

(Use this form to file a local law with the Secretary of

~~County~~ of Bethlehem
~~City~~
Town
~~Village~~
Local Law No. of 5 2020

A local law Residential Land Use Moratorium for 12-month period during preparation of
Comprehensive Plan Update

Be it enacted by the Town Board of the

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

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

Section 1. PURPOSE

On August 24, 2005, the Town Board adopted its first Comprehensive Plan, which provided a vision for the Town up to year 2020. The 2005 Comprehensive Plan recommended that, within 5 to 10 years of its adoption, a progress report be produced to review the degree to which the plan recommendations had been implemented and to identify possible topics and areas that should be revisited and updated. Progress reports were completed in 2007 and 2013, the latest review reflecting 7 years ago. NYS Town Law 272-a (10) provides for a periodic review of a Comprehensive Plan.

The Town's current Comprehensive Plan and progress reports have provided the Town's elected and appointed officials with valuable context and guidance for development-related decisions and capital investment. However, now that the 2005 Comprehensive Plan is nearly 15 years old and the community faces new challenges and opportunities from an ever changing world, the Town is undertaking a complete update of the Comprehensive Plan. Updating the comprehensive plan requires a thorough and inclusive community discussion about the current state of the town, the community's values and aspirations for the future, and the strategies that should be used or actions that should be taken to achieve the community's vision for the future.

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The first phase of the Comprehensive Plan Update began the community discussion. From Fall 2018 through Spring 2019, the Town held a series of seven community forums with resident participation to talk about what the future should hold for the hamlets and the greater Town. Resident responses representing interests in Neighborhoods, Transportation, Aging and Housing, Economic Development, Parks and Recreation, Environment, and Government, when taken all together, reveal certain development or community-related themes that community members care about. The Town of Bethlehem Demographic and Growth Analysis 1991-2018, dated December 2019, identifies Bethlehem as an aging community. The Town needs time to review all areas of interest and to formulate options for the Town Board.

On October 10, 2019 the Town Board appointed a special advisory committee (Comprehensive Plan Update Committee) to work with a hired planning consultant, SWBR, to formulate an update to comprehensive plan for the Town and provide policy and programmatic recommendations to the Town's zoning code and subdivision regulations to implement the plan. The participation of citizens in an open and flexible planning process is essential to the development of an effective and useful town plan. To maximize the benefits of such process, the enactment of a town-wide residential moratorium is necessary.

Bethlehem is growing and will continue to grow as people are attracted to our wonderful neighborhoods, strong schools, amazing library, vibrant commercial areas, and welcoming town character. This is a great place to live, and people want to live here. Like many other communities, the challenge facing the Town is to harness the power of growth in a manner that maintains and enhances the quality of life that Town residents have come to know and enjoy. Also, growth must be experienced in a fiscally and aesthetically responsible manner. In recent years, many concerns have been voiced in the community about the unplanned consequences of growth, specifically residential.

The Town Board subsequently finds that growth and development of residential subdivisions and multi-family developments requiring site plan approvals within the Town of Bethlehem are placing severe pressure on the water supply, sanitary sewer, stormwater management, agricultural lands, open and recreational space, rural character, natural resources, and transportation infrastructure of the Town. The Town's unique character, geography, and hydrology impose distinct limitations on the shape, design and intensity of development that can be reasonably sustained without endangering public health, safety and welfare of its residents. Further, the Town is desirous of expanding its commercial and business tax base to help diversify and stabilize the Town's revenue fund.

The Town's existing procedures and laws should have the practical effect of ensuring that new development and redevelopment are in accordance with the Town's planning objectives. The practical reality, however, is that some of the land use regulations and procedures (specifically including, but not limited to, the conservation subdivision regulations, Planned Development Districts, transportation connections, incentive zoning for affordable housing and density bonuses, stormwater management, climate change and resiliency, community character, and regulations governing site plan applications that include multi-family dwelling units) are not having this effect. Until the comprehensive planning process is completed, the Town Board finds it necessary to impose a moratorium on the processing and granting of approvals for residential subdivisions, Planned Development Districts and multi-family developments that require site plan approvals, as hereinafter provided. An integrated strategy that takes into account the town's fragile and finite natural resources and its unique geographic configuration is needed. This

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moratorium will enable the town to focus on crafting and implementing a strategy to ensure that it actually achieves its planning objectives, while allowing those existing residential development applications that have invested much time and effort to continue review and consideration of approval by their respective Boards. This action is necessary in order to protect the character, natural resources, public services and facilities of the Town of Bethlehem and the public health, safety and welfare of Town residents.

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.

Section 3. ENACTMENT OF TEMPORARY MORATORIUM

For a period of twelve (12) months following the effective date of this Local Law, after which date this Local Law shall lapse and be without further force and effect, and subject to any other Local Law adopted by the Town Board during the twelve (12) month period:

