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Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
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~~County~~
~~City~~ of Bethlehem
Town
~~Village~~
Local Law No. of 4 2019

A local law Establishing a six (6) month moratorium extension on the submission and processing of applications for building permits, certificates of occupancy, and land use approvals for "Vape Shops, Smoke Shops and the sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana" within the Town of Bethlehem.

Be it enacted by the Town Board of the

~~County~~
~~City~~ of Bethlehem as follows:
Town
~~Village~~

BE IT ENACTED BY, the Town Board of the Town of Bethlehem as follows:

Section 1. PURPOSE

- A. The Town Board of the Town of Bethlehem authorized the Economic Development and Planning Department to research and study the impacts, effects and regulations of development of vape and smoke shops and sale of marijuana products, or the dispensing or distribution of medical marijuana uses within the Town. The Town Board desires to protect the aesthetic and economic vitality of the business districts as well as real estate values within the Town by considering the appropriate zoning and other regulation of vape and smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses under the Town Code. Further, such regulations should take into account any significant negative impacts on the nature and quality of life in the Town and on the health, safety, general welfare, and comfort of its residents.
- B. The Town Board has received and reviewed a preliminary report from the Economic Development and Planning Department, that included monitoring other levels of government that may impose regulations on vapor products and the legalization of marijuana that would need to be considered in any local efforts, and has further received a proposed local law draft for a moratorium extension. The Town Board has determined that it is necessary to extend the original moratorium enacted by Local Law 1 of 2019, by an additional period of approximately six months in order to discuss policy level considerations for regulation options, since it was identified in the research that vapor products cannot be considered separately from tobacco products and that the sale of marijuana products will be an easy

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transition for tobacco and vapor retailers. The Town Board needs more time to permit the thorough review and completion of the proposed implementing legislation for regulatory options. The review will include a referral to the Planning Board for recommended zoning amendments, as well as consideration for adding a local licensing program that would include procedures and a Town Board decision for departmental responsibility.

- C. The enactment of this local law is designed to protect the health, safety and welfare of Town residents and to maintain the status quo to allow the Town to amend the Town's Zoning Law and add a possible licensing program in order to address the widespread sale and use of vaporizing products that has increased in the region with a target towards the youth population.
- D. The Town Board further recognizes the New York State Legislature's potential enacting of legislation that will legalize the recreational use of marijuana within the State. The Board further recognizes that the current state of such proposed legislation is undecided and may include the creation of a state regulatory authority controlling businesses that will engage in the sale of recreational marijuana and further that it may include a provision under which certain counties within the State may opt in or out of such legalization. Given the high level of uncertainty surrounding such proposed legislation and the form which it may take, the Board finds that the most sensible course of action is to review and consider proposed amendments to the Town Zoning Law and Codes regarding placement and operation of retail marijuana uses since it appears to be an easy transition for sales by tobacco and vapor retailers.
- E. It is the purpose of this Local Law to fulfill the Town's constitutional, statutory, and legal obligations to protect and preserve the public health, welfare, and safety of the citizens of the Town, as well as to protect the value, use and enjoyment of property in the Town by temporality prohibiting the submission and processing of applications for Building Permits, Certificates of Occupancy, and Land Use approvals for vape shops, smoke shops and the sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana within the Town pending consideration of the said amendments to the Town Code.
- F. The Town Board hereby finds that a moratorium extension of six months duration, coupled with a hardship waiver procedure and mechanism for persons seeking Building Permits, Certificates of Occupancy, and Land Use Approvals for vape and smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses within the Town, will achieve the balancing of interests between the public need to safeguard the resources and character of the Town, the health, safety and general welfare of its residents, and the rights of individual property owners, persons, or businesses engaging in various development activities during such period.

Section 2. AUTHORITY

This moratorium is enacted by the Town Board of the Town of Bethlehem pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law § 10.

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Section 3. ENACTMENT OF TEMPORARY MORATORIUM EXTENSION

For a period of six (6) months following the effective date of this Local Law, except as provided in Section "4" below:

- (i) no new applications for Building Permits and Land Use Approvals for vape or smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses shall be accepted or processed by the Town;
- (ii) no previously submitted applications for Building Permits and Land Use Approvals for vape or smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses shall be processed by the Town; and,
- (iii) no Certificate of Occupancy for vape or smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses shall be issued by the Town.

