

LOCAL LAW ____ OF 2026, entitled:

Local Law Amending Town Code §250-78: Freshwater Wetlands, Watercourses, Lakes, Ponds, and Floodplains

BE IT ENACTED BY, the Town Board of the Town of Clinton as follows:

1. The Title of §250-78 of the Town Code, “Freshwater wetlands, watercourses, lakes, ponds and floodplains” is hereby revised to be titled “Freshwater Wetlands, Watercourses, Waterbodies and Floodplains.”
2. §250-78 of the Town Code is hereby amended by repealing the existing §250-78 in its entirety and replacing it with a new §250-78, which shall read as follows:

§ 250-78. Freshwater Wetlands, Watercourses, Waterbodies and Floodplains.

- A. **Purpose.** The purpose of this Section is to eliminate or minimize negative impacts caused by development in or adjacent to freshwater Wetlands, Watercourses, Waterbodies, Floodplains, and natural drainage systems, while ensuring the continued public benefit and ecosystem services provided by these areas, defined as “Controlled Areas” in the Town.
- B. **Legislative Intent.** The Town Board has determined that the public interest, health and safety, and economic and general welfare of the residents of the Town, are best served by providing for the protection and preservation of the Town’s Controlled Areas. This Section is intended to protect water supplies, aquifers, stormwater management capacity, chemical and pollutant filtration ability, habitat and breeding environment, and recreational opportunities provided by the Town's water resources.
- C. **Regulated activities that do not require a permit.** Regulated activities occurring within a Controlled Area for which either a positive project jurisdictional determination or a Wetland Disturbance Permit has been issued by the New York State Department of Environmental Conservation (DEC), and submitted to the Zoning Administrator, shall not be subject to the requirements of this Section. For actions determined to require a Wetland Disturbance Permit from the DEC pursuant to the New York State Freshwater Wetlands Act, documentation for said permit shall be filed with the Zoning Administrator.
- D. **Regulated activities that require a permit.** Except as otherwise provided in Subsection E herein concerning exempt activities, it shall be unlawful, in the absence of a permit issued pursuant to this Section, to conduct any of the following activities in any Controlled Area:
 - (1) Place or construct any Structure.
 - (2) Place or construct any part of a septic or sewage disposal system, including a sewage treatment plant or similar system.

- (3) Place or construct any road, driveway, utilities, utility corridor, or similar improvements.
- (4) Drain, dredge, excavate, or remove material.
- (5) Dump, fill, or deposit material.
- (6) Introduce any form of pollution, including but not limited to surface water discharge; discharge from a sewage disposal system; the deposition or introduction of inorganic chemicals, animal wastes, pesticides, or fertilizers; or the discharge of solid, liquid, or gaseous wastes.
- (7) Alter or modify any natural features and contours or natural drainage patterns.
- (8) Construct dams or other water control devices.
- (9) Create an increase or decrease in the flow, velocity, or volume of water within any Controlled Area, not related to the natural seasonal fluctuations of same.

E. Exempt Activities. The following activities do not require a permit under this Section:

- (1) Deposition or removal of the organic material in any Controlled Area by recreational or commercial fishing, aquaculture, hunting, or trapping, where otherwise permitted and regulated through another agency.
- (2) The in-kind maintenance, repair, and/or replacement of existing structures or improved areas including but not limited to bridges, roads, driveways, sheds, bulkheads, docks, piers, or pilings.
- (3) Public health activities under orders and regulations of the New York State Department of Health, provided that copies of all such orders and regulations affecting any Controlled Area have been filed with the Zoning Administrator.
- (4) Any actual or ongoing emergency activity that is immediately necessary for the protection and preservation of life, property, or natural resource values.
- (5) The application of nonpolluting chemicals and dyes for maintenance purposes.
- (6) All activities listed in § 24-0701(3) through (8) of the New York Environmental Conservation Law as exempt from the permit requirements of the DEC, and defined by 6 NYCRR 663.2 of the DEC Rules and Regulations.
- (7) The installation of approved dry hydrants.
- (8) The salting and sanding of public roads by Town, County and State highway departments.
- (9) Placement or construction of any structure or other improvement in a Controlled Area on land that is not within twenty-five (25) feet of a Wetland, Watercourse, or Waterbody and that does not entail more than thirty (30) cubic feet of soil disturbance.
- (10) Excavation or removal of material, or dumping, filling or depositing of material, in a Controlled Area on land that is not within twenty-five (25) feet of a Wetland, Watercourse, or Waterbody, where the total amount of material to be removed, deposited, or disturbed does not exceed thirty (30) cubic feet.
- (11) Routine maintenance to existing lawns, gardens or landscaped areas occurring within the Buffer adjacent to the Wetland such as mowing and garden activities, maintenance of a vegetable or flower garden, provided direct land disturbance does not exceed thirty (30) cubic feet.

