

Appendix A - 2

Local Waterfront Revitalization Program Consistency Law

**Approved by the City of Peekskill Common Council
on January 26, 2004 as Local Law No. 2**

CITY OF PEEKSKILL

Local Law No. 2 Of 2004

**LOCAL WATERFRONT REVITALIZATION
PROGRAM (LWRP)**

CONSISTENCY LAW

Section 1 – Title

The Local Law will be known as the “City of Peekskill Local Waterfront Revitalization Program (LWRP) Consistency Law.”

Section 2 – Authority and Purpose

- A. This local law is adopted under the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).
- B. The purpose of this Local Law is to:
- a. Implement consistency review regulations and procedures for the City of Peekskill Local Waterfront Revitalization Program (LWRP).
 - b. Provide agencies of the City of Peekskill with a framework to consider the policies and purposes contained in the LWRP when reviewing private applications for actions or direct agency actions located within the LWRP boundaries which are:

“Beginning at a point where the City of Peekskill/Town of Cortlandt boundary intersects with the mean high water line of the Hudson River, generally northeasterly along the City/Town boundary to where the City/Town boundary intersects with a line along the southeast bank of Peekskill Hollow Brook along the line of the 100-year flood or 100 feet back from the bank, whichever is greater; then downstream on a similar line on the other side to Union Church/Annsville Road to its intersection with Highland Avenue; then southeasterly on Highland Avenue to the Bear Mountain Parkway to the western most exit on Highland Avenue to the intersection of Highland Avenue and

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Pemart Avenue; then west along Pemart Avenue to Nelson Avenue; then south on Nelson Avenue to Phoenix Avenue; then west on Phoenix Avenue to Decatur Street; then south on Decatur Street to Paulding Street; then west on Paulding Street (Belden Street) to St. Mary's Street; then south on St. Mary's Street to John Street; then east on John Street to Spring Street; then south on Spring Street to Main Street; then easterly on Main Street to Nelson Avenue; then southerly on Nelson Avenue to South Street; then westerly and southwesterly along South Street and the South Street exit of US Route 9 to US Route 9; then southerly on US Route 9 to the southern boundary of the City of Peekskill; then generally northwesterly along the City of Peekskill/Town of Cortlandt boundary to a point where the City/Town boundary intersects with the mean high water line of the Hudson River.

The waterside boundary begins at a point where the City of Peekskill/Town of Cortlandt boundary intersects with the mean high water line of the Hudson River then northwest to the centerline of the Hudson River; then northerly along the centerline of the River that coincides with the Westchester County/Rockland County boundary to a point where the northern boundary of the City of Peekskill intersects the centerline of the Hudson River; then northeast to a point where the City of Peekskill/Town of Cortlandt boundary intersects the mean high water line of the Hudson River.”

- a. Assure that proposed private and direct actions are consistent with the said policies and purposes of the LWRP.
- B. It is the intention of the City of Peekskill that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal area of the City of Peekskill take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance permitting the beneficial use of coastal resources while preventing loss of living coastal resources; diminution of open space area or public access to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

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- C. The substantive provisions of this local law shall apply while there is in existence a City of Peekskill Local Waterfront revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Section 3 – Applicability

All private applicants and all boards, commissions, agencies, departments, offices, other bodies or officers of the City of Peekskill must comply with this law to the extent applicable, prior to carrying out, approving, or finding any Type I or Unlisted Action as those terms are defined below. Type II, Excluded or Exempt Actions as defined in 6 NYCRR Section 617.2 are hereby deemed consistent with the LWRP and do not require any further deliberation.

Section 4 – Definitions

As used in this article, the following terms shall have these meanings, as indicated:

- A. “Actions” mean either Type I or Unlisted Actions as defined in SEQRA Regulations 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 of structure, that:
 - i. Are directly undertaken by an agency; of
 - 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; and
 - d. Any combinations of the above.

