

**Town of Washington**

**State of New York**

**Local Law No. \_\_\_\_\_ of 2021**

**A LOCAL LAW TO ESTABLISH A TEMPORARY MORATORIUM ON CERTAIN LAND DEVELOPMENT APPLICATIONS THAT ARE PENDING OR MAY BE SUBSEQUENTLY FILED WITH THE TOWN OF WASHINGTON**

**BE IT ENACTED** by the Town Board of the Town of Washington as follows:

**Section 1. Title of Local Law.**

This local law shall be entitled "A Local Law to Establish a Temporary Moratorium on Certain Land Development Applications that are Pending or May be Subsequently Filed with the Town of Washington."

**Section 2. Authorization.**

This local law establishes a temporary moratorium on certain land-development applications that are pending or may be subsequently filed with the Town of Washington (this local law shall be referred to herein as the "Moratorium"). This local law is enacted pursuant to Article IX of the NYS Constitution, the authorizations established in the NYS Municipal Home Rule Law, the relevant provisions of the NYS Town Law, and the general police powers vested with the Town of Washington (the "Town") to promote the health, safety, and welfare of all of the residents and property owners in the Town.

**Section 3. Purpose.**

The Moratorium is intended to ensure that no Development Applications (as defined below) are considered or acted upon in the Moratorium Area (as defined below) until the Town of Washington Town Board (the "Town Board"): (1) prepares and considers revisions to its Comprehensive Plan; and (2) prepares and considers revisions to its Zoning Law, Land Subdivision Code, or other pertinent sections of the Town Code, to implement recommendations in the revised Comprehensive Plan and related planning and environmental studies; and (2) completes the process of adoption of an amendment to the Town Comprehensive Plan and/or an amendment to the Town of Washington Zoning Law.

The Town has recently seen an interest in dense commercial and residential development in its Rural Residential "RR-10" and "RS-10" zoning districts that conflict with the Town Comprehensive Plan, dated December 2015 (the "Comprehensive Plan"). Further, the Town Board recognizes that individual parcels of land or contiguous parcels of land under the same ownership, specifically in the RR-10 and RS-10 zoning districts, are large and could potentially be the subject of large scale commercial or residential development/subdivisions that would increase the density within the Town. Such development would be contrary to the current Town Comprehensive Plan.

The Moratorium is intended to provide a temporary zoning stop-gap that will halt proposed and future Development Applications (defined below) in the Moratorium Area (defined below) while the Town considers updates to its Zoning Law, Land Subdivision Regulations, or other pertinent sections of the Town Code to implement recommendations in the current Comprehensive plan or any revised Comprehensive Plan and related planning studies, and completes the process of formally adopting any amendments which arise from that process.

The following specific justifications support this Moratorium:

- 1) **Development Pressure:** The Town has experienced growing development pressure in the Moratorium Area (defined below). New commercial and residential projects have been proposed and/or completed in the Moratorium Area. In addition, there are a number of individual parcels of land or parcels of land under common ownership in the Moratorium Area that may result in large commercial or residential development. If pending or future development continues to proceed or be proposed, it may result in development contrary to the Comprehensive Plan or the studies noted below. Without the proposed Moratorium, the Town risks adverse impacts on the public health, safety and welfare of the community.
- 2) **Comprehensive Plan:** The Town's Comprehensive Plan is dated December 2015. The Comprehensive Plan specific states that "[t]he 2015 Town of Washington Comprehensive Plan embodies the community's desire to remain a rural town by maintaining existing land use types, protecting environmental resources, and supporting the Village of Millbrook as the location for concentrated diverse housing and commercial activity." Comprehensive Plan at 7. During the Moratorium period, the Town Board will evaluate whether circumstances have changed and potentially revise the Comprehensive Plan to include the community's current desire.

The Comprehensive Plan also recognizes that the Town is full of cultural resources that have been transformed into different uses. See Comprehensive Plan at 13. The Town Board, during the Moratorium period, will evaluate whether existing Town regulations appropriately protect the Town's cultural resources and plan for any future adaptation.

