

October, 2007

**New York State Department of Environmental Conservation
Model Local Law for Flood Damage Prevention
For Communities with No FEMA Mapped Special Flood Hazard Areas**

Instructions

The attached MODEL LOCAL LAW is designed to comply with the floodplain management requirements of the National Flood Insurance Program contained in 44 CFR 60.3(a). **Any changes made to this Model should be reviewed by the community's attorney and either the DEC or the Federal Emergency Management Agency (FEMA) before enacting. DEC and FEMA must be provided a list of any changes to this model at the time of filing.** Any rewording of the provisions of the Model must meet the minimum requirements of 44 CFR 60.3 (a) as enclosed.

Should your community have any questions about this Local Law, or should the community wish make changes in the Model language, please provide sufficient time for review prior to final passage.

An Application Form (Attachment A) is included for a community's consideration. The program regulations do not specify what information need be supplied with the application for a permit. However, the information should be sufficient to enable the responsible person to enforce the provisions of this document.

Department of State Filing Forms – insert all required information. Blank Local Law Filing Forms, including instructions and an online interactive version, can be found at <http://www.dos.state.ny.us/lgss/publications.htm>.

The community must complete the following sections:

Page 1, Section 1.1 – Insert legislative body and the name of the community twice.

Page 4, Section 3.1 – Insert the title of the individual or group responsible for administering the Local Law, such as the Building Inspector, Code Enforcement Officer, or Planning Board. May not be the same as in Section 4.1.

Page 4, Section 3.3 – Either insert a fee and delete the parentheses and the word text reading ****"OPTIONAL"**, or, if the community chooses not to establish a fee, delete the entire parenthetical phrase.

Page 5, Section 4.1 – Insert the name of the appeals board (in many instances the Zoning Board of Appeals serves this role) and the name of the community. It may be necessary to create a 3-5 person board to fulfill these duties. **In accordance with Town/Village/City Law, the appeals board may neither be the Town/Village/City Board, nor have any common members, nor be the same body as named in Section 3.1.**

Sections 4.1 (2) through 4.1 (5) – Insert the name of the Appeal Board in all blanks.

NOTE: This document must be adopted in a manner that is legally enforceable.

File the indicated number of certified copies with each of the five offices listed below.

Follow all instructions and use the official filing form.

1. **FEDERAL AGENCY** (1 copy)

Federal Emergency Management Agency
Mitigation Division
26 Federal Plaza, Room 1337
New York, New York 10278-0002

2. **COUNTY PLANNING** (1 copy)

The planning department for your county.

3. **SECRETARY OF STATE** (3 copies)

State Records and Law Bureau
Department of State
41 State Street
Albany, New York 12231

4. **DEC CENTRAL OFFICE** (1 copy)*

NYS Department of Environmental Conservation
Floodplain Management Section
Attn: Jaime Ethier
625 Broadway, 4th Floor
Albany, NY 12233-3504
(518) 402-8185

5. **DEC REGIONAL OFFICE** (1 copy)*

Regional Office address is determined by the county in which the community is located. See page iii for address of Regional Office covering your county.

***Please submit one copy of the "Local Law Acknowledgement" to the DEC Central Office and the DEC Regional Office upon receipt from the Department of State.** However, to expedite approval of your Local Law, please send a copy to the DEC Central Office immediately upon passage, prior to receipt of the "Local Law Acknowledgement."

**New York State Department of Environmental Conservation
Bureau of Flood Protection and Dam Safety
625 Broadway, 4th Floor
Albany, NY 12233-3504
(518)402-8185**

Central Office Floodplain Management Coordinators

Bill Nechamen:	518-402-8146	Chief, Floodplain Management	wsnecham@gw.dec.state.ny.us
Kelli Higgins:	518-402-8143	Environmental Engineer	kahiggin@gw.dec.state.ny.us
Jaime Ethier:	518-402-8149	Environmental Program Specialist	jaethier@gw.dec.state.ny.us
Jacob Tysz	518-402-8152	Mapping Specialist	rjtysz@gw.dec.state.ny.us

