

## Appendix A. Village of Ocean Beach Waterfront Consistency Review Law



### INCORPORATED VILLAGE OF OCEAN BEACH

#### CHAPTER 135

#### WATERFRONT CONSISTENCY REVIEW LAW

#### Article I - GENERAL PROVISIONS

##### § 135-1 TITLE

This Local Law will be known as the Village of Ocean Beach Waterfront Consistency Review Law.

##### §135-2 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 Village of Ocean Beach to consider the policies and purposes contained in the Village of Ocean Beach Local Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure for that such actions and direct actions are consistent with the said policies and purposes.
3. It is the intention of the Village of Ocean Beach that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal area of the Village take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth, economic development, and the public. 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.
4. The substantive provisions of this Local Law shall only apply while there is in existence an Ocean Beach Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

**§135-3 DEFINITIONS:**

- I. “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:
  - (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;
  - (d) any proposed action within the Village’s Local Waterfront Revitalization Area that requires Site Plan Review and approval by the Village of Ocean Beach Planning Board; and
  - (e) any combination 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.

2. “Agency” means any board, agency, department office, other body, or officer of the Village Ocean Beach.
3. “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 the boundaries of the Village of Ocean Beach, as shown on the Coastal Area Map on file in the office of the Secretary of State and as delineated in the Village of Ocean Beach Local Waterfront Revitalization Program as [Map 1](#).
4. “Waterfront Assessment Form (WAF)” means the form used by an agency to assist it in determining the consistency of an action with the Village of Ocean Beach 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.

## Village of Ocean Beach Local Waterfront Revitalization Program

---

7. “Local Waterfront Revitalization Program” (“LWRP”) means the Village of Ocean Beach Local Waterfront Revitalization Program 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 Village of Ocean Beach.
8. “Planning Board” means the Planning Board of the Village of Ocean Beach.

### **§135-4 VILLAGE OF OCEAN BEACH PLANNING BOARD:**

1. The Planning Board is hereby authorized to review and make all determinations regarding the consistency of proposed actions with the Village of Ocean Beach Local Waterfront Revitalization Program policy standards and conditions.

### **§135-5 REVIEW OF ACTIONS:**

1. Whenever a proposed action is located within the Village’s Waterfront Area, an agency shall, prior to approving, funding or undertaking the action, refer to and receive from the Planning Board, a determination from the Planning Board that the action is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein (unless a determination from the Planning Board is not forthcoming as identified in Paragraph 5).
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 of the proposed action.
3. The agency shall refer a copy of the completed WAF to the Planning Board within ten (10) days of its submission and prior to approving, funding, or undertaking the action, shall consider the determination of the Planning Board with reference to the consistency of the proposed action with the Village of Ocean Beach Local Waterfront Revitalization Program.
4. After referral from an agency, the Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein. The Planning Board shall require the applicant to submit all completed applications, WAFs and any other information deemed to be necessary to its consistency review and determination.
5. The Planning Board shall render its written consistency determination to the agency within ninety (90) days following referral of the WAF from the agency, unless extended by mutual agreement of the Planning Board and the applicant or in the case of direct action, the agency. The consistency determination shall indicate whether, in the opinion of the Planning Board, 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 determination.

The Planning Board shall, along with its consistency determination, 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.

## Village of Ocean Beach Local Waterfront Revitalization Program

---

In the event that the Planning Board's consistency determination is not forthcoming within the specified time, the referring agency shall make its own consistency decision without the benefit of the Planning Board's determination.

6. The Planning Board (or the agency, in the case when a Planning Board's determination is not forthcoming within the specified time as identified in Paragraph 5) shall make the determination of consistency based on the WAF and such other information as is deemed to be necessary in its determination. The Planning Board (or the agency, in the case when a Planning Board's determination is not forthcoming within the specified time as identified in Paragraph 5) 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 Local Law.
7. Actions to be undertaken within the Village of Ocean Beach 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 Ocean Beach LWRP, a copy of which is on file in the Village Clerk's office 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 policy to:
  - (a) Foster a pattern of development that enhances the community's character, preserves open space, makes efficient use of infrastructure, makes a beneficial use of a waterfront location, and minimizes adverse effects of development (Policy 1).
  - (b) Protect existing water-dependent uses, promote siting of new water-dependent uses in suitable locations, and support efficient marina operation (Policy 2).
  - (c) Promote the sustainable use of fish and wildlife resources (Policy 4).
  - (d) Protect and restore ecological resources, including significant fish and wildlife habitats and wetlands (Policy 5).
  - (e) Protect and improve water resources (Policy 6).
  - (f) Minimize loss of life, structures, and natural resources from flooding and erosion (Policy 7).
  - (g) Protect and improve air quality (Policy 8).
  - (h) Promote appropriate use and development of energy and mineral resources (Policy 9).
  - (i) Minimize environmental degradation from solid waste and hazardous substances and wastes (Policy 10).
  - (j) Improve public access to and use of public lands and waters (Policy 11).
  - (k) Enhance visual quality and protect scenic resources in Village of Ocean Beach (Policy 12).

- (l) Preserve historic resources (Policy 13).
8. If the Planning Board (or the agency, in the case when a Planning Board's determination is not forthcoming within the specified time as identified in Paragraph 5), determines that the action would not be consistent with the LWRP policy standards and conditions, such action shall not be undertaken unless the Planning Board or 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;
  - (d) The action will result in an overriding Village, regional or statewide public benefit.
- Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.
9. The Planning Board and, if applicable, each agency, shall maintain a file for each action made the subject of a consistency determination. Such files shall be made available for public inspection upon request.

**§135-6 ENFORCEMENT:**

The Village of Ocean Beach Building Department shall be responsible for enforcing this Local Law. No work or activity on a project in the Waterfront Area which is subject to review under this Local Law shall be commenced or undertaken until the Building Department has been presented with a written determination from the Planning Board (or the agency, in the case when a Planning Board's determination is not forthcoming within the specified time as identified in Paragraph 5) that the action is consistent with the 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 Building Department 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.

**§ 135-7 VIOLATIONS:**

- 1. A person who violates any of the provisions of, or who fails to comply with any conditions imposed by this Local Law 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 offense.

Village of Ocean Beach Local Waterfront Revitalization Program

---

2. The Village 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. The Village may also enforce this Local Law by injunction or other civil proceeding.

**§ 135-8 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.

**§ 135-9 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.

UPON MOTION MADE BY Tr. **MALLOTT**, SECONDED BY Tr. EINIG

The foregoing RESOLUTION WAS       X     ADOPTED  
     DEFEATED  
     TABLED

Upon the following roll call vote of the members of the Board of Trustees:

Member	Absent	Aye	Nay	Abstain
Trustee Wingate	<u>      </u>	<u>  X  </u>	<u>      </u>	<u>      </u>
Trustee Mallott	<u>      </u>	<u>  X  </u>	<u>      </u>	<u>      </u>
Trustee Einig	<u>      </u>	<u>  X  </u>	<u>      </u>	<u>      </u>
Trustee Klein	<u>      </u>	<u>  X  </u>	<u>      </u>	<u>      </u>
Mayor Loeffler	<u>      </u>	<u>  X  </u>	<u>      </u>	<u>      </u>

ATTEST: \_\_\_\_\_  
                  Village Administrator/Clerk-Treasurer