



Land Use Moratoria

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Two types of moratoria

1. Land use
2. General police power

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Land Use moratorium

- Local law or ordinance
 - Temporarily suspends landowner's right to obtain development approval(s)
 - Address circumstances not addressed by current laws
- Community considers revisions
 - Comprehensive plan; and/or
 - Land use regulations



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Landmark moratorium case

“Otherwise, any movement by the governing body of a city to zone would, no doubt, frequently precipitate a race of diligence between property owners, and the adoption later of the zoning ordinance would in many instances be without effect to protect residential communities – like locking the stable after the horse is stolen.

”Downham v. Alexandria, 58 F.2d 784 (D.C. Va., 1932)

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General Police Power moratorium

Non-zoning moratoria are temporary restrictions imposed by municipality under general police power in response to immediate health & safety problem

Municipality must justify such temporary measures:

- It acted in response to dire necessity
- Its action is reasonably calculated to alleviate or prevent crisis condition
- It is presently taking steps to rectify the problem

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Crisis prevention

“... the municipality must establish that it has acted in response to a dire necessity, that its action is reasonably calculated to alleviate or prevent the crisis condition, and that it is presently taking steps to rectify the problem.”

– Belle Harbor Realty Corp. v. Kerr, 35 N.Y.2d 507 (1974)

Moratoria prevents

- Rushed development
- Inefficient & ill-conceived growth
- Hasty decisions that might result in disadvantages to landowners & the public
- Immediate construction inconsistent with comprehensive plan



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Impermissible reasons

- Slow down development in hopes that developer will go away
- Halt development while community considers buying land

—Oakwood Island Yacht Club v. City of New Rochelle, 59 Misc.2d 355 (Sup. Ct. Westchester Co. 1955), aff'd. 36 A.D.2d 796 (2d Dept. 1971), aff'd. 29 N.Y.2d 704 (1971)

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“Growth-Capping” laws

Designed to limit not halt development pending capital improvement upgrades

Moratorium, by contrast, is designed to halt development for a certain period, to maintain the status quo

Assures development doesn't outpace planned improvements

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Possible approvals affected

- New land use applications
- Projects currently before review boards
- Issuance of permits
 - Building, sign, water & sewer connection
- Establishment of certain businesses
 - Adult use, junkyards, mining, etc.
- Siting of certain uses
 - Solid waste facility, etc.



Possible exemptions

Moratoria often exempt certain activities, such as:

- Construction applications that have been approved & begun, even where rights have not vested
- Construction of single-family homes
- Minor expansions or additions to buildings, such as garages for residences
- Projects under review, such as subdivision applications which have received preliminary approval

Subdivisions

- Default approval
 - If board fails to take action within statutorily prescribed time frames
- Moratorium suspends subdivision applications and may delay action beyond time frames
- Moratorium should state that it supersedes default approval provision
 - Specify exact provision

- **Town Law §276(8)**
- **Village Law §7-728(8)**
- **General City Law §32(8)**

Turnpike Woods, Inc. v. Tn of Stony Point, 70 N.Y.2d 735 (1987)

Use variances

Municipality undertaking rezoning may enact moratorium on granting of use variances by Zoning Board of Appeals (ZBA) even though local law would be inconsistent with general law

—Attorney General Inf. Opinion 87-22

Make Laws Legally Defensible


5 Key elements


1. Reasonable time frame relative to action being addressed
2. Valid public purpose
3. Address situation where burden imposed is shared substantially by public at large
4. Strict adherence to statutory adoption procedures
5. Certain expiration time

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1. Reasonable time frame


- Must be relatively short
 - Not excessively long or unfixed
 - Specify duration
 - Relate closely to actions necessary to address the issues
- Municipality must actively engage in planning or developing regulations
 - Rubin v. McAlevey (see above); and Lake Illyria Corp. v. Tn of Gardiner, 43 A.D.2d 386 (3d Dept. 1974)



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Struck Down – Too Long	Upheld – Reasonable Duration
<ul style="list-style-type: none"> • 7 years: Comprehensive plan & draft zoning <ul style="list-style-type: none"> – Lakeview Apartments v. Town of Stanford • 5 years: Local Waterfront Revitalization Plan <ul style="list-style-type: none"> – Duke v. Town of Huntington • 5 years: Draft new zoning law & master plan <ul style="list-style-type: none"> – Mitchell v. Kemp 	<ul style="list-style-type: none"> • 2 Year: Wind energy projects <ul style="list-style-type: none"> – Variance <ul style="list-style-type: none"> • 90-day extension • Highly technical nature – Ecogen, LLC v. Town of Italy • 1 year: Adjust zoning related to big box development <ul style="list-style-type: none"> – Village of Rockville Center


