

Putnam County's
Municipal Guide to NYS General Municipal Law §239:
Required Planning, Zoning and Subdivision Referrals



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Introduction

This 239 Review Guide was prepared by the Putnam County Department of Planning, Development & Public Transportation to provide clarity to the referral and review process that is required by New York State General Municipal Law §239-l, m & n, also referred to as GML §239. GML §239 was established to encourage and coordinate inter-community and county-wide planning and zoning decisions between local municipalities and county planning officials. This Guide consists of an overview of the basic GML §239 legal requirements of referral and review. It also describes the types of projects for referral and addresses the process used by Putnam County to accept, review and complete referrals.

GML §239 requires that all towns and villages in Putnam County refer development applications, proposed zoning changes, and comprehensive plan adoption or amendments to the Putnam County Department of Planning, Development & Public Transportation (County Planning) under certain circumstances for review, comment, and recommendation prior to taking final action. The purpose of this law is to bring relevant inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. This guide uses the terms “referring body” and “municipality” interchangeably throughout the document.

Which Projects Require Review?

Projects must meet two criteria to be subject to review. The first relates to the type of proposed action and the second is linked to its geographical location.

GML §239-m states that the following proposed actions shall be subject to referral:

1. Adoption or amendment of a comprehensive plan;
2. Adoption or amendment of a zoning ordinance or local law;
3. Issuance of special use permits;
4. Approval of site plans;
5. Approval of subdivisions;
6. Granting of use or area variances; or
7. Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

Additionally, GML §239-n states that the local board must refer applications for preliminary and/or final subdivision approval. Sketch plans are also referable if the local board votes to approve them. Even if sketch plans are not required to be referred, County Planning encourages local Boards to refer sketch plan applications so that we may offer comments early in the review process.

What Triggers a Referral?

GML §239 triggers a referral based on geographic location and states that local projects must be referred if they affect real property within five hundred feet (500') of any of the following:

1. The boundary of any city, village or town;
2. The boundary of any existing or proposed county or state park or any other recreation area;
3. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
4. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
5. The existing or proposed boundary of any county or state-owned land on which a public building or institution is situated; or
6. The boundary of a farm operation located in an agricultural district, as defined by Article Twenty-five-AA of the Agriculture and Markets Law. Note that the exception to this subparagraph is that it shall not apply to the granting of area variances.

Furthermore, GML §239-n states that if any portion of the property meets one of the geographical locations, then the project must be referred, even if the developed portion of the property would not be within 500 feet.

What Constitutes a Complete Application or Full Statement?

GML §239 requires that the municipality submit a "full statement" (or a complete application as required by local regulations) for a proposed action before County Planning begins its review. This includes all materials required by and submitted to the municipality as an application on a proposed action as well as a completed Environmental Assessment Form (EAF) and all other materials required by such municipality in order to make its determination of significance pursuant to the State Environmental Quality Review Act (SEQRA). For adoption or amendment of a zoning ordinance, local law or comprehensive plan: the complete text of the proposed ordinance, local law or plan as well as all existing provisions to be affected thereby, if any. The proposed rezoning must be also referred.

If it is discovered at any point during the County review process that any of the required information has not been provided and that the referral does not comprise a complete application, County Planning will notify the municipality that the submission is incomplete. Please note that GML §239 requires that any additional items that the municipality receives as part of the application be forwarded to County Planning for review.

Please also note that County Planning does not review or accept materials regarding any referral that are sent from any other source than the municipality. All GML §239 Review communications flow directly between the municipality and County Planning.

How Much Time Does County Planning Have to Conduct its Review?

After receiving a complete application, County Planning has 30 days, or longer if mutually agreed upon by County Planning and the municipality, to provide its recommendations to the municipality. If County Planning fails to provide its recommendations within the 30 days, or the agreed-upon time, the municipality may take final action on the proposed action without input from the County. However, any County Planning recommendations received after 30 days, or the agreed-upon time, but at least two business days prior to final action by the municipality, must be considered as if the recommendations were received within 30 days. Typically, County Planning spends less time than the allowed 30 days for review, however it sometimes requires the full 30 days. If there are any key dates for project review, including meeting or public hearing dates, please inform County Planning during the submittal process.

What are Typical County Planning Responses?

