

Proposed Local Law Number 4 Of 2025

County Of Ulster

A Local Law Providing For The Protection And Restoration Of The Esopus Creek, Rondout Creek And Wallkill River In Ulster County, And Providing For The Rights Of The Residents Of Ulster County To Clean Water And A Healthy And Productive Ecosystem

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This Local Law shall be known and referred to as “The Rights of the Esopus Creek, Rondout Creek and Wallkill River in Ulster County” law.

SECTION 2. AUTHORITY.

This Local Law is enacted under the authority of the Ulster County Charter; Article II, §C-13 “local laws...”, Article VII, §C-47 “Planning Director...”, and the Code of the County of Ulster §41-2 “Department of Environment Director...”; Municipal Home Rule Law, Article 2, Section 10 “local laws...”, Article 4, Section 33 “county charters”; and New York State Constitution, art. I, § 19 “Each person shall have a right to clean air and water and a healthful environment,” and, art. IX, § 2, “home rule powers of local governments,” and art. XIV, § 4, state policy “to conserve and protect natural resources and scenic beauty.”

SECTION 3. LEGISLATIVE INTENT AND FINDINGS.

Through ignorance or indifference, we can do and have already done massive and irreversible harm to Nature. To defend and improve the condition of all living things, presently and in the future has become an imperative goal for humankind. ~~Through fuller knowledge and wiser action, and by acknowledging our responsibility for the past we can in the future protect Nature, reverse many of the harms we and others have caused, and protect not just for humans, but for all things, a good and free life.~~

This law is proposed on behalf of those in Ulster County concerned for their own health, safety & well-being as well as those of the complex, living ecosystems of the Esopus Creek, Rondout Creek and Wallkill River, hereinafter collectively referred to as “the waterways”, which constitute the county’s main feeder waterways of the Hudson River.

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It is the responsibility of the County and essential to the health, welfare and prosperity of the County's residents to protect the waterways, their ecosystems and the species within from the many current threats, including but not limited to, climate change, excessive water diversion, chemical pesticides, toxic contaminants and other pollutants, and adverse industrial, corporate or governmental practices.

These protections are not without precedent.

The State Constitutions of Pennsylvania, Montana, Hawaii, Illinois, Massachusetts, and Rhode Island all contain language concerning inalienable environmental rights and protections.

~~Pennsylvania adopted the country's first environmental rights amendment in 1971 establishing a state constitutional right to clean air and water. The Pennsylvania Environmental Rights Amendment also contained a provision declaring the state's natural resources to be "... common property of all the people, including generations yet to come."~~

~~In 1972, voters ratified a new Montana State Constitution, which included an article on the environment and natural resources declaring "... the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." The constitutional provision also provided that "... the legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."~~

~~As of 2021, the constitutions of four additional states, Hawaii, Illinois, Massachusetts, and Rhode Island, contained language concerning environmental rights.~~

In 2022 the "Green Amendment" to the New York State Constitution was ratified by voters adding Section 19 to Article I codifying into law that "Each person shall have a right to clean air and water, and a healthful environment."

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For over a decade Tribal Nations governments throughout the United States have enacted legally enforceable Rights of Nature Laws **including the Ho-Chuck and Ponca Nations, the Yurok and Nez Perce Tribal Councils and the Menominee Indian Tribe of Wisconsin, to name a few.**

- ~~In 2016 the Ho-Chunk Nation passed a Resolution to add the Rights of Nature to their constitution stating “Whereas, in the tradition of the Nation's relationship with Mother Earth, from which we came and upon which we depend ... we recognize that to protect Mother Earth, we must place the highest protections on nature, through the recognition of rights in the Nation's highest law, our Constitution...”~~
- ~~In 2017 the Ponca Nation passed a Resolution recognizing the Rights of Nature to address the problems caused by hydrofracking near and on the reservation, which included earthquakes. The law states that "Nature is a unique, indivisible, self-regulating community of interrelated beings," and that nature has, "the right to life and to exist." The law also establishes the right to clean water, clean air, the right to a climate that is habitable, and the right to be free from contamination, pollution, and toxic or radioactive waste.~~
- ~~In 2019, the Yurok Tribal Council passed a Resolution establishing the Rights of the Klamath River. The resolution declares that the Klamath River has the right to "exist, flourish and naturally evolve to have a clean and healthy environment free from pollutants ... " The law explicitly states that the Klamath river, its ecosystem, and species have the right of personhood, "thus granting standing in causes of action against entities inflicting harm ...".~~
- ~~In 2020, The Nez Perce Tribal General Council passed a resolution recognizing the Snake River as a living entity that has rights, including the right to, "exist, flourish, evolve, flow, and regenerate." The law states that the Nez Perce People have, "always believed that rivers are alive And have long strived to live in harmony with the river... " The law provides that the Snake River will be represented by legal guardians "whose duty is to act on behalf of the rights and interests of the Snake River."~~
- ~~In 2020 The Menominee Indian Tribe of Wisconsin passed a Resolution asserting that the Menominee River has the right to, "exist naturally, flourish, evolve, remain unpolluted and carry out its natural ecosystem functions..." and~~

