer shall issue a Building/Site Grading Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code, Energy Code and the Code of the Town of New Hartford.

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(k) Building/Site Grading Permits to be displayed. Building/Site Grading Permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

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

(m) Time limits. Building/Site Grading Permits shall expire 12 months after the date of issuance. A Building and/or Site Grading Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer. The renewal rate shall be 25% of the original building permit cost and only one renewal is allowed.

(n) Demolition permits. Demolition permits are required whenever work is to be undertaken to dismantle any portion of any building, and shall be performed in conformance with all applicable local, state and federal laws. Demolition permits shall expire 30 days from the date of issuance and only four (4) permits shall be issued per calendar year per structure.

(o) Work hours. Any work being performed within the Town of New Hartford shall not commence earlier than 7AM and continue later than 7PM except work wholly contained within the structure.

(p) Revocation or suspension of Building/Site Grading Permits. If the Code Enforcement Officer, Town Engineer and/or Town Planner determines that a Building/Site Grading Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building/Site Grading Permit was issued violates the Uniform Code, the Energy Code or the Code of the Town of New Hartford, the Code Enforcement Officer shall revoke the Building and/or Site Grading Permit or suspend the Building/Site Grading Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in

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

(q) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 (Fees) of this local law must be paid at the time of submission of an application for a Building and/or Site Grading Permit, for an amended Building and/or Site Grading Permit, or for renewal of a Building and/or Site Grading Permit.

(r) Required information; liability policy. The plans and specifications or statements shall be accompanied with the full name and address of the owner or owners of record of the structure. For the purpose of this code, any person, firm or corporation holding the fee title to real property, or his or their duly authorized agent or attorney or the guardian, conservator or trustee, shall be regarded as the owner. Unless otherwise expressly waived in writing by the Code Enforcement Officer, the owner or contractor shall be required to have a liability policy in an amount determined by the Code Enforcement Officer for comprehensive general liability coverage with a per location and per project endorsement which names the Town as an additional insured or co-insured during the period of time the permit is in use, or until the permit expires or is revoked by the Code Enforcement officer. The Code Enforcement Officer shall promulgate an official Codes Department policy detailing potentially dangerous or hazardous conditions and/or materials which will also require insurance pursuant to this section.

SECTION 5. CONSTRUCTION INSPECTIONS.

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

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:

(1) work site prior to the issuance of a Building and/or Site Grading Permit;

(2) footings and foundation;

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- (3) preparation for concrete slab;
- (4) framing;
- (5) building systems, including underground and rough-in;
- (6) fire resistant construction;
- (7) fire resistant penetrations;
- (8) solid fuel burning heating appliances, chimneys, flues or gas vents;
- (9) Energy Code compliance; and
- (10) a final inspection after all work authorized by the Building and/or Site Grading Permit has been completed.

(c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code, Energy Code or Code of the Town of New Hartford. Work not in compliance with any applicable provision of the Uniform Code, Energy Code or Code of the Town of New Hartford shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code, the Energy Code, and the Code of the Town of New Hartford, reinspected, and found satisfactory as completed.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

SECTION 6. STOP WORK ORDERS.

(a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to cease and desist:

- (1) any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code, Energy Code or Code of the Town of New Hartford, without regard to whether such work is or is not work for which a Building and/or Site

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Grading Permit is required, and without regard to whether a Building and/or Site Grading Permit has or has not been issued for such work, or

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

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

(4) any work that is being conducted without proof of the required general liability insurance coverage as required in accordance with the provisions set forth in Section 4 (r) of this local law.

(b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

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

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

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(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 17 (Violations) of this local law or under any other applicable local law, State or Federal law. Any such other remedy or penalty may be pursued at any time as may be prescribed by law.

