

APPENDIX D

Village of Middleport Waterfront Consistency Law

Accepted
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.

COUNTY

CITY

TOWN

Village

of Middleport

Local Law No. 2 of the year 2002

A local law entitled the Village of Middleport Waterfront Consistency Law.

Be It enacted by the Board of Trustees of the

COUNTY

CITY

TOWN

Village

of Middleport

as follows:

I. Title

This local law will be known as the Village of Middleport Waterfront Consistency Law.

II. 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 Village of Middleport 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.
- It is the intention of the Village of Middleport that the preservation, enhancement and utilization of the natural and manmade resources of the unique waterfront area of the Village occur in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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; adverse impacts to historic structures; 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 which are undertaken by an applicant 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 Village of Middleport.
3. "Waterfront area" means the Waterfront Revitalization Area delineated in the Village'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 comply with the LWRP policy standards and conditions.

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 Village of Middleport, 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 shall be on file in the Office of the Village Clerk of the Village of Middleport.
8. "Building Inspector" means the building inspector or, if none, the code enforcement officer of the Village of Middleport.
9. "Applicant" means any person, corporation, partnership, or other entity requesting approval or funding of an action, or undertaking any action for which approval is required pursuant to this Law.

IV. Review of Actions

1. Whenever a proposed action is located in the village'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 4 below.
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. Whenever an agency shall make a determination that an action is not consistent with the LWRP policy standards and conditions, it shall notify the applicant of such findings and the reason therefor within 45 days of filing of the application.
4. 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 Village of Middleport LWRP, a copy of which shall be on file in the Village 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 its consistency determination:
 - (a) Fostering a pattern of development in the Village of Middleport that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of a waterfront locations, and minimizes potential adverse impacts of development.
 - (b) Protecting existing water-dependent uses in the Village of Middleport and promoting the siting of new water-dependent uses in suitable locations.

- (c) Protecting existing agricultural land in the Village of Middleport.
- (d) Promoting the sustainable use of living marine resources in the Village of Middleport.
- (e) Protecting and restoring ecological resources, including significant fish and wildlife habitats, wetlands and rare ecological communities.
- (f) Protecting and improving water resources.
- (g) Minimizing loss of life, structures and natural resources from flooding and erosion.
- (h) Protecting and improving air quality.
- (i) Promoting appropriate use and development of energy and mineral resources.
- (j) Minimizing environmental degradation from solid waste and hazardous substances and wastes.
- (k) Improving public access to the waterfront and the use of public lands.
- (l) Enhancing visual quality and protecting outstanding scenic resources.
- (m) Preserving and protecting historic resources.

5. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such actions 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; and
- (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 village, regional or state-wide public benefit.

6. Each agency shall maintain a file for each action made the subject of a consistency determination. Such files shall be under the control of the Village Clerk.

V. Enforcement

The Village Building Inspector shall be responsible for enforcing this Chapter. No work or activity on an action 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 Village's LWRP policy standards and conditions.

In the event that any construction, action or other activity is being performed in violation of 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. Posting of a stop work order at any work site, or delivery to any individual shall constitute issuance. Issuance of a stop work order shall not be a prerequisite to prosecution for violating this law.

VI. Violations

1. The undertaking or performing, or exercising, any action as defined, herein, without agency approval shall constitute a violation of this Local Law and shall be punishable by a fine not to exceed \$250.00 or imprisonment for not more than 15 days, or both such fine and imprisonment.
2. Each week of continuing violation of this Law shall constitute a separate violation.
3. This law may be enforced by a civil action and any violation thereof may be enjoined by a court of competent jurisdiction.

VII. Severability

The provisions of this local law are severable. If any provision of this 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.

(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. 2 of 2002 of the ~~(County)(City)(Town)~~(Village) of Middleport was duly passed by the Village Board on March 18 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. 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 _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* 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 chairperson 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 20____ 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 _____ 20____, 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 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, 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 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.


Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

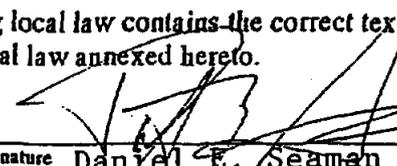
(Seal)

Date: March 18, 2002

(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 NIAGARA

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.


Signature Daniel E. Seaman
Village Attorney
Title _____

~~County~~
~~City~~ of Middleport
~~Town~~
Village

Date: March 18, 2002