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2. Valid public purpose

Local law should state purpose(s) for adopting moratoria, such as:

- Town facing unprecedented growth & development following announcement of chip fabrication plant
- New commercial businesses are unsightly & detracting from pristine view
- Town is waiting for environmental study results

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3. Balance community benefit/detriment

- Develop or amend:
 - Comprehensive plan
 - Zoning regulations
 - Subdivision regulations
 - Site plan regulations
 - Other land use regulations
- Make improvements to:
 - Road system
 - Water or sewer infrastructure



4. Strict adherence to procedures

Cite one of these two sources of authorization; follow procedures

1. Local law adoption under General Police Power
 - Municipal Home Rule Law §20–27
2. Amend zoning by local law or ordinance
 - Town Law §263-265
 - Village Law §7-706 & 7-708
 - City Charter

5. Time certain for expiration

- Duration cannot be unreasonable
- If no indication when moratorium will end, courts can inquire as to the constitutionality of moratorium and set time certain

Russo v. New York State Department of Environmental Conservation

Variations from the moratorium

Variance applications from interim zoning ordinance must meet the same statutory standards for variances as though the interim zoning was permanent

- During moratorium, it's common for governing board--rather than ZBA--to consider variances
- Moratorium law must specifically state supersession of statute if governing board will consider variances instead of ZBA

Variance standards

Court held that adult community should get a variance:

- Extraordinary hardship
- No adverse impact health, safety & general welfare
- Not substantially undermine land use plan & revision process under review

- Town Law §§267, 267-a & 267-b
- Village Law §§7-712, 7-712-a & 7-712-b
- General City Law §§81, 81-a, & 81-b

Montgomery Group, LLC v. Town of Montgomery, 4 A.D.3d 458 (2d Dept. 2004)

Takings

- Advantages to municipality must outweigh potential hardships to landowners

– Charles v. Diamond, 41 N.Y.2d 318 (1977)

- Temporary takings that deny landowner all use of their property are permissible according to the U.S. Supreme Court

– Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002)



Vested rights

- The right to build or use property according to law as it existed prior to effective date of moratorium if land owner has undertaken substantial construction & made substantial expenditures
 - Ellington Construction Corp. v. ZBA of the Incorporated Village of New Hempstead, 77 N.Y.2d 114 (1990)
- Obtaining vested rights essentially makes use under construction legal non-conforming use

Vested rights

- Moratoria may not be used to stop building operations begun under a valid building permit and which continued in good faith to the extent that property owner had secured vested rights
 - Hasco Electric Corp. v. Dassler, 143 N.Y.S.2d 240 (1955)
- Valid building operations may not be stopped in anticipation of a moratorium in order to prevent landowner from qualifying for vested rights
 - Temkin v. Karageuzoff, 43 A.D.2d 820 (1st Dept. 1974)

Refer to county planning

If moratorium acts as an amendment to zoning then it must be referred to the county planning agency.

B & L Development v. Tn of Greenfield, 146 Misc.2d 638 (Sup. Ct. Saratoga Co. 1990)
 Court invalidated a one-year moratorium on building permits & construction approvals because town did not follow procedural requirements for amending zoning. Court held that moratorium law was subject to all statutory procedural requisites of zoning laws, including county referral (GML §239-m) & notification of adjacent municipalities pursuant to Town Law §264.

Caruso v. Tn of Oyster Bay, 250 A.D.2d 639 (2d Dept. 1998)
 Court held town board had no jurisdiction to adopt a local law establishing a moratorium on building permits for new home construction in a defined area of town since it had failed to properly refer law to county planning commission (GML §239-m).

County planning may affect vote

• If County Planning Agency recommends proposed zoning moratorium be:

- Disapproved
- Approved with modification



• Governing board may act contrary but only by supermajority vote

SEQRA

State Environmental Quality Review Act (SEQRA) classifies Moratoria as Type II Actions

- Type II Actions have been determined not to have a significant impact on environment
- Once classified, they require no further review under SEQRA
 - Make notation in file

Drafting a moratorium law

- Adopt in the form of a local law
- For existing zoning ordinance or local law, treat as an amendment to that ordinance or local law
- Clearly define the activity affected
- If moratorium supersedes any provision of Town or Village law, then it must be adopted by Town or Village law and also specifically state section being superseded

Drafting a moratorium law (con't)

