

## Local Law Filing

**(Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**Town of Colonie**  
Local Law No. 4 of the year 2009

**A local law** amending Chapter 190 of the Code of the Town of Colonie entitled “ZONING AND LAND USE.”

**Be it enacted by the Town Board of the Town of Colonie as follows:**

**SECTION 1. § 190-27. Incentive Zoning.**

- A. Purpose and objectives. It is the purpose of this section of the Town of Colonie Land Use Law to authorize the Planning Board to grant incentives to project sponsors during the plan review process. Such incentives shall advance the Town's comprehensive planning policies and provide opportunities to preserve open spaces in the Town with an approximate equivalence between the open space that may be lost or gained, as articulated in the Town's Comprehensive Plan and other current planning studies.
- B. Authority of the Planning Board. Incentive zoning provisions may be used by the Planning Board to further the following Town objectives:
- (1) To protect the Town's important natural resources such as stream corridors, steep slopes, floodplains, wetland systems, wildlife habitats and unique ecosystems.
  - (2) To encourage the conservation of viable farmland and significant open spaces.
  - (3) To develop a network of open lands to provide wildlife habitat and potential recreational trail corridors, connections, and pathways.
  - (4) To protect the Town's significant cultural and historic resources.
  - (5) To focus development and redevelopment into mixed-use centers.
  - (6) To ensure that all development occurs in an ecologically sound manner so that the Town can improve air and water quality.

- (7) To protect viewsheds, scenic roads and environmentally sensitive lands.
  - (8) To encourage the use of conservation development throughout the Town but particularly in environmentally sensitive or ecologically unique areas such as the Albany Pine Bush, the Mohawk and Hudson Rivers and tributaries, the Town's creeks, the Ashford Glen Preserve, Ann Lee Pond and Shaker Heritage Site, Kettle Bog, Stump Pond and other significant areas.
  - (9) To protect and enhance the Town's recreational resources.
  - (10) To provide public access to protected open spaces.
  - (11) To allow for an increased density of both commercial and residential development while enhancing and protecting a diversity of housing types.
- C. Applicability. Incentives for increased density may only be used in the following districts as shown on the Town of Colonie Zoning Map: Office Residential (OR), Commercial Office (CO), Neighborhood Commercial Office Residential (NCOR), Commercial Office Residential (COR), Highway Commercial Office Residential (HCOR), Airport Business Area (ABA), and Industrial (IND).
- D. Incentive standards.
- (1) The Planning Board may grant reductions in the minimum green space requirement in increments of 5%.
  - (2) Required green space shall not be reduced below 15%.
  - (3) Residential density shall not exceed eight dwelling units per acre.
  - (4) Commercial density shall not exceed 24,000 square feet per acre.
  - (5) If the lot where the incentive is requested is in more than one district, the provisions for the more restrictive district shall apply.
  - (6) In mixed-use developments, 3,000 gross square feet of commercial space shall equal one dwelling unit.
  - (7) Owners of previously developed parcels of land containing less than the 35% minimum green space required by the zoning standards (§190 Attachment 2), but at least meeting the 15% green space required by this section may be permitted by the Planning Board to redevelop the parcel without fine or penalty so long as the redeveloped parcel maintains or exceeds its current percentage of green space. A "previously developed parcel of land" is one that met the zoning and site plan

requirements in effect at the time it was approved and has been lawfully developed and maintained thereafter.

E. Amenities.

- (1) The following amenities may be accepted in exchange for an incentive as provided above. These amenities may be located either on the same lot as the project or located on another lot and may involve one or more parcels of land. Amenities may be located anywhere in the Town of Colonie, however, the Planning Board may reject amenities that are not of sufficient value to merit an incentive.
  - (a) Permanent conservation easements: agricultural conservation, open space, scenic, ecological, historic or other types of permanent conservation easements. Proof of recording of easement is required prior to issuance of any building permit in connection with an incentive zoning proposal.
  - (b) Permanent protection of land in fee simple for conservation and other community benefit purposes. Proof of transfer of ownership is required prior to issuance of any building permit in connection with an incentive zoning proposal.
  - (c) Cash in accordance with the incentive unit schedule adopted by the Town Board, paid into the Town of Colonie's dedicated amenity zoning fund account, for use by the Town exclusively for the permanent protection of open space and/or environmental remediation in Colonie. Proposed cash must be placed in an escrow account to be held by the Town prior to issuance of any building permit in connection with an incentive zoning proposal.
  - (d) Any combination of the above
- (2) These amenities will be in addition to any other mandated requirements pursuant to other requirements pursuant to other provision of the Town of Colonie Code and any other applicable law or regulation.
- (3) The Town of Colonie Town Board shall adopt an incentive unit schedule, which it shall update as needed, establishing the minimum monetary value for each incentive unit. Incentive units shall be value based on reduction in the amount of required site green space, in increments of 5% of the total area of the site. The minimum value for each 5% green space reduction shall be based on an escalating scale where each additional 5% shall be valued at least 30% more than the prior 5%. Reductions of less than 5% shall be valued proportionately within each

