

CODE

Chapter 1

GENERAL PROVISIONS

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Sec. 1-1. How Code designated and cited.

The laws embraced in the following chapters and sections shall constitute and be designated the "Code of the Town of Vestal" and may be so cited. Such Code may also be cited as the "Vestal Town Code" or as the "Vestal Code."

State law reference—Authority to codify, Municipal Home Rule Law, § 20(33).

Sec. 1-2. General rules of construction and definitions.

In the construction of this Code, and of all local laws and ordinances, the following rules of construction and definitions shall be observed unless such construction or definition would be inconsistent with the manifest intent of the town board, be repugnant to the context of the provisions, or the context clearly requires otherwise:

Generally. The provisions of the General Construction Law are applicable to all local laws and ordinances except as otherwise provided.

Affidavit. When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

State law reference—Similar provisions, General Construction Law, § 12.

Armed forces of the United States. The term "armed forces of the United States" means the army, navy, marine corps, air force and coast guard, including all components thereof, and the national guard when in the service of the United States pursuant to call as provided by law. Pursuant to this definition no person shall be considered a member or veteran of the armed forces of the United States unless his service therein is or was on a full-time active duty basis, other than active duty for training.

State law reference—Similar provisions, General Construction Law, § 13-a.

Bond and undertaking. Any provision authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

State law reference—Similar provisions, General Construction Law, § 14.

Code. The term "Code" shall mean the Code of the Town of Vestal as established and designated in section 1-1 above.

Computation of days. A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. If such period is a period of two (2) days, Saturday, Sunday or a public holiday must be excluded from the reckoning if it is in an intervening day between the day from which the reckoning is made and the last day of the period. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.

State law reference—Similar provisions, General Construction Law, § 20.

Computation of months. A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

State law reference—Similar provisions, General Construction Law, § 30.

Corporate limits, corporation limits. The words "corporate limits," "corporation limits" or "town limits" mean the legal boundary of the Town of Vestal, Broome County, New York.

County. The words "the county" or "this county" mean Broome County, New York.

Delegation of authority. Whenever a provision appears requiring a town officer or employee to do some act or make certain inspections it is to be construed to authorize the person to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.

Effect of holidays. When any period of time, computed from a certain day, within which or after which or before which an act is authorized or required to be done, ends on a Saturday, Sunday or a public holiday, such act may be done on the next succeeding business day and if the period ends at a specified hour, such act may be done at or before the same hour of such next succeeding business day. Where time is extended by virtue of the provisions of this paragraph, such extended time shall not be included in the computation of interest, except that when the period is specified as a number of months, such extended time shall be included in the computation of interest.

State law reference—Similar provisions, General Construction Law, § 25.

Gender. Whenever words of the masculine or feminine gender appear, unless the sense of the sentence indicates otherwise, they shall be deemed to refer to both male or female persons. This construction shall apply to gender indicative suffixes or prefixes as well as to gender indicative words. Whenever the reference is to a corporation, board, body, group, organization or other entity comprising more than one (1) person or to an assemblage of persons or to an inanimate object the reference shall be construed to be neuter in gender.

State law reference—Similar provisions, General Construction Law, § 22.

Heretofore and hereafter. The terms “heretofore,” and “hereafter,” in any provision of local law or ordinance, relate to the time such provision takes effect.

State law reference—Similar provisions, General Construction Law, § 23.

Interpretation. In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provisions imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Keeper, proprietor. The words “keeper” and “proprietor” shall mean and include persons, firms,

associations, corporations, clubs and partnerships, whether acting by themselves or through a servant, agent or employee.

May. The word “may” is to be construed as being permissive.

Month. The word “month” shall mean a calendar month.

Must. The word “must” is to be constructed as being mandatory.

Name of officer. Whenever the name of an officer is given it shall be construed as though the words “of the Town of Vestal, Broome County, New York” were added.

Newspapers. The terms “daily newspaper” and “newspaper published each business day” mean, respectively, a newspaper customarily published on each business day of the year, whether or not such newspaper is published on any other day. The term “business day” when used herein does not include Saturdays, Sundays or legal holidays.

State law reference—Similar provisions, General Construction Law, § 60.

Nighttime. “Nighttime” includes the time from sunset to sunrise.

State law reference—Similar provisions, General Construction Law, § 51.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Notice. When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

State law reference—Similar provisions, General Construction Law, § 33.

Now. The term “now” in any provision of a local law or ordinance referring to other local laws or ordinances in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or to the person in

office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

State law reference—Similar provisions, General Construction Law, § 34.

Number. Words in the singular number include the plural, and in the plural number include the singular.