- Establish a valid public purpose for the moratorium with a preamble that recites the nature of the land use issue
- Be sure to state that moratorium is in effect for a specific time period
- Include a relief mechanism

Conclusion

- With community growth comes development pressure
 - Comp plans should be adequate to deal with growth, but this is rarely so
- Moratorium provides time to formulate a comprehensive regulatory approach
- Precisely drafted moratorium should withstand legal challenges

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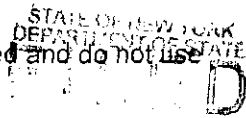
(518) 473-3355 Training Unit
 (518) 474-6740 Counsel's Office
 Email: localgov@dos.ny.gov
 Website: www.dos.ny.gov
www.dos.ny.gov/lq/lut/index.html



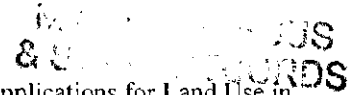
Local Law Filing

(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.



APR 23 2007



Town of Elma

Local Law No. 1 of the year 2007.

A local law "Imposing a Twelve Month Moratorium on Land use Approval of Applications for Land Use in the Commercial and Restricted Commercial Zones in the Town of Elma"
(Insert Title)

Be it enacted by the Town Board of the Town of Elma as follows:
(Name of Legislative Body)

Local Law No. 1-2007

Imposing a Twelve Month Moratorium on Land use Approval of Applications for Land Use in the Commercial and Restricted Commercial Zones in the Town of Elma

BE IT ENACTED BY THE Town Board of the Town of Elma, New York as follows:

Section 1: Title.

This Local Law shall be referred to as "Local Law Imposing a Twelve Month Moratorium on Land Use Approvals or applications for Land Use Approvals or applications for Land Use in the Commercial and Restricted Commercial Zone in The Town of Elma."

Section 2: Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Elma and its Town Board to regulate and control land use and to protect the health, safety and welfare of its Residents; and to address present and future development within the Town; and Pursuant to the Comprehensive Plan adopted by the Town of Elma on May 21, 2003; and to continue the update of the Town's Land Use Regulations, including but not limited to the Zoning Code of the Town of Elma; the Town Board of the Town of Elma hereby declares a twelve (12) month moratorium on the approval of land use or the application for land use in the commercial and restricted Commercial zones of the Town of Elma. At the discretion of the Town Board, there shall be the possibility of two (2) separate six (6) month periods of extension imposed, after proper notice and a public hearing, to be held within forty-five (45) days prior to the expiration of said moratorium period.

Section 7: Variances.

- A. Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purpose of this moratorium, unnecessary hardship shall not be the mere delay in being permitted to make an application or writing for a decision on the application for a building permit, subdivision map, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- B. Substantive requirements: No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such exemptions that:
- a. Failure to grant an exemption to the petitioner will cause the petitioner unnecessary hardship, is substantially greater than any harm to the general public welfare resulting from the generating of the exemption; and
 - b. The grant of the hardship, even if the project or activity for which exemption is sought is approved, will clearly have no adverse effect upon any of the Town's goals or objectives in undertaking the community planning effort or in adopting this moratorium, including but not limited to the effects resulting from uses detrimental to the community's resources or character, from loss or potential open space including areas important as wildlife habitat or from other adverse environmental impacts; and
 - c. The project or activity for which the petitioner seeks an exemption is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town or community-planning effort then progress; or the project or activity for which the petitioner seeks an exemption is submitted in connection with workforce or senior citizens affordable housing development; and
 - d. The alleged extraordinary hardship is not the result of any delay, action or inaction by the applicant, the property owner, or predecessors-in interest and that such alleged hardship has not been self-created; and
 - e. Failure to grant a hardship exemption to the applicant will cause hardship to the surrounding area, community, neighborhood, or general public welfare resulting from the granting of the exemption. In determining the magnitude of the alleged harm, the Town Board may consider the applicant's monetary investment in the completed application, prior to the moratorium, as applicable to such application; however, such monetary investment shall be only but one factor and shall not be the controlling factor in demonstrating extraordinary hardship.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking relief from this Moratorium, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon five days written notice in the official newspaper in the Town. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have the opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of the public hearing, render its decision either granting or denying the application for relief from the strict requirements of this Moratorium. If the Town Board determines that the property owner will suffer an unnecessary hardship if this Moratorium is strictly applied to a particular property, then the Town Board shall grant relief from the moratorium to the minimum extent necessary to provide the property owner relief from strict compliance with this Moratorium. The town Board may impose any conditions on any grant that is deemed necessary.

