

Local Law Filing

(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
(Select one:)

of NEW WINDSOR

Local Law No. 1 of the year 2020

A local law to establish a temporary moratorium on all development approvals in the Town of
(Insert Title)
New Windsor.

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village
(Select one:)

of NEW WINDSOR as follows:

Section 1: Title:

This local law shall be known as "Local Law #1-2020: A local law to establish a temporary moratorium on all development approvals in the Town of New Windsor."

Section 2: Legislative Purpose

The purpose of this local law is to temporarily suspend all approval of all development in the Town of New Windsor ("the Town"), both residential and non-residential, while the Board (1) evaluates sewer, water and traffic issues to ensure they are not in danger of causing a crisis condition within the Town should future development proceed under the criteria of the current comprehensive master plan ("CMP"); (2) considers whether it is necessary to commission and adopt a new or revised CMP in order to ensure that future development within the Town maintains the traditional rural character of the Town and safely and adequately protects the Town's natural

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

resources going forward, both of which were stated goals of the Town's prior CMP; and/or (3) seeks to enact changes to its current land use regulations in order to maintain and safeguard the Town's traditional rural character and natural resources.

The Town's CMP was last updated and adopted on May 6, 2009 (after it was authorized to commission same in April 2008). The stated mission in creating this plan was to:

"Balance residential and non-residential development in a responsible manner that will allow for improved protection of natural resources and maintenance of the traditional rural residential character of portions of the Town, while increasing the tax base, encouraging attractive economic activity with higher paying jobs and providing a variety of housing types and supportive municipal services to meet the needs of present and future residents."

Since adoption of the 2009 CMP, there has been substantial residential and non-residential development, which has caused concern amongst the Board about over-taxing the municipal sewer system. The current capacity of the Town's sewer treatment plant is approximately 5.0 million gallons per day (mgd). On an average day, the Town's flow to the plant is 4.79 mgd and oftentimes daily flow to the plant will exceed capacity. In addition to the development of the last ten (10) years, which has led to a corresponding increase in use of the municipal sewer system, there are agreements in place with existing owners of property within the Town who have already secured rights to sewer capacity that has not yet been utilized. Given the current average daily flow and the overages that already occur with the current state and capacity of the Town's sewer systems, the Board is concerned about the effects of additional development without significant progress being made towards alleviating the apparent capacity constraints. The Board wants to and must take this time to ensure that whatever future development occurs in the Town, it does not create a crisis condition as it pertains to the ability to provide its residents and users with safe and sufficient sewer services. To this end, the Town has already taken steps towards the design of an upgrade to the sewer treatment plant, with the idea of increasing treatment capacity to at least 7.0 mgd by sometime in 2024. Still, there are concerns about whether those plans, that level of increase in capacity, and that construction timeline is adequate to effectively protect the safety, health and general welfare of the Town's current and future residents in the face of future development.

Since 2009, there has also been a substantial increase in vehicular traffic due, in part, to the substantial development in Town. This has contributed to a significant increase in vehicular traffic in Town, substantially more traffic delays on roads and highways within Town, considerably more vehicular traffic in more densely populated residential neighborhoods in Town, and an increased need for maintenance and repair of both Town and State owned roads within Town. These issues are also of significant concern to the Board as they too pertain to the safety, health and general welfare of the Town's current and future residents.

Recently, the Town's newly developed and constructed water wells were found to be contaminated with PFOA and PFOS. The wells and the new water treatment plant, constructed to service those wells, were shut down until such time as the Town was able to secure a granular activated carbon filtration system (GAC) at the site of the plant in order to treat the water to non-detect levels of the aforementioned contaminants. The GAC was installed by the DEC. It is only able to treat a little over 2.0 mgd of water, while the Town's daily needs average approximately

2.5 mgd and can and do often exceed 3.0 mgd during the summer. The DEC has only committed to leaving the GAC in place on a temporary basis. At this time, the Town is uncertain as to the length of time the GAC will be kept in place to treat the still contaminated water; uncertain as to the length of time the media used to treat the water in the GAC will be effective before change-outs of the media are required; uncertain as to what those change-outs will cost, who will be paying for them in the future, and if the Town is to pay, how much it will cost to do so; uncertain as to whether the DEC will agree to construct a permanent, larger GAC system, in order that the Town may be able to utilize the wells and plant to provide for all the Town's water needs going forward; and if the temporary GAC is removed, the Town is uncertain as to where it will be sourcing its water to provide for all the Town's needs and whether it will be able to afford that source. These uncertainties have created further uncertainty amongst the Board as to the safety, health and general welfare of the Town's current and future residents. Action concerning this issue will be required in the first few months of 2020 in order to prevent a crisis condition for the Town and its residents, and any future development should, in the Board's opinion, be placed on hold until solutions to the problem are known and put in place.