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- B. “Agency” means any department, board, commission, council, or other agency of the City of Peekskill which has jurisdiction by law to approve or directly undertake a given action.
- C. “Certification of Determination” means a notice prepared by the Department of Planning, Development and Code Assistance or other appropriate agency and filed with the Clerk of the City of Peekskill, which notice shall contain:
 - a. A statement specifying whether the proposed action is or is not consistent to the maximum extent practicable with the policies of the LWRP; and
 - b. A brief statement and precise description of the nature, extent and location of the action; and
 - c. A brief statement of the reasons supporting the determination.
- D. “City” means the City of Peekskill.
- E. “Common Council” means the Common Council of the City of Peekskill.
- F. “Coastal Assessment Form (CAF)” means the form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.
- G. “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.
- H. “Direct Actions” means actions planned and proposed for implementation by an agency, such as, but not limited to a capital project, rule making, procedures making and policy making.
- I. “EAF” means Environmental Assessment Form.
- J. “EIS” means Environmental Impact Statement.
- K. “Excluded Action” means an action which was undertaken, funded or approved prior to the effective dates set forth in SEQRA.
- L. “Exempt Action” means any one of the following:
 - a. Enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

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- b. A ministerial act which means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, such as the granting of a driver's license, although such law may require to a limited degree, a construction of its language or intent;
 - c. Maintenance or repair involving no substantial changes in an existing structure or facility; and
 - d. With respect to the requirements of Subdivision 2 of Section 8 -0109 of SEQRA, actions requiring a certificate of environmental compatibility and public need under Article VII or VIII of the Public Service Law and the consideration of, granting or denial of any such certificate.
- M. "Lead Agency" means an agency principally responsible for carrying out, funding, or approving an action and therefore responsible for determining whether an EIS is required in connection with the action and for causing the preparation and filing of the EIS if one is required.
- N. "Local Waterfront Area (LWA)" means "Coastal Area" means a portion of the New York State coastal waters and adjacent shore lands as defined Article 42 of the Executive Law which is located within boundaries of the City of Peekskill, as shown on the Coastal Area map on file in the Office of the Secretary of State and as delineated in the City of Peekskill Local Waterfront Revitalization Program.
- O. "Local Waterfront Revitalization Program (LWRP)" means the City of Peekskill Local Waterfront Revitalization Program, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file on the Office of the Clerk of the City of Peekskill.

Section 5 – Review of Actions

- A. Responsibility for determining the consistency of actions:
- a. Common Council: determines consistency with the LWRP of: 1. those actions which require Common Council approval, including special permits and zoning changes, and 2. any remaining local agency actions which are not the responsibility of the Planning Commission or the Zoning Board of Appeals as described below.
 - b. Planning Commission: determines consistency with the LWRP of those actions which require Planning Commission approval, including

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special permits, site plans and subdivision plans for proposed developments.

- c. Zoning Board of Appeals: determines consistency with the LWRP of those actions which require Zoning Board of Appeals approval, including use and area variances.
- d. Other local agencies: refer actions to be reviewed for LWRP consistency, along with Coastal Assessment Forms, to the Common Council.

B. Commencement of Review:

Each agency proposing to review or undertake a Type I or Unlisted Action in the Local Waterfront Area shall prepare or shall cause an applicant to prepare a Coastal Assessment Form (CAF). The agency shall refer within ten (10) days the CAF and other pertinent information for the action to the City of Peekskill Department of Planning, Development, and Code Assistance (DPDCA) for review and recommendations regarding the action's consistency with policies and purpose of the LWRP. The DPDCA shall complete its review of the proposed action's consistency and prepare a written recommendation to the referring agency within thirty (30) days of the referral date.

C. Determination of Consistency:

Prior to a City Agency's undertaking or approving a proposed Type I or Unlisted Action in the Local Waterfront Area the DPDCA shall either:

- A. Find and certify in writing that the action will not substantially hinder the achievement of any of the policies and purposes of the LWRP; or
- B. If the action will substantially hinder the achievements of any policies and purpose of the LWRP, such action shall not be undertaken unless the DPDCA shall instead find and certify that the following three requirements are satisfied:
 - a. No reasonable alternatives exist which would permit that action to be taken in a manner, which would not substantially hinder the achievement of such policy or purpose;
 - b. The action taken would minimize all adverse effects on the local policy and purpose to the maximum extent practicable; and
 - c. The action will result in an overriding public benefit.

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Such certification shall constitute a determination that the action is consistent to the maximum extent practicable with the LWRP.

