

**Town of Berkshire**  
**Building Construction and Enforcement Local Law**

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# **BUILDING CONSTRUCTION AND ENFORCEMENT LAW**

Be it enacted by the Town Board of The Town of Berkshire to declare its intent to protect the welfare of the citizens by regulating construction and use of buildings in the Town of Berkshire as follows:

## **Section I - Purpose and Intent**

This local law provides the basic method for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code in the Town of Berkshire and to further describe the process whereby the Code Enforcement Officer (CEO) can assure proper protection for the town and its residents by further clarifying building construction requirements as well as the duties and responsibilities of the CEO.

**Section II - Definitions** As used in this local law, the following terms shall have the meanings indicated:

**ADDITIONS** - Extension or increase in area, height or equipment of building structure.

**AGRICULTURAL PURPOSES** - Exclusive use in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, or the raising of livestock.

**ALTERATION** - Any change, rearrangement or enlargement in a building or structure whether by extending on a side or by increasing in height or by moving said building or structure from one location or position to another location or position.

**APPEARANCE TICKET** - A written notice issued and subscribed by the CEO to someone found in violation of the permitting process. The violator shall be required to appear before a local criminal court at a designated future time in connection with an alleged commission of a designated offense.

**BUILDINGS** - A structure wholly or partially enclosed within exterior walls and a roof, affording shelter to persons, animals or properties.

**BUILDING CODE LOCAL LAW** - The New York State template adopted by the Town of Berkshire for the enforcement of New York State Uniform Fire Prevention and Building Code. The title *is Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code* and shall hereafter be referred to as the Building Code Local Law.

**BUILDING PERMIT**- An official approval issued by the Town of Berkshire that allows you or your contractor to proceed with a construction or remodeling project on your property. It is intended to ensure that the project will comply with state and local standards for land use and construction. These standards are intended to ensure the safety of current and future owners and occupants and to provide enforcement of land-use policies. Specific issues that the building permit process may address include structural integrity of the framing, sanitation, water, fire protection, and electrical service.

**CEO or CODE ENFORCEMENT OFFICER**- An appointee of the Town of Berkshire who is hired to enforce building codes described as follows:

- New York State Uniform Fire Prevention and Building Code

- Building Code Local Law
- This local law
- Other local laws assigned for enforcement

**COMPLIANCE CERTIFICATES:**

**CERTIFICATE OF OCCUPANCY** - A document issued by a local government agency or building department certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

**CERTIFICATE OF COMPLIANCE** - A written document that states the fulfillment of a given requirement. It is a formal certification that declares that an individual or company met a set of conditions.

**TEMPORARY OCCUPANCY CERTIFICATE** - A document issued by the CEO for a temporary occupancy of a building or structure provided all safety conditions and means of egress are met. Full compliance must be met within a six-month period.

**CONSTRUCTION** - The process of erecting a building or modifying a building's existing infrastructure, typically involving planning and design that continues until the project is complete and ready for use.

**DEMOLITION (or razing)**- The tearing down, removal, and disposal of buildings and other man-made structures.

**ENVIRONMENTAL ASSESSMENT - (SEQR)** The assessment of the environmental consequences (positive and negative) of a plan, policy, program, or actual projects prior to the decision to move forward with the proposed action. It is done to determine whether or not an action has the potential to significantly affecting the quality of the human environment.

**FEE SCHEDULE** - A listing of fees established by the Town of Berkshire to charge for specific actions described in local laws for such things as construction, towers, etc. Fee schedules are available on the Town of Berkshire website or by contacting the Town Clerk.

**FLOODPLAIN or FLOOD PLAIN** - An area of land adjacent to a stream or river which stretches from the banks of its channel to the base of the enclosing valley walls, and which experiences flooding during periods of high discharge. The area is defined by FEMA maps and monitored and enforced by DEC.

**FOSSIL FUEL APPLIANCE** - A heating or cooking device, fireplace, furnace, or water heater in a residential home or business that uses coal, natural gas, fuel oil, or propane.

**NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE** - A New York State law that provides guidelines to cover new construction, building rehabilitation, fire safety, and housing maintenance by prescribing minimum standards for both fire prevention and building construction. The Town of Berkshire adopted a local version of this law that is referred to in this document as the Building Code Local Law.

**STOP WORK ORDER** - A written order requiring all work to stop, excluding remedial work required to make the site safe. The order describes all activities being suspended and provides clear instructions or directions for the permit holder to remedy the violation.

STORM WATER POLLUTION PREVENTION PLAN - (SWPPP - often referred to as “swip”) - A plan to ensure that discharged stormwater is as clean and unpolluted as possible. A permit process has been developed to comply with the Environmental Protection Agency and the Clear Water Act and is required on any disturbance greater than one acre.

