

NEW YORK STATE DEPARTMENT OF STATE
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Local Law Filing

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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.

Town of OSSINING

Local Law No. __ of the year 2015

A local law entitled "Local Law # of 2015, for the Purpose of Amending the Freshwater Wetlands, Watercourses and Water Bodies Protection Chapter of the Town Code."

Be it enacted by the TOWN BOARD
of the

Town of OSSINING **as follows:**

TEXT COMMENCES ON NEXT PAGE

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

LOCAL LAW # __ OF THE YEAR 2015

BE IT ENACTED by the Town Board of the Town of Ossining as follows:

SECTION 1: TITLE

This Local Law shall be known and cited as “Local Law #__ of 2015, for the Purpose of Amending the Freshwater Wetlands, Watercourses and Water Bodies Protection Chapter of the Town Code.”

SECTION 2: LEGISLATIVE INTENT

The Ossining Town Board has a desire to amend the Freshwater Wetlands, Watercourses and Water Bodies Protection chapter of the Town Code in order to improve and update certain provisions of said chapter. This local law is determined to be an exercise of the police powers of the Town to protect the public health, safety and welfare of its residents. This local law also serves to implement recommendations of the Town’s Comprehensive Plan.

SECTION 3: FRESHWATER WETLANDS, WATERCOURSES AND WATER BODY PROTECTION CHAPTER AMENDMENTS

1. Section 105-1.A shall be amended to read as follows:

- A. Title and purpose. This chapter shall be known as the "Freshwater Wetlands, Watercourses and Water Body Protection Law of the Town of Ossining." It is a chapter regulating the dredging, filling, deposition or removal of materials; diversion or obstruction of water flow; and placement of structures and other uses in the water bodies, watercourses, wetlands and buffers thereof, in light and recognition of the functional benefits of the preservation, protection and conservation of these water resources as enumerated in § 105-1C, in the Town of Ossining.

2. A new Subsection 105-1.C(m) shall be added and shall read as follows:

- (m) Providing carbon sequestration to offset climate change.

3. **The following definitions in Section 105-2.B shall be amended to read as follows:**

HYDRIC SOIL

A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, and as further defined by the New York State Department of Environmental Conservation wetlands delineation manual, as such document may be amended from time to time.

HYDROPHYTIC VEGETATION

Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

WATERCOURSE

A running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, springs, runs and rivulets; a stream, usually flowing in a particular direction, though it need not flow continuously (it may sometimes be dry). It usually discharges itself into some other stream or body of water. It must be something more than mere surface drainage over the entire face of the tract of land, occasioned by unusual freshets or other extraordinary causes.

WETLAND

- (1) All areas that comprise hydric soils and/or are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.
- (2) Except with respect to the size of buffer areas pursuant to § 105-3.B herein, the term "wetland," as used in this chapter, shall include watercourses and water bodies.

4. **The following new definition shall be added to Section 105-2.B and shall read as follows:**

GROWING SEASON

The portion of the year when soil temperatures at 19.7 inches below the soil surface are higher than biologic zero (5 degrees C) (U.S. Department of Agriculture, Soil Conservation Service, 1985). For ease of determination this period can be approximated by the number of frost-free days (U.S Department of the Interior, 1970).

5. **Section 105-3.A shall be amended to read as follows:**

- A. Wetlands. The applicant shall be responsible for having the boundaries of the wetland(s) and buffer area(s) delineated by a qualified environmental professional by field investigation during a growing season, with soils not snow covered or frozen, and with each turning point flagged and identified by GPS location, and subsequently surveyed and mapped by a licensed land surveyor. A full report regarding the delineation with data sheets shall also be submitted by said professional. The approval authority may also consult, at the expense of the applicant, with biologists, hydrologists, soil scientists, ecologists/botanists or other experts and professionals as deemed necessary by said authority to make this delineation.

6. Section 105-5.A shall be amended to read as follows:

- A. Allowable activities. The following uses shall be allowed without a permit within a wetland or buffer area as specified below:
- (1) Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence.
 - (2) Repair of existing walkways and walls.
 - (3) Maintenance of existing decorative landscaping and planting in buffer areas only.
 - (4) Public health activities and orders of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only.
 - (5) Normal gardening activities and the composting of leaves, grass clippings or other vegetation in buffer areas only, located within a private residential lot.
 - (6) Operation and maintenance of existing dams and water control devices, excluding the adjustment of water elevations over 18 inches in height.
 - (7) Maintenance of existing drainage channels where impedance of flow may cause flooding or threaten public safety on highways or in dwellings or other structures.
 - (8) Maintenance and repair of any Best Management Practice (BMP) installed for stormwater management purposes.

