

Adopting and Amending Zoning by Local Law

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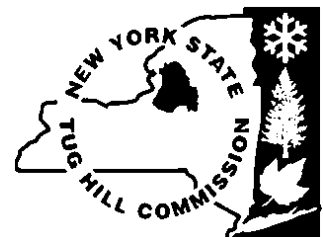
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This paper was prepared in cooperation with the late Russell L. Eggleston, Attorney at Law.

In this paper, the following abbreviations are used:

TL – Town Law

VL – Village Law

MHRL – Municipal Home Rule Law

GML – General Municipal Law

The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

Introduction

Towns in New York State may adopt zoning regulations by passing either an ordinance or a local law. Villages may act only by local law. There are a number of sound procedural reasons for preferring the local law method. This paper details the necessary steps for adopting zoning by local law.

Checklist - The procedures for adopting a zoning law must be followed exactly. If adopted incorrectly, the law may be found to be invalid and unenforceable. For this reason all steps of the adoption process must be clearly documented, using board minutes and affidavits where appropriate, and they must be on permanent file in the municipal clerk's office for public inspection. Attached at the end of this paper is a checklist for verifying that each step has been completed.

Municipal Attorney - This technical memo should only be used as a guide for the adoption and amendment process. The municipal attorney should be closely consulted throughout the process. The municipal attorney must certify that the law was properly adopted, and therefore should be personally aware of all actions taken in the adoption process. For these reasons it is important to involve the municipal attorney as soon as possible in any zoning adoption or amendment process.

Comprehensive Plan - The validity of a zoning law will hinge upon whether it was adopted in conformance with a comprehensive plan for the community. For this reason, it is important to have a well-established comprehensive plan in place before a zoning law is adopted.

Original Adoption Versus Amendment – The original adoption process starts with step 1. For amending or changing a law, follow the entire adoption process set out below, beginning with Step 3. A local law can only be amended with another local law. A town ordinance can be amended with another ordinance or a local law. Villages must act by local law.

Map Amendments - In the case of a map amendment, it may not be necessary to refer proposed changes or amendments to the county or regional planning body, as required in step 5. If referral is not required by these bodies, omit steps 5, 11, and 12. [GML §239-m]

Adoption Procedures

1. **Zoning Commission Appointed** – The municipal board must appoint a zoning commission. Although the municipal board has the power to zone its community, it is restricted from performing the duties of the zoning commission, and may not appoint any of its members to such commission. Where a planning board already exists, the municipal board may appoint the planning board as the zoning commission. The number of members is at the discretion of the municipal board. [TL §266, VL §7-710]
2. **Zoning Commission Report and Hearing** – The zoning commission must make a preliminary report, and hold at least one public hearing on such report before making its final report to the municipal board. Prior to the board's receipt of the zoning commission's final report, the board is prohibited from holding hearing or taking any action on the issues before the zoning commission. [TL §266, VL §7-710] The report of the zoning commission must be filed with the municipal clerk.