STRUCTURE - A combination of material to form a construction that is safe and stable and includes, among other things, buildings, porches, balconies, terraces, decks, stadiums, reviewing stands, platforms, staging, sheds and display signs.

### **Section III - Provisions and Requirements**

1. Designation and duties of CEO - In addition to those duties and responsibilities that are described in the Building Code Local Law, the following will apply:

A. There is hereby designated in the Town of Berkshire a public official to be known as the "Code Enforcement Officer" (CEO) who shall be appointed by the Town Board of the Town of Berkshire at a compensation to be fixed by it.

B. The CEO shall conduct business as follows:

1) Administer and enforce all provisions of laws, ordinances, rules and regulations related to building construction including the following:

- Accepting plan and building specifications and/or permits for the construction
- Reviewing alteration and repair of buildings and structures
- Overseeing installation and use of materials and equipment therein, and the location, use and occupancy thereof
- Monitoring safety and hazardous conditions or activities potentially harmful to the public and issue Operating Permits as needed (See Operating Permits Section 10 of the Building Code Local Law).

2) Determine compliance with the provisions of applicable laws, ordinances, rules and regulations covering building construction and alteration by the following procedures:

- Conducting inspections at certain intervals of construction
- Performing fire safety and property maintenance inspections as described in the New York State Uniform Fire Prevention and Building Code (see Building Code Local Law - Section 11)
- Coordinating with other agencies as necessary for assistance with specific regulations
- Accepting and relying upon written reports of tests in the field by experienced, professional persons or by accredited and authoritative testing laboratories or service and inspection bureaus or agencies
- Consulting with the Town Board, Legal Counsel and Town Court for appropriate adherence to all regulations.
- Responding to any complaints filed in regard to construction or compliance issues described in this local law or the New York State uniform codes.

3) Written notices or orders should be issued to do the following:

- Handle discovered activities that are not in compliance with these laws and regulations
- Ensure compliance during the entire course of construction to the requirements of such laws, ordinances, rules and regulations

- Remove illegal or unsafe conditions or to deal with unsafe buildings (see local law for Unsafe Building Ordinance)
- Ensure appropriate safeguards during construction.

(Such notices or orders may be served upon the property owner or their agent personally, sent by certified mail, or posted upon a conspicuous portion of the premises to which the notices apply.)

4) Maintain records and provide reports which will become the property of the Town of Berkshire and be open to public inspection during normal business hours.

- Keep permanent official records of all transactions and activities conducted
- Furnish a monthly activity report to the Town Board that includes but is not limited to applications or permits received, plan approvals, fees charged, inspection reports, certificates, and notices or orders issued
- Submit an annual summary of activity as required by the state. A copy of this report will be provided to the Town Board and filed with the Town Clerk.

C. The CEO shall not do the following:

- Engage in any activity inconsistent or in conflict with their official duties
- Be engaged directly or indirectly in any building business in the furnishing of labor, materials, supplies or appliances for, or the supervision of, the construction, alteration, demolition or maintenance of a building, or the preparation of plans or specifications therefore, within the Town of Berkshire.

This provision, however, shall not prohibit any employee from engaging in any such activities in connection with the construction of a building or structure owned by themselves for their own personal use and occupancy or for the use and occupancy of members of their immediate family and not constructed for sale.

D. In the absence of the CEO, or in the case of his inability to act for any reason, the Supervisor shall have the power, with the consent of the Town Board, to designate a person to act on behalf of the CEO and to exercise all the powers conferred upon them by this chapter.

2. Building Permit Requirements - No building or structure shall be erected, constructed, enlarged, altered, moved or relocated or excavation made thereof, or work begun thereon until a building permit has been issued by the CEO of the Town of Berkshire. Most specifications for applying for a building permit are described in the Building Code Local Law.

A. Permits shall be required for any work which must conform to the New York State Uniform Fire Prevention and Building Code. (Building permits shall **not** be required for necessary repairs and alterations which do not materially affect structural features or fire safety standards.) Some examples of work requiring a building permit include the following:

- New buildings and structures except for sheds not greater than 144 sq. ft.
- Installation of new decks for porches
- Additions to buildings
- Installation of pools and associated protective structures
- Alterations to buildings and structures
- Cut away walls or portions thereof

- Remove or cut away beams or supports
- Change or closing of any stairway or required means of exit
- Demolition of any structure
- Install fireplaces, chimneys and wood burning stoves or fossil fuel appliances
- Building used for agricultural purposes.

B. Steps to follow are as listed below:

- Building permit application forms that must be completed and submitted to the Town Clerk or the CEO
- CEO review of application with approve or disapprove to occur within 10 days
- If approved, applicant will receive a signed permit and a poster to display on the construction site
- Fees shall be charged based on the most current fee schedule and monies collected should be paid to the Town Clerk.