- (9) Manual removal of accumulated sediment, up to a maximum of two cubic yards, located within five feet of the end of a pipe which crosses under a road or driveway.

7. Section 105-5.B(4) shall be amended to read as follows:

- (4) Installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse, water body or buffer area with the approval of the Westchester County Department of Health.

8. Section 105-5.C shall be amended to read as follows:

- C. Prohibited acts. It shall be unlawful to place or deposit chemical wastes or to introduce influents of such thermal content so as to cause deleterious ecological effect in any wetland, watercourse, water body or buffer area. Also unlawful shall be the installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse, water body or buffer area without the approval of the Westchester County Department of Health.

9. A new Subsection 105-6.A(8) shall be added and shall read as follows:

- (8) The delineation mapping and report specified in § 105-3.A of this chapter.

10. Section 105-6.D shall be amended to read as follows:

D. Regulated acts permitted with permit issued by the Building Inspector.

- (1) The following regulated activities are determined by this chapter to be limited in scope and potential impact, and are the activities within wetlands or buffer areas for which a permit issued by the Building Inspector may be granted:
 - (a) Construction of a driveway when the length of a wetland or buffer area crossing or intrusion is less than 100 feet, excluding the construction of driveways of any length which cause hydrological isolation of a portion of a wetland; if a natural drainage system crossing is proposed, where a single culvert of less than 25 feet in length and 18 inches in diameter is required.

- (b) The application of nonpolluting chemicals or dyes for the purpose of maintenance that does not change the character of the wetland (such as Health Department testing).
- (c) Decks or porches with a footprint of 200 square feet or less located more than 50 feet from a wetland or watercourse, provided that no grading is required for their construction other than for posts or footings.
- (d) Single-story movable sheds, without foundation or footings, with a footprint of 100 square feet or less located more than 50 feet from a wetland or watercourse, provided:
 - [1] Such sheds are not used for the storage of gasoline, oil, pesticides or other chemicals or toxic substances or any tools, machinery or equipment which use any such substances; and
 - [2] No grading is required for installation.
- (e) Movable play sets or swing sets or other small additions to existing structures, without foundation, with a footprint of 100 square feet or less and located more than 50 feet from a wetland or watercourse, provided no grading is required for installation.
- (f) Fences without mesh, provided:
 - [1] No fence post is to be placed in the streambed or within three feet from the edge of the stream; and
 - [2] The bottom of the fence is to be no lower than 12 inches above seasonal high water of the stream; and
 - [3] No grading is required for installation.
- (g) Dry-laid stone walls, containing no mortar or cement, where the wall is designed to permit the passage of small animals by permitting openings at 15-foot intervals at least six inches in height above ground level and 12 inches in length, and where the construction of said wall will not inhibit or alter the natural drainage flow or cause the blocking or damming of

surface water.

- (2) Notwithstanding the foregoing, no regulated activity shall be permitted with a permit issued by the Building Inspector when such activity is proposed for an area designated as a wetland on the New York State Freshwater Wetlands Map.
- (3) If the Building Inspector determines that the granting of a permit for one or more of the activities in Subsection D(1) immediately above would be appropriate in light of the standards set forth in § 105-8 below, the Building Inspector shall grant the permit within 21 days of receipt of a complete application. Notwithstanding the foregoing, the Building Inspector, in his/her sole discretion, may forward any application for a permit to the Planning Board for processing in accordance with the provisions of § 105-7 below.
- (4) However, in the event that the Building Inspector determines that the granting of a permit for one or more of the activities in Subsection D(1) immediately above would be inappropriate in light of the standards set forth in § 105-8 below, the Building Inspector shall neither approve nor deny the application, but rather shall notify the applicant within 21 days of receipt of a complete application and shall forward the application to the Planning Board for processing in accordance with the procedures set forth in § 105-7 below.

11. Section 105-8.A shall be amended to read as follows:

- A. Consideration. In granting, denying or conditioning any permit, the approval authority shall consider all relevant facts and circumstances including but not limited to the following:

[Subsections (1) through (3) shall remain intact.]

