

CITY OF LOCKPORT
CORPORATION PROCEEDINGS

Lockport Municipal Building

Regular Meeting
Official Record

March 2, 2011
6:00 P.M.

Mayor Michael W. Tucker called the meeting to order.

ROLL CALL

The following Common Council members answered the roll call:

Aldermen Kibler, Pasceri, Smith, McKenzie, Chapman, and Genewick.

RECESS

Recess for public input.

030211.1

APPROVAL OF MINUTES

On motion of Alderman Pasceri, seconded by Alderman Kibler, the minutes of the Regular Meeting of February 16, 2011 are hereby approved as printed in the Journal of Proceedings. Ayes 6. Carried.

PUBLIC HEARING
WATERFRONT CONSISTENCY REVIEW LAW

The Mayor announced a public hearing on a proposed local law #2011-2 regarding Waterfront Consistency Review Law.

The Mayor asked the City Clerk if any petitions or communications relative to said local law have been received.

Recess for public input.

The Mayor closed the public hearing.

FROM THE MAYOR

Appointments:

2/18/11 John Lombardi III, 329 Chestnut Street, Lockport, NY – appointed as a member of the Zoning Board of Appeals. Said term expires November 15, 2013. Received and filed.

2/24/11 Michael J. Worthington, 129 Saxton Street, Lockport, NY – appointed as a member of the Planning and Zoning Board. Said term expires October 14, 2013. Received and filed.

Resignation:

2/18/11 Julie Muscato, 567 Locust Street, Lockport, NY – resigned as a member of the Planning and Zoning Board. Received and filed.

2/24/11 Michael J. Worthington, 129 Saxton Street, Lockport, NY – resigned as a member of the Zoning Board of Appeals. Received and filed.

FROM THE CITY CLERK

The Clerk submitted payrolls, bills for services and expenses, and reported that the Department Heads submitted reports of labor performed in their departments. Referred to the Finance Committee.

Communications (which have been referred to the appropriate City officials)

2/17/11 Niagara County Department of Health, 5467 Upper Mountain Road, Lockport, NY - notification of changes in Children's Day Camp Program qualifications. Referred to the Director of Youth and Recreation.

2/22/11 Niagara County Center for Economic Development, 6311 Inducon Corporate Drive, Sanborn, NY – notification of the New York State Smart Growth Public Infrastructure Policy Act. Referred to the Committee of the Whole.

2/25/11 Christy Missico, National Multiple Sclerosis Society, 4245 Union Road, Buffalo, NY – request permission to conduct the annual Lockport MS Walk on Sunday, May 1, 2011. Referred to the Committee of the Whole.

Notice of Defect:

3/2/11 Various locations on Beattie Avenue & High Street, Lockport, NY – potholes

MOTIONS & RESOLUTIONS

030211.2

By Alderman Kibler:

Resolved, that the Mayor and City Clerk be authorized to issue orders in favor of the claimants for payrolls, bills, and services to be paid on March 4, 2011.

Seconded by Alderman Pasceri and adopted. Ayes 6.

030211.3

By Alderman Kibler:

Resolved, that claims authorized for payment by the Department of Community Development, and subsequently paid from the Community Development Escrow Account, be and the same are hereby approved.

Seconded by Alderman McKenzie and adopted. Ayes 6.

030211.4

By Alderman Pasceri:

Resolved, that the Mayor and Common Council do hereby extend congratulations and appreciation to the following City employees for their years of dedicated service to the City of Lockport:

<u>Employee</u>	<u>Years of Service</u>	<u>Title</u>
Michael B. Seeloff	30	Assistant Fire Chief
Luca C.P. Quagliano	10	Firefighter
Melissa I. Junke	5	Exec. Director of Youth & Recreation

Seconded by Alderman Genewick and adopted. Ayes 6.

030211.5

By Alderman Pasceri:

Resolved, that pursuant to their request, Resurrection Racing is hereby granted permission to use the rest room facilities and pavilion at Nelson C. Goehle Wide Waters Marina for overnight use on Saturday, August 20, and Sunday, August 21, 2011, for a resting shelter for the Beast of Burden race. Said permission is subject to Resurrection Racing filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured, and be it further

Resolved, that The Highways and Parks Department is hereby authorized and directed to deliver traffic cones and barricades to close off the parking lot.