C. Prior to approval of any permit, the CEO must first determine if other actions are necessary. They may include but not be limited to the following:

- Site Plan Review, Environmental Assessment (SEQR), 239 review with the County, Flood Plain Review, Storm Water Prevention Plan (SWPPP).

Other agencies, if necessary, may be involved in the building permit and construction process.

D. The application shall be signed by the owner or an authorized agent. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner indicating the following:

- That it is authorized by the owner
- The applicant is authorized to make such application
- The owner authorizes the applicant to allow the CEO or designated representative to enter upon the premises without a search warrant in the manner prescribed herein.

E. Any construction project that is started without a permit will be stopped immediately until a valid permit is attained and a fine paid. A building permit is required for actions listed above even when The Town of Berkshire fee schedule shows a zero or no fee charge (see Fee Schedule)

- F. Amendments, if any, to the application or to the plans and specifications accompanying the same shall be filed with the CEO and approval received from the CEO prior to the commencement of such change of work.
  - G. Building Permits shall be effective for a period of one year from the issuance/approval date. If requested, the CEO has the discretion to issue one six-month extension on this building permit. Construction beyond that time limit will require the acquisition of a new building permit.
  - H. Where a building permit has been issued, the CEO may conduct such inspections as are necessary to determine compliance with the New York State Uniform Fire Prevention and Building Code. During the course of construction, inspections will allow observations of the following:
    - Foundation
    - Structural elements
    - Electrical systems
    - Plumbing systems
    - Thermal Envelope and Insulation systems
    - Heating, ventilation and air-conditioning systems
    - Fire-protection and detection system and exit features.
  - I. Building Permits may be revoked by the CEO when any of the following are observed:
    - A crucial error is discovered
    - Inaccurate information or misrepresentations are made by applicant
    - CEO finds the work being performed is not being prosecuted in accordance with the application plans or specifications
    - Applicant refuses to comply with written notices furnished by the CEO.
3. Stop Work Orders - the New York State Uniform Fire Prevention and Building Code law also describes these orders. The owner of the property or the owner's agent shall be notified to suspend all work, and any such persons shall forthwith stop such work and suspend all building activities until violations have been remedied and the stop order has been rescinded.
- A. The CEO will issue a stop work order when there are reasonable grounds to believe that work on any building or structure is being performed under the following circumstances:
    - Without a valid building permit (see fee schedule for applicable fines)
    - In violation of the provisions of the applicable building laws
    - Not in conformity with the provisions of application plans or specifications on the basis of which a building permit was issued
    - In an unsafe and dangerous manner.
  - B. Stop work order and notice shall adhere to the following:
    - Be in writing
    - Identify the property or premises
    - Specify the violations
    - State the conditions under which the work may be resumed
    - Provide a reasonable time limit for compliance, but not to exceed 30 days.
  - C. Order shall be served to the applicant or permit holder by the following means:

- Delivering it personally or posting it upon a conspicuous portion of the building or premises where the work is being performed
  - Sending a copy by certified mail with a return receipt requested to the address set forth in the application for permission for the construction of such building.
- D. In case the applicant shall fail to remedy the violation order within the specified time stated in the stop work order, the CEO shall take the appropriate legal action with the issuance of an appearance ticket.
- E. In the case of imminent danger to life or property, the CEO can order the premises be immediately vacated. The CEO will issue an appearance ticket in connection with violations of the Building Code Local Law or this local law.
4. Certificate of Occupancy or Compliance - No building or structure shall be used or occupied, in whole or in part, until a certificate of occupancy or compliance has been issued by the CEO.
- A. The CEO shall be entitled to conduct inspections of the premises prior to the issuance of a certificate of occupancy or a certificate of compliance.
- B. If the proposed work has been completed in accordance with the applicable building laws, rules and regulations and also in accordance with the application, plans and specifications filed in connection with the issuance of a building permit, the CEO shall issue a certificate of occupancy within 10 days of the final inspection. Completed projects shall also be reported to the Town Assessor.
- C. If it is found that the proposed work has not been properly completed, the CEO shall not issue a certificate and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations. A Temporary Occupancy Certificate, however, can be issued by the CEO provided there are no safety concerns and terms and conditions established by the CEO are completed to ensure full compliance within a six-month period.
5. Building lot and driveway requirements
- A. All home lots shall have a minimum area of one acre exclusive of highway right-of-way.
- B. All home lots shall have a minimum depth of one hundred fifty (150) feet and shall have minimum frontage on a public street of one hundred fifty (150) feet
- C. Home Placement
- 1) Homes and any adjacent structures and appendages shall be set back a minimum distance of thirty-five (35) feet from the abutting rights-of-way.
  - 2) Homes shall be at least ten (10) feet from all property lines.
- D. All septic systems, new or replacement tanks, must be approved by the Tioga County Department of Health.
- E. Driveway requirements
- 1) Sluices for driveway must be approved by the following divisions:



