

## Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village  
(Select one:)

of Canandaigua

Printed: 5/3/2016

DRAFT

Local Law No. \_\_\_\_\_ of the year 20<sup>16</sup>

A local law Amending Chapter 220 Section 220-8.1 Steep Slope Protection Law

(Insert Title)

Amending Chapter 1 Section 17 Definitions

Be it enacted by the Town Board \_\_\_\_\_ of the  
(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village  
(Select one:)

of Canandaigua

as follows:

(see attached)

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**SECTION ONE. Legislative Intent.** The legislative intent of the Town Board of the Town of Canandaigua in enacting the following amendments to Town Code is to preserve and protect the sensitive environment of steep slope areas in the Town of Canandaigua, and to regulate land use within these areas in a manner which protects the public interest by minimizing detrimental effects of disturbance and development to steep slope areas.

**SECTION TWO.** The following section shall be added to Town of Canandaigua Town Code Chapter 220, immediately after §220-7 (Applicability of Regulations), and immediately preceding §220-9 (Regulations Applicable to All Districts):

**§ 220-8.1 Town of Canandaigua Steep Slope Protection Law**

**§ 220-8.1 Steep Slope Protection Law**

**A. PURPOSE:** The purpose of this Steep Slope Protection Law is to conserve the sensitive environment of steep slope areas, and to regulate land use within these areas in a manner which protects the public interest by minimizing detrimental effects of disturbance and development to steep slopes by:

- (1) Providing for the reasonable use of steep slopes while ensuring development will not induce soil erosion, require excessive grading, increase slope instability, increase stormwater runoff, contaminate surface waters or create sewage treatment problems.
- (2) Guarding against property damage and personal injury;
- (3) Minimizing the potential for erosion, slope failure, stream siltation, increased storm water runoff, flooding, contamination of surface waters; and protecting the water quality of Canandaigua Lake and other downstream bodies of water.
- (4) Conserving existing steep slope woodlands for air and water quality benefits and the preservation of wildlife habitats.

**B. STEEP SLOPE PROTECTION AREAS (SSPA)**

- (1) The Steep Slope Protection Areas shall include all lands having slopes 15% or greater.
- (2) Steep Slope Protection Areas are further categorized as:
  - (a) Moderately Steep: 15% to <25% slope (Zone A),
  - (b) Very Steep: 25% to < 40% slope (Zone B), and
  - (c) Extremely Steep: 40% or greater slope Zone C).

### **C. ACTIVITIES WITHIN A STEEP SLOPE PROTECTION AREA REQUIRING SITE PLAN REVIEW**

- (1) The following activities require site plan approval through the Town of Canandaigua Planning Board, pursuant to Section 220-64, when located in a SSPA except where specifically exempt in section 220-8.1(D)(2):
  - (a) **Zone A (moderately steep):** 500 square feet or greater of disturbance within 2000 feet horizontal distance from the mean high water mark of Canandaigua Lake.
  - (b) **Zone B (very steep):** 500 square feet or greater of disturbance within 100 feet horizontal distance from any open water course.
  - (c) **Zone C (extremely steep):** 2,000 square feet or greater of disturbance occurring beyond the horizontal distance stipulations in Zones A and B above.
  - (d) **All Zones:** Any prohibited use or activity, as specified in Section 220-8.1(E) that would create a disturbance of less than 500 square feet.
- (2) The following activities are exempt from the site plan approval required for SSPA:
  - (a) Soil cultivation for agricultural purposes.
  - (b) Wildlife sanctuary, woodland preserve, and similar passive park and recreation activities.
- (3) All soil disturbance that occurs on a site within two (2) years shall be used to calculate the total amount of disturbance.

### **D. PERMITTED AND PROHIBITED USES AND ACTIVITIES WITH A SSPA**

#### **(1) Moderately Steep Slopes (15% to < 25%)**

- (a) **Permitted Uses and Activities on Moderately Steep Slopes (15% to < 25%):** all permitted uses allowed in the underlying zoning district except for those uses and activities prohibited in Section 220-8.1(E)(1)(b) and not prohibited by any other Town Law are allowed within this slope category.
- (b) **Prohibited Uses and Activities on Moderately Steep Slopes (15% to < 25%):** The following uses and activities are specifically prohibited on Moderately Steep Slopes if the disturbance is 500 square feet or greater:

[1] Removal of existing ground cover and root systems except when related to a permitted use.

