

Berkshire Code Enforcement

SECTION 1. PURPOSE/INTENT:

This document is intended for use as a reference document for all Town of Berkshire residents and town officials.

The purpose of code enforcement for the Town of Berkshire is to apply federal, state, county, and local regulations that ensure the health, safety and welfare of all citizens of the community thus protecting the quality of life. The Berkshire Town Board (Town Board) administers this process by appointing a Code Enforcement Officer/Fire Marshall (CEO/FM) who acts on the town's behalf. It is the desire of the Town Board that the CEO/FM consistently apply and enforce all laws in a concerted effort to preserve the town's rural environment and agricultural resources as reflected in the Town of Berkshire Master Plan. Community awareness of building regulations and other behaviors that impact safety and welfare is encouraged through Town Board meetings, web site posting of regulations and other forms of communications.

The code enforcement mission is to enforce the New York State Fire Prevention and Building Code (the Uniform Code), which provides guidelines for construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, property maintenance, and installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. Berkshire local laws and ordinances and other pertinent regulations must also be considered. The CEO/FM acts at the direction of the Berkshire Town Board and interacts with the Town Clerk, Town Justice, Town and County Planning Boards and other related individuals (i.e. Fire Chief, Town Supervisor, Superintendent of Highways, etc.). The CEO/FM primarily ensures that all development of land or property and construction and/or renovations of buildings meet current laws and regulations. The CEO/FM also ensures that permits are applied for and inspections are performed. The CEO/FM will confront code enforcement issues with steps to comply with code or will serve and file citations for non-compliance. See appendix A on Code Enforcement Officer Job description, and section 3 for specific duties.

SECTION 2. CODE ENFORCEMENT PROCESS:

(a) Township Code Enforcement Authority:

- (1) **The Town Board** (with assistance from Town Planning Board) establishes local laws to protect private citizens and the best interests of the community. All board members must be familiar with all local laws and ordinances. The Town Board:
 - a. appoints a Code Enforcement Officer/Fire Marshall to administer building codes and other safety and welfare regulations;
 - b. oversees all CEO/FM activities and provides direction;
 - c. monitors town-wide code compliance;
- (2) **The Town Clerk** provides building permit applications and collects appropriate fees. The Clerk gives the applicant a receipt and gives them application copies, sends a copy to the CEO/FM and keeps a copy for town records. Note: The Town Clerk does not handle any detailed specifications. The Town Clerk also maintains the official copy of all local codes, laws, and ordinances.
- (3) **The Code Enforcement Officer/Fire Marshall** is appointed by the Town Board to enforce laws and ordinances that insure a safe and healthy environment for town residents and the general public. The CEO/FM must have expertise in building and fire safety and be familiar with local and government regulations. See Section 3 for specific duties of the CEO/FM including the role in permit applications.
- (4) **The Town Justice** shall have the power to conduct hearings regarding non-compliance with local laws and ordinances when violations occur and are not resolved by any other means. The justice has the power to levy fines for violations in accordance with the local law in question.
- (5) **The Town Attorney** is available to consult with the CEO/FM and Town Board on legal matters when necessary.

(b) Code Violations:

The intent of the code enforcement process is to protect our community's environment, character, and property values. It is recognized that on occasion residents may unknowingly violate code by taking prohibited actions or failing to apply for proper permits. The CEO/FM may become aware of violations of code from a citizen, a town

official or by their own observation. In acting on a violation, the CEO/FM generally acts in the following sequence:

- (1) The CEO/FM receives notice of, or observes a potential violation;
 - (2) an investigation is made to determine the details of the potential violation;
 - (3) A violation notice shall be served on the owner or the owner's executors, legal representative, agents, lessees, any tenant or other person having a vested or contingent interest in the premises. Such order may be served either personally or by certified mail with return receipt requested, addressed to the last known address of the owner or agent. The violation notice shall identify the property and/or business and the violation;
 - (4) the violator is given the opportunity (within the time period specified in the local law) to remedy the violation;
 - (5) the violator may choose to seek relief by applying for a variance;
 - (6) failure to remedy the violation or to seek relief will result in the CEO/FM to issue an appearance ticket and bring the matter to the court system for review, which may result in fines levied against the violator. A detailed description of the violation, identifying the specific code or law being violated, must accompany the appearance ticket;
 - (7) The Town Board may rule on the variance request or refer it to another governing body with more appropriate jurisdiction.
- (c) Variances: Should there appear to be a valid reason to proceed in a manner that does not conform to these regulations then one should apply for a variance. Most local laws describe the variance process, which normally requires that a clear description of the property and the justification for exception be documented and submitted to the Town Board.
- (d) Complaint process: Citizens/residents can submit or report issues within the community by calling a complaint hotline (657-8678 and leave a message) or via email (Berkshireny@htva.net or Berkshirecode@berkshireny.com). Required information would include the reason or description of the complaint, non-compliance action observed and dates; and specific address of the property where the violation occurs. The CEO/FM maintains a file of all complaints and responses to them. Some typical complaints or common code violations include:
- (1) Building construction with no permits (see local law "Building Permits", "Mobile Home Law" or "Site Plan Review");
 - (2) Questionable use of building ("See LL "Site Plan Review" or "Adult Entertainment");
 - (3) Unsafe buildings (See LL "Site Plan Review");
 - (4) Junk, trash and debris (see LL "Solid Waste Disposal");
 - (5) Tall grass & weeds;
 - (6) Collection of vehicles (see LL "Unregistered Vehicles and Junk Yard Licensing");
 - (7) Blocked sidewalks;
 - (8) Improper use of highways (see LL "Notice of Highway Defects" or "Road Preservation");
 - (9) Water flow disturbance (see LL "Flood Damage Prevention").