increment. The Incentive Unit Schedule should be updated annually, but if it is not updated the prior schedule shall remain in effect.

SECTION 2. § 190-34. **Nonconforming Uses.**

- A. Determination of nonconforming use. Any lawfully established use of property legally existing at the time of the passage of this chapter that does not conform to the regulations thereof, except those established pursuant to the issuance of the use variance, shall be deemed a nonconforming use.
- B. Continuation. Any nonconforming use which existed lawfully at the time of adoption of this chapter may be continued, subject to the following provisions.
- (1) Extension, modification or replacement. **[Amended 6-28-2007 by L.L. No. 10-2007]**
    - (a) Extension. A nonconforming use shall not be enlarged or extended beyond the area occupied by such use. No structure occupied by or accessory to such use shall be constructed, enlarged or extended, except for the following:
      - [1] A storage shed or garage that is clearly accessory and incidental to the nonconforming use;
      - [2] An existing Telecommunications Tower where additional antennas and/or equipment cabinets and cables are added without increasing the height of Tower.
    - (b) Replacement. If a nonconforming use is modified or replaced in whole or in part by another use, such use shall conform to this chapter.
    - (c) In an OR, NCOR, COR or HCOR District where a mixed-use site is not in conformance with respect to the required proportion of commercial to residential use, an existing commercial use may be replaced with a permitted commercial use, provided no other violations of this chapter are created by such replacement.
  - (2) Discontinuance. A nonconforming use shall not be changed unless changed to a permitted use. A nonconforming use, if changed to a permitted use, may not thereafter be changed back to a non-permitted use. When a nonconforming use has been discontinued for a period of 18 months or more, intent to abandon or relinquish such nonconforming use shall be presumed, and such nonconforming use shall be deemed abandoned and shall not thereafter be reestablished, and the use shall be changed to a permitted use.
  - (3) Destruction and restoration. If any building or structure in which a nonconforming use is conducted is hereafter removed or destroyed through natural or other cause beyond the control of the owner, to the extent that the loss is 75% or more of its fair market value at the time of such damage, the use shall not be reinstated. If any such building or structure is intentionally removed or destroyed to any extent by its owner or agent thereof, the nonconforming use shall not be reinstated.

**SECTION 3. § 190-35. Nonconforming Structures.**

- A. Completion. Any building or structure for which construction was lawfully begun prior to the adoption of this chapter may be completed and used in accordance with the approved plans and specifications for building or structure.
- B. Continuation. Any nonconforming building or structure which exists at the time of the adoption of this chapter may be maintained so long as it remains otherwise lawful, subject to the following provisions.
  - (1) Modification and replacement.
    - (a) Modification.
      - [1] A nonconforming building or structure shall be maintained in such condition as will not constitute a danger to the health, safety or general welfare of the public.
      - [2] A nonconforming building or structure shall not be added to, enlarged, reduced or altered in any manner which increases its nonconformity with the exception of existing Telecommunication Towers as set forth in §190-34 B(1)(a)[2]. Nothing herein, however, shall prevent the strengthening or alteration to a safe condition of all or part of a building that is nonconforming, provided that the repair or alteration will not increase the nonconformity.
    - (b) Replacement. A nonconforming structure may be replaced to occupy the same footprint on the lot and not exceeding the height of the prior structure or rebuilt providing greater conformance to the dimensional requirements article of this chapter, subject to a site plan review by the PEDD or Planning Board, if applicable.<sup>28</sup>
  - (2) Destruction and Restoration. A nonconforming building or structure destroyed or damaged through natural or other cause beyond the control of its owner may be replaced to occupy the same space on the lot and not exceeding the height of the prior structure or rebuilt providing greater conformance to the dimensional requirements article of this chapter,<sup>29</sup> subject to a site plan review by the PEDD or Planning Board, if applicable. A complete application for building and zoning permit for the replacement must be made within one year from when the damage was sustained.