[2] Solid waste disposal, recycling uses, junkyards, or other similar outdoor storage use.

[3] Installation of an accessory structure that requires greater than 4,000 square feet of disturbance.

**(2) Very Steep Slopes (25% to < 40%)**

(a) Permitted Uses and Activities on Very Steep Slopes (25% to < 40%): The following uses and activities are permitted within this category provided that each use or activity is in compliance with the regulations of the underlying district and is not prohibited by any other Town Law.

[1] One single-family residence with attached or detached garage.

[2] One driveway to serve the residence and garage (Driveways must comply with the Town Private Driveways and Private Roads Law as well as the Town Site Design Criteria).

[3] Trams and/or stairs as may be needed to access another elevation on the property.

[4] Onsite wastewater treatment system. This must first be reviewed for location viability by local authorities, followed by design approval by the Watershed Inspector, DEC and/or the New York State Department of Health.

[5] Utility transmission lines and aboveground utility line structures unless upon petition of a public utility corporation, the New York State Public Utility Commission shall, after public hearing, decide that the presence of such proposed lines or structures in question is not reasonably necessary for the convenience or welfare of the public.

[6] New or expanded paths developed specifically for golf carts, ATV's or other similar small vehicles- maximum path width to be six feet.

[7] Detached accessory structures.

[8] Those uses and activities otherwise prohibited by Section 220-8.1(E)(2)(b) but whose disturbance is less than 500 square feet.

(b) Prohibited Uses and Activities on Very Steep Slopes (25% to < 40%): If the disturbance in this slope category is 500 square feet or greater, the following uses and activities are specifically prohibited:

[1] All items prohibited on Moderately Steep Slopes.

[2] All terraced landscaping, with or without retaining walls, not directly required to construct items listed under Section 220-8.1(E)(2)(a).

[3] Resource extraction uses.

[4] Storm water retention basins.

[5] Installation of an accessory structure that requires greater than 2,000 square feet of disturbance.

**(3) Extremely Steep Slopes of 40% or More**

- (a) Permitted Uses and Activities on Extremely Steep Slopes of 40% or More:  
The following uses and activities are permitted within this category provided that each use or activity is in compliance with the regulations of the underlying district and is not prohibited by any other Town Law:

[1] The construction of new stairs and/or new tramways as required for access to an allowable building site, existing residence, elevation change on the property or to the water front for lakeside property.

[2] Replacement of existing structures, stairs or tramways, all to be within the same footprint, that are currently on the property.

[3] The construction of roadside parking via retaining wall system if approved by the Town/County Highway Department or the Department of Transportation, whichever has jurisdiction.

[4] Installation of structures, to include access, that requires less than 500 square feet of disturbance.

[5] Those uses and activities otherwise prohibited by Section 220-8.1(E)(3)(b) but whose disturbance is less than 500 square feet.

- (b) Prohibited Uses and Activities on Extremely Steep Slopes (40% or Greater):  
All uses or construction activities, other than those set forth in Section 220-8.1(E)(3)(a) that require 500 square feet of disturbance or greater are prohibited.

**E. GENERAL REGULATIONS**

- (1) Any development proposed on a steep slope shall be designed to work with the natural elements of the site, locating the proposed improvements in such a manner as to minimize disturbance, cut and fill operations, tree removal, and alterations to natural drainage. The applicant must provide the Development Office with documentation that

the improvements were designed to fit the existing natural elements of the site, rather than making the site fit the development goals of the landowner as part of the site plan review process. In any project with cut and fill operations, the applicant shall prove to the Planning Board that there was no other alternative to cut and fill to develop the site and that cut and fill has been minimized. The Town of Canandaigua Development Office will provide steep slope site design examples to applicants.