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~~to "secure the highest protections for the river through the recognition of the river's inherent and legal rights."~~

These measures have also had increasing successes around the globe. **Legal rights have been granted to the Whanganui River in New Zealand, the Ganges and Yamuna rivers in India, all rivers in Bangladesh, and in September 2024 the Biobío River became the first ecosystem in Chile to have a Declaration of Rights.**

~~In 2017, New Zealand granted legal personhood to the Whanganui River. Since then, other nations have followed suit in an effort to protect the environment. Following the decision in 2017, the Ganges and Yamuna rivers in India and all rivers in Bangladesh also received legal rights. In September 2024 the Biobío River became the first ecosystem in Chile to have a Declaration of Rights.~~

Locally, in June 2023, the City of Kingston Common Council, as urged by Ramapough Turtle Clan Chief Vincent Mann, passed Resolution No. 98, “to recognize, secure, and create a Bill of Rights providing for the “rights of the Hudson River Watershed and its Ecosystem...” to “exist, flourish, evolve, and regenerate, and rights to restoration, recovery, and preservation...” and “... to sustain life, to maintain and regenerate their life cycles and evolutionary processes, to be restored to a healthy state, and to be free from harmful activities ...” and, “that no person, government or business entity of any form shall violate the rights of the Hudson River Watershed...”

~~These actions affirm a growing sense that all species connected to the waterways are environmentally and culturally significant and should be protected in their traditional forms, natural diversity and original integrity.~~ It is the intent and purpose of the Ulster County Legislature to protect and, to the extent practicable, restore the health, cleanliness and productivity of the waterways for the benefit of its residents and visitors as well as the waterways’ natural components and ecosystems. The Legislature also intends to recognize and implement the rights of its residents to a clean, healthful and productive ecosystem and the right of the waterways themselves to thrive, in keeping with the Green Amendment; Article I, Section 19 of the New York State Constitution.

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The Ulster County Legislature hereby finds that the Esopus Creek, Rondout Creek and Wallkill River are defining features of the county, feeder waterways of the Hudson River, and crucial environmental resources for the County and its residents. The Legislature further finds that protection and restoration of the waterways is essential to provide for the health, welfare, prosperity and benefit of County residents currently and in the future, and to fulfill the County's stewardship obligations to its residents and natural resources.

SECTION 4. RIGHTS OF THE ESOPUS CREEK, RONDOUT CREEK AND WALLKILL RIVER WITHIN ULSTER COUNTY AND RIGHTS OF ULSTER COUNTY RESIDENTS.

A. The Ulster County Legislature hereby declares and establishes that the Esopus Creek, Rondout Creek and the Wallkill River, collectively the waterways, within the boundaries of the County of Ulster have a right to exist, flourish, and naturally evolve; to have clean and healthy environments; to have stable climates free from human-caused climate change impacts; and to be free from contamination by natural or genetically engineered pollutants.

B. The Ulster County Legislature hereby affirms Article I, Section 19 of the New York State Constitution and further declares and establishes that Ulster County residents have a right to clean water and a healthy and productive ecosystem.

SECTION 5. ANTIDEGRADATION.

A. The Ulster County Legislature finds that the federal Clean Water Act and its implementation by the NYS DEC have improved water quality of New York's waterways substantially since the 1970s. However, certain discharges and other activities that may damage water quality remain unregulated, leaving waterways at risk to receive wastes from polluting activities and industries, thus requiring protection.

B. The Legislature further finds that the assimilation of wastes and other pollutants into the waterways from discharges and other activities to be inconsistent with the goal

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of restoring the waterways and the expectation and right of County residents to the ongoing improvement of their environment and their beneficial use and enjoyment of the waterways.

C. Ulster County hereby adopts the New York State antidegradation policy for the waterways, whether or not it is currently implemented by the NYS DEC.

1. Water quality in the waterways shall be maintained and protected unless the proponent of any activity that would lower water quality shows after an analysis

of alternatives that such lowering of water quality is necessary to accommodate significant social or economic development in the affected area.

2. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity (DEC Organization and Delegation Memorandum 85-40; 40 CFR § 131.12).

D. Any activity under this section shall achieve the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. No such activity may result in a loss of a recognized use for the waterways or any violation of applicable water quality standards.

E. “Lowering of water quality” shall mean any increase in the water column of the waterways within Ulster County of any non-water substance, heat or radioactivity, or removal or degradation of physical components of the waterways or habitat or biota that are part of their ecosystems, including increased mortality or morbidity to fish or other aquatic life, effected directly or indirectly by the proposed activity, or substantially threatened by the proposed activity.