SECTION 4. 190 Attachment 1. Table of Permitted Uses [Amended 6-28-2007 by L.L. No. 10-2007]

KEY X - Permitted Use A - Permitted Accessory Use SP - Use permitted by Special Use Permit												
	SFR Single-Family Residential	MFR Multi-Family Residential	OR Office Residential	CO Commercial Office	NCOR Neighborhood Commercial Office Residential	COR Commercial Office Residential	HCOR Highway Commercial Office Residential	IND Industrial	ABA Airport Business Area	LC Land Conservation	CEM Cemetery	
Airport									X			
Animal Shelter								X	X			
Amusement Use, Indoor (excluding specific amusement uses enumerated in this Table)				X	X	X	X	X	X			
Amusement Use, Large Outdoor (excluding specific amusement uses enumerated in this Table)								X	X			
Amusement Use, Small Outdoor (excluding specific amusement uses enumerated in this Table)						X	X	X	X			
Bakery, Commercial							X	X	X			
Bakery, Retail				X	X	X	X	X	X			
Bank			X	X	X	X	X	X	X			
Bar					X	X	X	X	X			
Bed & Breakfast		SP	X		X	X	X	X				
Billboard								X				
Boardinghouse			X		X	X	X					
Building Supplies						X	X	X	X			
Carwash						X	X	X	X			
Cemetery											X	
Christmas Tree Sales (see General Regulations Article)				X	X	X	X	X	X			
Commercial Parking								X	X			
Community Center		SP	X	X	X	X		X		X		
Construction Company							X	X	X			
Convenience Store				X	X	X	X	X	X			
Convention and Exhibit Center				X		X	X	X	X			
Correctional Facility								X	X			
Crematory											X	
Cultural Venue			X	X	X	X	X	X	X			
Dance Hall						X	X	X	X			
Daycare, Home	A	A	A	A	A	A	A	A	A			
Daycare Center		SP	X	X	X	X	X	X	X			
Drive-Thru Use			A	A	A	A	A	A	A			
Dwelling Unit Accessory	A	A	A		A	A	A					
	SFR Single-Family Residential	MFR Multi-Family Residential	OR Office Residential	CO Commercial Office	NCOR Neighborhood Commercial Office Residential	COR Commercial Office Residential	HCOR Highway Commercial Office Residential	IND Industrial	ABA Airport Business Area	LC Land Conservation	CEM Cemetery	

Dwelling Unit, Mixed-Use			A		A	A	A					
Dwelling, Multifamily (see Additional Use Standards, Restrictions, And Exceptions for Mixed Use Zones below)		X	X		X	X	X	X				
Dwelling, Single-Family (see Additional Use Standards, Restrictions, And Exceptions for Mixed Use Zones below)	X	X			SP							
Dwelling, Single-Family Farmhouse	A	A	A	A	A	A	A	A	A	A	A	
Dwelling, Townhouse		X	X		X	X	X					
Dwelling, Two-Family (see Additional Use Standards, Restrictions, And Exceptions for Mixed Use Zones below)		X			SP							
Elder Care Use		SP	X	X	X	X	X	X	X	X		
Entertainment or Retail, Adult (see General Regulations Article)												
Farm	X	X	X	X	X	X	X	X	X	X	X	X
Farm Stand	A	A	A	A	A	A	A	A	A	A	A	
Fast Food Establishment				A	X	X	X	X	X	X		
Fire Station	X	X	X	X	X	X	X	X	X	X	X	
Fraternity or Sorority House	A	A	A	A	A	A	A	A	A	A		
Funeral Home				X	SP	X	X	X	X	X		X
Garage Sale (see General Regulations Article)	A	A	A	A	A	A	A	A	A	A		
Garden Center			A			X	X	X	X			
Golf Course	X	X	X	X		X	X	X	X	X		
Golf Course, Miniature						X	X	X	X			
Health Club			X	X	SP	X	X	X	X	X		
Heavy Equipment Storage/Sales/Services							X	X	X			
Home Occupation Level One (see General Regulations Article)	A	A	A	A	A	A	A	A	A	A		
Home Occupation Level Two (see General Regulations Article)		A	A	A	A	A	A	A				
Hospital				X		X	X	X	X	X		
Hotel				X	X	X	X	X	X	X		
Industry, Light								X	X			
Industry, Heavy								X	X			
Junkyard											X	
Kennel						X	X	X	X	X		
Library			X	X	X	X	X	X	X	X		
Marina					X	X	X	X	X	X		
	SFR Single-Family Residential	MFR Multi-Family Residential	OR Office Residential	CO Commercial Office	NCOR Neighborhood Commercial Office Residential	COR Commercial Office Residential	HCOR Highway Commercial Office Residential	IND Industrial	ABA Airport Business Area	LC Land Conservation	CEM Cemetery	
Mini Mart					SP	X	X	X	X			
Mini Warehouse/Self Storage Facility						SP	SP	X	X			