There has also recently been significant concern and protest amongst Town residents concerning the "balance" of residential and non-residential development in the Town, along with the effectiveness and implementation of the 2009 CMP's goal concerning the "protection of natural resources and maintenance of the traditional rural residential character of portions of the Town...." Specifically, there are a number of development projects pending before the Town's Planning Board, or recently approved by the Town's Planning Board, which the Board agrees have the potential to (1) significantly impact the "balance" of residential and non-residential development in the Town, as discussed in the 2009 CMP; (2) significantly endanger the "protection of natural resources" within the Town (i.e., water, forestry, etc.); (3) significantly and permanently affect the "traditional rural residential character of portions of the Town"; and (4) considerably impact the health, safety and general welfare of the Town, as well as its residents and visitors.

In light of the issues discussed above, the Town Board believes it is necessary and appropriate that further discussion, public input, and consideration be given to the commission of a new, updated CMP and/or new or revised land use regulations in order to ensure controlled growth that (1) will not create or contribute to a crisis condition within the Town as to sewer and/or water services that must be provided to the Town's residents and users; (2) will not cause further irreversible and dangerous traffic concerns within the Town; (3) will not unduly impact the safety, health and general welfare of the Town, its current and future residents, community services for same, schools located within the Town and Town infrastructure; and (4) will ensure a proper mix of residential and commercial development, along with the preservation of open space and the protection of the Town's natural resources.

This stop gap or interim measure is intended to preserve the status quo pending such consideration and prevent a "race of diligence" by those seeking to obtain approvals before any new CMP and/or land use regulations might be put in place. This local law will protect the public's safety, health and general welfare until any such amended/revised CMP and/or zoning law is adopted, if any such amended/revised CMP and/or zoning law is adopted.

Section 3: Duration and Scope of Temporary Moratorium Imposed

A. For a period of three (3) months following the date of adoption of this Local Law, no development approval, residential or non-residential, shall be granted in the Town unless expressly exempted from this temporary moratorium pursuant to Section 4 below.

The term "development approval" shall mean any application for an approval of a discretionary nature required for any development in the Town, including, but not limited to, any approval of a subdivision, site plan, special permit or variance application proposing such development. "Development approval" shall also mean any permit for clearing, filling and grading where such permit is not part of or necessary to an already approved subdivision, special permit or site plan that has completed SEQRA and has applied for and received a permit pursuant to said approval.

In addition, no new applications for any development approval shall be accepted and/or processed by any of the Town's boards, unless expressly exempted from this temporary moratorium pursuant to Section 4 below. This local law is binding on all Town boards, officers and employees and on all persons and property requiring a development approval within the Town.

B. This temporary moratorium may be extended by two (2) additional periods of up to six (6) months each by resolution of the Town Board upon a finding of need for such extension(s), which may or may not include a decision to commission a new/revised CMP and/or introduce new or amended zoning/land use regulations and seek approval of same.

If the Town Board does not extend this temporary moratorium, as noted above, it shall expire upon the happening of whichever of the following events that occurs first: (a) upon the passing of three (3) months from the effective date of this Local Law; (b) upon the Board's adoption of a new/revised CMP or new or amended zoning/land use regulations specifically enacted pursuant to this temporary moratorium; (c) upon the Board's adoption of a resolution expressing its determination that further regulation(s) to address the concerns expressed in this Local Law would not be appropriate; or (d) upon the passing of one (1) year and three (3) months from the effective date of this Local Law (as this takes into account the two, six month extensions authorized by this Local Law).

C. During the period of the temporary moratorium, the Town shall initially seek public input and engage in further study and discussion in consideration of whether to proceed with the commission of a new/revised CMP and/or new/revised planning and zoning regulations for development within the Town.

