

DRAFT

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the 2nd day of April, 2012 at 7:00 P.M., Prevailing Time and recessed until the 4th day of April, 2012 at 3:00 P.M.

PRESENT:

Wayne C. Booth, Supervisor

George Woolsey, Councilman

Gilbert J. Piaguadio, Councilman

Elizabeth J. Greene, Councilwoman

Ernest C. Bello, Jr., Councilman

RESOLUTION OF ADOPTION
OF LOCAL LAW NO. 2 OF THE YEAR
2012 – IMPOSING A SIX MONTH
MORATORIUM ON PERMITS
AND APPROVALS FOR
ADULT-ORIENTED BUSINESSES

Councilman/woman _____ presented the following resolution which was seconded by Councilman/woman _____.

WHEREAS, a Local Law Imposing a Six Month Moratorium on Permits and Approvals for Adult-Oriented Businesses was introduced before the Town Board of the Town of Newburgh in the County of Orange and State of New York on the 29th day of February, 2012; and

WHEREAS, pursuant to resolution of the Town Board, copies of the aforesaid local law were forwarded to the Orange County Department of Planning and the Town of Newburgh Planning Board for their reports in accordance with the provisions of the New York State General Municipal Law and the Town of Newburgh Zoning Code respectively, and to the Town of Newburgh Zoning Board of Appeals; and

WHEREAS, the Town Board of the Town of Newburgh adopted a resolution on the 29th day of February, 2012 ordering a public hearing to be held on the 2nd day of April, 2012 at 7:00 o'clock p.m., prevailing time, to hear all interested parties on said proposed local law, designated as Introductory Local Law # 1 of the Year 2012 entitled "A Local Law Local Law Imposing a Six Month Moratorium on Permits and Approvals for Adult-Oriented Businesses"; and

WHEREAS, a notice of Public Hearing and copy of the local law were mailed to the clerks of the municipalities and counties with boundaries within 500 feet of the properties affected by the Local Law at least ten days prior to the date of the public hearing; and

WHEREAS, a notice of said Public Hearing was duly advertised on the ___th day of March, 2012 in The Mid-Hudson Times and on the ___th day of March, 2012 in The Sentinel and posted on the Town Clerk's sign board on the ___th day of March, 2012; and

WHEREAS, the public hearing was duly held on the 2nd day of April, 2012 at 7:00 o'clock p.m., at Town Hall, 1496 Route 300, Newburgh, New York and all parties in attendance were permitted to speak on behalf or in opposition of the proposed Local Law or any part thereof; " -C: Do

and

WHEREAS, the adoption of a moratorium on land development or construction is considered a Type II action under Part 617 of the General Regulations adopted pursuant to Article 8 of the Environmental Conservation Law ("SEQRA") and accordingly the action is not subject to review and no determination of significance or procedure under SEQRA is required for the adoption of said Local Law under the State Environmental Quality Review Act or Chapter 100, entitled "Environmental Quality Review" of the Town of Newburgh Municipal Code; and

WHEREAS, the Town Board of the Town of Newburgh has duly considered the reports and responses it has received from the Orange County Planning Department and the Town of Newburgh Planning Board; and

WHEREAS, due to the intervening adoption of a Local Law designated as Local Law No. 1 of Year 2012, upon adoption and filing with the Secretary of State, the adopted Local Law will designated as Local Law No. 2 of the Year 2012; and

WHEREAS, the Town Board of the Town of Newburgh, after due deliberation finds it in the best interest of the Town to adopt said Local Law.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Town Board of the Town of Newburgh hereby finds that:

A. The Town has addressed and continues to address legislative and administrative Action Items recommended by the adopted Comprehensive Plan Update in a deliberate and serial fashion in accordance with prudent management for the Town's financial resources and budgetary restrictions. Resources have additionally been required to be devoted to litigation arising from challenges to the implementation of certain Action Items. The implementation of the Comprehensive Plan Update has included the following:

- | | |
|------|---|
| 2006 | Environmental Review and Adoption for Southwest Zoning Map Changes R-2 ad R-3 to R-1 and IB to B
Open Space acquisition and planning
Submission of Requests for NYSDOT speed limit reductions
Workforce housing drafting and senior housing report
Consultant mapping of public assembly uses and adult uses
Draft of proposed amendments pertaining to ridgeline and viewshed protection, clustering, neighborhood preservation, travel centers |
| 2007 | Environmental Review and Adoption of Setback and Buffers Zoning Amendment
Open Space Acquisition and planning |

Submission of Requests for NYSDOT speed limit reductions

Update zoning regulations pertaining to Orange Lake lakefront " ' -C: Do

access lots

Consideration of proposed amendments pertaining to ridgeline and viewshed protection, clustering, neighborhood preservation, travel centers

Environmental Review and Adoption of Design Guidelines Manual

Study of costs of further sewer plant expansion

2008

Consideration of Meadow Avenue Rezoning

Environmental Review and Adoption of Amendments Pertaining to Accessory Apartments and certain Route 9W corridor uses

Submission of Requests for NYS DOT speed limit reductions

Review of sidewalk requirements

Environmental review and adoption of revised Floodplain Regulations

Open Space Acquisition and planning

Environmental review and adoption of Sign Amendments pertaining to illumination

Authorizing establishment of Department of Public Works

2010

Adoption of Zoning Amendments pertaining to additional Route 9W corridor uses

Submission of Requests for NYS DOT speed limit reductions

Implementation of trial traffic calming measures on Meadow Hill Road and Gun Hill Road

