

TOWN OF NEW LISBON
A LOCAL LAW CODIFYING THE TOWN SETBACK LAW

Be it enacted by the Town Board of the Town of New Lisbon as follows:

Section 1 – Legislative Authority.

This local law is enacted pursuant to Section 10 of the New York State Municipal Home Rule Law and in accordance with the Town's Comprehensive Plan adopted pursuant to New York State Town Law Section 272-a. {TWN 16, MHR 10, 20}

Section 2 – Purpose.

Structures near the edges of public highways and adjoining property lines pose a hazard to the health, safety and general welfare of town residents as well as passersby such as by creating highway safety hazards, making highway and right of way maintenance more difficult, reducing open spaces, and adversely affecting the enjoyment and value of properties within the town.

It is the purpose of this local law to provide for the health, safety, and general welfare of persons and property in the Town of New Lisbon, by codifying in this local law the town's setback requirements.

Section 3 - Title.

This local law shall be known as "A Local Law Codifying the Town's Setback Requirements."

Section 4 – Definitions.

(1) "**Structure**" means something that is constructed, on or off site, and is placed, permanently or movably, on property within the town. For the avoidance of doubt, Structures include, without limitation, Buildings, vehicles including cars, trucks, recreational vehicles and campers, carports, fences, posts, columns and flat or curved arches.

(2) "**Building**" means a structure having three or more walls, roofed or unroofed, regardless of whether or not the structure is fixed or movable, including without limitation barns, garages, houses, sheds, and storage units including without limitation shipping containers.

(3) "**Non-conforming Structure**" means any Structure that does not conform to the setback requirements of this Local Law and that is in place prior to the effective date of this local law. A Structure shall be considered to be in place prior to the effective date of this local law if the erection, installation or placement of the Structure has substantially commenced prior to the effective date of this local law and is fully constructed and completed within one year from the effective date of this local law.

(4) “**Land Use Enforcement Officer**” and “**LEO**” each mean the person appointed by the Town Board to enforce Town of New Lisbon local laws and ordinances pertaining to land use. At its discretion, the Town Board may appoint additional LEO(s) for the limited purpose of implementing and enforcing this local law.

(5) “**Landowner**” means the person or persons identified in the current Otsego County Office of Real Property Tax Services assessment rolls as the owner(s) of a parcel within the Town, irrespective of whether the person resides on the parcel.

(6) “**Lessee**” means a person or persons who has a documented leasehold interest in a parcel within the Town, irrespective of whether or not the person resides on the parcel, under the explicit or implicit terms of which the Landowner has no right to enter upon the parcel for the purpose of remedying a violation of this Local Law on such parcel.

Section 5 - Setback Requirements.

1. No Structure shall be placed alongside a town public highway within the town’s right of way for a period of longer than thirty days.
2. No Building greater than ten square feet (10 sq. ft.) shall be erected, installed or placed within seventy-five feet (75’) of a road centerline of any public highway in the town or within twenty five feet (25’) from any lot line for a period of longer than thirty days. For the avoidance of doubt, such Buildings are subject to section 5.1 of this local law.
3. Notwithstanding the setback requirements of this local law, Nonconforming Structures may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that such action does not increase the degree of or create any new nonconformity with respect to the setback requirements of this Local Law.

Section 6 - Waivers.

Where the Town, on petition of a Landowner or Lessee, finds that extraordinary and unnecessary hardships may result from strict compliance with this local law, it may vary the application of this local law so that substantial justice may be done and the public interest secured, provided that such waivers will not have the effect of nullifying the intent and purpose of the town’s comprehensive plan or of this or other local land use laws. In granting waivers, the Town shall require such conditions as will, in its judgment, balance the intent and purpose of this local law against relief from the extraordinary and unnecessary hardships.

Section 7 - Complaints.

Any person may file a complaint with the Town Clerk or directly with the Land Use Enforcement Officer that a violation of Section 5 this Local Law has taken place. The LEO shall record and investigate any such complaint. The LEO may also investigate any such alleged violation that he or she otherwise has reason to believe may have occurred.