F. Application Process.

- (1) The issuance of permits for regulated activities under this Section shall be the purview of the Planning Board, to which the Zoning Administrator shall refer all permit applications deemed to be complete. Applications for permits for regulated activities shall be filed with the Zoning Administrator. To the extent practical, review of applications pursuant to this Section shall take place in concert with the review of any principal activity being reviewed by the Planning Board.
- (2) The Planning Board may request the advice of the Conservation Advisory Council, specialists, or consultants, and may conduct a public hearing, for the purpose of collecting information necessary to make an appropriate determination of potential impacts on any Controlled Area. The applicant shall deposit an escrow amount specified by the Planning Board in the event that a professional consultant is required to support the Planning Board's findings.
- (3) Prior to submitting a permit application, the applicant shall request a jurisdictional determination from the DEC. All submission materials associated with the jurisdictional request, and the resulting determination, shall be submitted to the Zoning Administrator. Positive jurisdictional determinations shall follow the regulation of Section C below.
- (4) If a permit is required pursuant to this Section, the applicant shall file an application with the Zoning Administrator in such form and with such information as required herein. The Zoning Administrator shall review the permit application for completeness. At a minimum, the following information shall be required:
 - (a) A written explanation setting forth why the proposed activity cannot be located outside of the Controlled Area.
 - (b) Applications proposing activities that may affect the water retention capacity, water flow, or other drainage characteristics of any Controlled Area shall include a statement of the impact of the proposed activities on upstream and downstream areas, giving appropriate consideration to flood and drought levels and the projected amount of rainfall.
 - (c) A site map showing all Controlled Areas on the site under review and within two hundred (200) feet of the site boundaries.
 - (d) A description of the vegetative cover of the area.
 - (e) A description of the soil types on the site.
 - (f) Where the creation of a Lake or Pond is proposed, details of the construction of any dams, embankments, outlets, or other water control devices and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions.
 - (g) A completed SEQRA Environmental Assessment Form.
- (5) Where an application has been made to the Zoning Administrator, Town Board, or Planning Board for an action that is subsequently determined to require a permit pursuant to this Section, a copy of that application shall be deemed an application sufficient to proceed under this Section.

G. **Standards for Permit Decisions.** In approving or denying any application for a permit under this Section, the Planning Board shall consider the effect of the proposed regulated activity on the ecology and aesthetic value of the Controlled Area, and on the public health and welfare. The Planning Board shall apply the following standards in making its determination:

- (1) Impacts to Controlled Areas should be considered in terms of the present and future effects of the proposed activity on the Controlled Areas. Potential impacts to Controlled Areas may include:
 - (a) Infilling or other modification of natural topographic contours and the potential for increased soil erosion.
 - (b) Disturbance or destruction of naturally occurring habitats, including native flora and fauna.
 - (c) The potential for sediments or other materials causing increased water turbidity or substrate deposition.
 - (d) Removal or disturbance of wetland soils.
 - (e) Reductions in water supply or water quality.
 - (f) Interference with water circulation, water flows, or flood storage.
 - (g) Reduction or increases in nutrients.
 - (h) Influx of toxic chemicals or heavy metals.
 - (i) Thermal changes in the water supply.
- (2) The potential negative impacts of the proposed regulated activity upon Controlled Areas should be eliminated or minimized to the maximum extent practical.
- (3) The extent to which the private or public benefit to be derived from the proposed activity may outweigh or justify the possible degradation of any Controlled Area.

H. **Findings.** Permits may be issued by the Planning Board pursuant to this Section upon written finding that:

- (1) The proposed regulated activity is consistent with the policy of this Chapter to preserve, protect, and conserve Controlled Areas and the benefits derived therefrom.
- (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 to eliminate or reduce the intrusion into any Controlled Area.

I. **Permit conditions.** Any permit issued pursuant to this Section may be issued with conditions to assure the preservation and protection of affected Controlled Areas and compliance with the policy and provisions of this Section.

