

2022-46
Unfinished Business #7

**TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER**

Your Committee recommends passage of “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 581 requiring landlords to provide tenants with a flood history disclosure.”

Your Committee is aware that over the past number of years increases in the intensity and frequency of rain storms due to Climate Change have caused extraordinary flooding in Westchester County. Due to these ever-growing storms, area residents have experienced costly property damage to their homes and assets. Additionally, business owners have also faced serious challenges from the rise in flooding related issues by being forced to temporarily close for expensive capital repair or through the loss of inventory.

Your Committee is aware that the Long Island Sound Shore in 2007, 2011, 2012 and most recently in 2021 tenants were hit with flooding of basement apartments which resulted in some cases with water rising up over five feet. Over the course of the next few years, these apartments were leased out to new tenants. These new tenants were unaware of the property’s propensity for significant and life threatening flooding and suffered expensive and massive property damage similar to that which occurred after storms in 2007. In one instance, the new tenants were luckily awoken by the storm and were able to move their child from its crib as water was climbing on all sides.

Your Committee is also aware that the flash flooding of the tri-state area on September 1, 2021 caused at least 11 (eleven) deaths in basement apartments in New York City as tenants were inundated with water and could not get out of their apartments.

A 2014 Study conducted by the New York State Energy Research and Development Authority (NYSERDA) found that precipitation across New York State is projected to increase by approximately 1-8 percent by the 2020s, 3-12 percent by the 2050s, and 4-15 percent by the 2080s. Additionally, sea level is projected to rise along the New York State coastline and in the tidal Hudson by 3-8 inches by the 2020s, 9-21 inches by the 2050s, and 14-39 inches by the 2080s. This rise in precipitation and sea level is a dangerous combination to those who own property on land with a propensity for flooding.

Your Committee is aware that the intent of this proposed Local Law is to require owners of property to disclose flood history of a building prior to the signing of a lease with a tenant. This requirement, through provision of a “flood disclosure” form to the tenant, will serve as a safety net for both lessors and lessee. The lessor can be assured that they will not be liable for any damages as a result of failing to disclose a property’s propensity for flooding and previous height of water, while the lessee will have a remedy to recover the unfair damages they may suffer at the hands of an unscrupulous landlord who fails to disclose all of the details of the property they are leasing.

Your Committee is further advised that the proposed Local Law will, if adopted, provide for civil remedies for violations of its provisions. Specifically, violation of the local law would authorize the commencement of civil actions for equitable relief and costs.

Your Committee is informed that the proposed project does not meet the definition of an action under New York State Environmental Quality Review Act ("SEQRA") and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning, dated January 14, 2022, which is on file with the Clerk of the Board of Legislators. Your Committee concurs in this conclusion.

In light of the aforementioned, your Committee, after careful consideration, recommends the adoption of this proposed Local Law adding Chapter 581 to the Laws of Westchester County.

Dated: June 6, 2022
White Plains, New York

COMMITTEE ON

D. M. [Signature]
Nancy Bar
Jedat Jachri
Margaret A. Cyr
Benjamin [Signature]
Col. J. [Signature]

1 resolution

D. M. [Signature]
Nancy Bar
Samuel [Signature]

Hours [Signature]

Dated: June 6, 2022
White Plains, New York

The following members attended the meeting remotely, as per Chapter 1 of the New York State Laws of 2022 and Executive Order 11 and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Committee(s) on:

**LEGISLATION
COMMITTEE**

Mary Jane Skimsky
Catherine Boy

**HOUSING
COMMITTEE**

Catherine F. Parker
Catherine Boy
Tye H.

LOCAL LAW INTRO. NO. -2022

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 581 requiring landlords to provide tenants with a flood history disclosure.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 581 is hereby added to the Laws of Westchester

County to read as follows:

CHAPTER 581

FLOOD HISTORY DISCLOSURE LAW

Sec. 581.01. Short Title.

Sec. 581.11. Definitions.

Sec. 581.21. Required Conduct.

Sec. 581.31. Civil Causes of Action.

Sec. 581.41. Joint and Several Liability.

Sec. 581.51. Construction.

Sec. 581.61. Severability.

Sec. 581.01. Short Title.

This Chapter shall be known as and may be cited as the “Flood History Disclosure Law.”

Sec. 581.11. Definitions.

As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. “Flood” shall mean a general or temporary condition of partial or complete inundation of leased Premises caused by:
 - a. The overflow of inland or tidal waters;

- b. The unusual and rapid accumulation of runoff or surface waters from any established water source such as a river, stream or drainage ditch; or
- c. A ponding of water at or near the place where heavy or excessive rain fell.

2. “Flood Disclosure Form” shall mean a form which shall be completed by the property owner providing information regarding the Premises’ propensity for flooding.

3. “Flood Damage” shall mean all the varieties of harm resulting from a flood including all detrimental effects on people, their health and property.

4. “Premises” shall mean the portion of real property contained within a structure to which a tenant has the exclusive right to use or the authority to store non-real property within.

Sec. 581.21. Required Conduct.

1. When the owner of real property, either directly or through an agent, seeks to lease or rent that property, or any portion thereof, for residential or commercial occupancy, prior to entering a written agreement for the leasehold of that property, the owner shall, either directly or through an agent notify the prospective tenant of:

- a) whether the property is located in a Special Flood Hazard Area as shown on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency; and
- b) the propensity for flooding of the Premises contained on such property if such flooding has occurred to such owner’s knowledge, at least one time during the

ten-year period immediately preceding the date of the lease and has caused flood damage to any portion of the leased Premises.

2. In the event a tenant sublets the property, the tenant shall be required to disclose information regarding the propensity for flooding of the Premises prior to entering a written agreement for the sublease of that property, if such flooding has occurred, at least one time during the ten-year period immediately preceding the date of the lease and has caused flood damage to any portion of the sublet Premises.

3. The owner of the property shall provide notification of the Premises' propensity for flooding pursuant to the parameters listed in subdivision "1" of this section, by provision of a "Flood Disclosure Form" to be signed by both the owner of the property and the tenant. The owner shall also provide notification of where the water line was estimated in the Premises.

4. The Westchester County Planning Department shall provide such "Flood Disclosure Form" on its website or by hard copy when requested.

5. This Local Law shall only apply to leaseholds or sublets, or renewals thereof, entered into on or after its effective date.

Sec. 581.31. Civil Causes of Action.

In the event of a landlord's non-compliance with subdivision "1" of Section 581.21 of this Chapter, a tenant that sustains flood damage during the course of his, her or their lease may commence an action in a court of competent jurisdiction for the recovery of such damages.

Sec. 581.41. Joint and Several Liability.

If it is found in any action brought pursuant to the provisions of this Chapter, that two (2) or more named defendants acted in concert pursuant to a common plan or design to violate any provision of this Chapter, such defendants shall each be held jointly and severally liable for any damages assessed or any costs and fees awarded.

Sec. 581.51. Construction.

No provision of this Chapter shall be construed or interpreted so as to limit the right of any person or entity to seek other available criminal penalties or civil remedies.

Sec. 581.61. Severability.

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§2. This Local Law shall take effect on August 15th 2022.