

**INCORPORATED VILLAGE OF OLD WESTBURY
BOARD OF TRUSTEES**

LOCAL LAW NO. 6 OF 2019

**CREATING CHAPTER 112, “FLOOD DAMAGE
PREVENTION” OF THE CODE OF THE VILLAGE OF
OLD WESTBURY**

WHEREAS, the Village Administrator of the Village, Brain Ridgway, has recommended to the Board of Trustees the enactment of a local law creating Chapter 112, “Flood Damage Prevention,” relating to the requirements of the National Flood Insurance Program; and

WHEREAS, this Local Law was introduced by the Board of Trustees on April 15, 2019; and

WHEREAS, the Board finds that this Local Law is a Type II Action pursuant to the New York State Environmental Quality Review Act (SEQRA); and

WHEREAS, this Local Law was the subject of a duly noticed public hearing in accordance with New York State Village Law and the Village Code before the Board on May 20, 2019.

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Old Westbury as follows:

Section 1. Chapter 112, “Flood Damage Prevention” of the Village Code of the Village of Old Westbury be and is hereby created to read as follows:

Article I Statutory Authorization and Purpose

§ 112-1 FINDINGS

The Board of Trustees of the Village of Old Westbury finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Old Westbury and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

§ 112-2 STATEMENT OF PURPOSE

It is the purpose of this local law to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify for and maintain participation in the National Flood Insurance Program.

§ 112-3 OBJECTIVES

The objectives of this local law are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Article II Definitions

§ 112-4 DEFINITIONS.

Unless specifically defined below, words or phrases used in this document shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this document its most reasonable application.

“Appeal” means a request for a review of the Local Administrator's interpretation of any provision of this Local Law or a request for a variance.

“Basement” means that portion of a building having its floor subgrade (below ground level) on all sides.

“Building” see "Structure"

"Cellar" has the same meaning as "Basement".

“Crawl Space” means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

“Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Federal Emergency Management Agency” means the Federal agency that administers the National Flood Insurance Program.

“Flood” or **“Flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters;
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

“Flood plain” or **“flood prone area”** means any land area susceptible to being inundated by water from any source (see definition of "Flood").

“Floodproofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

“Historic structure” means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of

the Interior as meeting the requirements for individual listing on the National Register;

- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) by an approved state program as determined by the Secretary of the Interior or
 - (ii) directly by the Secretary of the Interior in states without approved programs.

“Local Administrator” is the person appointed by the community to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an engineering department.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle"

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Person” includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

“Start of construction” includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers, and building materials. For manufactured homes the "actual start" means affixing of the manufactured home to its permanent site.

“Structure” means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

“Variance” means a grant of relief by a community from the terms of a flood plain management regulation.

“Violation” means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations.

Article III Administration

§ 112-5 Permitting Official

The Superintendent of Buildings for the Village of Old Westbury hereinafter referred to as the Local Administrator is responsible for receiving applications, examining the plans and specifications and issuing permits for the proposed construction or development.

§ 112-6 Permit Requirements

- (1) No person shall erect, construct, enlarge, alter, repair, improve, move, or demolish any building or structure without first obtaining a separate permit for each building or structure from the Local Administrator.
- (2) No man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, shall be commenced until a separate permit has been obtained from the Local Administrator for each change.
- (3) No manufactured home shall be placed on improved or unimproved real estate without first obtaining a separate permit for each mobile home from the Local Administrator.

§ 112-7 Application

To obtain a permit, the applicant shall first file a permit application on a form furnished for that purpose. The form must be completed and submitted to the Local Administrator before the issuance of a permit will be considered.

§ 112-8 Permitting Procedures

- (1) After reviewing the application, the Local Administrator shall require any additional measures which are necessary to meet the minimum requirements of this document.
- (2) The Local Administrator shall review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 V.S.C. 1334.
- (3) The Local Administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall: 1) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, (2) be constructed with materials and utility equipment resistant to flood damage and (3) be constructed by methods and practices that minimize flood damage;
- (4) The Local Administrator shall review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;
- (5) The Local Administrator shall require within flood prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and
- (6) The Permitting Official shall require within flood prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

Article IV Variance Procedure

§ 112-9 Appeals Board

- (1) The Board of Zoning Appeals as established by the Village of Old Westbury shall hear and decide appeals and requests for variances from the requirements of this local law.

- (2) The Board of Zoning Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Board of Zoning Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger to life and property due to flooding or erosion damage;
 - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Section 4.1(4) and the purposes of this local law, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.

- (6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

§ 112-10 Conditions for Variances

- (1) Variances shall be based upon a hardship that runs with the land and shall not be issued for economic or other personal hardships.
- (2) Variances shall be issued upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in significant hardship, and (c) a determination that the variance will not result in increased flood risks, create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances.
- (3) Variances to this Local Law shall be consistent with requirements for variances to other Local and State law, code or regulation.

§ 112-11 Severability

In the event that any section, paragraph, sentence, clause or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, the invalid or unconstitutional portions of the chapter shall be deemed severable from the chapter and shall in no way affect the validity of the rest of the chapter.

Section 2. Severability. If a court determines that any clause, sentence, paragraph subdivision, or part of this local law or the application thereof to any person, firm or corporation or circumstance is invalid or unconstitutional, the Court's order or judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 3. Effective Date. This Local Law shall take effect immediately upon filing with the Secretary of State.

On motion made by Trustee Novick, seconded by Trustee Baker, the foregoing Local Law was enacted upon the following vote:

Fred J. Carillo, Mayor	-	Aye
Marina Chimerine, Deputy Mayor	-	Aye
Cory Baker, Trustee	-	Aye
Leslie Fastenberg, Trustee	-	Aye
Edward Novick, Trustee	-	Aye

Dated: Old Westbury, New York
May 20, 2019

Filed: Old Westbury, New York
May 21, 2019