Mining									X			
Manufactured Home Park		X										
Motor Vehicle Rental Agency				X		X	X	X	X	X		
Motor Vehicle Repair Shop (Major)								X	X			
Motor Vehicle Repair Shop (Minor)						X	X	X	X			
Motor Vehicle or Boat Sales and Service						X	X	X	X			
Motor Vehicle Service Station					X	X	X	X	X			
Motor Vehicle or Boat Storage Yard								X	X			
Movie Theater					X	X	X	X	X			
Municipal Uses	X	X	X	X	X	X	X	X	X	X	X	
Nightclub						X	X	X	X			
Nursery	X	X	X	X	X	X	X	X	X	X	X	X
Nursing Home		SP	X	X	X	X	X	X	X			
Office, Medical			X	X	X	X	X	X	X			
Office, Professional or Business			X	X	X	X	X	X	X			
Park	X	X	X	X	X	X	X	X	X	X	X	
Personal Service Business				X	X	X	X	X	X			
Place of Worship	X	X	X	X	X	X	X	X	X			
Pre-school			X	X	X	X	X	X	X			
Pre-school, Accessory	A	A	A	A	A	A	A	A	A			
Private Club				X	SP	X	X	X	X			
Recreation Field				X		X	X	X	X	X	SP	
Research and Development Laboratory			X	X		X	X	X	X			
Restaurant				X	X	X	X	X	X			
Retail Business (excluding specific retail sales uses enumerated in this Table)						X	X	X	X	X		
School	X	X	X	X	X	X	X	X	X	X		
Service Business			X	X	X	X	X	X	X			
Shipping Store, Retail				X	X	X	X	X	X			
Sign (see Signs and Billboards Article)												
Supermarket						X	X	X	X			
Telecommunications Tower (see General Regulations Article)				SP		SP	SP	X	X			
Transfer Station								X				

	SFR Single-Family Residential	MFR Multi-Family Residential	OR Office Residential	CO Commercial Office	NCOR Neighborhood Commercial Office Residential	COR Commercial Office Residential	HCOR Highway Commercial Office Residential	IND Industrial	ABA Airport Business Area	LC Land Conservation	CEM Cemetery
Truck Garden	X	X	X	X	X	X	X	X	X	X	
Veterinarian				X	SP	X	X	X			
Warehouse Storage/Distribution								X	X		
Wholesale Business								X	X	X	

**SECTION 5. 190 Attachment 2. Dimensional Table [Amended 6-28-2007 by L.L. No. 10-2007]**

District	Building and Lot Requirements							Yard Requirements <sup>3</sup>		
	Maximum Height <sup>1</sup> (feet)	Maximum Building Footprint (sq. feet)	Lot Area Minimum (sq. feet)	Lot Width and Frontage Minimum <sup>2</sup> (feet)	Minimum Green Space Coverage <sup>3</sup>	Base Residential Density (units/acre)	Base Commercial Density (sq. ft./acre)	Front Setback <sup>4</sup> Minimum (feet)	Side Setback Minimum Each Side / Total of Two Sides (feet) <sup>5</sup>	Rear Setback Minimum (feet) <sup>5</sup>
<b>SFR</b>	40	30% of Lot Area	18,000 <sup>6</sup>	80	35%	2 <sup>6</sup>	--	40	10 / 25	25
<b>MFR<sup>7</sup></b>	50	15,000	20,000	100	35%	6 <sup>8</sup>	--	20	10 / 25	30
<b>OR</b>	40	30,000	20,000	100	35%	See note 9	18,000 <sup>9</sup>	Minimum: 20	10 / 25	15
<b>NCOR</b>	40	15,000	6,000	60	35%	See note 9	18,000 <sup>9</sup>	Minimum: 20	5/15	15
<b>COR</b>	75	30,000	20,000	100	35%	See note 9	18,000 <sup>9</sup>	Minimum: 20	10/25	15
<b>HCOR</b>	75	--	20,000	100	35%	See note 9	18,000 <sup>9</sup>	Minimum: 20	20/50	15
<b>CO</b>	75	--	20,000	100	35%		18,000 <sup>10</sup>	Minimum: 20	20 / 50	15
<b>IND</b>	75	--	20,000	100	35%	--	18,000 <sup>10</sup>	Minimum: 50	20 / 50	15
<b>ABA</b>	75	--	20,000	100	35%	--	18,000 <sup>10</sup>	Minimum: 50	20 / 50	15
<b>LC</b>	--	--	--	--	35%	--	--	--	--	--
<b>CEM</b>	40	--	--	--	--	--	--	Minimum: 50	25 / 50	25