Seconded by Alderman Kibler and adopted. Ayes 6.

030211.6

By Alderman McKenzie:

Resolved, that Taren Lagamba be and the same is hereby authorized to submit an application on behalf of the City of Lockport to the 2011 William G. Mayne, Jr. Business/Community Enhancement Program for a grant to be used for John Henry Park.

Seconded by Alderman Genewick and adopted. Ayes 6.

030211.7

By Alderman Smith:

Resolved, that pursuant to the request of Every Nook & Cranny, of 151 East Avenue, Lockport, NY, permission is hereby granted to erect a sandwich board sign in the City's right-of-way in front of 151 East Avenue subject to the following provisions:

that upon motion of the Common Council, duly adopted by a majority vote only, and thirty days notice from the City Clerk, the sign must be removed,

filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured, leaving the City free and clear of all liability in connection therewith,

permit must be renewed annually.

payment of the revocable permit fee of \$100.00 renewable annually.

Seconded by Alderman Pasceri and adopted. Ayes 6.

By Alderman Kibler:

Resolved, that the reading of the foregoing resolution be and the same is hereby waived.

Seconded by Alderman McKenzie and adopted. Ayes 6.

030211.8

By Alderman Pasceri:

City of Lockport

Local Law No. 2 of the year 2011

A local law titled "City of Lockport Waterfront Consistency Review Law"

Be it enacted by the Common Council of the City of Lockport as follows:

GENERAL PROVISIONS

I. Title.

This Local Law will be known as the City of Lockport Waterfront Consistency Review Law.

II. Authority and Purpose.

A. 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 Executive Law).

- B. The purpose of this local law is to provide a framework for the agencies of the City of Lockport (City) to incorporate the policies and purposes contained in the City of Lockport Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or when undertaking direct agency actions within the waterfront area; and to assure that such actions and direct actions by City agencies are consistent with the LWRP policies and purposes.
- C. It is the intention of the City of Lockport that the preservation, enhancement and utilization of the unique waterfront area of the City take place in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate limited population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing loss and degradation of living waterfront resources and wildlife; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic, cultural or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.
- D. This local law shall remain in effect for the duration of the City of Lockport Local Waterfront Revitalization Program provided the LWRP has been adopted in accordance with Article 42 of the Executive Law of the State of New York and approved by the Secretary of State (Secretary).

III. Definitions.

- A. "Actions" include all the following, except minor actions:
 - (1) projects or physical activities, such as construction or any other activities that may affect natural, manmade or other resources in the waterfront area 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 policymaking activities that may affect the environment and commit the agency to 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 waterfront resources or the environment; and
 - (4) any combination of the above.

- B. “Agency” means any board, agency, department, office, other body, or officer of the City of Lockport.
- C. “Waterfront area” means the Waterfront Revitalization Area delineated in the City’s Local Waterfront Revitalization Program.
- D. “Waterfront Assessment Form (WAF)” means the form used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.
- E. “Code Enforcement Officer” means the Building Inspector and/or Code Enforcement Officer of the City of Lockport.
- 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 applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making. [See definition of “Action” above.]
- H. “Environment” means all the conditions, circumstances and influences surrounding and affecting the development of living organisms or other ecological resources in the waterfront area.
- I. “Local Waterfront Revitalization Program” or “LWRP” means the Local Waterfront Revitalization Program adopted by the City of Lockport and approved by the Secretary of State pursuant to the Waterfront Revitalization of Costal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the City of Lockport.
- J. “Appropriate Municipal Agency” means an officer of the City of Lockport, the City Council, Planning Board or Zoning Board of Appeals reviewing the Action.
- K. “Minor actions” include the following actions, which are not subject to review under this chapter:
 - (1) maintenance or repair involving no substantial changes in 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 the Waterfront Erosion Hazard Area (CEHA) law where structures may not be replaced, rehabilitated or reconstructed without a permit;
 - (3) repaving or widening 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, or within locally significant habitat areas;
- (6) granting of individual setback and lot line variances, except in relation to a regulated natural feature or a bulkhead or other shoreline defense structure;
- (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 action;
- (11) official acts of a ministerial nature involving no exercise of discretion, including a building permit where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code.
- (12) routine or continuing agency administration and management, not including new programs or major recording 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, storage of road de-icing substances, or other hazardous materials;

- (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 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;
- (25) local legislative decision such as rezoning where the City Council determines the action will not be considered for approval.