Regional Floodplain Management Coordinators

1	Nassau & Suffolk	NYS DEC Region 1 Loop Rd., Building 40 SUNY Campus Stony Brook, NY 11790-2356	Eric Star (631) 444-0423 exstar@gw.dec.state.ny.us
2	Bronx, Kings, New York, Queens & Richmond	NYS DEC Region 2 1 Hunters Point Plaza 4740 21st Street Long Island City, NY 11101-5407	Vichit Aramsombatdee (718) 482-4946 vxaramso@gw.dec.state.ny.us
3	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster & Westchester	NYS DEC Region 3 21 S. Putt Corners Rd. New Paltz, NY 12561	Bernard Lohmann (845) 256-3020 bxlohman@gw.dec.state.ny.us
4	Albany, Columbia, Delaware, Greene, Montgomery, Otsego, Rensselaer, Schenectady & Schoharie	NYS DEC Region 4 1150 North Westcott Road, Schenectady, NY 12306	Tom Blanchard (518) 357-2379 teblanch@gw.dec.state.ny.us
5 North	Clinton, Essex, & Franklin	NYS DEC Region 5 Route 86, PO Box 296 Ray Brook, NY 12977-0296	Fred Dunlap (518) 897-1243 fddunlap@gw.dec.state.ny.us
5 South	Fulton, Hamilton, Saratoga, Warren & Washington	NYS DEC Region 5 232 Hudson St. Warrensburg, NY 12885	Rob Streeter (518) 623-1211 rwstreet@gw.dec.state.ny.us
6	Herkimer, Jefferson, Lewis, Oneida & St. Lawrence	NYS DEC Region 6 207 Genesee Street Utica, NY 13501	Albert Ash (315) 793-2358 awash@gw.dec.state.ny.us
7 North	Cayuga, Madison, Onondaga & Oswego	NYS DEC, Region 7 615 Erie Blvd. West Syracuse, NY 13204-2400	Kevin Delaney (315) 426-7501 kddelane@gw.dec.state.ny.us
7 South	Broome, Chenango, Cortland, Tioga & Tompkins	NYS DEC, Region 7 1679 NY Route 11 Kirkwood, NY 13795	Larry Lepak (607) 775-2545 ext 121 ltlepak@gw.dec.state.ny.us
8 North	Genesee, Livingston, Monroe, Ontario, Orleans, & Wayne	NYS DEC Region 8 6274 E. Avon-Lima Rd. Avon, NY 14414	Colleen Donovan (585) 226-5446 crdonova@gw.dec.state.ny.us
8 South	Chemung, Schuyler, Southern Seneca, Steuben & Yates	NYS DEC, Region 8 276 Sing Sing Rd. Horseheads, NY 14845	Scott Rodabaugh (607) 739-0809 sarodaba@gw.dec.state.ny.us
9	Allegany, Cattaraugus, Chautauqua, Erie, Niagara & Wyoming	NYS DEC, Region 9 270 Michigan Ave. Buffalo, NY 14203-2999	Rebecca Anderson (716) 851-7070 rjanders@gw.dec.state.ny.us

A local law for Flood Damage Prevention as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36

**SECTION 1.0
STATUTORY AUTHORIZATION AND PURPOSE**

1.1 FINDINGS

The _____ of the _____ of _____ finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the _____ of _____ and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

1.2 STATEMENT OF PURPOSE

It is the purpose of this local law to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify for and maintain participation in the National Flood Insurance Program.

1.3 OBJECTIVES

The objectives of this local law are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

SECTION 2.0 DEFINITIONS.

Unless specifically defined below, words or phrases used in this document shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this document its most reasonable application.

“Appeal” means a request for a review of the Local Administrator's interpretation of any provision of this Local Law or a request for a variance.

“Basement” means that portion of a building having its floor subgrade (below ground level) on all sides.

“Building” see "Structure"

"Cellar" has the same meaning as "Basement".

“Crawl Space” means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

“Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Federal Emergency Management Agency” means the Federal agency that administers the National Flood Insurance Program.

“Flood” or **“Flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters;
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe

storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

“Flood plain” or “flood prone area” means any land area susceptible to being inundated by water from any source (see definition of "Flood").

“Floodproofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

“Historic structure” means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) by an approved state program as determined by the Secretary of the Interior or
 - (ii) directly by the Secretary of the Interior in states without approved programs.

“Local Administrator” is the person appointed by the community to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an engineering department.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle"

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Person” includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

“Start of construction” includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers, and building materials. For manufactured homes the "actual start" means affixing of the manufactured home to its permanent site.

“Structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

“Variance” means a grant of relief by a community from the terms of a flood plain management regulation.

SECTION 3.0 ADMINISTRATION

3.1 Permitting Official

The _____ hereinafter referred to as the “Local Administrator” is responsible for receiving applications, examining the plans and specifications and issuing permits for the proposed construction or development.

3.2 Permit Requirements

No person shall erect, construct, enlarge, alter, repair, improve, move, or demolish any building or structure without first obtaining a separate permit for each building or structure from the Local Administrator.

No man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, shall be commenced until a separate permit has been obtained from the Local Administrator for each change.

No manufactured home shall be placed on improved or unimproved real estate without first obtaining a separate permit for each mobile home from the Local Administrator.

3.3 Application

To obtain a permit, the applicant shall first file a permit application on a form furnished for that purpose. The form must be completed and submitted to the Local Administrator (**"OPTIONAL" with a fee of \$_____) before the issuance of a permit will be considered.

3.4 Permitting Procedures

- (1) After reviewing the application, the Local Administrator shall require any additional measures which are necessary to meet the minimum requirements of this document.
- (2) The Local Administrator shall review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 V.S.C. 1334.

- (3) The Local Administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall: 1) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, (2) be constructed with materials and utility equipment resistant to flood damage and (3) be constructed by methods and practices that minimize flood damage;
- (4) The Local Administrator shall review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;
- (5) The Local Administrator shall require within flood prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and
- (6) The Permitting Official shall require within flood prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

SECTION 4.0 VARIANCE PROCEDURE

4.1 Appeals Board

- (1) The _____ as established by the _____ shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The _____ shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the _____ may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the _____, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger to life and property due to flooding or erosion damage;
 - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;

- (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Section 4.1(4) and the purposes of this local law, the _____ may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
 - (6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

4.2 Conditions for Variances

- (1) Variances shall be based upon a hardship that runs with the land and shall not be issued for economic or other personal hardships.
- (2) Variances shall be issued upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in significant hardship, and (c) a determination that the variance will not result in increased flood risks, create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances.
- (3) Variances to this Local Law shall be consistent with requirements for variances to other Local and State law, code or regulation.

Be it enacted this _____ day of _____, 20__ by the

_____ of the _____

_____, _____ County, New York, to be

effective _____.

SEAL

ATTEST _____ CLERK