

Appendix A

Waterfront Consistency Law

CITY OF AMSTERDAM

Local Law No. 6 of the year of 1992

Be it enacted by the Common Council of the City of Amsterdam as follows:

GENERAL PROVISIONS

I. Title

This local law will be known as the City of Amsterdam Waterfront Consistency Law.

II. Authority and Purpose

1. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this local law is to provide a framework for agencies of the City of Amsterdam to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the waterfront area; and to assure that such actions and direct actions are consistent with the said policies and purposes.
3. It is the intention of the City of Amsterdam that the preservation, enhancement and utilization of the natural and manmade resources of the unique waterfront area of the City take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss of fish and wildlife; diminution of open space areas or public access to the waterfront; erosion of shoreline; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
4. The substantive provisions of this local law shall only apply while there is in existence a Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III.

Definitions

1. "Actions" means either Type I or unlisted actions as defined in SEQRA regulations (6N.Y.C.R.R.617.2) which are undertaken by an agency and which include:
 - (a) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - (i) are directly undertaken by an agency; or
 - (ii) involve funding by an agency; or
 - (iii) require one or more new or modified approvals from an agency or agencies
 - (b) agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;
 - (c) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
 - (d) any combinations of the above.
2. "Agency" means any board, agency, department, office, other body, or officer of the City of Amsterdam.
3. "Waterfront area" means the Waterfront Revitalization Area delineated in the City's Local Waterfront Revitalization Program.
4. "Waterfront Assessment Form (WAF)" means the form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.
5. "Consistent" means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.
6. "Direct Actions" mean actions planned and proposed for implementation by an agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.
7. "Local Waterfront Revitalization Program (LWRP)" means the Local

Waterfront Revitalization Program of the City of Amsterdam, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the City of Amsterdam.

IV.

Review of Actions

- 1. Whenever a proposed action is located in the City's waterfront area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Paragraph 9 herein.**
- 2. Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the waterfront area, the applicant, or in the case of a direct action, the agency, shall prepare a Waterfront Assessment Form (WAF) to assist with the consistency review.**
- 3. The agency shall refer a copy of the completed WAF to the Waterfront Development Committee within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the Waterfront Development Committee with reference to the consistency of the proposed action.**
- 4. After referral from an agency, the Waterfront Development Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 9 herein. The Waterfront Development Committee shall require the applicant to submit all completed applications, WAFs and any other information deemed to be necessary to its consistency recommendation.**
- 5. The Waterfront Development Committee shall render a written recommendation to the agency within thirty (30) days following referral of the WAF from the agency, unless extended by mutual agreement of the Committee and the applicant or in the case of a direct action, the agency. The recommendation shall indicate whether, in the opinion of the Waterfront Development Committee, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for the opinion. The Waterfront Development Committee shall, along with the consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with the LWRP policy standards and conditions or to greater advance them.**

In the event that the Waterfront Development Committee's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Committee's recommendation.

6. If the agency and the Committee concur in the consistency of the proposed action, the agency may proceed with the action. In the event that the agency, after reviewing the written recommendation of the Committee, finds that it disagrees with the consistency recommendation of the Committee, the agency shall within fifteen (15) days prepare a written finding detailing its position and transmit it to the Committee. The Committee and the agency shall meet to resolve their differences within fifteen (15) days of the Committee's receipt of the agency's finding.
7. If the Committee and the agency cannot reach a mutually agreeable determination of consistency, the matter will be referred to the City Common Council for a finding of consistency. The agency shall take no action until the Common Council has made a determination and finding of consistency with the LWRP.
8. The provisions of IV (7) shall not apply to the Zoning Board of Appeals. Instead, where the Zoning Board of Appeals is the agency, the Zoning Board of Appeals shall consider the written consistency recommendation of the Committee when reviewing and considering an application for a variance.
9. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the City of Amsterdam LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. In the case of direct actions, the agency shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:
 - (a) Revitalize and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other comparable uses.
 - (b) Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters.
 - (c) Strengthen small harbors by maintaining the mix of traditional uses, assuring safe navigation and resolving use conflicts and competition through harbor and water surface use management.