- (2) All single-family residential land-disturbing activities in steep slope protection areas, including but not limited to clearing, grading, excavation, building construction, construction of driveways and roads, cutting, and filling, shall be limited to the minimum land area necessary to accommodate the proposed use or activity, and shall in no case be greater than 15,000 square feet plus land necessary for driveway access and an on-site wastewater treatment system.
- (3) Changes to the natural grade of any steep slope area shall be minimized. Any changes to the natural grade of the site shall meet the following criteria:
  - (a) The original, natural grade of a lot shall not be raised or lowered more than four feet at any point for the construction of any structure or improvements, except that:
    - [1] The original grade of a lot may be raised or lowered a maximum of eight feet if retaining walls are used to reduce the steepness of man-made slopes, provided that the retaining walls comply with the requirements of this Section 220-8.1(F)(4).
  - (b) The maximum limit of cut and fill operations is 1,000 cubic yards per 10,000 square feet of disturbance.
  - (c) The natural grade shall not be raised or lowered more than 2 feet within the required setback for structures. The setback distances are described in Chapter 220: Zoning, Schedule I.
  - (d) The finished slope of all cuts or fills for any site work in areas where only vegetation is proposed to prevent erosion shall not exceed a slope of one vertical to two horizontal (50% grade or 26.5 degrees of angle) without a retaining wall or other similar structural stabilization.
- (4) Any new or existing retaining wall higher than three feet above finished grade incorporated into the proposed project design requires the evaluation of a New York Professional Engineer as to its structural integrity and written direction and certification as to its use.
- (5) To further protect steep slope areas, lot coverage in Steep Slope Protection Areas shall be reduced to 90% of the allowable lot coverage for the underlying zoning district.

- (6) The alignment of private roads and driveways in steep slope areas shall follow the natural topography and minimize re-grading. The maximum grade of driveways shall not exceed 10% or the current specifications in the Town of Canandaigua Site Design and Development Criteria (Section 2.12), whichever is less.
- (7) If a permanent driveway cannot be legally built to serve the residence or other improvement, no temporary construction road/driveway may be permitted in steep slope areas.
- (8) All development projects that disturb greater than 5,000 square feet of steep slope areas in Zones A and B, and 15,000 square feet of steep slope areas in Zone C shall be required to provide for water quality treatment up to the (1) one year storm event and provide for a net-zero increase in the peak runoff flow rate for the following storm events: one (1) year, ten (10) year, twenty-five (25) year and one hundred (100) year storms. The engineer will complete both the Rational Method and TR55 method of calculating peak flows and the greater of the two calculated peak flows will be used.
- (9) From October 15 until April 1, disturbed land areas in steep slope areas that are not worked for three (3) days shall not be left bare or exposed. Approved temporary or permanent protective straw mulch and/or erosion control blankets shall cover these disturbed areas to provide stabilization. From April 1st until October 15th disturbed land areas that are not worked for five (5) days shall not be left bare or exposed. Approved temporary or permanent seeding along with protective straw mulch and/or erosion control blankets must cover these disturbed areas. All seeding, straw mulching and erosion control blankets shall meet the installation methods and quantities as stated in the New York State Standards and Specifications for Erosion and Sediment Control.
- (10) Rolled Erosion Control products shall be used to stabilize slopes that exceed slopes of 25%.
- (11) Trees with a Diameter Breast Height (DBH) of 6 inches or greater within twenty (20) feet of the mean high water mark of Canandaigua Lake, within twenty (20) feet of the top of slope of the shoreline cliff area or twenty feet from the toe of a gully shall not be removed unless they are deemed unhealthy or a safety hazard by a certified arborist or equivalent. Enhancing lake views can be done through a combination of canopy reduction and selective thinning without substantial tree removal at the top of the shoreline cliff area. Tree removal may be allowed in the gully zone for the purposes of traversing a gully via a bridge or culvert structure to access another portion of the property.

## **F. BURDEN OF PROOF**

- (1) The applicant shall in all cases have the burden of proof of demonstrating that the proposed activity is fully consistent with the standards for approval set forth in Section 220-8.1.

## **G. STEEP SLOPE PROTECTION AREA REVIEW PROCESS**

- (1) Steep Slope Protection Area Application: The Steep Slope Protection Area Review Process will follow the Town of Canandaigua Site Plan Regulations (Chapter 220 Article VII), in addition to the following criteria:

(a) The Preliminary Site Plan and Final Site Plan shall include the following:

- [1] Documentation that the improvements were designed to comply with § 220-8.1 and have been designed to fit the existing natural elements of the site instead of altering the site to fit the development goals.
- [2] Contours of existing and proposed conditions at vertical intervals of no more than two feet.
- [3] Temporary roads, driveways, parking areas and pathways, including the widths and slopes of these features.
- [4] Location of all trees in steep slope areas with a DBH of 6 inches or greater and which, if any, of these trees will be cut as part of this project.
- [5] An overlay of each steep slope category as defined in § 220-8.1(C)(4) of this local law for existing site conditions
- [6] Location and description of all existing and proposed, open and closed, drainage features, to include roof drains, footing drains and retaining wall drains, with discharge points identified. Storm water calculations shall be provided for all existing and proposed culverts or changes to gullies. The applicant will need to document that each of these drainage features can convey the 25 year-one hour storm event

- (2) The application shall be prepared in accordance with the New York State Standards and Specifications for Erosion and Sediment Control and the New York State Stormwater Management Design Manual.

