

Appendix 4 – Consistency Review Law

City of Binghamton, (Broome County) New York

Local Law No. _____ of the year 200__

Be it enacted by the City Council of the of the City of Binghamton, New York as follows:

GENERAL PROVISIONS

Section 1. Title.

This local law will be known as the City of Binghamton Waterfront Consistency Review Law. Section 2. Authority and Purpose.

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).

The purpose of this local law is to provide a framework for agencies of the City of Binghamton to consider policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions and direct actions are consistent with the said policies and purposes.

It is the intention of the City of Binghamton that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal area of the City of Binghamton 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, peiinitting the beneficial use of coastal resources while preventing: loss of living estuarine resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

The substantive provisions of this Local Law shall apply while there is in existence a City of Binghamton Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Section 3. Definitions.

A. "Actions" mean either Type I or unlisted actions as defined in SEQRA regulations (6 N.Y.C.R.R. 617.2) which are undertaken by an agency and which include:

1. 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:

Are directly undertaken by an agency; or

Involve funding by an agency; or

Require one or more new or modified approvals from an agency or

Agencies;

2. Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions

3. Adoption of agency rules, regulations and procedures, including Local Laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

4. Any combinations of the above.

This law does not apply to Type II, excluded or exempt actions as defined in the S.E.Q.R.A. regulations 6 N.Y.C.R.R. Part 617.

"Agency " means any board, agency, department, office, other body, or officer of the City of Binghamton.

"Coastal area" means that portion of the New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the City of Binghamton, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the City of Binghamton Local Waterfront Revitalization Program.

"Coastal Assessment Form (CAF)" means the form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

"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.

"Direct Actions" means 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.

"Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the City of Binghamton, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the City of Binghamton.

H. "Waterfront Advisory Committee" or "Committee" means the Waterfront Advisory Committee of the City of Binghamton, as created by Local Law No. xxx of the City of Binghamton.

Section 4. Waterfront Advisory Committee.

The Committee is authorized to review and make recommendations to appropriate agencies regarding the consistency of proposed actions with the City of Binghamton Local Waterfront Revitalization Program policy standards. The Planning Commission is hereby appointed the Waterfront Advisory Committee and charged with the administration and implementation of this local law and is authorized to review and make recommendations to the appropriate agencies regarding the consistency of proposed action within the City of Binghamton Local Waterfront Revitalization Program policy standards.

Section 5. Review of Actions.

'Whenever a proposed action is located in the City's Coastal Area, an agency shall, prior to approving, fielding or undertaking the action, make a determination that is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein.

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 Coastal Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review of the proposed action.

The agency shall refer a copy of the completed CAF to the Committee within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the Committee with reference to the consistency of the proposed action.

After referral from an agency, the Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in

Paragraph 7 herein. The Committee shall require the applicant to submit all completed actions, CAF's and any other information deemed to be necessary to its consistency recommendation.

The Committee shall render its written recommendation to the agency within thirty (30) days following referral of the CAF form the agency, unless extended by mutual agreement of the Committee and the applicant or in the case of the direct action, the agency. The recommendation shall indicate whether, in the opinion of the 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 its opinion.

The Committee shall, along with its consistency recommendation, make any suggestions to the agency concerning modification, of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

In the event that the 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.

If the Agency and the Committee concur int he 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 mneet to resolve their differences within fifteen (15) days of the Committee's receipt of the agency's finding

If the Committee and the agency cannot reach a mutually agreeable determination of consistency, the matter shall be referred to the City Council for a finding of consistency. The agency shall take no action until the City Council has made a determination and finding of consistency with the LWRP.

The provisions of Sub-section G 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.

K. 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 Binghamton LWRP, a copy of which is on file in the City's Department of Planning, Housing and Community Development and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policies to:

Foster a pattern of development in the riverfront area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations.

Promote sustainable use of fish and wildlife resources.

Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands, and rare ecological communities.

Protect and improve water resources.

Minimize loss of life, structures, and natural resources from flooding and erosion.

Protect and improve air quality.

Promote appropriate use and development of energy and mineral resources.

Minimize environmental degradation from solid waste and hazardous substances and wastes.

Improve public access to and use of public lands and waters.

Enhance visual quality and protect outstanding scenic resources.

Preserve historic resources located in the waterfront revitalization area.

L. 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 agency makes a written finding with respect to the proposed action that:

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.

The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions.

The action will advance one or more of the other LWRP policy standards and conditions: and

The action will result in an overriding City, regional or state-wide public benefit.

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

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

Section 6. Enforcement.

The City Zoning Enforcement Officer and Building Inspectors shall be responsible for enforcing this Local Law. No work or activity on a project in the Coastal Area which is subject to review under this Local Law shall be commenced or undertaken until the Zoning Enforcement Officer 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 Local Law or any conditions imposed thereunder, the Zoning Enforcement Officer, Building Inspector or any authorized official of the City shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on this project so long as a stop work order is in effect.

Section 7. Violations.

A. A person who violates any of the provisions of, or who fails to comply with any conditions imposed by, this chapter shall have committed a violation, punishable by a fine not exceeding five hundred (500) dollars for a conviction of a first offense and punishable by a fine of one thousand (1,000) 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 violation.

B. The City attorney 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.

Section 8. 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 of provision hereof other than the provision so found to be invalid.

Section 9. Effective Date.

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