SECTION 7. CERTIFICATES OF OCCUPANCY, CERTIFICATES OF COMPLIANCE and TEMPORARY CERTIFICATES OF OCCUPANCY

(a) No building, use or structure hereafter erected, relocated or altered as to outside dimensions shall be used, changed in use or occupied until a certificate of occupancy or compliance shall have been issued by the Code Enforcement Officer stating that the use, land or structure complies with all applicable provisions of this chapter. For previously existing construction, the Code Enforcement Officer may, on request, issue a certificate of occupancy or certificate of compliance if the Code Enforcement Officer determines that the use of the building in question meets the requirements of this chapter. The Code Enforcement Officer may issue a temporary certificate of occupancy or temporary certificate of compliance at the Code Enforcement Officer's discretion.

(b) A certificate of occupancy, or certificate of compliance shall be issued only if:

- 1) the proposed use of the building or land conforms to the provisions of this chapter
- 2) conforms to the plot plan
- 3) conforms to approved plans
- 4) as built drawings, are provided, if applicable
- 5) conforms to the purpose and description for which the permit was issued
- 6) building and/or site work is complete to outward appearance in accordance with the building and/or Site Grading Permit issued
- 7) the building or structure is properly supplied with water
- 8) the building or structure is properly supplied with approved sanitary disposal facilities
- 9) all improvements shown on the site plan are installed to the satisfaction of the Code Enforcement Officer, Town Engineer, and/or Town Planner or when applicable sufficient performance guaranty has been posted in the form of a certified check, letter of credit, or bond for improvements not yet completed.

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(c) Any building or land which has been granted a special use permit, site plan approval, or variance by the Planning Board or Zoning Board of Appeals. Every certificate of occupancy or certificate of compliance for which special use permit or site plan approval or variance has been granted shall contain a detailed statement of any conditions to which the same is subject and include, by attachment, a copy of such Planning Board or Zoning Board of Appeals decision.

(d) Performance guaranty. No certificate of occupancy or compliance shall be issued until all improvements shown on the site plan are installed or sufficient performance guaranty has been posted for improvements not yet completed. The sufficiency of such performance guaranty shall be determined by the Planning Board after consultation with the Code Enforcement Officer, Town Engineer and/or Town Planner.

(e) The Code Enforcement Officer shall promptly make or cause to be made an inspection of each building or site for which application for a certificate of occupancy or certificate of compliance has been made and shall grant or deny such certificate within 10 days from the date of application.

(f) For any building that is part of a Town-approved project requiring the construction or extension of a public road in addition to the regulations stated in this section at paragraph (b) above, no certificate of occupancy or certificate of compliance shall be issued until all infrastructure improvements with the proposed easements and/or rights-of-way are installed, approved, certified by the Engineer of Record and accepted and approved by the Town. For details of highway construction and dedication requirements, see Code of the Town of New Hartford, Chapter 102, Streets and Sidewalks, Article II.

(g) At the time a certificate of occupancy is applied for, and the developer is unable to complete the installation of the top course or other approved infrastructure improvements within the proposed easement and/or rights of way, and those deficiencies are determined by the town planner or engineer to be noncritical to the occupancy of the building, safety of the traveling public and the proper operation and maintenance of the highway and other public infrastructure, the developer, at the request of the Town Planner or Town Engineer shall execute an agreement with the town and provide surety in the form of a certified check, bond, or letter of credit in an amount equal to two times the value of the deficiencies determined by the town planner or town engineer. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy and/or Certificate of Compliance, shall

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be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy and/or Certificate of Compliance:

- (1) a written statement of structural observations and/or a final report of special inspections, and
- (2) flood hazard certifications.

(h) Contents of Certificates of Occupancy and/or Certificates of Compliance. A Certificate of Occupancy and/or Certificate of Compliance shall contain the following information:

- (1) the Building and/or Site Grading Permit number;
- (2) the date of issuance of the Building and/or Site Grading Permit;
- (3) the address and tax map number of the property;
- (4) the name of the property owner of record;
- (5) if the Certificate of Occupancy and/or Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy and/or Certificate of Compliance is issued;
- (6) the use and occupancy classification of the structure;
- (7) the type of construction of the structure;
- (8) the assembly occupant load of the structure, if applicable;
- (9) if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- (10) any special conditions imposed in connection with the issuance of the Building and/or Site Grading Permit; and
- (11) the decision of the Planning Board or Zoning Board of Appeals as may relate to the subject property regarding a special use permit, site plan approval or variance; and

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(12) the signature of the Code Enforcement Officer issuing the Certificate of Occupancy and/or Certificate of Compliance and the date of issuance.