- C. Such certification that a project is consistent to the maximum extent practicable with the policies and purposes of the LWRP shall be made only:
- a. Following a determination pursuant to Section 6 or 7 of Part 617 that the proposed action will not have any significant adverse environmental impacts; and, if referred to the Department of Planning, Development and Code Assistance for review and recommendation pursuant to Section of the local law, either upon receipt of such recommendation in writing or after the lapse of thirty (30) days for the recommendations, or
 - b. As part of the findings prepared by that City agency pursuant to Section of part 617, if the proposed action has been determined to have significant adverse environmental impacts and made subject to the environmental impact statement (EIS) procedures of Section 8 of Part 617, or
 - c. Where certification is made as part of findings prepared pursuant to NYCRR 617.9 (i.e., where Section 8C2. applies) it shall be filed with the SEQRA findings of that section. Otherwise it shall be filed with the City Clerk before the action is taken. Such files shall be made available for public inspection upon request.

Section 6 – Policy Standards and Conditions

Actions to be undertaken shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which is on file in the City Clerk's Office and available for inspection during normal business hours. In the case of direct actions, the responsible board shall also consult with Section III of the LWRP in making its consistency determination. The action shall be consistent with the policy to:

- A. Policy 1: restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses.
- B. Policy 1a: promote a physical, economic and cultural link between the Central Business District (CDB) [Business Improvement District (BID)] and the Hudson River, by

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- encouraging landscaping, facade improvements and the development of attractive pedestrian ways and publicly-oriented space.
- C. Policy 1b: promote the continued redevelopment of the Charles Point portion of the southern planning area with commercial and light industrial uses, and where feasible, with water dependent and water enhanced uses for parcels abutting the Hudson River.
 - D. Policy 1c: encourage redevelopment of the St. Mary's property and St. Joseph's property for residential and other related uses and support in-fill and conversion of existing buildings in residential neighborhoods.
 - E. Policy 2: facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.
 - F. Policy 2a: water-dependent uses and activities of a recreational or commercial nature will be encouraged on water abutting parcels, especially in the Charles Point Industrial Park and in the Central Planning Area in the vicinity of Riverfront Green, particularly on the following sites, Resource Recovery Plant at Charles Point, Pier at Riverfront Green, Peekskill Yacht Club, and the former Hudson Valley Yacht Club site.
 - G. 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 waterborne transportation of cargo and people.
 - H. 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.
 - I. Policy 5: encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas.

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- J. Policy 6: expedite permit procedures in order to facilitate the siting of development activities at suitable locations.
- K. Policy 7: significant coastal fish and wildlife habitats, as identified on the coastal area map, shall be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.
- L. Policy 7a: fish and wildlife habitats of local importance Are of value to the city and its natural resource Inventory and shall be protected, preserved and, where practical, restored so as to maintain their viability.
- M. Policy 8: protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which causes significant sub-lethal or lethal effect on those resources.
- N. Policy 9: expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources. Such efforts shall be made in a manner that ensures the protection of renewable fish and wildlife Resources and considers other activities dependent on them.
- O. Policy 10: further develop commercial finfish, shellfish, and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the state's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.
- P. Policy 11: buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.
- Q. Policy 12: activities or development in the coastal 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. Primary dunes will be protected from all encroachments that could impair their

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- natural protective capacity.
- R. 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.
- S. 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.
- T. Policy 15: mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.
- U. 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.
- V. Policy 17: whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such non structural measures shall include: (i) the set back of buildings and structures outside the flood hazard area; (ii) the planting of vegetation and the installation of sand fencing; (iii) the reshaping of bluffs; and (iv) tie flood-proofing of buildings or their elevation above the base flood level.
- W. Policy 18: to safeguard the vital economic, social and environmental interests of the state and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.

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- X. Policy 19: protect, maintain, and increase the level and Types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

- Y. Policy 19a: improve pedestrian and vehicular access to Riverfront Green, Peekskill Landing, the Peekskill Yacht Club area and waterborne and pedestrian access to the Annsville Creek area as appropriate. Also, improve Central Avenue as a link between the waterfront and the Central Business District.

- Z. Policy 19b: new structures shall not decrease public access to the water. New structures shall not infringe upon existing public access points leading to the water in a manner that will decrease public awareness of said access points.

- AA. Policy 19c: due to its topography, which provides sweeping and unique views of Peekskill Bay and the Hudson Highlands, public access across the St. Joseph's landform would be a desirable extension of the City's Greenway Trail System.

