

<b>Topic:</b>	Natural Resource Protection & Conservation
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	City of White Plains
<b>Year (adopted, written, etc.):</b>	1989
<b>Community Type - applicable to:</b>	Urban; Suburban
<b>Title:</b>	City of White Plains Environmentally Sensitive Sites & Features Ordinance
<b>Document Last Updated in Database:</b>	April 16, 2017

### ***Abstract***

To protect environmentally sensitive features, including watercourses, wetlands, and flora and fauna habitat, this ordinance regulates any area in the proximity of these environmentally sensitive ordinances. Requirements are based on proximity to environmentally sensitive areas.

### ***Resource***

#### **Chapter 3-5 STANDARDS AND REGULATIONS TO PROTECT AND PRESERVE**

#### **ENVIRONMENTALLY SENSITIVE SITES AND FEATURES\***

##### **Sec. 3-5-1. Findings and legislative intent.**

In order to meet the city's stewardship responsibility under the New York State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and the regulations thereunder promulgated by the Department of Environmental Conservation (the "DEC Regs.") and to protect its natural resources, ecological systems, open spaces, natural beauty, and the value of property within the city, it is necessary to assure that full consideration is given to the natural features enumerated herein. It is in the general interest of the health, safety and welfare of the inhabitants of the City of White Plains to encourage protection of water bodies, watercourses and watersheds, wetlands and aquifer recharge areas, mature trees, habitat for flora and fauna, steep slopes, highly erodible soils, rock outcroppings, and other natural features of the land. Protection of the features stabilizes and preserves real property values, encourages, passive recreation and appreciation of aesthetic and scenic beauty, and safeguards the public from flooding and erosion. (Ord. of 12-18-89, § 1.B)

##### **Sec. 3-5-2. Environmentally sensitive sites and features.**

The following are determined to be environmentally sensitive sites and features when present on or within stated distances of a particular location at or in excess of the threshold quantities set forth in section 3-5-3 hereinbelow:

(a) Water resources, including perennial or intermittent watercourses, ponds, lakes, reservoirs, retention basins and watersheds therefor.

(b) Wetlands, defined as any area which meets one or more of the following criteria:

1. Lands and waters of the state that meet the definition provided in subdivision 24-0107.1 of the New York State Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law (ECL)) but without regard to the minimum size standards set forth in the ECL;

2. Lands and waters of the state that meet the definition of wetlands provided in a report dated January 10, 1989, and entitled Federal Agency Committee for Wetland Delineation, 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative Technical Publication.

(c) Floodplains, as mapped by the Federal Emergency Management Agency and/or as determined by the commissioner of building, the commissioner of planning or the commissioner of public works to exhibit the characteristics of floodplains, including without limitation, horizontal and vertical proximity to watercourses and water bodies such that there is a reasonable probability of inundation at times of high water.

(d) Aquifer recharge areas, as identified by the Soils Conservationist of the United States Soil Conservation Service in Westchester County by the action of the Westchester County Soil Conservation Board.

(e) Erodible soils according to the United States Soil Conservation Service criteria.

(f) Steep slope areas.

(g) Rock outcroppings at or above the surface of the ground evidencing the original natural rock outcropping geological features indigenous to White Plains.

(Ord. of 12-18-89, § 1.C; Ord. of 3-4-96, § 1)

### **Sec. 3-5-3. Thresholds, criteria, measurements.**

The following thresholds shall determine that a site or feature is environmentally sensitive:

(a) Any site, property or location which is traversed by, on the bank of, or within one hundred (100) feet of any river, creek, stream, brook or other flowing watercourse.

(b) An area of one thousand (1,000) square feet, or a combination or aggregation of areas each at least one hundred (100) square feet and totalling one thousand (1,000) square feet, of pond, lake, standing water, marsh, bog, swamp, or wetland as such terms are defined pursuant to the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

(c) An area or a combination or aggregation of areas amounting to ten (10) percent of the site, property or location, which slopes in any direction or combination of directions by twenty (20) percent or more, as measured in accordance with the following methodology:

(1) *Vertical measurement:* Vertical measurement shall be determined by utilizing two-foot contours as documented and determined by on-site survey or the use of photogrammetric aerial topography.

(2) *Horizontal measurement:* Horizontal measurement shall be determined by the use of an appropriate scale, which unless directed otherwise by the City of White Plains Department of Building, shall be one (1) inch for fifty (50) feet measuring a minimum horizontal section thirty (30) feet in length.

(3) *Application of vertical and horizontal measurements:* The vertical and horizontal measurements are utilized to determine the slope by measuring the vertical rise, on the basis of two-foot contours, in a thirty-foot horizontal length. All surveys, calculations and documents shall be performed and submitted by, and shall bear the seal and original signature of, a professional engineer or land surveyor licensed to practice in the State of New York.

(d) An area of five hundred (500) square feet, or a combination or aggregation of areas each at least fifty (50) square feet and totalling five hundred (500) square feet, of exposed rock.

(e) Any combination of the above features no one of which meets the thresholds stated but which in combination meet the intent of the statute as determined by the commissioner of building after consultation with the environmental officer.

(Ord. of 12-18-89, § 1.D; Ord. of 3-4-96, § 2)

#### **Sec. 3-5-4. Regulated activities.**

(1) Except pursuant to a permit issued therefor by the commissioner of building and/or the commissioner of public works in accordance with the zoning ordinance, the subdivision regulations, the building code, and/or any other applicable code, ordinance or regulation, no person shall conduct, allow, suffer or permit, either directly or indirectly, any form of draining, dredging, excavation, removal or addition of soil, mud, sand, gravel or other material; or any form of dumping, filling, grading or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind; or the erection of any structures or roads, the driving of pilings, or the placement of any other obstructions, whether or not changing or

diverting the flow of water; or the introduction of any form of pollution, including but not limited to installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain, fill, contaminate, clog, reroute or in any way affect, change or alter any environmentally sensitive site or feature.

(2) Regulated activities under this chapter shall not include swimming or fishing, where otherwise legally permitted; public health activities, orders and regulations of the state or county departments of health, grazing, farming and gardening; the operation and maintenance of dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as were in existence on August 16, 1976; and the conduct of normal land maintenance and conservation measures, including tree trimming and pruning, the removal of dead or diseased vegetation, lawn and garden care, and the planting of decorative shrubs or trees.

(Ord. of 12-18-89, § 1.E)

### **Sec. 3-5-5. Violations.**

In the event that any person conducts, allows, suffers or permits, without a proper permit therefor, any of the regulated activities or otherwise violates the provisions of this chapter, the commissioner of building shall issue such orders to cease and desist, and/or to restore and maintain the affected site or facility as deemed necessary and appropriate. In addition, the commissioner of building and/or the corporation counsel may prosecute the offender; and, upon conviction, the following penalties may be imposed:

(1) For a first offense, a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00).

(2) For a second offense, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).

(3) For a third or later violation, or for a continuing violation, five hundred (\$500.00) dollars per day and/or incarceration for up to ten (10) days for each day of violation to a maximum of five thousand dollars (\$5,000.00) and/or thirty (30) days of incarceration.

In any event, the corporation counsel is expressly authorized, without further action by the common council, to seek such injunctive relief as may be deemed necessary and appropriate to preserve, protect, safeguard, restore and/or maintain, as the case may be, any environmentally sensitive state or feature as may be affected or threatened by violation.

(Ord. of 12-18-89, § 1.F)

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