

APPENDIX E
Local Consistency Law

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(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 of NEWBURGH
~~Town~~
~~Village~~

DEPARTMENT OF STATE
OCT 20 1997
RECEIVED

Local Law No. 2 of the year 19 92.

A local law establishing The City of Newburgh Waterfront Consistency
(Insert Title)
Review Law.

Be it enacted by the CITY COUNCIL of the
(Name of Legislative Body)

~~City~~
City of NEWBURGH as follows:
~~Town~~
~~Village~~

that the Code of Ordinances of the City of Newburgh is hereby amended by the addition of a new chapter, to be numbered Chapter 296, and shall be entitled, CITY OF NEWBURGH WATERFRONT CONSISTENCY REVIEW LAW, and to read as follows:

(text follows on pages 2 through 8)

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

GENERAL PROVISIONS

Section 296-1 Title

This local law will be known as Chapter 296 of the Code of Ordinances and shall be entitled The City of Newburgh Waterfront Consistency Review Law.

Section 296-2 Authority and Purpose:

A. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this local law is to provide a framework for agencies of the City of Newburgh to consider the policies and purposes contained in the I Waterfront Revitalization Program when reviewing applications for action 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.

C. It is the intention of the City of Newburgh that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal 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 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.

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

Section 296-3 Definitions:

"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:
 - (a) are directly undertaken by an agency; or
 - (b) involve funding by an agency; or
 - (c) require one or more new or modified approvals from an agency or agencies;
- (2) agency planning and policymaking 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.

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

"Coastal Assessment Form (CAF)" means the form contained in Appendix A, 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" 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.

"Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the City of Newburgh, 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 Newburgh.

"Waterfront Advisory Committee" or "Committee" means the Waterfront Advisory Committee of the City of Newburgh, as created pursuant to this Chapter.

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

Section 296-4 Waterfront Advisory Committee

A. A Committee is created and shall be hereafter known as the "Waterfront Advisory Committee of the City of Newburgh." The Committee is authorized to review and make recommendations to appropriate agencies regarding the consistency of proposed actions with the LWRP policy standards and conditions.

B. The City Council of the City of Newburgh is hereby authorized to appoint five (5) persons to said Committee, all of whom shall be residents of the City of Newburgh. Of the members of the Committee first appointed, one (1) shall hold office for a term of one (1) year, two (2) for a term of two (2) years, two (2) for a term of three (3) years from and after his/her appointment. Their successors shall be appointed for the term of three (3) years from and after the expiration of the terms of their predecessors in office. Vacancies shall be filled by the City Council by appointment for the unexpired term. Members may be removed by the City Council for cause and after public hearing.

C. The Committee shall annually appoint one (1) committee member to serve as chairperson of the Committee.

D. The Committee may employ such persons as may be needed as authorized by the City Council. This Committee shall have the power to adopt rules of procedure for the conduct of all business within its jurisdiction.

E. The Committee shall serve without compensation and shall be charged with the duties as set forth in this Chapter.

Section 296-5 Review of Actions:

A. 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 Section 7 herein.

B. Whenever a 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 Coastal Assessment Form (CAF) to assist the consistency of the proposed action.

C. 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.

D. 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 Section 7 herein. The Committee shall require the applicant to submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendations.

E. The Committee shall render its written recommendation to the agency within thirty (30) days following referral of the CAF from the agency, unless extended by mutual agreement of the Commission and the applicant or in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the Commission, 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 recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Committee recommendation.

F. The agency shall make the determination of consistency based on the CAF, the Committee recommendation and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within thirty (30) days following receipt of the Committee recommendation and submission by the applicant of any additional required information. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this Chapter.

G. Actions to be undertaken within the Coastal 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 Newburgh LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:

- (1) Revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D, 1E).
- (2) Retain and promote commercial and recreational water-dependent uses (Policy 2).
- (3) Strengthen economic base of smaller harbor areas by encouraging traditional uses and activities. (Policies 4, 4A).
- (4) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
- (5) Streamline development permit procedures (Policy 6).
- (6) Protect significant and locally important fish and wildlife

habitats from human disruption and chemical contamination (Policy 7, 7A, 8, 8A).

- (7) Maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities. (Policies 9, 9A, 10).
- (8) Minimize flooding and erosion hazards through non-structural means, carefully-selected long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17, 28).
- (9) Safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18, 18A).
- (10) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 20, 20A, 21, 21A, 21B, 22, 22A).
- (11) Protect and restore historic and archeological resources (Policies 23, 23A).
- (12) Protect and upgrade scenic resources (Policy 25).
- (13) Site and construct energy facilities in a manner in which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29, 40).
- (14) Prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28).
- (15) Protect surface and groundwaters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37, 38).
- (16) Perform dredging and dredge spoil in a manner protective of natural resources (Policies 15, 35).
- (17) Handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39, 39A).
- (18) Protect air quality (Policies 41, 42, 43).
- (19) Protect freshwater wetlands (Policy 44).

H. 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:

- (1) 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;
- (2) the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
- (3) the action will advance one or more of the other LWRP policy standards and conditions: and
- (4) the action will result in an overriding 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.

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

Section 296-6 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 the 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.

Section 296-7 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 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.

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 296-8 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 valid.

Section 296-9 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.

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

(Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 19 92 of the ~~(County)~~(City)(~~Town~~)(Village) of Newburgh was duly passed by the City Council on April 27 1992, 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 19 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19 ____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19 ____, 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 19 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19 ____, and was (approved)(not disapproved)(repassed after approval) by the _____ on _____ 19 ____. 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 _____ 19 ____, 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 19 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19 ____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19 ____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19 ____, 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 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 19____ 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 _____ 19____, 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 19____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____ 19____, 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 1, above.

Maureen A. Kaish
Clerk of the County legislative body, City, ~~X~~ ~~XXXXXX~~ Village Clerk
or officer designated by local legislative body

(Seal)

Date: April 28, 1992

(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 ORANGE

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.

William M. K...
Signature

Corporation Counsel
Title

~~X~~ ~~County~~
City of Newburgh
~~X~~ ~~Town~~
~~X~~ ~~Village~~

Date: April 28, 1992