

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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~~

of MACHIAS

Local Law No. 1 of the year 2003

"A local law RELATING TO THE ESTABLISHMENT/DESIGNATION OF HISTORIC  
(Insert Title)  
PRESERVATION LANDMARKS IN THE TOWN OF MACHIAS, NEW YORK."

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

~~COUNTY~~

~~City~~

Town

~~Village~~

of MACHIAS as follows:

SEE PAGES 1a-1f.

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

## **Section 1. Purpose**

It is hereby declared as a matter of public policy that the protection, enhancement, and perpetuation of historic landmarks is necessary to promote the economic, cultural, educational, and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as Machias has many significant historic, architectural, and cultural resources which constitute its heritage, this act is intended to:

- (a) protect and enhance the landmark properties which represent distinctive elements of Machias' historic, architectural, and cultural heritage;
- (b) foster civic pride in the accomplishments of the past;
- (c) protect and enhance Machias' attractiveness to visitors and the support and stimulus to the economy thereby provided; and
- (d) insure the harmonious, orderly, and efficient growth and development of the town.

## **Section 2. Historic Preservation Commission**

There is hereby created a commission to be known as the Machias Historic Preservation Commission.

- (a) The commission shall consist of 3 members to be appointed, to the extent available in the community, by the Town Supervisor as follows:

- at least one shall be an architect experienced in working with historic buildings;

- at least one shall be a historian;

- at least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment, education, or volunteer activity in the field of historic preservation, or other serious interest in the field;

and

- all members shall have a known interest in historic preservation and architectural development within the Town of Machias, NY.

- (b) Commission members shall serve for a term of four years, with the exception of the initial term of one of the 3 members, which shall be one year, one which shall be two years, and one which shall be three years.

- (c) The chairman and vice chairman of the commission shall be elected by and from among the members of the commission.

- (d) The powers of the commission shall include:

(i) the use of volunteer staff and professional consultants as necessary to carry out the duties of the commission;

(ii) promulgation of rules and regulations as necessary for the conduct of its business;

(iii) adoption of criteria for the identification of significant historic, architectural, and cultural landmarks;

(iv) conduct of surveys of significant historic, architectural, and cultural landmarks within the town;

(v) designation of identified structures, properties or resources as landmarks;

(vi) increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs;

(vii) making recommendations to town government concerning the utilization of state, federal, or private funds to promote the preservation of landmarks within the town;

(viii) recommending acquisition of a landmark structure by the town government where its preservation is essential to the purposes of this act and where private preservation is not feasible; and

(ix) approval or disapproval of applications for certificates of appropriateness pursuant to this act.

(c) The commission shall meet quarterly, but meetings may be held at any time on the written request of any two of the commission members or on the call of the chairman or the Town Supervisor.

(f) A quorum for the transaction of business shall consist of 2 of the commission's members, but not less than a majority of the fully authorized membership may grant or deny a certificate of appropriateness.

### **Section 3. Designation of Landmarks**

(a) The commission may designate an individual property as a landmark if it:

(i) possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or

(ii) is identified with historic personages; or

(iii) embodies the distinguishing characteristics of an architectural style; or

(iv) is the work of a designer whose work has significantly influenced an age; or

(v) because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood

(b) Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation, describing the property and announcing a public hearing by the commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least 7 days prior to the date of the public hearing. Once the commission has issued notice of a proposed designation, no building permits shall be issued by the building inspector until the commission has made its decision. For properties that are privately (non-Government entity) owned, the designation of landmark status will require the property owner's written consent.

(c) The commission shall hold a public hearing prior to designation of any landmark. The commission, owners, and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.

(d) The commission shall forward notice of each property designated as a landmark to the offices of the Cattaraugus County clerk for recordation.

(e) Landmark designation of a property will continue even if the property changes ownership from the owner(s) at the original time landmark status was designated.

#### **Section 4. Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Landmarks**

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark property, nor shall any person make any material change in the appearance of such property, or any exterior elements which affect the appearance and cohesiveness of the landmark without first obtaining a certificate of appropriateness from the historic preservation commission.

#### **Section 5. Criteria for Approval or a Certificate of Appropriateness**

(a) In passing upon an application for a certificate of appropriateness, the historic preservation commission shall not consider changes to interior spaces, unless they are open to the public. The commission's decision shall be based on the following principles:

(i) properties which are designated a landmark shall be retained, with their historic features altered as little as possible;

(ii) any alteration of the existing property/landmark shall be compatible with its historic character, as well as with the surrounding area; and

(iii) new construction shall be compatible with the property/landmark at which it is located.

