

LOCAL LAW NO. ___-2023

TOWN OF AMHERST

COUNTY OF ERIE, STATE OF NEW YORK

**A Local Law Creating A New Chapter, Chapter 205, To The Code of the
Town of Amherst, Local Waterfront Revitalization Program (LWRP)**

Be it enacted by the Town of Amherst as follows:

PART I
GENERAL PROVISIONS

§1-1 Title.

This Local Law shall be referred to as “A Local Law Creating a New Chapter, Chapter 205, to the Code of the Town of Amherst, Local Waterfront Revitalization Program (LWRP).”

§1-2 Authority and Purpose

1-2-1 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 NYS Executive Law).

1-2-2 The purpose of this Local Law is to provide a framework for the Town of Amherst (Town) to incorporate the policies and purposes contained in the Town’s Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct Town actions located within the Waterfront Revitalization Area (WRA); and to assure that such actions and direct actions undertaken by the Town are consistent with the LWRP policies and purposes.

1-2-3 It is the intention of the Town that the preservation, enhancement, and utilization of the unique Waterfront Revitalization Area (WRA) of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate economic growth. Accordingly, this law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing degradation or loss of living waterfront resources and wildlife; diminution of open space

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areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic or historical resources; losses due to flooding, erosion, and sedimentation; impairment of water quality, or permanent adverse changes to ecological systems.

The substantive provisions of this Local Law shall only apply while there is in existence a Town of Amherst LWRP that has been adopted in accordance with Article 42 of the NYS Executive Law.

PART 2 **DEFINITIONS**

§2-1. Definitions

A. "Actions" include all the following, except minor actions as defined in Section J below:

1. projects or physical activities, such as construction or any other activities that may affect natural, manmade, or other resources in the Waterfront Revitalization Area (WRA), or the environment, by changing the use, appearance, or condition of any 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, permits, or review from an agency or agencies;
2. agency planning and policy making 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 resources or the environment within the Amherst WRA;
4. a Type 1 and Unlisted Action under SEQRA, as well as any project involving a Draft Generic Environmental Impact Statement;
5. any combination of the above.

B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Amherst.

C. "Waterfront Revitalization Area" or "WRA" means that portion of New York State designated waterway and adjacent shorelands as defined in Article 42 of the

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- Executive Law, which is located within the municipal boundaries of the Town of Amherst, as described, and mapped in the approved Town LWRP.
- D. "Waterfront Assessment Form" or "WAF" means the form identified in the LWRP Plan used by an agency or other entity to assist in determining the consistency of an action with the Town LWRP.
- E. "Code Enforcement Officer" means the Building Commissioner and/or Zoning Enforcement Officer of the Town of Amherst.
- F. "Consistent" means that the action will fully comply with the LWRP policy standards, conditions, and objectives and, whenever practicable, will advance one or more of them.
- G. "Direct Actions" mean actions planned and proposed for implementation by an agency, such as, but not limited to, a capital project, rulemaking, procedure making and policy making.
- H. "Environment" means all conditions, circumstances, and influences surrounding and affecting the development of living organisms or other resources in the Waterfront Revitalization Area (WRA).
- I. "Local Waterfront Revitalization Program" or "LWRP" means the Town of Amherst Local Waterfront Revitalization Program approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the NYS Executive Law), a copy of which is on file in the Offices of the Clerk of the Town of Amherst and the Planning Department.
- J. "Minor actions" include the following actions, which are not subject to review under this law:
1. maintenance or repair involving no substantial changes to an existing structure or facility;
 2. replacement, rehabilitation, or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, except for structures in areas designated by Local Law where structures may not be replaced, rehabilitated, or reconstructed without a permit;

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3. repaving of existing paved highways not involving the addition of new travel lanes;
4. street openings and right of way openings for the purpose of repair or maintenance of existing utility facilities;
5. maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, and in Nature Preserves or within a special district which currently are under the legality of the purpose, restrictions and retained rights of a conservation easement with designated management plans;
6. granting of individual setback and lot line variances, except in relation to a regulated natural feature;
7. minor temporary uses of land having negligible or no permanent impact on waterfront resources or the environment;
8. installation of traffic control devices on existing streets, roads and highways;
9. mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
10. information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;
11. official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
12. routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
13. conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in, or approve such action;
14. collective bargaining activities;
15. investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
16. inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
17. purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;

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18. adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
19. engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
20. civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
21. adoption of a moratorium on land development or construction;
22. interpreting an existing code, rule or regulation;
23. designation of local landmarks or their inclusion within historic districts;
24. emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property, or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to waterfront resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part; and
25. local legislative decisions such as rezoning where the Town Board determines the action will not be approved.

PART 3
MANAGEMENT AND COORDINATION OF THE LWRP

§ 3-1 **Management and Coordination**

§ 3-1-1A. The Planning Department shall be responsible for overall management and coordination of the LWRP. In performing this task, the Planning Department shall:

1. Inform the Town Board on implementation, priorities, work assignments, timetables, and budgetary requirements of the LWRP.
2. Coordinate the drafting and submission of applications for funding from State, federal, or other sources to finance projects implementing the LWRP
3. Coordinate and oversee liaison between the Town Board and other town boards and departments, to further the implementation of the LWRP.