(i) Temporary Certificate of Occupancy. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building and/or Site Grading Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer, Town Engineer, and Town Planner may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code including, but not limited to, surety in the form of a certified check, bond or letter of credit in an amount equal to two times the value of any deficiencies.. A Temporary Certificate shall be effective for a period of time, not to exceed 6 months, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code, the Energy Code and the Code of the Town of New Hartford.

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

(k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy and/or Certificate of Compliance or for Temporary Certificate.

SECTION 8. NOTIFICATION REGARDING FIRE OR EXPLOSION.

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

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any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

SECTION 9. UNSAFE BUILDING AND STRUCTURES

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by Local Law Number No. 2 of 1982 Chapter 52 and Local law No. 8 of 1994 Chapter 94, as now in effect or as thereafter amended from time to time.

SECTION 10. EMERGENCY ACTION

If the Code Enforcement Officer is notified that a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety or welfare of occupants of a building, or to other persons, the Code Enforcement Officer shall direct that such violation be immediately remedied by the property owner or occupant at his/her sole expense or shall take direct action on his or her own initiative to abate the hazard or danger. Any costs incurred the Code Enforcement Officer for such action shall be paid for by the property owner, occupant or person responsible for the violation. The Code Enforcement Officer shall keep on file an affidavit stating with fairness and accuracy the items of expense and date of execution of action taken and is furthermore authorized to institute a suit, if necessary, against the person liable for such expenses in order to recover said costs.

SECTION 11. INSPECTION AND CERTIFICATE OF COMPLETION

- (a) The architect or professional engineer whose seal and signature appear on the drawings for buildings or structures other than one- or two-family dwellings, or his/her designated representative, shall be responsible for making periodic visits to the construction site to familiarize him/herself with the progress and quality of the construction and to determine, in general, if the construction is proceeding in accord with the plans, drawings, specifications and addenda thereto which have been approved by the Code Enforcement Officer, and/or Planning Board and Zoning Board of Appeals. Said architect or engineer shall file reports with the Code Enforcement Officer at regular intervals, indicating the times of such visits, the status of the construction and any defects or discrepancies between the actual construction and the approved plans, drawings and specifications affecting structural, fire, health or life safety which he/she may observe. Said architect or engineer shall also advise the

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Code Enforcement Officer when such discrepancies have been corrected.

(b) The architect or engineer shall not be required to make exhaustive or continuous on-site inspections to check the construction. He/she shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the construction, nor shall he/she be responsible for the contractor's failure to carry out the construction in accord with the approved plans, drawings and specifications.

(c) Upon completion of the construction, the architect or engineer shall file a certificate of completion with the Code Enforcement Officer stating that, to the best of his/her knowledge, the building or structure has been completed in accord with the approved plans, drawings, specifications and addenda thereto, insofar as structural, fire, health and life safety are concerned, or shall state any defects of which he/she is aware.

SECTION 12. OPERATING PERMITS.

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

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

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

(3) use of pyrotechnic devices in assembly occupancies;

(4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and

(5) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town.

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

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

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

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

(e) Duration of Operating Permits. Operating Permits shall remain in effect until reissued, renewed, revoked, suspended or the contents of storage is changed or otherwise altered as specified in Section 12(a) above.

(f) Revocation or suspension of Operating Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, Energy Code and the Code of the Town of New Hartford, such Operating Permit shall be revoked or suspended.