Examination of additional inter-municipal connections with Catskill Aqueduct and other water supplies in connection with Orange County and other municipalities

2011

Adoption of Amendments pertaining to steep slopes, wetlands, residential lots, buildable area and senior housing

Commencement of East Coldenham hamlet study

Adoption of Revised Stormwater Management Regulations

Submission of Requests for NYS DOT speed limit reductions

Implementation of traffic calming measures on Gardnertown Road

Participation in Transportation Plan undertaken by Orange County

Adoption of regulations pertaining to sidewalks

Review workforce housing regulations in light of Tri-County study

Adoption of driveway regulations

Examined additional inter-municipal connections with Catskill Aqueduct and other water supplies in connection with Orange “ ’-C: Do

County and other municipalities

2012 Town hamlet continued study

Adult Uses: examining negative secondary effects

Agricultural parcel evaluation in conjunction with Orange County
Real Property Department

B. A dire necessity exists for a moratorium on permits and approvals for adult oriented businesses while the Town Board undertakes further study of the secondary effects of adult-oriented businesses in order to further consider possibly amending the Zoning Code of the Town of Newburgh and its associated maps and tables to address such effects due to the following:

- (1) Provisions are presently absent from the Municipal Code to control the siting of adult-oriented businesses;
- (2) Under current Code interpretation, property owners and developers can add adult-oriented business activities to certain existing permitted uses, such as eating and drinking places and retail and personal service stores or obtain approvals for new uses in those categories without any ability on the part of the Town to regulate the location of such adult-oriented business activities relative to certain sensitive sites, including, for example, schools, places of worship, parks and residential districts;

- (3) Without an application requirement or process in place the Town is unable to accurately account for the number of adult-oriented business activities that are currently under consideration or proposed and their proximity to sensitive sites in the Town.

C. Written and oral submissions of generalized community opposition to particular projects which may be subject to the moratorium imposed by Local Law No. 2 in the absence of substantial evidence relating to the substantive legal grounds for making a determination will not be considered by the Town Board in these findings or its decision.

D. The Town Board further finds, acknowledges and recognizes the applicability of the doctrine known as "vested rights" as set forth in relevant New York and federal cases to Local Law No. 2. Authority to make vested rights determinations with respect to applications has consistently been placed with and exercised in the Town of Newburgh by the Code Compliance Supervisor, an independent officer of the Town and the person in charge of the enforcement of zoning and other Code provisions, who has the ability to render decisions with respect to the applicability of local law provisions to applications. That authority includes this Local Law.

E. In accordance with such finding, acknowledgment and recognition, an " -C: Do

applicant has the right to request the Code Compliance Supervisor or his designee for a determination regarding vested rights in any pending or future application to the Town of Newburgh with respect to the applicability of Local Law No. 2 and to submit relevant evidence in support of the claim, including but not limited to records of expenditures incurred, construction and improvements made and permits and approvals obtained pursuant to which the work was performed.

- F. In the event the Code Compliance Supervisor determines that an applicant has obtained vested rights, then its applications shall not be subject to the provisions of the local law, and the Planning Board, Zoning Board of Appeals or official with primary or appellate authority over the application, may accept, process and make a decision with respect to a preliminary or final site plan or amended site plan, special use permit, area or use variance, interpretation, building permit, certificate of occupancy or other applicable entitlement.
- G. The Town of Newburgh Zoning Board of Appeals has jurisdiction over orders, requirements, decisions, interpretations, determinations of the Code Compliance Supervisor pursuant to Town Law Section 267-b, including those with respect to vested rights.
- H. The Town Board further finds, acknowledges and recognizes that in the event the processing and consideration of a pending application has been delayed prior to the enactment of Local Law No. 2 pursuant to this resolution beyond applicable time frames set forth in the Code or New York law, the Local Law cannot serve as a basis for the Board or official having jurisdiction over the application to refuse to consider the application further.
- I. The Town Board further finds, acknowledges and recognizes that in the event a Zoning Board of Appeals decision on an application will have the effect of either leaving the status quo of an order, requirement, decision, interpretation or determination of the Code Compliance Supervisor or his designee approving an adult-oriented business in place or will overturn such approving order, requirement, decision, interpretation or determination of the Code Compliance Supervisor or his designee, the provisions of Section 4C of Local Law No. 2 will not apply as such a decision will neither authorize the expansion or alteration of an adult-oriented business existing and operating within the Town of Newburgh as of the effective date of this Local Law #2 of 2012 nor will it authorize the establishment of a new adult-oriented business.

and Approvals for Adult-Oriented Businesses”.

3. The Town Clerk is hereby directed to enter this resolution and said Local Law in the minutes of this meeting and the Local Law Book of the Town of Newburgh and to give due notice of the adoption of said Local Law to the Secretary of State and to the public.
4. A report of final action in the matter of the adoption of said Local Law amending the Zoning Code of the Town of Newburgh shall be delivered to the Orange County Planning Department in accordance with the requirements of the General Municipal Law.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

George Woolsey, Councilman voting _____

Gilbert J. Piaquadio, Councilman voting _____

Elizabeth J. Greene, Councilwoman voting _____

Ernest C. Bello, Jr., Councilman voting _____

Wayne C. Booth, Supervisor voting _____

The resolution was thereupon declared duly adopted.

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