- 1) The Planning Board shall not accept for review, hold a hearing or make any decision upon any application for a residential subdivision containing more than four dwelling units and/or that meets the criteria of a major subdivision (e.g. including a new street or road or the extension of municipal facilities), whether that subdivision application was submitted prior to or after the effective date of this Local Law. The law applies to subdivisions as defined in Bethlehem Town Code § 103-8. The statutory and locally-enacted time periods for processing and making decisions and all aspects of subdivision application (including, but not limited to, preliminary and final subdivision plats) are suspended and stayed while this Local Law is in effect;
- 2) The Planning Board shall not accept for review, hold a hearing or make any decision upon any application for a site plan containing residential dwelling units or for residential dwelling units within a residential care/nursing home/senior citizen housing facility, whether submitted prior to or after the effective date of this Local Law, and shall not be subject to the time periods specified in Town Law § 274a, including without limitation, provisions relating to the processing, reviewing, holding of hearings and the rendering of decisions. The statutory and locally-enacted time periods for processing and making decisions on all aspects of site plan applications for these residential land uses are suspended and stayed while this Local Law is in effect;
- 3) The Planning Board and Town Board shall not accept for review, hold a hearing or make any decision upon any application to establish a Planned Development District containing residential dwelling units, whether submitted prior to or after the effective date of this Local Law. This law applies to Planned Development Districts as described in Bethlehem Town Code §128-40 and 128-41. The statutory and locally-enacted time periods for processing and making decisions on all aspects of Planned Development District applications are suspended and stayed while this Local Law is in effect;
- 4) The Zoning Board of Appeals shall not accept for review, hold a hearing on, or make any decision upon any application for a use variance or the expansion or conversion of a nonconforming use that

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creates more than 2 additional residential dwelling units, whether said application was submitted prior to or after the effective date of this Local Law. The statutory and locally-enacted time periods for processing and making decisions on all aspects of applications for use variances and nonconforming use that creates additional residential dwelling unit(s) as indicated are suspended and stayed while this Local Law is in effect; and

5) For the purpose of this Section, the terms Planning Board, Town Board, and Zoning Board of Appeals shall be interpreted to include all Departments and employees of the Town who serve as staff to said Boards in the review of applications as cited in preceding Paragraphs 1 through 4.

Section 4. APPLICATION

- (1) This Local Law shall not apply to:
- a. Site plan for residential dwelling units for which a SEQR Determination of Significance/Negative Declaration Resolution was granted by the Planning Board prior to the effective date of this Local Law;
 - b. Subdivisions for which preliminary plat approval was granted by the Planning Board prior to the effective date of this Local Law;
 - c. Lot line revision applications;
 - d. Land Division applications;
 - e. Special Use Permit applications for accessory apartments;
 - f. Minor subdivision applications of four (4) lots or less, provided however that in no instance shall more than four (4) building lots be obtained from any lot or parcel existing on the effective date of this Local Law;
 - g. A site plan application for a two-family dwelling;
 - h. Subdivisions of land where it can be shown that the purpose of the subdivision is to develop said land for commercial, industrial or other non-residential use;
 - i. Any application to amend an approved Building Project within an established Planned Development District, provided that the purpose of said applications is to expand housing, assisted or assistive living, or skilled nursing care opportunities, for senior citizens;
 - j. An application (subdivision or site plan) related to a previously approved Planned Development District, where the application is in substantial conformance with the district plan that served as the basis for the zone change to PDD; or
 - k. Any request for assistance from the Zoning Board of Appeals to the Planning Board pursuant to Zoning Law 128-89, whether said request was made prior to or after the effective of this Local Law.

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.

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In particular, this local law supersedes any inconsistent provisions of Town Law §276 and Bethlehem Town Code §§§ 103-1 through 103-37, which require that the Planning Board act upon, hold hearings on, and make decisions concerning subdivision applications (including, but not limited to, preliminary and final subdivision plats) within specified time periods. 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 a subdivision applications (including, but not limited to, preliminary and final subdivision plats) provided for in those laws.

This Local Law also supersedes Bethlehem Town Code Sections 128-40 and 128-41 dealing with Planned Development Districts and Planned Hamlet Districts respectively, which require that the Town Board and/or Planning Board act upon, hold hearing on, and make decisions concerning Planned Development District applications within specified time periods, if any. 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.

This Local Law also supersedes any inconsistent provisions of Town Law §§§§ 267, 267-a, 267-b and 267-c and Bethlehem Town Code § 128-90 (C) relating to the authority to grant use variances for residential uses, waivers or other relief from the Town Zoning Code.

This Local Law also supersedes any inconsistent provisions of Town Law §274-a and Bethlehem Town Code §128-71, which requires that the Planning Board process, review, hold hearings on, and act upon applications for site plans within 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. APPEAL PROCEDURES

- 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 hardship affecting a parcel of property. To grant such a request, the Town Board must find that a variance or waiver will not adversely effect the purpose of the local law, the health, safety or welfare of the Town of Bethlehem or any comprehensive planning being undertaken in the Town. The Town Board shall take into account the existing land use in the immediate vicinity of the property and the impact of the variance or waiver on the water supply, agricultural lands, open and recreational space, rural character, natural resources, and transportation infrastructure of the Town. The application must comply with all other applicable provisions of the Bethlehem Town Code.
- b. Any request for a variance or waiver shall be filed with the Town Clerk and shall include a fee of two hundred fifty (\$250.00) dollars for the processing of such application, along with copies of such plat or plan showing all required improvements in accordance with the procedures of the Bethlehem Town Code.
- c. All such applications shall, within five (5) days be referred to the Planning Board, which shall have forty-five (45) days following receipt to make a recommendation to approve or disapprove a variance or waiver of this Local Law. The application and recommendation shall be transmitted to

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the Town Board which may conduct a public hearing and make a final decision on the application, with or without conditions. Final approval is reserved to the absolute discretion of the Town Board.

Section 7. SEVERABILITY

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjusted by any court of competent jurisdiction to be invalid, the judgment shall not effect the validity of this law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 8. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

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

(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. 5 of 2020 of the (County)(City)(Town)(Village) of Bethlehem was duly passed by the Town Board on December 9 2020, 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.

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

Date: *December 9, 2020*

(Seal)