Amendment Procedures Begins Here

3. **Introduction of Proposed Law** – The proposed zoning law or zoning law amendment must be introduced by a board member at a municipal board meeting or as otherwise prescribed by the board’s rules of procedure. [MHRL §20 (4)]
4. **SEQR** – A determination must be made, following the State Environmental Quality Review Act (SEQR) requirements, as to whether there are any significant environmental impacts associated with the adoption of the zoning law or amendment. This requires that the lead agency complete an Environmental Assessment Form (EAF) to determine the environmental significance or non-significance of such action. A determination of significance will require the preparation of an Environmental Impact Statement (EIS). [6 NYCRR Part 617]
5. **Referral to County Planning Body** – The proposed zoning law or zoning law amendment must be referred to the county or regional planning agency for review and comment. If comments are received by the municipal board, it may then immediately act on such proposal, taking into consideration the planning agency’s comments. If no comments are made on the proposed zoning law or zoning law amendment within thirty days of the referral to the planning agency, the board has the right to proceed toward finalizing the law, although it must take comments into consideration if it receives them two days prior to final action. [GML §239-m]
6. **Notice of Public Hearing** – A resolution must be passed setting a date for a public hearing. The clerk must publish this notice in a local newspaper of general circulation. The notice must be published at least ten days prior to the public hearing. The notice must include the time, date and place of the hearing and the nature of the subject to be discussed. The notice must clearly inform the public of the action to be taken by the board. [TL §264 (1), VL §7-706 (1)]
7. **Notice to Others** – At least ten days prior to the date of the public hearing, the municipal board must provide written notice to neighboring governments and certain agencies. Notice may be served personally or by mail. [TL §264 (2), VL §7-706 (2)] The notice must be provided to all applicable people on the following list:
 - Notification must be given to the clerk of each city, town, village, and county that the municipality (or rezoned area or district) lies within, borders on, or comes within 500 feet of. In the case of the county, notification is given not to the county clerk but to the clerk of the county legislative body (board of supervisors or county legislature).
 - Notification must be given to the State Park Commission governing any state park within, bordering on, or within 500 feet of the municipality, or the rezoned area or zoning district as applicable.
 - If a protective regulation has been adopted with regard to a housing project authorized under the state’s Public Housing Law that lies within, borders on, or is within 500 feet of the municipality, rezoned area, or zoning district in question, notification must be given to both the Executive Director of the appropriate housing authority and to any municipality providing financial aid or assistance to that authority.

8. **Public Hearing** – A public hearing must be held.
9. **Changes Following Hearing** – If the municipal board determines that the proposal must be substantially changed following the public hearing, it may either make those changes itself or refer the proposal to the planning board or zoning commission for the appropriate changes. Where changes have been made, the adoption steps 3 through 8 outlined above must be repeated. This process will continue until the proposal is no longer substantially changed.
10. **Voting on the Proposed Law** – The municipal board may vote on the proposed law at a meeting immediately following the public hearing or at a subsequent board meeting, but in either case only after all time and notice requirements have been satisfied:
 - a. All notice requirements set forth above have been met.
 - b. If the law was “upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage” or
 - c. If the law was “mailed to each of them [members of the municipal board] in postpaid properly addressed and securely closed envelopes...at least ten calendar days, exclusive of Sunday, prior to its final passage...” [MHRL §20 (4)]
11. **Passage Contrary to County Recommendation** – If the proposed law is contrary to the recommendations of the county or regional planning body (referred to in step 5), a majority of the board plus one is needed for passage. [GML §239-m (5)]
12. **Report on Final Actions For All Matters Referred to the County or Regional Planning Agencies** – Within thirty days after final action the referring body shall file a report of the final action it has taken with the county, metropolitan or regional planning agency. A referring body that acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report. [GML §239-m (6)]
13. **Filing With Secretary of State** – Following adoption, the municipal clerk must see to it that the law, including the map, is filed with the Secretary of State in Albany within five days. The law must be filed on the appropriate forms provided by the Department of State. [MHRL §27]
 - a. **Form Completion** – The municipal clerk must complete the local law forms in line with the Department of State instructions (Rules for Filing Local Laws). Failure to do so properly may result in its return for changes.
 1. Extra pages in addition to the form must be the same size as the forms and must be printed only on one side as noted on the forms. The map need not be to any particular specifications.
 2. Number the law where indicated by starting with number one for the first law each calendar year.
 3. If amending a previously adopted local law, do not include parts of the local law to be omitted.
 4. When the form is complete, the municipal attorney must certify it on the final page.
 - b. **Mailing** – Mail one original certified copy to: Secretary of State, Records and Law Bureau, Department of State, Albany, NY 12231
 - c. **Verification** – A post card will be received from the Secretary of State verifying that the laws were filed. This post card must be filed in the municipal clerk’s office as proof of filing.

