

**PROPOSED AMENDMENTS TO ENFORCEMENT, AND PROCEDURAL, PROVISIONS (ONLY) OF
TOWN OF ORANGETOWN CODE §6-5, AND ZONING CODE (CHAPTER 43) §4.11, §4.12 AND
§4.13 (PERFORMANCE STANDARDS), AND §10.222, §10.323, §10.334 AND §10.335**

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Existing Language to be stricken/deleted is indicated by a ~~strikethrough~~.

New language to be inserted/added is underlined

§6-5. Duties and powers of Building Inspector.

- A. Except as otherwise specifically provided by law, ordinance or regulation, or except as herein otherwise provided, the Building Inspector shall administer and enforce all of the construction, alteration, repair, removal and demolition of buildings and structures, and in the installation and use of materials and equipment therein, and the location, use, occupancy and maintenance thereof.
- B. ~~He~~The Building Inspector shall receive applications and issue permits for the erection, alteration, removal and demolition of buildings or structures or parts thereof, and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of insuring compliance with laws, ordinances and regulations governing building construction.
- C. ~~He~~The Building Inspector shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to insure compliance during the entire course of construction with the requirements of such laws, ordinances or regulations. ~~He~~The Building Inspector shall make all inspections which are necessary or proper for the carrying out of his duties, except that he may accept written reports of inspection from Building Inspectors, or other employees of ~~the Building Department~~ Town of Orangetown's (hereinafter referred to as "Orangetown") Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as "OBZPAE"), or from generally ~~recognized and authoritative~~ reputable service and inspection bureaus, provided the same are ~~certified~~ prepared and signed by a qualified professional responsible official thereof.
- D. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations covering relating to building construction, ~~he~~ the Building Inspector may require the performance of tests in the field/on-site by ~~experienced,~~ qualified professional(s) persons, or by ~~accredited and authoritative~~ reputable testing laboratories, ~~or service~~ bureaus or agencies.
- E. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations relating to the use, maintenance or occupancy of land or buildings, including, but not limited to, assuring compliance with the Performance

Standards set forth in §4.1 of Chapter 43 (Zoning Code) of the Orangetown Code, and/or to assure compliance with the conditions of any applicable Orangetown land use board approval decisions, the Building Inspector may inspect, investigate and/or conduct tests, on-site, which may include, with regard to the Performance Standards, inspecting, investigating and/or conducting tests while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the Performance Standards, are in full operation. For purposes of said inspections, investigations and/or tests, the Building Inspector may engage, employ or retain the services of the Orangetown Department of Environmental Management and Engineering (hereinafter referred to as "DEME"), and/or expert consultants, to the extent, type and/or degree that the Building Inspector, DEME, and/or the expert consultants, deems necessary.

(i). If, as a result of the Building Inspector's said inspection, investigation and/or testing, relating to an alleged violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) on the part of any nonresidential use subject to the Performance Standards (hereinafter referred to as "industrial user"), the Building Inspector has reasonable grounds to believe that a violation, or non-compliance, exists, the Building Inspector shall notify the Zoning Board of Appeals of the occurrence or existence of such possible violation, or non-compliance, in accordance with Zoning Code §10.335.

(ii). If, after public hearing on due notice, in accordance with Zoning Code §4.13, the Zoning Board of Appeals finds that a violation, or non-compliance, occurred or exists, and revokes and rescinds its Performance Standards (Zoning Code §4.1) approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision.

§4.1. Performance standards.

All references herein contained to certain standards which indicate a publisher and date are hereby deemed to mean the latest revised edition of such standard. Where a federal, state, county or local agency promulgates standards which are inconsistent with, or different from, those herein enumerated, the more restrictive standards shall control. Unless otherwise stated, all citations to statutory sections ("§") are from Chapter 43, the Zoning Code, of the Code of the Town of Orangetown (hereinafter referred to as "Orangetown" and "Zoning Code").

§4.11. Applicable to all nonresidential uses. No land or building shall be used or occupied for a nonresidential use in any manner as to create any dangerous, injurious, noxious or otherwise objectionable

fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; electrical or other disturbance; glare; liquid or solid refuse or wastes; a condition conducive to the breeding of rodents or insects or other substance, condition or element, all referred to herein as “dangerous or objectionable elements,” in a manner or amount as to adversely affect the surrounding area. However, any nonresidential use, except those expressly prohibited by this code in §4.4, may be undertaken, and maintained, if it conforms to the district regulations, and the regulations of §4.1, ~~P~~performance standards, limiting dangerous and objectionable elements at the point of determination of their existence as provided in ~~this section~~§4.1.