NOTES ON DIMENSIONAL TABLE:

1. With the exception of church towers, spires, or belfries; flagpoles; water tanks; elevator bulkheads; or stairway enclosures. A parapet wall may extend not more than eight feet above the Maximum Height. The peak of a pitched roof may extend not more than 15 feet above the Maximum Height. Building-mounted accessory structures such as communications antennae shall not exceed the maximum height or the highest point of the building, whichever is greater.
2. The minimum lot width shall be maintained continuously between the front lot line and the front building setback line, and shall be provided at all points along the front building setback line, for each front yard. The minimum lot frontage shall apply to each street on a corner lot or through lot.
3. Minimum green space requirements shall apply to any use other than a single-family dwelling or two-family dwelling. Minimum green space is subject to incentive provisions as described below. Any area of a Street or utility right-of-way adjacent to a parcel, and used for off-street parking, loading, storage or other such purposes incidental to the use of the parcel, shall be considered a part of the parcel for purposes of determining the minimum required green space.
4. Minimum front yard setbacks apply only to new construction and not to renovation of existing structures.
5. All non-residential structures and related parking, loading, refuse containment areas, and storage areas must be set back a minimum of twenty-five (25) feet from the boundary of any adjacent lot with an existing single-family use, except in the NCOR District.
6. Base Residential Density in an SFR District shall apply to conservation subdivision development only.
7. In an MFR District, a lot conforming to the minimum dimensional requirements contained in this table may be subdivided for development of single-family or two-family residences, with lot sizes, minimum building setbacks from newly created lot lines, other area and dimensional requirements, development design, road standards, and provisions for open space subject to review and approval by the Planning Board in accordance with the standards established for conservation subdivisions in the Overlay Districts Article of this Chapter. The overall development density shall not exceed six units per acre, and building setbacks from the original lot lines shall conform to the minimum dimensional requirements contained in the table.
8. Where a lot is proposed to be subdivided for development of multi-family dwellings, the allowable number of dwelling units for the entire development shall be determined by the area of the original lot, including any part of the original lot to be set aside for public or private roadways, open space, recreation areas, or other such uses. The density on any individual lot in such a development may exceed six units per acre, provided that the average density for the entire development does not.
9. In an OR, NCOR, COR, or HCOR District, up to 80% of the Base Commercial Density may be converted to residential use, at a ratio of 3,000 sq. ft. commercial use per dwelling unit.
10. Base Commercial Density in a CO, IND or ABA District shall apply to conservation development only.

## **SECTION 6. Grandfathering**

Changes in the Minimum Front and Side Setback Dimensional Table (190 Attachment 2) shall not apply to any project or site development plan that has been submitted to the Town Development Coordination Committee as of the date of the adoption of this Local Law and for which final site plan approval is issued by January 1, 2012.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No.4 of 2009 of the **Town of Colonie** was duly passed by the Town Board on May 21, 2009, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 2009 of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2009, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed adopted on \_\_\_\_\_ 2009, in accordance with applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 2009 of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2009, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed adopted on \_\_\_\_\_ 2009. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 2009, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 2009 of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 2009, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed adopted on \_\_\_\_\_ 2009. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 2009, in accordance with the applicable provisions of law.

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**\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2009 of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 2009, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2009 of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 2009, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

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Clerk of the Town or officer designated by local legislative body

(Seal)

Date: May 28, 2009

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

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Signature Town of Colonie Town Attorney

Date: May 28, 2009