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4. Provide the New York State Department of State and other State agencies with timely feedback regarding the consistency of actions proposed by State agencies within the Amherst WRA.
5. Prepare an annual report on progress achieved and problems encountered in implementing the LWRP and recommend actions necessary for further implementation to the Town Board.
6. Perform other functions regarding the Amherst WRA and direct such actions or projects as are necessary, or as the Town Board may deem appropriate to implement the LWRP.

§ 3-2-1B. In order to foster a strong relationship and maintain an active liaison among the agencies responsible for implementation of the LWRP, the Planning Department shall schedule annual LWRP progress meetings, including, but not limited to, representatives of the Town Board, Planning Board, Zoning Board of Appeals, and such other departments or individuals charged with LWRP implementation.

PART 4

REVIEW OF ACTIONS AND CONSISTENCY WITH LWRP POLICIES

§4-1 Review of Actions and Consistency With LWRP Policies

- A. Whenever a proposed action is located within the Amherst WRA, the Town agency shall, prior to approving, funding, or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in Section I. below. No action in the WRA shall be approved, funded, or undertaken by the Town agency without such a determination.
- B. The Planning Department shall be responsible for coordinating review of actions within the Amherst WRA for consistency with the LWRP, and will advise, assist, and make consistency recommendations for other Town agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative, and other actions included in the program.
- C. The Planning Department will assist each Town agency or outside applicant with preliminary evaluation of actions in the waterfront area, and with preparation of a WAF. Whenever the Town agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct

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- action to be located within the Amherst WRA, such application or direct action shall be referred to the Planning Department, within ten (10) days of its receipt, for preparation of a WAF, a sample of which is appended to this Local Law.
- D. The Planning Department shall require the agency or the applicant to submit all completed applications, Environmental Assessment Forms (EAFs), and any other information deemed necessary to its consistency recommendation. The recommendation shall indicate whether, in the opinion of the Planning Department, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and objectives and shall elaborate in writing the basis for its opinion. The Planning Department shall, along with its consistency recommendation, make any suggestions to the agency or applicant concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards and objectives or to greater advance them. Such recommendation shall go to the agency or applicant within thirty (30) days of receipt of the completed information (as deemed complete by the Planning Department) submitted by the department or applicant.
- E. If an action requires approval of more than one agency, decision making will be coordinated between agencies to determine which agency will conduct the final consistency review, and that agency will thereafter act as designated consistency review agency. Only one WAF per action will be prepared. If the agencies cannot agree, the Planning Director shall designate the consistency review agency.
- F. Upon recommendation of the Planning Department, the agency shall consider whether the proposed action is consistent with the LWRP policies included in Section I, herein. Prior to making its determination of consistency, the agency shall consider the consistency recommendation of the Planning Department. The agency shall render a written determination of consistency based on the WAF, the Planning Department recommendation and such other information as is deemed necessary to its determination. No approval or decision shall be rendered for an action in the Amherst WRA without a determination of consistency. The designated agency will make the final determination of consistency.

The Zoning Board of Appeals is the designated agency for the determination of consistency for use variances and special use permit applications subject to this law. The Zoning Board of Appeals shall consider the written consistency recommendation of the Planning Department in the event and at the time it makes a decision to grant such a variance or special use permit and shall impose

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appropriate conditions to make the activity consistent with the objectives of this law.

- G. Where an Environmental Impact Statement (EIS) is required or prepared, the draft EIS must identify applicable LWRP policies and standards and include a discussion of the effects of the proposed action on such policy standards. No agency may make a final decision on an action that has been the subject of a final EIS and is located within the Amherst WRA until the agency has made a written finding regarding the consistency of the action with the LWRP policies included in Section I herein.
- H. In the event the Planning Department's recommendation is that the action is inconsistent with the LWRP, and the agency makes a contrary determination of consistency, the agency shall elaborate in writing the basis for its disagreement with the recommendation and explain the manner and extent to which the action is consistent with the LWRP policy standards. Where an action is found to be inconsistent with one or more LWRP policy standards, such action shall not be approved, funded, or undertaken unless modified to be consistent with the LWRP, as determined by the reviewing agency.
- I. Actions to be undertaken within the Amherst WRA shall be evaluated for consistency in accordance with the following summary of LWRP policies, which are derived from and further explained and described in the approved Town of Amherst LWRP, a copy of which is on file in the Clerk and Planning Department offices and available for inspection during normal business hours. Agencies who undertake direct actions shall also consult with Section IV- Proposed Land and Water Uses and Projects of the LWRP, in making their consistency determination. The action shall be consistent with the following LWRP policies:
- 1) Policy 1: Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses.
 - 2) Policy 2: Facilitate the siting of water-dependent uses and facilities on or adjacent to inland waterways.
 - 3) Policy 3: Further develop the State's major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities, of land use and development which is essential to, or in support of, the waterborne transportation of cargo and people.