§4.12. Performance standards procedure. Only those uses specified in the Zoning Code Use Table, Columns 2, 3 and 4, ~~as are~~ subject to the performance standards procedure of §10.334, §4.12, are subject to performance standards procedure requiring the Orangetown Zoning Board of Appeals’ (hereinafter referred to as “ZBA”) approval ~~as specified in §10.334~~ in obtaining a building permit or certificate of occupancy, or both (hereinafter referred to as “industrial user”), unless the Building Inspector has reasonable grounds to believe that any other proposed use, including any building or use accessory to a use subject to performance standards procedure, is likely to violate performance standards, in which event the ~~applicant~~ industrial user shall comply with the procedure in §10.334 in obtaining a building permit or certificate of occupancy, unless the ZBA Board of Appeals finds that compliance therewith is unnecessary.

§4.13. Initial, and cContinued, enforcement provisions. ~~Whether or not compliance with performance standards procedure in §10.334, in obtaining a building permit or certificate of occupancy, is required for any particular use,~~

(a). Initial, and continued, compliance with performance standards is required of every new nonresidential use, or change in such use, including, but not limited to, §10.231(c), in all Zoning dDistricts, as provided in §10.335, for all nonresidential uses that are subject to §4.1. Pursuant, but not necessarily limited, to §4.13, §10.334(c) and §10.335, initial, and continued, compliance with the performance standards (§4.1) is required, and all building permits and certificates of occupancy, issued for a use subject to §4.1, is conditioned, and contingent, upon the industrial user conforming to the performance standards, and the industrial user’s paying of the fees, to the Town of Orangetown, for services of Orangetown’s own expert consultants deemed reasonable and necessary by Orangetown’s Department of Environmental Management and Engineering (hereinafter referred to as “DEME”), Orangetown’s Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as “OBZPAE”), and/or the ZBA, for said consultants’ inspections, investigations, research, studies, tests, advice and/or reports relating to determining compliance with the industrial user’s conformance to the performance standards (§4.1).

(b). The industrial user's initial, and continued, compliance with the performance standards (§4.1) shall include the following:

(i). Inspections, investigations and/or testing, on-site, while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the performance standards (§4.1), are in full operation, by OBZPAE, DEME, and/or the Orangetown-retained expert consultants, to the extent, type and/or degree that OBZPAE, DEME, and/or the Orangetown-retained expert consultants, deem necessary.

(ii). The industrial user's full, and complete, compliance with any and all laws, statutes, rules and regulations of the NYS Department of Environmental Conservation and federal Environmental Protection Agency, that also regulate the use that is subject to the performance standards (§4.1).

(iii). OBZPAE, DEME, and/or the Orangetown-retained expert consultants, shall investigate any alleged violation of, or non-compliance with, the performance standards (§4.1) by the industrial user, as per §4.13(b)(i); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, OBZPAE, DEME, and/or the Orangetown-retained expert consultant(s), shall notify the ZBA, in writing, of the occurrence, or existence, of a probable violation, or non-compliance, thereof. Upon receiving such notification, the ZBA may further investigate the alleged violation or non-compliance, if the ZBA deems it necessary in its discretion; and, for such further investigation, the ZBA may utilize, or retain, the services of OBZPAE, DEME, and/or the Orangetown-retained expert consultants. Thereafter, after holding a Public Hearing on due notice, including notice to the industrial user (except for posting of signs at the industrial user's subject site, which signs shall not be required), the fees for which Public Hearing shall be paid for by the industrial user, if the ZBA finds that a violation, or non-compliance, occurred or exists, the ZBA may revoke and rescind its performance standards (§4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded; which shall be in addition to any other legal remedies that the Town of Orangetown may pursue, including, but not necessarily limited to, prosecution of violations in the Orangetown Justice Court pursuant to §10.2 and/or §10.6, and/or commencement of a civil action or

proceeding in the NYS Supreme Court, pursuant to NYS Town Law §135(1) and/or §268(2).

§10.222. Permits granted only in conformance with regulations.