The Comprehensive Plan also recognizes that the Town's residents are satisfied with the existing land use, which have "essentially remained the same, and [there is] an equally strong desire for that to continue in the future." See Comprehensive Plan at 25. Also, the current Comprehensive Plan recognizes that "the opportunities and the limitations of the natural environment is necessary to maintain the natural beauty, economic vigor, and quality of life in the Town of Washington." See Comprehensive Plan at 28. The Town Board, during the Moratorium period, will evaluate whether existing Town regulations appropriately protect the Town's natural environment and plan for any future development.

By adopting the Moratorium, the Town Board will update the Comprehensive Plan and survey the residents of the Town of Washington to ensure that the Comprehensive Plan still continues to reflect the desires of the community. Further, the Town Board will assess the potential for nonresidential development on the larger tracts of the land in the Town (or multiple parcels under common ownership), to ensure that the Zoning Law and Subdivision Regulations (some of which adopted prior to the 2015 Comprehensive Plan) applicable to those tracts of land are in furtherance of, but not limited to, the following current Comprehensive Plan principles:

**Goal 1: Keep the Town Scenic and Rural and the Village the One Developed Center.**

**Objective: Maintain existing land use types which keep the Town rural.**

**Policies:** (a) preserve traditional rural land use patterns, (b) enhance and preserve the duality between the Town and Village, (c) avoid future new or denser zoning that would create village like areas in the Town, (d) maintain the scenic beauty and natural diversity of the Town by avoiding the disruption of scenic vistas, view sheds, corridors, ridgelines, natural areas, and historic resources.

**Objective: Avoid infrastructure expansion into the Town.**

**Policies:** (a) discourage construction of new roads in undeveloped areas, (b) deter the development or extension of centralized water and sewer systems into rural areas, except as necessary to address public health and safety.

**Objective:** Keep our roads rural in form, use, and appearance, minimizing the impact of motor vehicles.

**Policies:** (a) avoid zoning uses which will increase traffic congestion and flow as they detract from the look and feel of a rural community, (b) design and maintain roads in ways that minimizes their environmental and visual impacts, (c) Avoid projects in the Town which will increase traffic congestion to and from the Village.

See Comprehensive Plan, at 39-42.

- 3) **Greenway Connections:** The Town of Washington has adopted and is included within the Greenway Compact Program and Guides for Dutchess County Communities. During the Moratorium period, the Town Board shall consider whether amendments to the Zoning Law, Land Subdivision Regulations, or other pertinent sections of the Town Code are necessary to further the principles of the Greenway Compact Program and Guides for Dutchess County Communities in the face of development pressure.
- 4) **Infrastructure:** The Town does not have meaningful infrastructure in the rural areas, where most of these larger tracts of land exist, to accommodate larger scale or dense development (residential or commercial). Further, the Comprehensive Plan sets forth that the Town should avoid infrastructure expansion. As noted above, there are a number of large individual parcels and contiguous parcels of land under common ownership that could be subdivided for future residential or commercial development. The infrastructure impacts of any such development must be planned now, instead of on a case by case basis. The Moratorium period will allow the Town Board to consider the future infrastructure impacts within the Town in the face of development pressure
- 5) **Update Zoning Law:** The current version of the Town's Zoning Law was adopted in 2007, and amended several times since then, but no significant amendments have been made since the adoption of the 2015 Comprehensive Plan. It is recommended that municipalities periodically review and update, if necessary, their zoning laws every five to ten years to ensure that they are supportive of changing community goals and objectives. The Moratorium will allow the Town time to consider updates to its existing Zoning Law.
- 6) **Sensitive Environmental Resources/Constraints:** A number of parcels available for future development in the Moratorium Area, and throughout the Town, have sensitive environmental resources/constraints including, without limitation, steep slopes, floodplains, wetlands and forested areas. In 2004, Hudsonia Ltd. issued the "Significant Habitats in the Town of Washington, New York"

report for the Town of Washington (the “Hudsonia Report”). The Hudsonia Report and subsequent habitat assessments within the Town identified the location and configuration of ecologically significant habitats throughout the Town. The Hudsonia Report concluded that “[i]n the rural landscapes of northern Dutchess County, including the Town of Washington, there are still significant opportunities for biodiversity conservation. Development pressure is on the rise, however, and strategic land-use and conservation planning is needed to ensure that species, communities, and ecosystems are protected for the long term.” Hudsonia Report at 76. The Town Board, during the Moratorium period, will review the Town’s current Zoning Law, Land Subdivision Regulations, and/or other pertinent sections of the Town Code to potentially implement recommendations from the Hudsonia Report and its subsequent studies and mapping. The Town Board will also assess whether additional environmental studies are necessary.