- The highway department for Town roads
  - New York State Department of Transportation for State Roads
  - Tioga County Highway Department for County Roads.
- 2) Intersection angle - The angle at which the driveway intersects the street shall be greater than eighty (80) degrees for a distance of twenty (20) feet back from the highway right-of-way.
- 3) All driveways which intersect with a New York State highway must meet the requirements of the following:
- The New York State Department of Transportation code for highways
  - New York State Building and Fire Code requirements.
- 4) Visibility requirement - All entrances to driveways shall have clear visibility for a distance of twenty (20) feet from the highway right-of-way, except for individual trees. All other view obstructions shall be a maximum of thirty-two (32) inches in height within the twenty (20) foot area.
- 5) Storm drainage must be designed to convey all storm runoff into natural water channels and to maintain the site free from standing pools of water and erosion.
- F. Utilities - All electric systems, including service connections, must be subjected to complete inspection by a third-party underwriter or a licensed electrician.
- G. New home address - The CEO will assign an address based on the county 911 system.
6. No permit is required for
- A. A new building that is 144 square feet or less
  - B. Basic repairs and maintenance that do not affect the structural integrity of the building.

## **Section IV: Administration and Enforcement**

This local law shall be enforced by the CEO when acting pursuant to his or her special duties and those assigned by Berkshire local law for Administration and Enforcement of New York State Uniform Fire Prevention and Building Code. The CEO shall do the following:

- Authorize new construction or renovations of structure by receiving and approving or disapproving building permits
- Review and investigate compliance with this law and the fire prevention building code law
- Investigate complaints filed with respect to alleged violations of this building local law
- Determine if project is complete, and issue a Certificate of Occupancy if appropriate.

## **Section V: Exclusions**

Any exceptions to construction standards set in this law are available in the Building Code Local Law, Section 4, (b).

## **Section VI: Enforcement Procedure; Appeals**

1. The CEO is the lead agent for the Town of Berkshire to assure appropriate building standards are followed to protect the town and its citizens. The CEO will refer to this law and the New York State Uniform Fire Prevention and Building Code to issue building permits, stop work orders and certificates of occupancy/compliance.
2. Failure to obtain a building permit shall result in a stop work directive from the CEO until required permit is approved. Noncompliance with this directive will result in a fine as stated in the Town of Berkshire Fee Schedule, as well as other actions the CEO may deem appropriate including legal action that includes the issuance of an appearance ticket.
3. The CEO will monitor progress on the building project construction to ensure building standards are being met and will inspect the project at given intervals as described in Section III, Part H and will share his findings with the owner or builder.
4. If violations are documented and steps are not taken to remedy the situation, the CEO will issue a stop work order to bring the project back into compliance. If the situation is not remedied in 30 days, an appearance ticket will be issued.
5. The CEO will act as prosecutor representing the Town of Berkshire in any court proceeding regarding the violation of the Building Code Local Law or this Local Law.
6. Appeals:
  - The CEO will review the application and other details to support the request and either approve or disapprove the permit within 10 days. If a building permit is not approved, the CEO and applicant will meet to determine the corrective actions required to gain approval. If they cannot come to agreement, the applicant can submit a written appeal to the Supervisor of the Town Board.
  - Violations of building standards will result in issuance of a stop work order. The CEO will work with the owner or builder to remedy the violations. If they are unable to resolve those issues within 30 days, a written request may be submitted to the Supervisor of the Town Board asking for special consideration.
  - Any other exceptions to this law require sending a written request to the CEO.

## **Section VII: Reference**

This local law repeals any reference to Building Permits law initially contained in Local Law # 2 of the year 1995 and any reference to Authorizing the Town of Berkshire Code Enforcement Officer to Issue Appearance Tickets contained in Local Law #1 of 1991.

New York State Uniform Fire Prevention and Building Code, Property Maintenance Code of New York and New York State Agriculture and Markets Law.

## **Section VIII: Severability/Invalid Segments**

Should any section or provision of this local law be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this local law as a whole or any part thereof other than the part declared to be invalid.

## **Section IX: Penalties**

Penalties will be administered as described in Section 15 of the Town of Berkshire Building Code local law to administer and enforce the New York State Uniform Fire Prevention and Building Code law. Basically, referring to Subdivision (2) of section 382 of the Executive Law and to civil penalties and injunctive relief. Civil penalties apply when there is a failure to comply with any provision of the New York State Uniform Fire Prevention and Building Code, rules and regulations adopted pursuant to this local law or a stop order/violation order duly issued by the CEO and shall be deemed a misdemeanor and the violator shall be liable for a fine of not more than \$250 per day of violation.

## **Section X: Effective Date**

This Local Law shall take effect immediately upon filing by the Secretary of State.....October 2020