State law reference—Similar provisions, General Construction Law, § 35.

Oath, affidavit and swear. The terms "oath" and "affidavit" include every mode authorized by law of attesting the truth of that which is stated. The term "swear" includes every mode authorized by law for administering an oath.

State law reference—Similar provisions, General Construction Law, § 36.

Or, and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Person. The term "person" includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, any state, municipality, county, or any political subdivision thereof, and all other groups and legal entities or combinations thereof.

Personal property. The term "personal property" includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interest to which they relate, by which any right, interest, lien or encumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership.

Oil wells and all fixtures connected therewith, situate on lands leased for oil purposes and oil interests, and rights held under and by virtue of

any lease or contract or other right or license to operate for or produce petroleum oil, shall be deemed personal property for all purposes except taxation.

State law reference—Similar provisions, General Construction Law, § 39.

Preceding, following. The words "preceding" and "following" shall mean next before and next after, respectively.

Premises. The word "premises" means place or places.

Property. The word "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments, corporeal and incorporeal.

Quorum and majority. Whenever three (3) or more public officers are given any power or authority, or three (3) or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, at a meeting duly held at a time fixed by law, or by any bylaw duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons disqualified from acting.

Any meeting referred to above may be adjourned by a less number than a quorum.

State law reference—Similar provisions, General Construction Law, §§ 41, 13.

References to repealed provisions. If any provision of an ordinance or local law be repealed and, in substance, reenacted, a reference in any law to such repealed provision shall be deemed a reference to such reenacted provision.

State law reference—Similar provisions, General Construction Law, § 80.

Seal. The word "seal" means the town or corporate seal.

Shall. The word "shall" is to be construed as being mandatory.

Sidewalk. The word "sidewalk" means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians.

Signature. The word "signature" includes any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

State law reference—Similar provisions, General Construction Law, § 46.

State. The term "state" or "the state" means the State of New York.

Street. The word "street" includes streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public highways in the town.

Tenant, occupant. The word "tenant" or "occupant," applied to a building or land, includes any person holding a written or oral lease or who occupies the whole or a part of such buildings or lands, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Town. The word "town" means the Town of Vestal, Broome County, New York.

Town board. The words "town board" mean the Town Board of the Town of Vestal, Broome County, New York.

Trustee. The word "trustee" means any person elected or appointed to that office.

Week. The word "week" means seven (7) days.

Writing and written. The terms "writing" and "written" include every legible representation of letters upon a material substance, except when applied to the signature of an instrument.

State law reference—Similar provisions, General Construction Law, § 56.

Year. The term "year" means three hundred sixty-five (365) days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as

one (1) day. In a local law or ordinance the term "year" means twelve (12) months, the term "half-year," six (6) months, and the term "a quarter of a year," three (3) months.

State law reference—Similar provisions, General Construction Law, § 58.

Sec. 1-3. Catchlines of sections; references to Code; history notes, etc.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be the title of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines are amended or reenacted.

(b) References in this Code to chapters, articles, divisions or sections are to chapters, articles, divisions or sections of this Code unless stated otherwise.

(c) Editor's notes, cross references and references to the state constitution or to laws enacted by the state general assembly that appear in footnotes to this Code are for reference purposes only and are not part of this Code.

(d) History notes appearing at the end of sections of this Code are for reference purposes only and are not part of this Code.

Sec. 1-4. Effect of repeal of legislation.

(a) The repeal of a local law or ordinance includes any local law or ordinance amendatory of the section repealed. The repeal hereafter or by this Code of any provision of a local law or ordinance which repeals any provision of a prior local law or ordinance, does not revive such prior provision. The provisions of a local law or ordinance repealing a prior local law or ordinance, which are substantial reenactments of provisions of the prior local law or ordinance, shall be construed as a continuation of such provisions of such prior local law or ordinance modified or amended according to the language employed, and not as new enactments.

(b) The repeal of a local law or ordinance or part thereof shall not affect or impair any act

done, offense committed or right accruing, accepted or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such repeal had not been effected. Unless otherwise specially provided by law, all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a local law or ordinance so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

(c) When two (2) numbers in a schedule of repeals of local laws or ordinances or sections of this Code are connected by a dash both such numbers are included as well as all intermediate numbers.

State law reference—Similar provisions, General Construction Law, §§ 90–96.

Sec. 1-5. Severability of parts of Code.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Sec. 1-6. Amendments to Code.

(a) All local laws passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent local laws, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent local laws as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent local laws until such time that this Code and subsequent local laws numbered or omitted are readopted as a new code by the board of trustees.