(g) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 (Fees) of this local law must be paid at the time submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

SECTION 13. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS

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

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

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

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

(b) Any owner of a building or structure designated for inspection and found to be not in compliance with the Uniform Code, Energy Code or the Code of the Town of New Hartford shall be subject to a notice of violation in accordance with section 17 here in.

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

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

(2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code, Energy Code or the Code of the Town of New Hartford exist; or

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

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

(e) Fee. The fee specified in or determined in accordance with the provisions set forth in section 18 (Fees) of this local law must be paid prior to or within 30 days of billing for each inspection performed pursuant to this section. Non payment shall be subject to a notice of violation in accordance with section 17 herein. This subdivision shall not apply to inspections performed by The Office of Fire Prevention and Control.

SECTION 14. COMPLAINTS

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

(a) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

(b) if a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with written notice of the violation and affording opportunity to abate, correct or cure the violation or proceeding in the manner described in section 17 (Violations) of this local law;

(c) if appropriate, issuing a Stop Work Order;

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

SECTION 15. RECORD KEEPING.

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(a) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

- (1) all applications received, reviewed and approved or denied;
- (2) all plans, drawings specifications and construction documents approved;
- (3) all Building and/or Site Grading Permits, Certificates of Occupancy and/or Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- (4) all inspections and tests performed;
- (5) all statements and reports issued;
- (6) all complaints received;
- (7) all investigations conducted;
- (8) Notices of Violation issued;
- (9) all other features and activities specified in or contemplated by sections 4 through 14, inclusive, of this local law, including; and
- (10) all fees charged and collected.

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

SECTION 16. PROGRAM REVIEW AND REPORTING

(a) The Town Board of this Town may request that the Code Enforcement Officer submit an annual written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 15 (Record Keeping) of this local law and a report

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and summary of all appeals or litigation pending or concluded.

(b) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code, Energy Code and the Code of the Town of New Hartford.

(c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code, Energy Code and the Code of the Town of New Hartford.

SECTION 17. VIOLATIONS

(a) Notice of Violation. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, the Code of the Town of New Hartford, including this local law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Notice of Violation. The Notice of Violation shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, and/or the Energy Code, the Code of the Town of New Hartford including this local law; (4) specify the provision or provisions of the Uniform Code, the Energy Code, the Code of the Town of New Hartford including this local law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time which shall not exceed 30 days; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Notice of Violation, or a copy thereof, to be served on the owner of the affected property personally or by registered mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Notice of Violation, or a copy thereof, to be served on any builder, architect, tenant, contractor,

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subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Notice of Violation.

(b) Summons. The Code Enforcement Officer is authorized to cause the Town Court to issue an Information/Complaint in the event compliance with the Notice of violation is not achieved.

(c) Civil Penalties. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code, or the Code of the Town of New Hartford including this local law, or any term or condition of any Building and/or Site Grading Permit, Certificate of Occupancy, Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of a fine and/or imprisonment as prescribed in §118-80 of the Code of the Town of New Hartford. Failure to timely remit payment in full of any civil penalty assessed by the Town shall result in a judgment in favor of the Town and against the owner of the affected property. Notice of judgment and the amount thereof shall be served on the owner of the affected property personally or by registered mail. Said notice shall allow ten (10) days from the date of the notice to cure or otherwise pay the outstanding civil penalty. In the event the civil penalty is not satisfied in full within the prescribed ten (10) day period, the outstanding civil penalty shall be filed in the Office of the Oneida County Clerk as a judgment against the owner of the affected property and shall become a lien upon the lot, tract or parcel of land or property where the violation was found to exist.