- (4) The effect of the proposed activity relative to the protection or enhancement of the functions of wetlands and the benefits they provide which are set forth in § 105-1C hereof.

[Subsections (5) and (6) shall remain intact.]

12. Section 105-8.B shall be amended to read as follows:

- B. Findings. Permits will be issued by the approval authority pursuant to this chapter only if the applicant demonstrates and the approval authority finds that:
- (1) The proposed regulated activity is consistent with the policy hereof to preserve, protect and conserve wetland functions and the benefits they provide, as set forth in § 105-1C hereof, by preventing to the maximum extent practicable the degradation and destruction of wetlands as balanced against private property rights.
 - (2) The proposed regulated activity is compatible with the public health and welfare.
 - (3) The proposed regulated activity cannot practicably be relocated on the site so as to eliminate or reduce the intrusion into the wetland, watercourse, water body and/or buffer area.
 - (4) All proposed culverts and dams meet the guidelines of the New York Department of Environmental Conservation for the migration of aquatic wildlife, if applicable.
 - (5) Pipes installed to convey a watercourse shown on the USGS maps or classified by the New York State Department of Environmental Conservation as A, B or C will require culverts designed in accordance with the stream crossing guidelines document published by the New York State Department of Environmental Conservation.

13. Section 105-10.B shall be amended to read as follows:

- B. Mitigation plan.
- (1) Upon a determination pursuant to Subsection A immediately above that a loss of wetland, watercourse, water body or buffer area is necessary and unavoidable, the Planning Board shall, and the Building Inspector may, as approval authority, require the preparation of a mitigation plan which shall specify mitigation measures that replace and/or restore, to the greatest extent reasonably practical, the functions of the original wetland and/or buffer area in terms of type, ecological benefits, geographic location and setting, and size.

- (2) For the purposes of mitigation, on-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible.
- (3) Mitigation for intrusion into wetlands shall be such as to provide no overall net loss of wetlands in terms of ecological characteristics and function, similar geographic location and setting, and size. A greater than 1:1 replacement may be necessary in areas where there is a strong possibility of the failure of the viability of the replacement/restored wetlands. Mitigation for intrusion into buffer areas shall be such as to preserve the ecological characteristics and functions of the associated wetland.
- (4) Where off-site mitigation is proposed, it shall be within the same drainage basin affected by the development. In this regard, contribution to a Town-Board-adopted drainage basin and/or wetland improvement plan may be considered by the approval authority.

14. Section 105-10.C shall be amended to read as follows:

- C. Mitigation plan requirements. Mitigation plans shall be designed to minimize impacts to wetlands, watercourses, water bodies and buffer areas. Said plans shall also provide for the preservation of remaining wetlands via the establishment of restrictive covenants or conservation easements.

[Subsections (1) through (4) shall remain intact.]

SECTION 4: RATIFICATION, READOPTION AND CONFIRMATION

Except as specifically modified by the amendments contained herein, the Code of the Town of Ossining as adopted and amended from time to time thereafter is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

SECTION 5: INCLUSION IN CODE

It is the intention of the Ossining Town Board and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of Ossining; that the sections and subsections of this Local Law may be renumbered or relettered to accomplish such intention; and that the words “local law” shall be changed to “chapter,” “section” or other appropriate word, as required for codification.

SECTION 6: **RENUMBERING**

The location and numerical designation of this Local Law and the sections included herein shall be delegated to the discretion of the codifier, General Code, which may renumber this Local Law and sections as are necessary to accommodate these amendments.

SECTION 7: **CODIFICATION**

This Local Law shall be incorporated into the Code of the Town of Ossining and shall be assigned a chapter number and appropriate section numbers by the codifier, General Code, in accordance with the numbering system of the Code.

SECTION 8: **CODIFIER'S CHANGES**

This Local Law shall be included in the Code of the Town of Ossining. The codifier shall make no substantive changes to this Local Law, but may renumber, rearrange and edit it without first submitting it to the Ossining Town Board. Any such rearranging, renumbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

SECTION 9: **SEPARABILITY**

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

SECTION 10: **EFFECTIVE DATE**

This Local Law shall take effect immediately upon adoption and filing with the Secretary of State as provided by the Municipal Home Rule Law.