For the reasons noted above, the Town Board has determined that this temporary Moratorium is necessary to temporarily halt proposed or future development while the Town considers, and potentially adopts, updates to its Comprehensive Plan, Zoning Law, Subdivision Regulations, and other land use laws to ensure that: (1) the Town Comprehensive Plan expresses a contemporary community vision for how the Town of Washington should grow and develop; (2) the Town Zoning Law is in harmony with the goals and objectives of the Comprehensive Plan, as is required by New York State law; (3) the public health, safety and welfare will be protected to maximum extent possible; and (4) the environment, natural resources, and community character of the Town of Washington are protected and preserved.

**Section 4. Definitions.**

Unless specified in this local law, terms used herein shall have the same meaning as defined in the Town of Washington Zoning Law at Article VI “Definitions.” and in the Town of Washington Land Subdivision Regulations at Article VII “Definitions”. All other terms used herein but not defined in those laws shall be construed to have their common meaning.

**Section 5. Affected Properties.**

This local law shall be applicable only to the real property located in the Town’s RR-10 and RS-10 zoning districts in the Town of Washington (the "Moratorium Area"). This local law shall be applicable to those properties notwithstanding that they may also lie within: the Agricultural Protection Overlay (APO District; the Aquifer Protection (AQ) District; the Environmental Protection (EP) District; the Mobile Home (MH) Floating District; and the Industrial (I) Floating District.

**Section 6. Duration.**

The provisions of this local law and Moratorium shall be in effect for a period of six (6) months from the effective date noted below unless earlier repealed, modified, extended, or supplemented by a further local law of the Town of Washington.

This Moratorium may be extended by two (2) additional periods of up to six (6) months by resolution of the Town Board upon a finding of the necessity for such extension.

**Section 7. Moratorium Scope.**

Except as noted below in Section 8, no board, commission, agency, department, officer, employee, consultant, or agent of the Town of Washington shall accept for review, continue to review, hold a hearing or meeting, or make any decision upon any application and/or appeal for a site plan, special permit, area variance, use variance, subdivision, applicant/property owner zoning amendment petition, demolition permit, grading permit, stormwater permit, or building permit (hereinafter referred to “Development

Applications”) during the time period for which this Moratorium is in effect, whether or not such Development Applications were submitted prior to or after the effective date of this Moratorium.

As discussed in Section 10 below, the New York State statutory and locally-enacted time periods for processing and making decisions on all such Development Applications are suspended and stayed while this Moratorium is in effect pursuant to the powers granted to the Town by the New York State Municipal Home Rule Law.

### **Section 8. Exemptions.**

This local law and Moratorium shall not apply to the following situations:

- A. Development Applications related to the construction of a single-family dwelling or two-family dwelling house on a parcel in existence at the time that this Moratorium is effective.
- B. Agriculture/Farm use as principal use of land but which does not include the sale of products to the public at the property.
- C. Animal Husbandry as a principal use of land but which does not include the sale of products to the public at the property.
- D. The following accessory uses, uses that are customarily incidental to any principal use permitted by right, and which are themselves permitted by right in the RR-10 and RS-10 Zoning Districts: (a) composting of manure and vegetative waste; (b) private garages; (c) home occupations, subject to Zoning Law § 321.[3][a] (list of home occupations); (d) open storage of farm machinery or vehicles associated with agriculture; and (e) swimming pools.
- E. The following special uses which may be allowed in the RR-10 and RS-10 Zoning Districts by special permit and subject to site plan approval: (a) animal hospital; (b) barn conversions subject to Zoning Law Supplementary Use Regulations; (c) bed and breakfast; (d) cemetery; (e) forestry; (f) home occupations, subject to Zoning Law § 321.4 (home occupation by special permit); (g) parks, public and private; (h) playgrounds; (i) riding academy, subject to Zoning Law Supplementary Use Regulations; (j) stables, public and private, subject to Zoning Law Supplementary Use Regulations; (k) signs; and (l) wildlife preserve.
- F. Subdivisions of land provides that the lots to be created have a minimum lot size of ten (10) acres and that the subdivision creates no more than three (3) lots. Such subdivisions shall also be subject to required reviews and approvals under the Town Zoning Law.
- G. An existing valid building permit and substantial construction completed in reliance upon such valid permit.
- H. Development Applications related only to the ordinary repairs, maintenance, and/or interior renovations and rehabilitation of an existing structure.
- I. The issuance of a certificate of occupancy in connection with the completion of a structure to which this moratorium would apply, but for which a valid building permit has been issued, and for which substantial construction has been completed in reliance upon such valid permit as of the effective date of this moratorium.