- BB. Policy 19d: efforts to increase public access will be carefully considered during site plan review and special use permit review for all properties in the coastal zone. These efforts shall include but not be limited to, the provision of trails and easements for future access connecting to existing and future components in the City's trail system.

- CC. 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 should be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

- DD. 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 coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of

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the coast can be provided by new or existing transportation services and to those areas where the use of the shore is severely restricted by existing development.

EE. Policy 22: development, when located adjacent to the shore, will provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development.

FF. Policy 23: protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the state, its communities, or the nation.

GG. Policy 24: prevent impairment of scenic resources of statewide Significance, as identified on the Coastal Area Map. Impairment shall include: (i) the irreversible modification of geologic forms, vegetation, or structures, whenever they are significant to the scenic quality of an identified resource; and (ii) the addition of structures that because of sitting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource, such as the Hudson highlands scenic area of statewide significance.

HH. 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 coastal area.

II. Policy 26: to conserve and protect agricultural lands in the state's coastal area, an action shall not result in a loss, nor impair the productivity, of important agricultural lands, as identified on the coastal area map, if that loss or impairment would adversely affect the viability of agriculture in an agricultural district or if there is no agricultural district, in the area surrounding such lands.

JJ. Policy 27: decisions on the sitting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

KK. Policy 27a: decisions on the sitting and construction of major regional water dependent energy facilities in the Peekskill Coastal Area must evaluate the potential cumulative impacts associated with pre-existing facilities such as Indian Point Nuclear

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Power Plant located in the Village of Buchanan, the bowline plant located in the Town of Haverstraw, and the Lovett Plant located in the Town of Stony Point.

- LL. Policy 28: ice management practices shall not damage significant fish and wildlife and their habitats, Increase shoreline erosion or flooding, or interfere with the production of hydroelectric power.**

- MM. Policy 29: encourage the development of energy resources on the outer continental shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.**

- NN. Policy 30: municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards.**

- OO. Policy 31: state coastal area policies and purposes of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.**

- PP. 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.**

- QQ. Policy 33: best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.**

- RR. Policy 34: discharge of waste materials into coastal waters from vessels will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.**

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SS. Policy 34a: pumpout facilities will be required in all new or expanded marina development in order to minimize or eliminate the discharge into the Hudson River, of sewage from the growing boat population at the Peekskill waterfront.

TT. Policy 35: dredging and dredge spoil disposal in coastal waters 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.

UU. 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 coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

VV. Policy 37: best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

WW. 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.

XX. Policy 39: the transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas 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 lands and scenic resources.

YY. Policy 40: effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to state water quality standards.

ZZ. Policy 41: land use or development in the coastal area will not cause national or state air quality Standards to be violated.

AAA. Policy 42: coastal management policies will be considered if the state

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reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.

BBB. Policy 43: land use or development in the coastal area must not cause the generation of significant amounts of the acid rain precursors: Nitrates and Sulfates.

CCC. Policy 44: preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

Section 7 – Coordinated Review

The Planning Commission shall coordinate the consistency determination process required by this local law with the environmental review process required by SEQRA and 6 NYCRR Part 617, to the extent possible.

Section 8 - Enforcement

The City of Peekskill Building Inspector shall be responsible for enforcing this law. No action in the Coastal Area, which is subject to review under this law shall be commenced or undertaken until the Building Inspector has been presented with a written Certificate of Consistency from the responsible board and/or commission. Such certificate must state that the action is consistent with the City's LWRP policy standards and conditions in accordance with Section – of this Law. In the event that an activity is not being performed in accordance with this law or any conditions imposed hereunder, the Building Inspector 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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Section 9 - Violations

A person who violates any of the provisions of, or who fails to comply with any conditions imposed by this law shall be guilty of 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 violation.

Section 10 – Laws to govern

Where there is a conflict or discrepancy in the application, interpretation or effect of the provisions of this local law with any other law, ordinance, rule, regulation, or policy of the City of Peekskill, the provisions of this law shall govern.

Section 11 - 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 provisions hereof other than the provision so found to be valid.

Section 12 – Effective Date

This local law shall take effect immediately upon approval of the City of Peekskill Local Waterfront Revitalization Program by the New York State Secretary of State.