- A. No permit shall be issued unless the proposed construction ~~of~~ and use is ~~are~~ in full conformity with all the provisions of this Zoning Code, and all other applicable land use and/or building statutes, codes, laws, ordinances or regulations. Any permit issued in violation of the provisions of this this Zoning Code shall be null and void, and of no effect, without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken, or use established, pursuant to any such permit shall be unlawful.
- B. After the effective date of ~~this~~ this Zoning Code, division of any parcel of land shall conform to all the applicable bulk regulations, except as permitted under §5.21 of this Code.
- C. The Inspector may revoke a permit theretofore issued, and approved, in the following instances:
- (ai) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans, drawings, plat or specifications on which the permit was based;
 - (bij) ~~Where~~ where he finds that the permit was issued in error, and should not have been issued in accordance with the applicable law(s);
 - (eiii) ~~Where~~ where he finds that the work performed under the permit is not being ~~prosecuted~~ conducted in accordance with the provisions of the application, plans, drawings, plat or specifications; ~~or~~
 - (div) ~~Where~~ where the person to whom a permit has been issued fails or refuses to comply with a stop order issued by the Inspector;
 - (v) where he finds that the conditions of any applicable Orangetown land use board approval decisions have not been complied with.
- D. Whenever the Inspector has reasonable grounds to believe that work on any land, building or structure is being ~~prosecuted~~ conducted in violation of the provisions of ~~the~~ any applicable land use and/or building statutes, codes, laws, ordinances or regulations, or not in conformity with the provisions of an application, plans, drawings, plat or specifications, or the conditions of any applicable Orangetown land use board approval decisions, on the basis of which a permit was issued, or in an unsafe and dangerous manner, ~~he~~ the Inspector shall notify the owner of the property, or the owner's agent, or the person performing the work, to suspend all work, and any such persons shall forthwith stop such work, and suspend all building activities, until the stop order has been rescinded. Such order and notice shall be in

writing, shall state the conditions under which the work may be resumed, and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by ~~certified mail~~ U.S. Postal Service First Class Mail.

E. If, after holding a Public Hearing on due notice, in accordance with Zoning Code §4.13, the Orangetown Zoning Board of Appeals finds that a violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) occurred or exists, and revokes and rescinds its Performance Standards approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision, in accordance with Zoning Code §4.13(b)(iii).

§10.323. Findings and conclusions. After such public hearings, the Orangetown Zoning Board of Appeals (hereinafter referred to as “ZBA”) shall make written findings of fact and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. As to any proposed use, such findings of fact and conclusions shall be made concerning such use, as described and represented by the applicant. In addition, the ~~ZBA Board of Appeals~~ shall, in appropriate cases, impose additional conditions and safeguards in granting a special permit or variance, or in approving an application requesting approval of conformance to the performance standards (Zoning Code §4.1), in harmony with the general purpose and intent of ~~this~~ the Zoning eCode, and to ensure that such use is established and maintained in conformity with the special findings, and the additional requirements and conditions, upon which such permit, variance(s) or approval of conformance to performance standards (Zoning Code §4.1), is granted.

§10.334. Permit for a use subject to performance standards procedure.

(a) Application. An application for a permit for a use subject to performance standards procedure shall be submitted to the Inspector in quadruplicate on a form prescribed by the Zoning Board of Appeals (hereinafter referred to as “ZBA”), which shall include, but not be limited to, a Resume of Operations, on a form prescribed by the ZBA, which shall be prepared, and signed, by a person who is qualified to answer the questions and submit documentation on behalf of the applicant; and shall be referred by the Inspector to the ~~ZBA Board of Appeals~~. The ZBA may reject the Resume of Operations if the ZBA determines that it has not been prepared, and signed, by a qualified person, regarding which the ZBA may engage or retain expert consultants to advise the ZBA with respect to the qualifications of the

preparer/signatory, the fees of which consultants shall be paid by the applicant. The applicant shall also submit in duplicate a plan of the proposed construction or development, including a description of the proposed machinery, operations, ~~and~~ products and specifications for the mechanism and techniques to be used in restricting the emission of dangerous and objectionable elements referred to in §4.1, in accordance with rules prescribed by the ~~ZBA Board~~ specifying the type of information required in such plans and specifications, and an affidavit by the applicant acknowledging his understanding of the applicable performance standards and agreement to conform with same at all times. No applicant will be required to reveal any secret processes, and any information submitted will be treated as confidential, if requested by the applicant. The fee for such application shall include the anticipated estimated costs of the ~~special~~ the ZBA's expert consultants' reports required to process it, described in Subsection (b) below.