14. **Entering Into Minutes** – At least one certified copy of the adopted law must be entered in the minutes of the municipal board and shall be filed with the clerk or other officer designated by the adopting municipality. The zoning map does NOT need to be included in the minutes; however, the minutes must make reference to any such map and describe it. [TL §264 (1), VL §7-706 (5)] In addition, the town clerk must maintain a separate file or filing cabinet for each and every such map and it must be kept available for public inspection. [TL §264 (1)]
15. **Publication and Posting Requirements**
 - Towns: The law or a summary or abstract must be published “in a newspaper published in the town, if any,” or in a county newspaper having circulation in the town. [TL §264 (1)]
 - Villages: The law, or a summary or abstract must be published in the official newspaper of the village and must be posted “conspicuously at or near the main entrance to the office of the village clerk...” [VL §7-706 (5)]
16. **Effective Date** – The law in a town will take effect on the twentieth day after adoption OR the date prescribed in the local law, provided that ten days have elapsed since publication, and the law has also been filed with the Secretary of State. [MHRL §27 (4), TL §264 (1)] The law in a village takes effect upon filing with the Secretary of State. [VL §7-706 (7)] It should be noted that the effective date of the law against an individual personally served with a copy, certified by the town (under the corporate seal of the town) or village clerk; and a showing of the date of the law’s passage and entry in the minutes, is the date of service. [TL §264 (1), VL §7-706 (7)]

Additional Information

1. **Stricter Provisions Apply** – This procedure is a summary of the adoption requirements of MHRL §20, TL §264 and VL §7-708. Where there is conflict in the statutes, the stricter provision has been recommended. MHRL §20 (5) requires only three or five days notice for a public hearing, depending on certain conditions. TL §264 (1) and VL §7-706 (2) require at least ten days notice for a public hearing. Thus, at least ten days notice should be given, because it is the stricter requirement.
2. **Publishing Summary** – The Attorney General (in Opinion 86-48) has ruled that filing with the Secretary of State as required by MHRL §20 satisfies the publication requirements spelled out in TL §264. Nonetheless, to inform the public, it is recommended that at least a summary statement of any zoning law or amendment be published. This statement should include the title of the law, announce its adoption, its availability at the town clerk’s office for viewing, and provide a short abstract of the law.
3. **Need to Maintain Complete Records** – It is the duty of the municipal clerk to maintain a record of all actions taken, e.g., the giving of notice and publication, in adopting or amending zoning. It is recommended that the clerk incorporate into the official record the checklist that follows with dates for each step filled in, and with copies of all required correspondence, affidavits of publication, etc., attached permanently to it, in chronological order.

ZONING ADOPTION CHECKLIST

Note: This checklist is intended as an aid in the adoption process. It is not intended to correlate numerically with the attached Technical Paper “Adopting and Amending Zoning by Local Law.”

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| 1. | Resolution to create Zoning Commission. | _____ |
| 2. | Motion to hold Zoning Commission hearings. | _____ |
| 3. | Notice of Zoning Commission hearings published | _____ |
| 4. | Affidavit of publication filed. | _____ |
| 5. | First Zoning Commission hearing held | _____ |
| 6. | Subsequent Zoning Commission hearings held if deemed necessary. | _____ |
| 7. | Resolution to transmit report to municipal board | _____ |
| 8. | Proposal filed in municipal clerk’s office. | _____ |
| 9. | Proposal introduced at a regular municipal board meeting. | _____ |
| 10. | Resolution to determine type of action and lead agency (SEQR). | _____ |
| 11. | Determination of significance (SEQR). | _____ |
| 12. | Motion to hold municipal board hearing. | _____ |
| 13. | Notice to county or regional planning body for review | _____ |
| 14. | Notice to adjacent municipalities, etc. | _____ |
| 15. | Notice of hearing published. | _____ |
| 16. | Affidavit of publication filed. | _____ |
| 17. | Municipal board hearing. | _____ |
| 18. | Response received from county or regional planning body. | _____ |
| 19. | Final form of proposal in the hands of municipal board members | _____ |
| 20. | Adoption of the law. | _____ |
| 21. | Entry of the law and maps in the minutes, ordinance books and or file cabinet accordingly. | _____ |
| 22. | Resolution addressing the recommendations of the county or regional planning body. | _____ |
| 23. | Filing the final report with the county or regional planning body. | _____ |
| 24. | Filing a copy of the law with the Secretary of State. | _____ |
| 25. | Verification cards received and filed. | _____ |
| 26. | Law and/or summary published. | _____ |
| 27. | Affidavit of publication filed. | _____ |
| 28. | Law posted (villages only). | _____ |