Section 4. ALLEVIATION OF EXTRAORDINARY HARDSHIP

- A. The Town Board may authorize exceptions to the moratorium extension imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for a Building Permit, issuance of Certificate of Occupancy, or Land Use Approval for a vape and smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses would impose an extraordinary hardship on a landowner or applicant.
- B. An application for an exception based upon extraordinary hardship shall be filed with the Town Clerk, including a fee of five hundred and 00/100 Dollars (\$500.00) for each tax map parcel claimed to be subject to extraordinary hardship, by the landowner or the applicant, upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Town Board or its designee shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Town Board at a meeting of the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Town Clerk. The Town Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.
- D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Board may consider the following criteria:
 - 1. The extent to which the proposed development activity would cause significant environmental degradation, adversely impact existing development in the area, be detrimental to public health, comfort or safety and/or have a negative impact upon the Town.(If additional space is needed, attach Pages the same size as this sheet, and number each.)

2. Whether the moratorium extension will expose a property owner or applicant to substantial monetary liability to a third person or 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.
 3. The extent to which actions of the applicant were undertaken in good faith belief that the proposed development would not lead to significant environmental degradation, adversely impact existing development in the area, have an adverse impact on public health or safety, and/or have a negative impact upon the Town of Bethlehem.
- E. Mere delay or concern that regulations may be adopted prohibiting establishment of a Vape and smoke shop and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana use is insufficient to constitute an extraordinary hardship under this section.
- F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Town Board may approve, deny or approve in part and deny in part the application being acted upon.

Section 5. CONFLICT WITH STATE STATUTES AND AUTHORITY TO SUPERSEDE

To the extent that any provisions of this Local Law are in conflict with or are construed as inconsistent with the provision of New York State Town Law this Local Law supercedes, amends and takes precedence over NYS Town Law pursuant to the Town's municipal home rule powers, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3); § 10(1)(ii)(a)(14) and § 22 to supersede any inconsistent authority.

Related to Building Permits, Certificates of Occupancy, and Land Use Approvals for vape and smoke shops and sale of marijuana or marijuana products, or the dispensing or distribution of medical marijuana uses this local law supercedes:

- (i) Bethlehem Town Code Zoning Law §128-82 Building Permits and Certificates of Occupancy, and Town Code Chapter 53 Building Construction and Fire Prevention Administration. This Local Law suspends and stays the running of time periods for processing, action upon, holding hearings on, making decisions and taking action on such applications provided for in those laws.
- (ii) Any inconsistent provisions of Town Law §§§§ 267, 267-a, 267-b and 267-c and Bethlehem Town Code §128-87 Zoning Board of Appeals relating to the authority to grant variances, waivers or other relief from the Town Zoning Code.
- (iii) Any inconsistent provisions of Town Law §274-a and Bethlehem Town Code Zoning Law Article VII § 128-68, and 71 Site Plan, which requires that the Planning Board process, review, hold hearings on, and act upon applications for site plans within

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specified time periods. This Local Law suspends and stays the running of time periods for processing, review, holding hearings on, making decisions, and taking action on such applications provided for in those laws and is intended to supersede and said inconsistent authority.

Section 6. SEVERABILITY

Should any word, phrase, clause, sentence, paragraph, section, part or provision of this Local Law be found by the courts to be unconstitutional or invalid, such decision shall not affect the validity of any other part of this Local Law which can be given effect without such invalid part or parts.

Section 7. EFFECTIVE DATE

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

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DEPARTMENT OF STATE, DIVISION OF
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Municipality Type: TOWN

Law Number: 4

Date Filed: 12/24/2019

Municipality Name: BETHLEHEM

Subject: ESTABLISHING A SIX MONTH MORATORIUM EXTENSION ON THE SUBMISSION AND PROCESSING OF APPLICATIONS FOR BUILDING PERMITS CERTIFICATES OF OCCUPANCY AND LAND USE APPROVALS FOR VAPTE SHOPS, SMOKE SHOPS AND THE SALE OF MARIJUANA OR MARIJUANA PRODUCTS OR THE DISPEN

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