IV. Management and Coordination of the LWRP.

- A. The City of Lockport Planning Board shall be responsible for coordinating review of actions in the City's costal area for consistency with the LWRP, and will advise, assist and make consistency recommendations to other City agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.
- B. The Planning Board shall coordinate with the New York State Department of State regarding consistency review actions Federal agencies and with State agencies regarding consistency review of their actions.
- C. The Planning Board shall assist the City Council in making applications for funding from State, Federal, or other sources to finance projects under the LWRP.

- D. The Planning Board shall perform other functions regarding the costal area and direct such actions or projects as the City Council may deem appropriate, to implement the LWRP.

V. Review of Actions.

- A. Prior to approving, funding, or undertaking a proposed action located within the City's waterfront area, each City agency shall determine whether the action is consistent or not consistent with the LWRP policy standards summarized in Section F. No action in the waterfront area shall be approved, funded, or undertaken by the designated agency without a determination regarding consistency.
- B. Whenever a City agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the costal area, the agency shall refer a copy of the completed WAF to the Planning Board within ten (10) days of its receipt and prior to making its determination, shall consider the recommendation of the Planning Board with reference to the consistency of the proposed action.
- C. After referral from an agency, the Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Section G herein. The Planning Board shall require the applicant to submit all completed applications, WAFs, EAFs, and any other information deemed necessary to its consistency recommendation.

The Planning Board shall render its written recommendation to the agency within thirty (30) days following referral of the WAF from the agency, unless extended by mutual agreement of the Planning Board and the applicant or in the case of a direct action, the agency. The Planning Board's recommendation shall indicate whether the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and shall elaborate in writing the basis for its opinion. The Planning Board shall, along with a consistency recommendation, make any suggestions to the agency concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards or to greater advance them.

In the event that the Planning Board's recommendation is not forthcoming within the specified time, the agency shall make its consistency decision without the benefit of the Planning Board's recommendation.

- D. If an action requires approval of more than one City agency, decision making will be coordinated between the 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 City Council shall designate the consistency review agency.
- E. Upon receipt of the Planning Board's recommendation, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Section G herein. The agency shall consider the consistency

recommendation of the Planning Board, the WAF and other relevant information in making its written determination of consistency. No approval or decision shall be rendered for an action in the costal area without a written determination of consistency having first been rendered by a City agency.

The Zoning Board of Appeals is the designated agency for the determination of consistency for variance applications. If the action is determined to be inconsistent with one or more LWRP policy standards, the Zoning Board of Appeals at the time it makes a decision to grant the variance it shall impose appropriate conditions on the variance to make the activity consistent with the policy standards.

- F. Where an EIS is required for an action in the City's waterfront area, the draft EIS must identify applicable LWRP policy standards in Section G and include a discussion of the effects of the proposed action on such policy standards.
- G. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following summary of LWRP policy standards, which are derived from and further explained and described in the City of Lockport LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions must also consult with Section V, in making their consistency determination. The action must be consistent with the policies to:
 - 1. Foster a pattern of development in the waterfront area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development;
 - 2. Preserve historic resources in the waterfront area;
 - 3. Enhance visual quality and protect outstanding scenic resources;
 - 4. Minimize loss of life, structures, and natural resources from flooding and erosion;
 - 5. Protect and improve water resources;
 - 6. Protect and restore ecological resources, including locally significant fish and wildlife habitats, wetlands and rare ecological communities;
 - 7. Protect and improve air quality in the waterfront area;
 - 8. Minimize environmental degradation in the local waterfront area from solid waste and hazardous substances;
 - 9. Provide for public access to, and recreational use of, canal waters, public lands, and public resources of the waterfront area;

10. Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations, and support harbor operations;
 11. Promote the sustainable use of living marine resources;
 12. Promote appropriate use and development of energy and mineral resources.
- H. Each agency shall maintain a file for each action made the subject of a consistency determination. Such files shall be made available for public inspection upon request.