- (b) Report by expert consultants. ~~The Board of Appeals, if there is~~ the ZBA has any reasonable doubt as to the likelihood of conformance to the performance standards, ~~the ZBA~~ shall refer the application, for investigation and report, to one or more expert consultants selected by the ~~ZBA Town Board~~ as qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in §4.1, in accordance with §4.13. ~~The applicant shall be informed of the estimated costs for such investigation and report before such referral is made. Such consultant or consultants shall make such report within 30 days after his or their receipt of such application. A copy of such report shall be promptly furnished to the applicant.~~
- (c) Decision of the Board of Appeals. At the next regular meeting of the ~~ZBA Board of Appeals,~~ but in no event more than ~~30~~ 62 days after the ~~ZBA Board~~ has received the aforesaid expert consultants' report(s) and after the closing of the Public Hearing, or within such further period as agreed to by the applicant and ZBA, the ~~ZBA Board~~ shall decide whether the proposed use will conform to the applicable performance standards ~~and, on such basis, shall authorize or refuse to authorize the issuance of a permit or certificate of occupancy or require a modification of the proposed plan of construction.~~ Such decision of the ~~ZBA Board~~ shall be in written ~~the form of a written report,~~ which shall be immediately filed in the office of the Orangetown Town Clerk and shall be a public record. Any permit or certificate of occupancy issued by the Inspector shall be conditioned on, among other things, the applicant's completed buildings, structures, ~~and~~ installations, machinery, equipment and appurtenances, in operation, conforming to the applicable performance standards, and the applicant's paying the fees for services of the expert consultant, or consultants, deemed reasonable and necessary by the ~~ZBA Board of Appeals~~ for advice as to whether or not the applicant's completed buildings, structures, ~~and~~ installations, machinery, equipment and appurtenances, will in, operation conform to the applicable performance standards.

§10.335. Continued enforcement.

- A. The Inspector shall investigate any alleged violation of, or non-compliance with, the performance standards (Zoning Code §4.1) on the part of any nonresidential use subject to the performance standards (hereinafter referred to as “industrial user”); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, he the Inspector shall notify the ZBA Board of Appeals of the occurrence or existence of a probable such possible violation or non-compliance thereof. The ZBA Board shall investigate the alleged violation, or non-compliance, in accordance with Zoning Code §4.13, and for such investigation may employ engage or retain qualified experts. If, after public hearing on due notice, in accordance with Zoning Code §4.13, the ZBA Board of Appeals finds that a violation, or non-compliance, occurred or exists, a copy of said findings shall be forwarded to the Inspector; and, in addition thereto, the ZBA may revoke and rescind its performance standards (Zoning Code §4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded Town Board. The services of any qualified experts, employed retained or engaged by the Town ZBA to investigate and report regarding an alleged advise in establishing a violation of, or non-compliance with, the performance standards, in accordance with Zoning Code §4.13, shall be paid for by the industrial user violator, if a violation, or non-compliance, is proved found by the ZBA, and otherwise by the Town. No new certificate of occupancy shall be issued, as provided in §10-236, unless such charges have been paid to the Town.
- B. (i). Each and every year, beginning on a date that is between eleven and twelve months after the issuance of a certificate of occupancy that was issued pursuant to Zoning Code §4.1, every industrial user shall submit an affidavit to the Inspector, sworn to and signed, under oath, by a qualified professional, attesting that the operations, processes and methods, and the completed buildings, structures, installations, machinery, equipment and appurtenances, that were approved by the ZBA as part of a performance standards application, have not been altered, modified or changed, in any manner whatsoever, other than routine maintenance. If the Inspector determines that the said affidavit has not been executed by a qualified professional, the Inspector may reject the affidavit, or may engage or retain expert consultants to advise the Inspector with respect to the qualifications of the signatory, the fees of which consultants shall be paid by the industrial user.
- (ii). If the operations, processes or methods, or the completed buildings, structures, installations, machinery, equipment or appurtenances, that were approved by the ZBA as part of a performance standards application, have been altered, modified or changed, in any manner

whatsoever, other than routine maintenance, then the industrial user shall submit, to the Inspector, a new Resume of Operations, in form and substance as described in §10.334(a); and, in addition, the industrial user shall apply for performance standards approval, as per Zoning Code §4.1, if determined to be necessary by the Inspector. In making such determination, the Inspector may engage or retain expert consultants to advise the Inspector with respect to such alterations, modifications or changes, the fees of which consultants shall be paid by the industrial user.

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