Section 4: Exceptions to Moratorium

A. The following types of development approvals or building permits may be granted or conditionally granted by the Planning Board (or by another board, if specifically designated below) during the temporary moratorium:

1. A building permit for the construction of a single-family or two-family home on an approved lot, or for the addition of an accessory building or structure to an existing single-family or two-family home;
2. Approval of a two (2) lot subdivision;
3. Approval by the Zoning Board of Appeals of an application for an area variance or interpretation;
4. Approval of an application for the adaptive reuse of a Historic Building;
5. Approval of a lot line adjustment;
6. Approval of an addition, alteration or reconstruction of an existing structure which results in no material change in such structure, as determined solely by the Planning Board, and which will not have any material effect on the environment, as determined solely by the Planning Board;
7. Approval of a subdivision application that has undergone SEQRA review to the extent that a negative declaration has been issued or a positive findings statement has been adopted from a final environmental impact statement prior to the date this Local Law is introduced; and
8. The issuance of building permits to a property that has received final subdivision, site plan or special permit approval.
9. Approval of an application to the Planning Board by a "Public Utility", as defined in New Windsor Town Code Section 252-55, seeking approval to install, upgrade or replace an "essential service" as that term is defined in New Windsor Town Code Section 300-89, and which, upon review by the Planning Board, it is determined will not adversely affect the Town's municipal sewer or water systems.

B. No development approval application shall be accepted for review by any of the Town's boards, officers or employees on or after the date of adoption of this Local Law, except for an application seeking a development approval described in subsection A above.

C. A development approval shall not be granted unless the approved application complies with all zoning and other requirements in effect on the date of approval.

D. To whatever extent the Town is preempted by Federal or State Law concerning land use approvals, the Town's Planning Board and/or the ZBA shall maintain authority to process and review any applications concerning same (i.e., cell tower applications/approvals).

E. This moratorium shall not prohibit the denial of an application.

Section 5: Administrative Relief from Moratorium

A. In order to prevent an unlawful taking of property and to prevent irreparable harm, the Board is authorized to grant limited relief from this temporary moratorium pursuant to the standards and requirements set forth herein. An applicant seeking such relief shall be required to show by clear and convincing evidence, including credible dollars and cents proof, that the applicant cannot make any reasonable use of its property with any of the uses permitted in the relevant zoning district; that the temporary moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the temporary moratorium. Any relief granted by the Board shall be the minimum necessary and the Board may impose conditions on any relief granted.

B. All such applications shall be actions subject to SEQRA. The Board may designate the Town's Planning Board or the Town's Zoning Board of Appeals, as the case may be, as lead agency for such applications if the Board deems it advisable. In the event relief from the temporary moratorium is granted by the Board, the applicant shall proceed to other Town board(s) or officials to apply for required development approval(s). Notwithstanding any relief granted pursuant to this section, a development approval shall not be granted unless the approved application complies with all zoning and all other requirements in effect on the date of approval.

C. The applicant or any other person aggrieved by a decision of the Board hereunder may apply to the State Supreme Court, pursuant to article seventy-eight of the Civil Practice Laws and Rules.

Section 6: Notice to Applicants - Change in Zoning Requirements

This section provides notice to all applicants that although an application authorized in Section 4 or Section 5 above may proceed through the Town's Planning Board and/or Town's Zoning Board of Appeals review process, the applicant proceeds at their own risk, as such application may be impacted or denied because of a change in zoning requirements. A development approval shall not be granted unless the approved application complies with all zoning and other requirements in effect on the date of approval.

Section 7: Default Approvals Abolished

Notwithstanding any law, rule, or regulation to the contrary, no development approval shall be granted, deemed granted, or dispensed with as a result of the passage of time. Any and all development approvals granted during the period of the moratorium shall require the affirmative vote of the reviewing board(s) with jurisdiction and endorsement of the plat or plan as otherwise required by law.

Section 8: Conflict with other Laws

The Board hereby declares that its legislative intent in enacting this Local Law is that it shall supersede any provisions of the State's Town Law, to the extent it may be inconsistent with same and be permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

Section 9: Severability

If any section, part or provision of this Local Law or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, provision or application directly and expressly adjudged invalid and shall not affect or impair the validity of the remainder of this local law or the application thereof.

Section 10: Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.

Section 11: Authority

This Local Law is enacted pursuant to the Municipal Home Rule Law.

(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 2020 of the (County)(City)(Town)(Village) of New Windsor was duly passed by the Town Board on 20 20, 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) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on 20 ☐ ☐ , 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) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. (Elective Chief Executive Officer*)

Such local law was submitted 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) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to 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.

Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body

(Seal)

Date: _____