- (d) Encourage the location of development in areas where public services and facilities essential to such development are adequate.
- (e) Significant fish and wildlife habitats will be protected, preserved, and, where practical, restored to maintain their viability as habitats.
- (f) In order to minimize damage to natural resources and property from flooding and erosion, development will be sited away from hazard areas wherever practical, and natural flooding and erosion protective features will not be degraded.
- (g) Erosion protection structures shall be constructed only if they are necessary to protect human life, existing development, or new water-dependent development and will result in no measurable increase in erosion or flooding at other locations. Non-structural measures shall be used whenever possible. Public funds shall only be used where the public benefits outweigh the long term costs.
- (h) Maximize public access and recreational opportunities to the shoreline and to waterways.
- (i) Protect, enhance and restore structures, districts, and sites that are of significance to the history, architecture, archeology or culture of the state, its communities, or the nation.
- (j) Protect and improve the visual quality of the waterfront.
- (k) Municipal, industrial, and commercial discharge of effluent and pollutants, including, but not limited to, toxic and hazardous substances, into water bodies will conform to state and national water quality standards.
- (l) Policies and management objectives of approved local waterfront revitalization programs will be considered while reviewing water body classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.
- (m) Best management practices will be used to ensure the control of stormwater runoff, combined sewer overflows, and the non-point discharge of excess nutrients, organics, and eroded soils into state waterways.
- (n) Discharge of waste materials into state waters from vessels subject to

state jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas, and water supplies.

- (o) Excavation, dredging, and dredge spoil disposal will be undertaken in a manner which protects fish and wildlife habitats, scenic resources, natural protective features, important agricultural land, and wetlands, and does not cause an increase in the erosion of such land.
 - (p) Preserve and protect wetlands and the benefits derived from these resources.
10. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the determining agency makes a written finding with respect to the proposed action that:
- (a) no reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 - (b) the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
 - (c) the action will advance one or more of the other LWRP policy standards and conditions; and
 - (d) the action will result in an over-riding city, regional or state-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

11. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Waterfront Development Committee. Such files shall be made available for public inspection upon request.

V. Enforcement

The City Building Inspector shall be responsible for enforcing this Chapter. No work or activity on a project in the waterfront area which is subject to review under this Chapter shall be commenced or undertaken until the Building Inspector has been

presented with a written determination from an agency that the action is consistent with the City's LWRP policy standards and conditions.

In the event that an activity is not being performed in accordance with this Chapter or any conditions imposed thereunder, the Building Inspector shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

VI. Violations

1. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter shall have committed a violation, punishable by a fine not exceeding five hundred dollars for a conviction of a first offense and punishable by a fine of one thousand dollars for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
2. The City Corporation Counsel is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

VII. Severability

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

VIII. Effective Date

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

CITY OF AMSTERDAM

WATERFRONT ASSESSMENT FORM (WAF)

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants or, in the case of direct actions, City agencies, shall complete this WAF for proposed actions which are subject to the LWRP consistency review law. This assessment is intended to supplement other information used by a City agency in making a determination of consistency with the City's Local Waterfront Revitalization Program.

2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the City Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the waterfront area.

3. If any question in Section C on this form is answered "yes", then the proposed action may affect the achievement of the LWRP policy standards and conditions contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination that it is consistent to the maximum extent practicable with the LWRP policy standards and conditions. If an action cannot be certified as consistent with the LWRP policy standards and conditions, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of City agency action (check appropriate response):

(a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) _____

(b) Financial assistance (e.g. grant, loan, subsidy) _____

(c) Permit, approval, license, certification _____

(d) Agency undertaking action: _____

2. Describe nature and extent of action:

3. Location of action

Street or Site Description

4. Size of site _____
5. Present land use _____
6. Present zoning classification _____
7. Describe any unique or unusual land forms on the project site (i.e. bluffs, ground depressions, other geological formations):

8. Percentage of site which contains slopes of 15% or greater: _____
9. Streams, lakes, ponds or wetlands existing within or continuous to the project area?
 (1) Name _____
 (2) Size (in acres) _____
10. If an application for the proposed action has been filed with the City agency, the following information shall be provided:
 (a) Name of applicant: _____
 (b) Mailing address: _____
 (c) Telephone number: Area Code () _____
 (d) Application number, if any: _____
11. Will the action be directly undertaken, require funding, or approval by a State or federal agency?
 Yes ___ No ___ If yes, which State or federal agency? _____