Section 8 - Notice of Violation and Order to Remedy.

If the LEO determines that a Structure is being or has been erected, installed or placed in violation of Section 5 of this Local Law ("Violation"), then the LEO is authorized to inform the Landowner and, if any and if known to the LEO, the Lessee, of the Violation and to discuss it with one or both of them. In any event, if the Violation is not remedied or definitive plans to remedy the Violation are not provided to the LEO within two weeks of the determination that a Violation is occurring or has occurred, then the LEO shall prepare and serve a Notice of Violation and Order to Remedy on the Landowner and, if any and if known to the LEO, the Lessee. The Notice of Violation and Order to Remedy shall be in writing and shall include, at a minimum:

1. the name(s) of the Landowner as shown in the current Otsego County Office of Real Property Tax Services assessment rolls;
2. the tax map parcel number;
3. the name(s) of the Lessee, if any and if known to the LEO;
4. a description of the Violation of Section 5 of this Local Law;
5. an order to remedy the Violation within thirty (30) days of the date of service of the Notice of Violation and Order to Remedy, or within such longer period as the LEO may deem appropriate under the circumstances, such longer period not to exceed 120 days;
6. notice that a failure to comply with such order may result in prosecution in accordance with this Local Law; and
7. a copy of this Local Law.

Section 9 - Enforcement.

If the Landowner (or Lessee, if any) fails to comply with such order, the LEO is authorized pursuant to Criminal Procedure Law §150.20(3) to issue an appearance ticket to the Landowner (or Lessee, if any) and shall cause such Landowner (or Lessee, if any) to appear before the Town Justice.

Section 10 - Penalties and Remedies.

1 Misdemeanor. For the purposes of conferring jurisdiction upon courts and judicial officers generally, Violations of this Local Law shall be deemed misdemeanors and, for such purpose, all provisions of law relating to misdemeanors shall apply to Violations.

2 Fines and Penalties. Any Landowner (or Lessee, if any) who violates the provisions of this Local Law by failing to comply with a Notice to Comply shall be guilty of a Violation of this local law and subject to the following:

1. a fine not to exceed \$250.00 for each Violation or
2. a civil penalty not to exceed \$250.00 for each Violation, plus attorney's fees, to be recovered by the municipality in a civil action.

Every such Landowner or Lessee shall be deemed guilty of a separate Violation for each week such Violation continues.

3 Injunction. The Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction, to compel compliance with a Notice of Violation and Order to Remedy or otherwise to enjoin violation of this Local Law.

4 Remedies Not Exclusive. Nothing herein shall prevent the Town from proceeding under any or all of the above enforcement methods for any violation. No remedy or penalty specified in this Local Law shall be the exclusive remedy or remedy available to address any violation and each remedy or penalty specified in this Local Law shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this Local Law. Any remedy or penalty specified in this Local Law may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Local Law or in any other applicable law.

Section 11 - Service.

Notices of Violation and Orders to Remedy and appearance tickets issued to a Landowner pursuant to this Local Law shall be served by (1) certified mail, return receipt requested, to the address shown in the current Otsego County Office of Real Property Tax Services assessment rolls by certified mail or (2) personal service.

Notices of Violation and Orders to Remedy and appearance tickets issued to a Lessee pursuant to this Local Law shall be served by (1) certified mail, return receipt requested, to the postal address of the relevant property or, if the LEO has actual knowledge of a different residential address for the Lessee, then to such different address or (2) personal service, in either case with copies provided to the Landowner as provided in the preceding paragraph of this section.

Service shall be effective as of the date a Notice of Violation and Order to Remedy or appearance ticket is deposited with the U.S. Postal Service or is served personally.

Section 12 - Severability.

If any clause, sentence, paragraph, section or article of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 13 - Effective Date.

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of Municipal Home Rule Law.