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- 4) Policy 4: Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.
- 5) Policy 5: Encourage the location of development in areas where public services and facilities essential to such development are adequate.
- 6) Policy 6: Expedite permit procedures in order to facilitate the siting of development activities at suitable locations.
- 7) Policy 7: Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats.
- 8) Policy 8: Protect fish and wildlife resources in the waterfront revitalization area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain, or which cause significant sublethal or lethal effect on those resources.
- 9) Policy 9: Expand recreational use of fish and wildlife resources in the waterfront revitalization area by increasing access to existing resources, supplementing existing stocks, and developing new resources.
- 10) Policy 10: Further develop commercial finfish, shellfish, and crustacean resources in the inland waterway area by encouraging the construction of new, or improvement of existing onshore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.
- 11) Policy 11: Buildings and other structures will be sited in the waterfront revitalization area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.
- 12) Policy 12: Activities or development in the waterfront revitalization area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs.
- 13) Policy 13: The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.
- 14) Policy 14: Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.
- 15) Policy 15: Mining, excavation or dredging in inland waterways shall not significantly interfere with the natural inland waterway processes which supply beach materials to land adjacent to such waters and shall be

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- undertaken in a manner which will not cause an increase in erosion of such land.
- 16) Policy 16: Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.
- 17) Policy 17: Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible.
- 18) Policy 18: To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the Waterfront Revitalization Area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable inland waterway resource areas.
- 19) Policy 19: Protect, maintain, and increase the level and types of access to public water related recreation resources and facilities.
- 20) Policy 20: Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided and it shall be provided in a manner compatible with adjoining uses.
- 21) Policy 21: Water-dependent and water-enhanced recreation will be encouraged and facilitated and will be given priority over non-water-related uses along the shorefront.
- 22) Policy 22: Development when located adjacent to the shore will provide for water-related recreation whenever such use is compatible with reasonably anticipated demand for such activities and is compatible with the primary purpose of the development.
- 23) Policy 23: Protect, enhance, and restore structures, districts, areas, or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the Nation.
- 24) Policy 24: Prevent impairment of scenic resources of statewide significance.
- 25) Policy 25: Protect, restore, or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the waterfront revitalization area.
- 26) Policy 26: Conserve and protect agricultural lands in the waterfront revitalization area.
- 27) Policy 27: Decisions on the siting and construction of major energy facilities in the shorefront area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

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- 28) Policy 28: Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding.
- 29) Policy 29: The development of offshore uses and resources, including renewable energy resources, shall accommodate New York's long-standing ocean and Great Lakes industries, such as commercial and recreational fishing and maritime commerce, and the ecological functions of habitats important to New York.
- 30) Policy 30: Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into inland waterways will conform to State and National water quality standards.
- 31) Policy 31: State policies and management objectives of approved local Waterfront Revitalization Programs will be considered while reviewing inland waterway classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.
- 32) Policy 32: Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities.
- 33) Policy 33: Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into inland waterways.
- 34) Policy 34: Discharge of waste materials into inland waterways from vessels subject to State jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.
- 35) Policy 35: Dredging and filling in inland waterways and disposal of dredged material will be undertaken in a manner that meets existing State dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands.
- 36) Policy 36: Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into inland waterways; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.
- 37) Policy 37: Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into inland waterways.
- 38) Policy 38: The quality and quantity of surface water and groundwater supplies will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

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- 39) Policy 39: The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within the waterfront revitalization area will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural land, and scenic resources.
- 40) Policy 40: Effluent discharged from major steam electric generating and industrial facilities into inland waterways will not be unduly injurious to fish and wildlife and shall conform to state water quality standards.
- 41) Policy 41: Land use or development in the waterfront revitalization area will not cause national or State air quality standards to be violated.
- 42) Policy 42: Waterfront revitalization program policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.
- 43) Policy 43: Land use or development in the waterfront revitalization area must not cause the generation of significant amounts of acid rain precursors: nitrates and sulfates.
- 44) Policy 44: Preserve and protect freshwater wetlands and preserve the benefits derived from these areas.
- J. If the agency determines that an action will be inconsistent with one or more LWRP policy standards or objectives, such action shall not be undertaken unless modified to be consistent with the LWRP policies.
- K. The Planning Department shall maintain a file for each action made the subject of a consistency determination, including the recommendations provided by the Planning Department. Such files shall be made available for public inspection upon request.

PART 5 **ENFORCEMENT**

§5-1 Enforcement

In the event that an activity is being performed in violation of this law or any conditions imposed thereunder, the Building Commissioner or any other authorized official of the Town of Amherst 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.

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§5-2 **Violations**

1. A person who violates any of the provisions of, or who fails to comply with any condition imposed by this law shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine of one thousand dollars (\$1000.00) 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.
2. The Town 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.

§5-3 **Severability**

The provisions of this law are severable. If any provision of this law is found invalid, such finding shall not affect the validity of this law as a whole or any law or provision hereof other than the provision so found to be invalid.

Section 6. 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.

**Francina J. Spoth, Town Clerk
Town of Amherst
County of Erie, New York**

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