C. WATERFRONT ASSESSMENT (Check either "Yes" or "No" for each of the following questions)

- | 1. Will the proposed action have a <u>significant effect</u> upon: | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| (a) Commercial or recreational use of fish and wildlife resources? | ___ | ___ |
| (b) Scenic quality of the waterfront environment? | ___ | ___ |
| (c) Development of future, or existing water dependent uses? | ___ | ___ |
| (d) Stability of the shoreline? | ___ | ___ |
| (e) Surface or groundwater quality? | ___ | ___ |
| (f) Existing or potential public recreation opportunities? | ___ | ___ |
| (g) Structures, sites or districts of historic, archeological or cultural significance to the City, State or nation | ___ | ___ |

| 2. Will the proposed action <u>involve</u> or <u>result in</u> any of the following: | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| (a) Physical alteration of land along the shoreline, land under water or coastal waters? | ___ | ___ |
| (b) Physical alteration of two (2) acres or more of land located elsewhere in the waterfront area? | ___ | ___ |
| (c) Expansion of existing public services or infrastructure in undeveloped or low density areas of the waterfront area? | ___ | ___ |
| (d) Energy facility not subject to Article VII or VIII of the Public Service Law? | ___ | ___ |
| (e) Mining, excavation, filling or dredging? | ___ | ___ |
| (f) Reduction of existing or potential public access to or along the shore? | ___ | ___ |
| (g) Sale or change in use of publicly-owned lands located on the shoreline or under water? | ___ | ___ |
| (h) Development within designated flood hazard area? | ___ | ___ |
| (i) Development on a natural feature that provides protection against flooding or erosion? | ___ | ___ |
| (j) Diminished surface or groundwater quality? | ___ | ___ |
| (k) Removal of ground cover from the site? | ___ | ___ |

| 3. <u>Project</u> | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| (a) If project is to be located adjacent to shore: | | |
| (1) Will water-related recreation be provided? | ___ | ___ |
| (2) Will public access to the shoreline be provided? | ___ | ___ |
| (3) Does the project require a waterfront site? | ___ | ___ |
| (4) Will it supplant a recreational or maritime use? | ___ | ___ |
| (5) Do essential public services and facilities presently exist at or near the site? | ___ | ___ |
| (6) Is it located in a flood prone area? | ___ | ___ |
| (7) Is it located in an area of high erosion? | ___ | ___ |
| (b) If the project site is publicly owned: | | |
| (1) Will the project protect, maintain and/or increase the level and types of public access to water-related recreation resources and facilities? | ___ | ___ |
| (2) If located in the foreshore, will access to those and adjacent lands be provided? | ___ | ___ |
| (3) Will it involve the siting and construction of major energy facilities? | ___ | ___ |
| (4) Will it involve the discharge of effluents from major steam electric generating and industrial facilities into a waterway? | ___ | ___ |
| (c) Is the project site presently used by the community as an open space or recreation area? | ___ | ___ |
| (d) Does the present site offer or include scenic views or vistas known to be important to the community? | ___ | ___ |
| (e) Will the surface area of any waterways or wetland areas be increased or decreased by the proposal? | ___ | ___ |
| (f) Will the project involve any waste discharges? | ___ | ___ |
| (g) Does the project involve surface or subsurface liquid waste disposal? | ___ | ___ |
| (h) Does the project involve transport, storage, treatment or disposal of solid waste or hazardous material? | ___ | ___ |
| (i) Does the project involve shipment or storage of petroleum products? | ___ | ___ |
| (j) Does the project involve discharge of toxics, hazardous substances or other pollutants? | ___ | ___ |
| (k) Will the project affect any area designated as a freshwater wetland? | ___ | ___ |

YES NO

- (l) Will the project alter drainage flow, patterns or surface water runoff on or from the site?
- (m) Will best management practices be utilized to control storm water runoff into waterways?
- (n) Will the project cause emissions which exceed federal or State air quality standards or generate significant amounts of nitrates or sulfates?

D. REMARKS OR ADDITIONAL INFORMATION. (Add any additional sheets necessary to complete this form.)

If assistance or further information is needed to complete this form, please contact

City Clerk at (518) 841-4337

Preparer's Name: _____ Telephone Number: () _____

Title: _____ Agency: _____ Date: _____