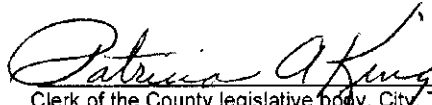
section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____ 20____, became operative.

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 subdivision 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 of 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 as 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 there from 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

Date: April 18, 2007

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, and Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

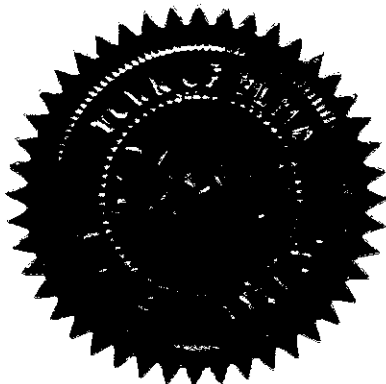
I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Elma Town Attorney
Title

TOWN OF ELMA, COUNTY OF ERIE
Date: April 18, 2007



LOCAL LAW FILING

NEW YORK STATE DEPARTMENT OF STATE
41 State Street,
Albany NY 12231

Town of Rensselaerville

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
DEC 03 2008

LOCAL LAW NO. 3 OF THE YEAR 2008

**MISCELLANEOUS
& STATE RECORDS**

A Local Law entitled "Moratorium Law of 2008 of the Town of Rensselaerville"

A local law establishing a six-month moratorium on applications and approvals for wind power facilities in the Town of Rensselaerville.

Be it enacted by the Town Board of the Town of Rensselaerville as follows:

Section 1. Title:

This law shall be known as the Moratorium Law of 2008 of the Town of Rensselaerville.

Section 2. Purpose and Intent:

The purpose of this moratorium is to temporarily suspend the administrative review and approval process for new or pending development proposals regarding the construction or installation of wind power facilities in the Town of Rensselaerville. Currently, the Town's zoning law does not address the wind power facilities as a permitted or allowed use in the Town nor does it provide for standards or guidelines for review of such land use and facilities. Thus, this moratorium is appropriate so that the Town may have the time necessary to study and evaluate this land use both for commercial and private use and to draft and propose reasonable regulations for such use. Such effort is advisable given potential development pressures for this type of use in the Town.

Section 3. Authority:

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

Section 4. Moratorium Imposed:

For the period of six (6) months immediately following the effective date of this local law, there is hereby imposed a moratorium on all commercial or non-commercial applications for the installation or construction of wind power, wind farm or wind generated energy facilities on land located within the municipal boundaries of the Town of Rensselaerville and that no approvals, permits, actions or decisions shall be made or issued by any Board or official of the Town of Rensselaerville with respect to any such applications. This moratorium shall apply to all such applications, whether pending or received prior to the effective date of this law. No such applications seeking approvals or permits for any windpower facilities shall be accepted by any Board or official of the Town of Rensselaerville while this law remains in effect.

Section 5. Effect of Moratorium:

Upon the effective date of this Local Law, no Board, body or official of the Town shall accept for review, continue to review, hold a hearing upon, make any decision upon, or issue any permit or approval upon any application or proposal for the uses, projects or developments set forth in Section 4 above. Any statutory or locally-enacted time periods for processing and making decisions on all aspects of the aforesaid applications are hereby suspended and stayed while this Local Law is in effect. No person, corporation, or other entity shall undertake any site preparation, including but not limited to clearing, grading, and filling, or construction activities, with respect to any application, proposed land use, subdivision, or development that is subject to this moratorium.

Section 6. Enforcement:

This local law shall be enforced by the Code Enforcement Officer of the Town of Rensselaerville or such other individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual to advise the Town Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to such enforcement.

Section 7. Violations:

Any person, firm, entity or corporation violating any of the provisions of this local law shall be guilty of an offense and upon conviction thereof, shall be subject to civil penalties in the amount of one hundred dollars (\$100.00) for each day such violation exists and/or an action for injunctive or equitable relief.

Section 8. Supersession:

To the extent that this local law is inconsistent with any state statute or regulation, it is the intent of this law to supersede such statutes or regulations. This supersession applies with respect to: (i) Town Law § 268 regarding the imposition of civil penalties; (ii) Town Law § 274-a with respect to the time frames for processing applications for site plan review, (iii) Town Law § 274-b with respect to the procedures and time frames for processing applications for special use permits, and (iv) Town Law § 267 et. seq. with respect to the time frames for processing area and use variances, appeals or interpretations.

Section 9. Severability of Provisions:

Should any section or provision of this local law be declared null, void, voidable, or invalid, such finding shall not affect the validity of the remaining portions of this local law.

Section 10. Effective Date:

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

End of Law