SECTION 3. CODE ENFORCEMENT OFFICER/FIRE MARSHALL:

- (a) The Code Enforcement Officer/Fire Marshall shall administer and enforce all the provisions of the Uniform Code, the Energy Code and all local laws/ordinances, and in addition shall have the following powers and duties:
- (1) review and approve or disapprove applications for Building Permits and the plans, specifications and construction documents submitted with such applications;
 - (2) upon approval of such applications, set such terms and conditions as the CEO/FM may determine to be appropriate;
 - (3) conduct construction inspections, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, inspections to be made prior to the issuance of *Certificates of Occupancy* or *Certificates of Compliance*, and all other inspections required or permitted under provisions of state and local laws;
 - (4) observe local activities for compliance to code enforcement;
 - (5) review and investigate complaints;
 - (6) issue orders for remediating violations and/or stop work orders;
 - (7) maintain records of all code enforcement activities;

- (8) impose fees as set by the local laws and Town Board;
 - (9) pursue administrative enforcement actions and proceedings, including issuance of appearance tickets as authorized under Town of Berkshire Local Law #1 of 2008 – Building Code, local law.
 - (10) in consultation with the town officials, pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and local laws, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or other local laws/ordinances;
 - (11) Insure compliance with NYS Uniform Code minimum requirement section 1203.4 regarding program review and reporting, which states that: ***“Every city, village, town and county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code shall annually submit to the Secretary of State, on a form prescribed by the Secretary, a report of its activities relative to administration and enforcement of the Uniform Code”***
 - (12) Attend all meetings as directed by the Town Board and submit detailed work reports on no less than a monthly basis.
- (b) The CEO/FM is appointed by the Town Board and shall perform all duties outlined in the job description in appendix A. Compensation for the CEO/FM shall be fixed from time to time by the Town Board.
 - (c) In the event that the CEO/FM is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting CEO/FM. The Acting CEO/FM shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the CEO/FM by Local Law #1 of 2008.

SECTION 4. CITIZEN INFORMATION

- (a) All citizens should have access to regulations concerning code enforcement. Local laws are filed with the Town Clerk and are also available on the town web site at <http://www.berkshireny.com/laws.htm> .
- (b) Residents must apply for a building permit for any work which must conform to the Uniform Code and/or the Energy Code ("Uniform code" or "code" means the New York State Uniform Fire Prevention and Building Code), including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit (also see the local laws and ordinance in the web pages under Town Government for Building Permit Ordinance and Building Code, local law). You should contact the Code Enforcement Officer/Fire Marshall Prior to applying for the permit so he can review your plans. Step by step procedures can be reviewed/followed to assist with the permit and building process. See Section 2d for contact information.
- (c) Citizens should be able to submit ideas, questions or complaints by calling the complaint hotline or via email (See Section 2d for details).
- (d) When in doubt call or send an e-mail to the Code Enforcement Officer/Fire Marshall about the following:
 - Building permits application process
 - Fences and shrubs at intersections
 - Size waiver on building sheds
 - Keeping identity anonymous for complaints
 - Tree removal
 - Swimming pool installation
 - Deck building
 - Change in use of building or property
 - Trash and debris
 - Unsafe conditions, buildings or properties
 - Sidewalks usage

Appendix A – Town of Berkshire Code Enforcement Officer Job Description

JOB DESCRIPTION:

1) **OVERVIEW:** Work is performed under general supervision of the Town Board with leeway allowed for the exercise of independent judgment in carrying out details of the work in accordance with established policies, procedures, legal rules, and regulations. Responsibilities primarily involve administering and enforcing the NYS Uniform Fire Prevention and Building Code and local laws or ordinances. These rules and regulations require enforcement to ensure the health, safety and welfare of all citizens by protecting the quality of life enjoyed by all. Doing so requires oversight of use, development, construction, and proper maintenance of land, property and buildings within the town. This effort requires issuing of permits, performing inspections, interpreting codes, issuing certificates of occupancy or compliance, and serving summons for noncompliance. The CEO must also work with town officials and residents to remedy violations. The incumbent will be required to submit reports of activities and attend meetings and training as required by New York State statute or the Town Board. Full knowledge of all state mandated regulations and all local laws and ordinances is required.

2) **MINIMUM QUALIFICATIONS:**

- Graduate of high school or possession of a high school equivalency diploma;
- 2 years experience in building or housing construction work, in a building trade such as carpentry, plumbing, electrical or related trades;
- Completed training of Minimum Standard for Code Enforcement Personnel or willing to complete such within 6 months of hire;
- Preferred prior experience as municipal building, housing or zoning inspector.

3) **SPECIAL CONSIDERATIONS:** Accept terms of a probationary appointment for first 6 months if desired by the Town Board.

4) **TYPICAL WORK ACTIVITIES:**

- Administer and enforce all provisions of NYS Uniform Fire Prevention and Building Code, and other codes, laws, rules and regulations pertaining to the construction or alteration of buildings and structures;
- Review building permit applications to insure compliance with regulations;
- Issue building permits and certificates of occupancy for buildings which comply with uniform code and other local laws or ordinances;
- Inspect building projects at certain intervals to make sure they meet requirements;
- Work with other agencies as necessary to assist with potentially dangerous situations (i.e. with DEC on wetlands or hazardous waste issues);
- Enforce local laws and ordinances by identifying noncompliance situations and resolving them through remediation, which may require issuance of oral or written notices;
- Respond to complaints or referrals in a timely manner and provide order for corrective action;
- Maintain accurate, permanent records of all CEO transactions and activities.