**Section 9. Appeal Procedure.**

- A. The Town Board shall have the authority to vary or waive the application of any provision of this local law, in its legislative discretion, upon its determination that such variance or waiver is required to alleviate an unnecessary and/or unique hardship affecting a lot. In reviewing such a request, the Town Board may consider:
  - 1. Whether the variance or waiver will adversely affect the purpose of the Moratorium, the health, safety or welfare of the Town or will substantially undermine the land-use planning and potential revision process under review.
  - 2. The Town Board may take into account the existing land use in the immediate vicinity of the property, whether the lot is vacant or developed, the impact of the variance or waiver on infrastructure, neighborhood and community character, community planning goals and objectives, natural resources, government services, and other environmental issues.
  - 3. A proposed project must comply with all other applicable provisions of the Town's local laws and Town Code.
  - 4. Whether the Moratorium would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.
- B. Any application for a variance or waiver shall be filed with the Town of Washington Clerk and shall include a fee of five hundred (\$500) dollars for the processing of such application. An application for a variance or waiver shall contain the complete details of the proposed project. To the extent that the Town Board requires a consultant to assist it in reviewing such application, it may also require the applicant to pay the reasonable costs of such consultant. Any consultant shall be selected in the sole discretion of the Town Board.
- C. In the sole discretion of the Town Board, the Board may refer any application for a variance or waiver of this local law to any official, department, and/or land use board for a recommendation. The Town Board shall not be bound by any recommendation of any official, department, or land use board and shall conduct a public hearing and make a final decision on the application, with or without conditions. The Town Board shall render a decision on an application for a variance or waiver of the Moratorium within sixty (60) calendar days of the Town Clerk's receipt of a complete application.
- D. The Town Board shall notify the applicant of the Board's decision to approve, approve with conditions, or deny an application to vary or waive the application of any provision of the Moratorium. In the event that the Town Board determines to approve such application, the applicant may seek approvals from the relevant officials and/or land use boards under the terms set forth within the Town Board's decision.

**Section 10. Conflicts with State Statutes and Local Laws and Authority to Supersede.**

To the extent that any law, ordinance, rule or regulation or parts thereof, including all deadlines for making decisions, interpretations or determinations, is in conflict with the provisions of this local law,

including, but not limited to, all provisions of the Town Code, all provisions of Article 16 of the New York State Town Law concerning special use permits, site plans, and subdivisions, including, but not limited to section 276(8) (“default approvals”), as well as building permit and certificate of occupancy procedure and requirements, this Local Law shall control, and such other laws are hereby superseded.

Pursuant to the same powers, and without limiting the generality of the foregoing, this local law supersedes and/or varies the provisions contained in Article 8 of the Environmental Conservation Law (known as the State Environmental Quality Review Act) and the regulations thereunder to the extent that such provisions require that an agency adhere to certain specified timeframes.

**Section 11. New York State Environmental Quality Review Act**

This local law constitutes a Type II Action under the State Environmental Quality Review Act because it constitutes the adoption of a moratorium on land development or construction. As such this “action” is not subject to review under the New York State Environmental Quality Review Act.

**Section 12. Severability.**

If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**Section 13. Effective Date.**

This local law shall take effect immediately upon filing with the New York State Secretary of State.