J. **Penalties for offenses.** Any person convicted of having violated or disobeyed any provision of this Section, or any condition imposed by the approval authority in a permit granted pursuant to this Section, shall be guilty of a Violation Zoning Enhanced pursuant to Town Code § 137-1, "Schedule of fines."

K. Enforcement & Appeals.

- (1) This Section shall be enforced by the Zoning Administrator, the Town Attorney or Attorney to the Town and/or any other enforcement officer as may be designated by the Town Board.
- (2) The Town Board is specifically empowered to seek injunctive relief restraining any violation, threatened violation, or breach of any permit condition under the provisions of this Section, and/or to compel the restoration of the affected Controlled Area to its condition prior to the violation or breach of any permit condition or to a restored condition acceptable to the Town pursuant to a remediation plan. If the Town Board is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorney's fees.
- (3) Appeals. Any appeal from a Planning Board determination under this Section shall be made by an aggrieved party to the Supreme Court of the State of New York, Dutchess County, in the manner provided by Article 78 of the Civil Practice Law and Rules.

3. Chapter 250 is hereby amended by repealing and removing the following definitions from Section 105:

Controlled Area
Floodplain
Lake
Pond
Watercourse
Wetland

4. Chapter 250 is hereby amended by adding the following definitions to Section 105:

CONTROLLED AREA

A. For the purposes of § 250-78, the “Controlled Area” shall mean:

- (1) Any area including or within one hundred (100) feet of a Watercourse or Waterbody identified on the Town of Clinton Natural Resource Inventory – Town Jurisdictional Wetlands, as amended;
- (2) Any Wetland between five (5) acres and 12.4 acres and the area within one hundred (100) feet of the boundary of such Wetland identified on the Town of Clinton Natural Resource Inventory – Town Jurisdictional Wetlands, as amended;
- (3) Any Wetland between one-half (0.5) acre and five (5) acres and the area within fifty (50) feet of the boundary of such Wetland identified on the Town of Clinton Natural Resource Inventory – Town Jurisdictional Wetlands, as amended; and
- (4) Land within the one-hundred-year Floodplain identified on the Town of Clinton Natural Resource Inventory – Town Jurisdictional Wetlands.

B. Controlled Areas shall be as depicted on the map entitled “Town of Clinton Natural Resources Inventory – Town Jurisdictional Wetlands” or such revised updated and adjusted NRI map as may be approved by later resolution of the Town Board and on file in the office of the Clerk of the Town of Clinton.

FLOODPLAIN — A land area adjoining a river, stream, watercourse, pond, or lake that is susceptible to being inundated by water from any source, identified on the Town of Clinton Natural Resource Inventory 2024 – Map 12a – Town Jurisdictional Wetlands, dated November 5, 2024. The term "one-hundred-year floodplain" shall mean the highest elevation of water from flooding that, on the average, is likely to occur once every one hundred (100) years, or a one (1) percent chance of occurring each year.

LAKE — See “Waterbody.”

POND — See “Waterbody.”

WATERBODY — An inland body of water that, for the purposes of § 250-78, has a surface water area at the mean high water mark of one (1) acre or larger, identified on the Town of Clinton Natural Resource– Town Jurisdictional Wetlands, as amended.

WATERCOURSE — A perennial stream, creek, brook, or other path through which surface water travels on a regular basis, identified on the Town of Clinton Natural Resource Inventory – Town Jurisdictional Wetlands. Intermittent streams and drainage areas that contain water only during and immediately after a rainstorm shall not be considered Watercourses.

WETLAND — Areas identified as “Wetlands” in the Town of Clinton Natural Resource Inventory– Town Jurisdictional Wetlands, as amended.

5. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of this Local Law, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase of this Local Law, which shall remain in full force and effect.
6. This Local Law is adopted pursuant to the New York State Constitution and New York Municipal Home Rule Law § 10 to advance and protect the health, safety and welfare of the Town.
7. To the extent that any provision of this Local Law is inconsistent with Town Law §§ 263, 274-a, 274-b or any other provision of Article 16 of the Town Law, the provisions of this Local Law are expressly intended to and do hereby supersede any such inconsistent provisions under the Town’s municipal home rule powers, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3); § 10(1)(ii)(a)(14) and § 22 to supersede any inconsistent authority.
8. This Local Law shall take effect immediately upon filing with the Secretary of State.