(b) In applying the principle of compatibility, the commission shall consider the following factors:

(i) the general design, character, and appropriateness to the property/landmark of the proposed alteration or new construction;

(ii) the scale of proposed alteration or new construction in relation to the property/landmark itself, surrounding properties, and the neighborhood;

(iii) texture, materials, and color and their relation to similar features of other properties in the neighborhood;

(iv) visual compatibility with surrounding properties, including proportion of the property's/landmark's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and

(v) the importance of historic, architectural, or other features to the significance of the property/landmark.

#### **Section 6. Certificate of Appropriateness Application Procedure**

(a) Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the historic preservation commission. The application shall contain:

(i) name, address, and telephone number of applicant;

(ii) location and photographs of property;

(iii) elevation drawings of proposed changes, if available;

(iv) perspective drawings, including relationship to adjacent properties, if available;

(v) samples of color or materials to be used;

(vi) where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and

(vii) any other information which the commission may deem necessary in order to visualize the proposed work.

(b) No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the historic preservation commission. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Town of Machias, NY.

(c) The commission shall approve, deny, or approve the permit with modifications within 14 days from receipt of the completed application. The commission may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.

(d) All decisions of the commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the town clerk's office for public inspection. The commission's decision shall state the reasons for denying or modifying any application.

(e) Certificates of appropriateness shall be valid for 12 months, after which time the owner must reapply if he still wishes to undertake work on the property.

### **Section 7. Demolition Hardship Criteria**

(a) An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

(i) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(ii) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and

(iii) efforts to find a purchaser interested in acquiring the property and preserving it have failed.

### **Section 8. Alteration Hardship Criteria**

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

### **Section 9. Hardship Application Procedure**

(a) After receiving written notification from the commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the commission makes a finding that a hardship exists.

(b) The commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.

(c) The applicant shall consult in good faith with the commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

(d) All decisions of the commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the town clerk's office for public inspection. The commission's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the commission shall approve only such work as is necessary to alleviate the hardship.

### **Section 10. Enforcement**

All work performed pursuant to a certificate of appropriateness issued under this local law shall conform to any requirements included therein. It shall be the duty of the building code enforcement officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the historic preservation commission, the building code enforcement officer shall issue a stop work order and

all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

### **Section 11. Maintenance and Repair Required**

Nothing in this local law shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark property which does not involve a change in design, material, color, or outward appearance. No owner or person with an interest in real property designated as a landmark shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the historic preservation commission, produce a detrimental effect upon the character of the property itself. Examples of such deterioration include:

- (a) deterioration of exterior walls or other vertical supports;
- (b) deterioration of roofs or other horizontal members;
- (c) deterioration of exterior chimneys;
- (d) deterioration or crumbling of exterior stucco or mortar;
- (e) ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors; and
- (f) deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

### **Section 12. Violations**

- (a) Failure to comply with any of the provisions of this local law shall be deemed a violation and the violator shall be liable to a fine of not less than \$100.00 for each day the violation continues.
- (b) Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this local law shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the town attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

### **Section 13. Appeals**

Any person aggrieved by a decision of the historic preservation commission relating to hardship or a certificate of appropriateness may, within 30 days of the decision, file a written application with the town board of trustees for review of the decision. Reviews shall be conducted based on the same record that was before the commission and using the same criteria.

### **Section 14.**

This Local Law shall take effect immediately upon the filing thereof in the office of 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. \_\_\_\_\_ 1 of 20 03  
of the (~~County~~)(~~City~~)(~~Town~~)(~~Village~~) of Machias was duly passed by the  
Town Board on Sept. 29 20 03, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**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  
(Name of Legislative Body)  
disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_,  
(Elective Chief Executive Officer\*)  
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  
(Name of Legislative Body)  
disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted  
(Elective Chief Executive Officer\*)  
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  
(Name of Legislative Body)  
disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to  
(Elective Chief Executive Officer\*)  
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-----1-----, above.

\_\_\_\_\_  
~~County, legislative body, City, Town or Village~~ Clerk  
or officer designated by local legislative body

(Seal)

Date: September 29, 2003

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Cattaraugus

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature

Town Attorney  
Title

~~County~~  
~~City~~ of MACHIAS  
Town  
~~Village~~

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