(b) Amendments to any of the provisions of this Code should be made by amending such provisions by specific reference to the section of this Code in substantially the following language: "Section ____ of the Code of the Town of Vestal is amended to read as follows: . . ." The new provisions may then be set out in full as desired.

(c) In the event a new section not heretofore existing in this Code is to be added, the following language may be used: "The Code of the Town of Vestal is amended by adding a section (or article or chapter) which reads as follows: . . ." The new provision may then be set out in full as desired.

(d) When the town board desires to enact a local law of a general and permanent nature on a subject not heretofore existing in the Code, which the board desires to incorporate into the Code, a section in substantially the following language may be made a part of the local law:

"Section _____. It is the intention of the town board that the provisions of this local law shall become and be made a part of the Code of the Town of Vestal and sections of this local law may be renumbered to accomplish such intention."

(e) All sections, articles, chapters or provisions of this Code desired to be repealed should be specifically repealed by section number, article number or chapter number, as the case may be.

Sec. 1-7. General penalty.

(a) In this section "violation of this Code" means:

- (1) Doing an act that is prohibited or made or declared unlawful or an offense or a misdemeanor by local law;
- (2) Failure to perform an act that is required to be performed by local law; or
- (3) Failure to perform an act if the failure is declared an offense or unlawful by local law.

(b) In this section "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is provided that failure to perform the duty is to be punishable as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this Code shall be guilty of a violation and shall be punished by a fine not exceeding five hundred dollars (\$500.00), or imprisonment for a term not exceeding fifteen (15) days, or both. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(e) Violations of this Code that are continuous with respect to time and are a public nuisance may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

(Code 1966, §§ 1-8, 1-10)

State law references—Penalties for violation of town legislation, Penal Law, §§ 55.10, 70.15, 80.05; Town Law, § 135; Municipal Home Rule Law, § 10(4.(b)).

Sec. 1-8. Appearance tickets.

(a) The purpose of this section is to authorize public servants of the town to issue and serve appearance tickets in connection with violations of the state statutes, local laws, ordinances or rules and regulations of the town which the public servants are authorized or required to enforce.

(b) The following public servants of the town are authorized to issue and serve an appearance ticket with respect to violations of state statutes, local laws, ordinances or rules and regulations of the town which such public servants are, respectively, required or authorized to enforce:

- (1) **Building inspector:** Building, zoning, planning, fire prevention, safety, licensing of occupations or businesses and all other local laws of the town that the building inspector is authorized to enforce.
- (2) **Dog warden:** All violations of the Agricultural and Markets Law and dog ordinances in the town.

(c) An appearance ticket other than for parking violations shall be served personally.

(Code 1966, §§ 4A-1—4A-3)

Sec. 1-9. Prosecution where different penalties exist for same offense.

In all cases where the same offense may be made punishable, or shall be created by different clauses or sections of legislation of the town, the prosecuting officer may elect under which to proceed; but not more than one (1) recovery shall be had against the same person for the same offense.

Sec. 1-10. Supplementation of Code.

(a) By contract or by town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the town board. A supplement to the Code shall include all substantive permanent and general parts of local laws of a general and permanent nature adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest local law included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in local laws and parts of local laws included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this act" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____," (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the local law incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of the material included in the supplement or already embodied in the Code.

Sec. 1-11. Certain legislation not affected by Code.

(a) Nothing in this Code or in the local law adopting this Code shall affect any local law or ordinance:

- (1) Promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness, or any contract or obligation assumed by the town.
- (2) Fixing salaries of officers or employees of the town.
- (3) Granting any right or franchise to any person.
- (4) Appropriating moneys.
- (5) Dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening, vacating, etc., any street or public way in the town.
- (6) Establishing and prescribing the street grades of any street in the town.
- (7) Providing for local improvements or assessing taxes therefor.

- (8) Dedicating or accepting any plat or subdivision in the town, or providing regulations for the subdivision of land.
- (9) Relating to annexation.
- (10) Rezoning specific property, amending the zoning map, granting a zoning variance, exception or special use permit.
- (11) Which is temporary, although general in effect.
- (12) Which is special, although permanent in effect.
- (13) Whose purposes have been accomplished.

(b) All such ordinances and local laws are recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances and local laws are on file in the town clerk's office.

Sec. 1-12. Code does not affect prior offenses, rights, etc.

(a) Nothing in this Code or the local law adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

(b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance or local law of the town in effect on the date of adoption of this Code.

Sec. 1-13. Provisions as continuation of existing legislation.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the town relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

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