(d) Abatement by Town; Lien. In addition to those penalties prescribed by State law, any person found guilty of violating any provision of the Uniform Code, Energy Code, or Code of the Town of New Hartford, including this local law or any term or condition of any Building and/or Site Grading Permit, Certificate of Occupancy, Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order of the Code Enforcement Officer pursuant to any provision of this local law and who fails, refuses, or neglects to abate the violation(s) within the amount of time ordered by the Court to abate, the Code Enforcement Officer may, after

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presentment to and approval from the Town Board, undertake to abate the subject violation(s) through use of Town facilities or equipment, or through use of outside independent contractor(s) to do the work necessary to abate all or some of the existing violations. Any costs incurred by the Town to accomplish the abatement can and shall be filed in proper form in the Office of Oneida County Clerk as a judgment against the owner of the affected property and shall become a lien upon the lot, tract or parcel of land or property where the violation was found to exist.

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

(f) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in Section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in Section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of

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section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

SECTION 18. FEES

A fee schedule shall be established by resolution of the Town Board of this Town. Such fee schedule is set forth in the Code of the Town of New Hartford at Section 118-93 thereof. Such fee schedule may be amended from time to time by similar resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the processing of applications, the issuance of Building and/or Site Grading Permits, amended Building and/or Site Grading Permits, renewed Building and/or Site Grading Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

SECTION 19. INTERMUNICIPAL AGREEMENTS

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

SECTION 20. PARTIAL INVALIDITY

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

SECTION 21. EFFECTIVE DATE

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

Schedule Public Hearing – Local Law Introductory “D” of 2009

Councilwoman Krupa offered the following Resolution for adoption and Councilman Woodland seconded same:

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(RESOLUTION NO. 86 OF 2009)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on **Wednesday, May 6, 2009 at 6:00 P.M.** or as soon thereafter as reached in the regular course of business, at Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory “D” of 2009** which, if adopted, would amend the Code, by repealing and replacing Chapter 65 entitled Fire Prevention and be it

FURTHER RESOLVED that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in the Observer Dispatch.

The Town Board Voted upon roll call, resulting as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	ABSENT

The Deputy Town Supervisor declared the Resolution unanimously carried and duly **ADOPTED.**

MATTERS SUBMITTED BY COUNCILMEN

COUNCILMAN REYNOLDS:

Temporary Appointment to Board of Assessment Review

Upon recommendation of Councilman Reynolds, Councilman Payne offered the following Resolution for adoption; seconded by Councilwoman Krupa:

(RESOLUTION NO. 87 OF 2009)

WHEREAS, current member of the Board of Assessment of Review Edward Goggin is out on sick leave;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby appoint Matthew Bohn III as an Auxiliary Member of the Board of Assessment Review for an “as needed” basis until the return of Edward Goggin, commencing April 28, 2009 and ending when Edward Goggin returns, with no salary.

The Town Board members voted upon roll call:

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Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	ABSENT

The Resolution was then declared unanimously carried and duly ***ADOPTED***.

REPORTS OF TOWN OFFICIALS (CONT'D)

POLICE CHIEF:

Donation

In behalf of Police Chief Philo, Dispatch Supervisor Jeffrey Madden requested that the Town Board accept a donation to the Police Department. The following Resolution was introduced for adoption by Councilman Woodland and seconded by Councilwoman Krupa:

(RESOLUTION NO. 88 OF 2009)

WHEREAS, on November 4, 1998 the New Hartford Town Board had established a “gift”/“donation” policy pursuant to Section 64(8) of the Town Law;

NOW, THEREFORE, BE IT RESOLVED that said Town Board does hereby accept the donation of one (1) 10 X 12 Storage Shed, donated to the Town Police Department for storage purposes by Jay-K Lumber Corp., the Mohawk Valley Homebuilders Association, and by Lewis Custom Homes who are funding the donation of materials at the cost of \$1,000.00 and the labor to build the storage shed are being donated by students in the BOCES Construction Trade. This donation is at no cost to the Town of New Hartford. The only cost to the Town for this donation will be insurance coverage.

The Deputy Town Supervisor polled the Board members who voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	ABSENT.

The Deputy Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***.

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ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Deputy Supervisor Reynolds, seconded by Councilman Payne, the meeting was adjourned at 6:10 P.M.

Respectfully submitted,

Melody K. Fancett, Deputy I