F. “Significant social or economic development” shall mean the development of workforce or affordable housing, or development or expansion of a mixed-use hamlet, village or city pursuant to a local comprehensive plan, or ecological restoration activities on or adjacent to the waterways (including removal of non-native species). It does not ordinarily include private commercial activities.

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SECTION 6. PROTECTION AND PREEMPTIVE RESTORATION OF THE ESOPUS CREEK, RONDOUT CREEK AND WALLKILL RIVER WITHIN ULSTER COUNTY.

A. Declaration of County policy. It shall be the policy of Ulster County to:

1. prioritize the protection and restoration of the waterways and to commit the necessary resources, staff and funding toward that end;
2. protect, support, advocate, and, at all possible opportunities, effect the ecological restoration of the waterways, including habitat for fish and other aquatic species and water quality;
3. monitor and preemptively restore the waterways to prevent and/or mitigate ecological damage before it occurs.

SECTION 7. PRECAUTIONARY PRINCIPLE.

The precautionary principle shall apply to determinations relating to the potential lowering of water quality, or degradation of any of the waterways' biota or associated ecological processes or components.

For purposes of this section "precautionary principle" shall mean that where there are reasonable grounds for concern that a proposed activity could result in adverse impact on the human health or welfare or lowering of water or ecological quality of the waterways, the insufficiency, inconclusiveness or uncertainty of scientific evidence shall not preclude appropriate restrictions or denial of the proposed activity. The burden of demonstrating the safety and lack of adverse impact from the proposal shall be on the proponent.

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SECTION 8. IMPLEMENTATION AND ENFORCEMENT.

A. The Director of the Department of Planning, in cooperation with the Director of the Department of Environment, or their designee(s), shall implement the provisions of this local law.

B. The Director of the Department of Planning, in cooperation with the Director of the Department of Environment, or their designee(s), shall advocate these policies and coordinate with jurisdictional agencies, including but not limited to the Ulster County

Water Quality Coordinating Committee, Lower Esopus Advisory Council, Rondout Creek Watershed Alliance, Wallkill River Watershed Alliance, Hudson River Watershed Alliance, to actively monitor the waterways, mitigate risks to water quality and environmental health, design and enact protection and restoration plans for the waterways in keeping with and furthering the goals of existing management plans, including but not limited to the Ashokan Watershed Stream Management Program, Upper Esopus Creek Stream Management Plan, Lower Esopus Stream Management Plan, Tidal Rondout Creek Watershed Management Plan, Rondout Creek Interim Watershed Management Plan, Wallkill River Watershed Conservation and Management Plan, and the Hudson River Estuary Program.

C. The Ulster County Legislature instructs the Directors of the Departments of Planning and Environment, or their designee(s), to regularly seek and apply for federal, state and private sources of funding where available, including but not limited to: EPA water quality management planning grants, New York State DEC/EFC Wastewater Infrastructure Engineering Planning Grants, Water Quality Improvement Projects (WQIP), Hudson River Estuary Grants Programs, Water Quality Management Planning Projects (604(b)).

1. The protection and preemptive restoration of waterways habitat or any other aspect of the waterways is not contingent on such funding. The Ulster County Legislature rejects any purported dependence on the availability of federal, state or private funding to justify failure to preemptively restore the ecological health and productivity of the waterways.

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D. The Director of the Department of Planning, in cooperation with the Director of the Department of Environment, or their designee(s), shall recommend to the Legislature any measures not currently within their authority, including any technical studies or research to apply these policies or advocate them to the jurisdictional agencies, or for the adjudication of disputes in administrative hearings or judicial proceedings.

E. The County, upon resolution of the Legislature, or any resident acting on their own behalf or that of the waterways, may bring an action to enforce the provisions of this Local Law in any appropriate venue or in any other court of competent jurisdiction.

F. Damages to the waterways as a result of one or more violations of this law may be recovered in an action to enforce the provisions of this law.

1. Damages shall be measured by the cost of fully restoring the waterways to their natural state and functionality before the violation, as well as the loss of ecosystem services from the time of the violation to the time of such restoration.
2. Such damages shall be paid into a segregated fund administered by Ulster County to be dedicated to restoration of the waterways as affected by the violation.
3. A prevailing plaintiff, in an enforcement action, shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

G. On or before January 15th a report shall be filed with the Clerk of the Legislature detailing for the previous year: the progress of the actions supporting the goals of this law, all funding sources investigated and identified, which sources were applied for with award status, which sources were not pursued with a brief explanation as to why, any actions brought under the provisions of this law and their disposition. The report shall contain any and all additional information related to the protection and restoration of the waterways.

SECTION 9. SEVERABILITY.

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In the event that any portion of this Local Law is found to be invalid, such invalidation will not have any effect on the remaining portions or applications of this Local Law. The Legislature intends that each section of this Local law shall be in full force and effect so as to provide increased benefit to the waterways, even if other provisions are invalidated or suspended.

SECTION 10. EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Office of the Secretary of State of the State of New York.