VI. Enforcement.

No action within the City's waterfront area which is subject to review under this Chapter shall proceed until a written determination has been issued from the designated City agency that the action is consistent with the City's LWRP policy standards. In the event that an activity is being performed in violation of this law or any conditions imposed thereunder, the City Code Enforcement Officer or any other authorized official of the City 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. The City Attorney, Code Enforcement Officer and Police Department shall be responsible for enforcing this Chapter.

VII. Violations.

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter shall have committed a violation, punishable by a fine not exceeding two hundred and fifty dollars (\$250.00) for a conviction of a first offense and punishable by a fine of five hundred dollars (\$500.00) 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.
- B. The City Attorney 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.

VIII. 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 or provision hereof other than the provision so found to be invalid.

IX. 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.

Seconded by Alderman McKenzie. A roll call vote was taken which resulted as follows:

Alderman Chapman	VOTING	Y
Alderman Genewick	VOTING	Y
Alderman Kibler	VOTING	Y
Alderman McKenzie	VOTING	Y
Alderman Pasceri	VOTING	Y
Alderman Smith	VOTING	Y

The local law was thereupon declared duly adopted.

030211.9

By Alderman Kibler:

Resolved, that pursuant to the request of the Director of Engineering, the City Treasurer be and the same is hereby authorized and directed to transfer funds for the purchase of rock salt in the amount of \$22,000 from account #01-1900-1990 to account #01-5142-415.

Seconded by Alderman Pasceri and adopted. Ayes 5. Nay 1 – Ald. Smith.

030211.9A

By Alderman Pasceri:

Whereas, the City as part of the consolidation and reorganization process established the position of Director of Planning and Development, and

Whereas, a committee of six (6) individuals conducted preliminary interviews by telephone of ten (10) finalist and personally interviewed at City Hall five (5) candidates for said position, and

Whereas, candidate R. Charles Bell was selected as the most qualified individual for the position, and

Whereas, Section 45 (1) of the Charter of the City of Lockport states that emergency situations arise which require employees of the City of Lockport to be near their place of employment, to assume the continuation of public services to protect the health, safety, and general welfare of the people and that those who are residents of the City of Lockport take a greater interest in promoting the public safety and health in the future of this community than do nonresidents who reside in areas unaffected by City of Lockport services. Therefore, employees hired must be residents of the City of Lockport, and

Whereas, Section 45 (4) states that the requirement of residency within the corporate limits of the City does not apply to temporary employees, temporary advisors and consultants, persons having an independent contractor status and current employees of the City of Lockport, who reside outside the corporate limits of the City. Also exempt from residency requirements are members of the Fire Department and Police Department, so long as the Police Department has 200 or more full-time members as set forth in further detail in Section 30(4) of the Police Officers Law, and

Whereas, Section 45 (8) allows the waivers in the event that the City of Lockport determines that it is in the best interest of the City of Lockport to do so in those instances where the City of Lockport has difficulty hiring or promoting the most qualified person because of its residency requirements and that residency is not in the best interest of the municipality. Now therefore be it

Resolved, that the Mayor and Common Council have considered all of the aspects of the aforesaid residency requirement and for the reason set forth below hereby determine that Employee shall be exempt from said residency requirements:

- (1) Employee resides within 13 miles of City Hall and the position does not involve emergency situations that would require employment to be close by;
- (2) That the Employee's contract is for a limited term of five (5) years and he is not a member of any collective bargaining unit with benefits and rights of continued employment beyond said five (5) years;
- (3) The employee is the most qualified person for the position, and
- (4) The requirement of residency in this particular circumstance is not in the best interest of the City.

Seconded by Alderman McKenzie and adopted. Ayes 4. Nays 2 – Aids. Smith & Chapman.

030211.10

ADJOURNMENT

At 6:20 P.M. Alderman Pasceri moved the Common Council be adjourned until 6:00 P.M., Wednesday, March 16, 2011.

Seconded by Alderman Genewick and adopted. Ayes 6.

RICHARD P. MULLANEY
City Clerk