**SECTION THREE.** The following definitions shall be added to Town of Canandaigua Town Code § 1-17:

**CONSTRUCTION SEQUENCE PLAN** – A written narrative, inserted on the site plan drawing or submitted as a separate document, describing the approach and sequencing of all construction activities.

**DIAMETER AT BREAST HEIGHT (DBH)** – The diameter of a tree trunk measured at a point four (4) feet above ground level.



**DISTURBANCE** - The removal of vegetation, any and all excavation (including but not limited to the use of motorized machinery on soil), grading, filling, removal of soil or rock, demolition of existing structures, access created for construction purposes, drilling, trenching, benching, terracing, backfilling, storm and erosion control work, embankment stabilization, installation or construction of catch basins, culvert piping, swales, ditches, rip rap, construction entrances, driveways (including shared), retaining walls or improvements of a similar nature, utility work, placing or filling soil on top of the natural vegetative cover and the conditions resulting from any of such activities.

**EXTRACTIVE USE** - The removal of any soil, gravel, natural gas or other earth generated material from a property with the intent to sell or reuse. Site work performed via building permit in preparation for property improvements, where earth generated materials are removed off site incidental to construction activities, shall not be deemed an extractive use.

**FILLING**- Any activity which deposits natural or artificial material so as to modify the surface or subsurface conditions of land, lakes, ponds or watercourses.

**GRADING** - The alteration of the surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling.

**RESTORATION** – The re-establishment of the grade, slope, stability, vegetation, or drainage system of a property in a steep slope area that has suffered a disturbance by restoring the property back to substantially the same condition as existed prior to a disturbance.

**SHORELINE CLIFF AREA** - slopes exceeding 45 degrees with a vertical height of 20 feet or greater measured from the first substantial toe of slope adjacent to Canandaigua Lake

**STABILIZED** – A condition where a ground surface that has suffered a disturbance or been modified has received appropriate surface treatment, including structural cover or topsoil, seeding, mulching, geo-textile or erosion control matting (as applicable), to prevent erosion and sedimentation from occurring. In general, an area is considered “stabilized” when vegetative cover has exceeded 80% density coverage over that disturbed area or straw mulch has been applied and maintained at a rate of 2 tons per acre.

**STEEP SLOPE** – Any area of land having a slope of 15% or greater

**STEEP SLOPE PROTECTION AREA (SSPA)** – Those areas of land having slopes 15% or greater.

**STORM WATER RUNOFF** - The portion of precipitation that flows overland as a result of rain or due to melted snow and ice.

**SUBGRADE** – The finished surface elevation achieved after removing organic surface material, followed by any necessary cut or fill activity, but prior to installing base and surface treatments.

**TOP OF SLOPE-** the first substantial slope change on the upper portion of the shoreline cliff area that decreases the slope below 100%.

**TREE REMOVAL** – Cutting down a tree, or the effective destruction of a tree through intentional damaging, poisoning, or other action resulting in the death of a tree.

**VEGETATIVE PROTECTION** - Stabilization of erosive or sediment producing areas by covering the soil with:

- Permanent seeding, producing long-term vegetative cover,
- Short-term seeding, producing temporary vegetative cover, or
- Sodding, which is the placement of cultivated sod onto prepared topsoil to promote rapid soil stabilization.

**SECTION FOUR.** The definition of WATERCOURSE in Town Code §1-17 shall be replaced in its entirety with the following:

**WATERCOURSE** – A permanent or intermittent stream or other body of water, either natural or artificial, which gathers or carries surface water. A watercourse contains a discernible channel, bed, and/or banks and flows in a particular direction.

**SECTION FIVE. Severability.** If any clause, sentence, paragraph, section, or part of this local law or the application thereof to any person, firm, corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part of this local law or in its application to the person, individual, firm, corporation, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

**SECTION SIX. Effective Date.** This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20<sup>16</sup> of the (County)(City)(Town)(Village) of Canandaigua was duly passed by the Town Board \_\_\_\_\_ on 20<sup>16</sup>, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_ above.

Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

(Seal)

Date: \_\_\_\_\_