County Planning typically makes one of four responses as part of its review process. Two of them require a supermajority vote to override recommendations. In other words, if County Planning recommends that a proposal be modified or disapproved, the municipality must either follow the recommendation or override the modification or disapproval by a majority plus one vote of the full municipal board. The municipality, in its report on the final action, must further state the reasons for overriding County Planning's recommendation. Additionally, County Planning may in some cases include advisory comments for the municipality to consider during deliberation.

- Matter for Local Consideration: County Planning has determined that the proposal will not create significant inter-municipal or county-wide impacts and is primarily of local concern.
- Approval: County Planning has determined that the proposal will not create significant negative inter-municipal or county-wide impacts. A recommendation for approval is non-binding and no supermajority is needed to override this recommendation.
- Modification: County Planning has determined that the proposal may cause negative inter-municipal or county-wide impacts. However, County Planning believes that these impacts could be addressed through modification of the proposal. A recommendation for modification is binding, so a supermajority is needed to override this recommendation if the modifications are not made.
- Disapproval: County Planning has determined that the proposal will result in significant negative inter-municipal or county-wide impacts and these impacts could not be addressed through a simple modification of the proposal. A recommendation for disapproval is binding and a supermajority is needed to override this recommendation.

What Are the Legal Implications of GML §239?

Case law in New York State has shown that the failure of local municipalities to follow the referral requirements of GML §239 may invalidate any final city, town or village decision in a development proposal. Therefore, it is crucial that local planning and zoning municipal staff, as

well as the governing body, planning and zoning boards, municipal attorneys and enforcement officers, be aware of the state law requirements.

Who Is Subject to GML §239?

All municipalities in Putnam County are subject to the provisions of GML §239. Any board considering any of the above actions, including the Town or Village Board, Planning Board or Zoning Board of Appeals, is subject to these requirements.

What Issues Can Be Considered by the County?

The intended purpose of GML §239 is to ensure that inter-community and county-wide matters are considered by individual municipalities in their review of planning, zoning, and development applications. While conducting reviews, County Planning will consider the following items as defined in and required by GML §239-l:

1. Compatibility of various land uses with one another;
2. Traffic-generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed roadways;
3. Impact of proposed land uses on existing and proposed County or State uses;
4. Protection of community character as it relates to predominant land uses, population density and the relation between residential and nonresidential areas;
5. Drainage and watershed;
6. Community facilities;
7. Official municipal and County development policies as may be expressed through comprehensive plans, capital programs or regulatory measures; and
8. Such other matters as may relate to the public convenience, to governmental efficiency and to the achieving and maintaining of a satisfactory community environment.

As needed, County Planning will work with various county, state, and federal agencies to analyze projects for potential inter-community and county-wide impacts. Agencies that County Planning regularly works with include the Putnam County Soil & Water Conservation District, Putnam County Health Department, the Putnam County Department of Highways & Facilities, the Putnam County Department of Emergency Services, the NYS Department of Transportation, NYS Department of Environmental Conservation, NYS Department of Parks, Recreation & Historic Preservation and NYC Department of Environmental Protection.

What is the Application Process? What Information is Required?

Municipalities should prepare and submit the Putnam County GML §239 referral form with all required materials. The materials submitted with the referral form should include all the project

materials required by your municipality for this to comply with the “full statement” requirement of GML §239. This includes all SEQR review documents available at the time of project submission.

The County's Referral Form requires several different types of information:

- Municipal information, such as the name of the municipality and municipal contact information for the project;
- Project proposal information, such as the project name, applicant name, tax parcel number, location, and dates related to the review of the project;
- Project details, such as the type of action being taken and how the project qualifies for GML §239 review; and
- Additional information including a general description of the proposed project or action, and if a variance is involved, why it is needed.

If at any time after submitting the original review materials new application materials are provided or changes are made to the project/proposed plan or law, those revised materials must be provided to County Planning for review again.

Finalizing the GML §239 Process

Within the 30-day review period, County Planning examines the project materials and determines if any additional materials are required to evaluate if the proposed project may have a negative inter-community or county-wide impacts. If necessary, County Planning will contact the municipality to clarify aspects of the project. Once County Planning has completed its review, it will send a determination with its recommendations and any comments to the municipality.

Additionally, GML §239 further requires that each municipality inform the County of its decision on the proposed project including if County recommendations were incorporated into the decision. A resolution or follow-up e-mail providing an overview of that decision are appropriate ways to provide that follow up.

Questions about the Process?

It is the intent of County Planning to update this guide as needed in order to provide a clear and streamlined process and to address any questions or concerns about the referral process. Please direct any comments or questions to:

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