

A LOCAL LAW IMPOSING AN SIX-MONTH MORATORIUM ON THE PROCESSING
AND APPROVAL OF PERMITS FOR KENNELS IN THE TOWN OF GARDINER

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

Section 1. Title

This Local Law shall be referred to as the “Local Law Imposing a Six-Month Moratorium on the Processing and Approval of Permits for Kennels in the Town of Gardiner”.

Section 2. Purpose and Intent

Pursuant to the statutory and common law powers vested in the Town of Gardiner (the “Town”) to regulate and control land uses and to protect the health, safety and welfare of its residents, the Town Board of the Town hereby declares a temporary six (6) month moratorium on the processing and approval of applications for building permits, special use permits, special permits, variances, site plan approval, lot line revision, subdivision approval or other approvals or permission related to the undertaking, establishment, placement, development, operation, enlargement, construction or erection of Kennels in the Town of Gardiner.

The Town Zoning Law defines “Kennels” as: “A structure which complies with the Code of the Town of Gardiner and which is intended for or used for the housing of dogs”. *See* Zoning Law §80-18. Commercial and Non-Commercial Kennels are further defined in relevant part as a place where give or more dogs over four months of age are kept or maintained either for commercial purposes or for personal recreation, enjoyment or use by an owner. *See id.*

The Town Board intends to consider, in a careful manner, the undertaking, establishment, siting, placement, construction, operation, enlargement and erection of Kennels in the Town of Gardiner on a comprehensive Town-wide basis, and if deemed necessary, update its land use regulations. The Town Board hereby finds and determines that it needs a period of time covered by the moratorium imposed herein in order to carefully review and complete this review, and to prepare and adopt any needed amendments, which will necessarily involve scheduling and holding the required public hearing, performing the appropriate environmental review, compliance with applicable provisions of law and filing with the Secretary of State of the State of New York.

The Town Board finds that pursuant to 6 NYCRR 617.5(c)(30) the adoption of a moratorium on land development or construction is a Type II action under the New York State Environmental Quality Review Act (“SEQRA”) which has been determined not to have a significant impact on the environment or is otherwise precluded from environmental review under Environmental Conservation Law, article 8 and is therefore not subject to review under 6 NYCRR Part 617 or Environmental Conservation Law article 8.

Section 3. Authority

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

Section 4. Scope of Controls

- A. For a period of six (6) months from the effective date of this Local Law, no board, officer or agency of the Town shall accept, process, consider or approve any new applications for building permits, special use permits, special permits, variances, site plan approval, lot line revision, subdivision approval or other approvals or permission related to the undertaking, establishment, placement, development, operation, enlargement, construction or erection of the following:
- (i) KENNEL - A structure which complies with the Code of the Town of Gardiner and which is intended for or used for the housing of dogs.
 - (ii) KENNEL, COMMERCIAL - Any location within the Town of Gardiner wherein five or more dogs over four months of age are kept or maintained for any commercial purpose, including but not limited to boarding, breeding, grooming, letting for hire, training for a fee or selling. Notwithstanding the foregoing, the following facilities shall not be deemed commercial kennels: town animal shelter; veterinary hospitals, unless engaged in commercial boarding; and groomers, unless engaged in commercial boarding and/or breeding.
 - (iii) KENNEL, NONCOMMERCIAL - Any location within the Town of Gardiner wherein quantities of five or more dogs which are over four months of age are kept or otherwise are allowed to reside. The sole purpose or outcome of keeping said animals shall provide personal recreation, enjoyment or use by the owner not resulting in direct or indirect compensation, profit or gains. A kennel under such definition must be licensed, fee waived. This term does not include an animal hospital.
- B. This moratorium shall not apply to Certificates of Occupancy for any and all construction pursuant to building permits issued prior to or in accordance with the provisions of this Local Law or the issuance of any building permit for the renovation or repair of any lawfully existing structure otherwise covered by this local law.
- C. The Town Board reserves the right to direct the Town Building Inspector/Code Enforcement Officer to revoke or rescind any building permits or certificates of occupancy issued in violation of this Local Law.

Section 5. Hardship

- A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, special permit, site plan, lot line revision, subdivision, or other approvals, permission, or permit during the period of the moratorium imposed by this Local Law.

- B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variance from this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall grant a variance of the application of this Local Law to a particular property, then the Town Board shall grant a variance of the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 6. Term

The moratorium imposed by this Local Law shall be in effect for a period of six (6) months from the effective date of this Local Law.

Section 7. Penalties

Any person, firm or corporation that shall undertake, establish, place, develop, operate, enlarge, construct or erect anything regulated within the "Scope of Controls" listed in Section 4 above in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall:

- A. Be guilty if an offense, punishable by a fine not exceeding two hundred and fifty dollars (\$250.00) or imprisonment for a period not to exceed 15 days, or both. Each day's continued violation shall constitute a separate offense, and

- B. Be subject to appropriate action or proceedings by the proper authorities of the Town to enjoin, correct, or abate any violation(s).

Section 8. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provisions of this Local Law that can be given effect without such invalid provision.

Section 9. Suspension and Supersession of Other Laws

All local laws in conflict with the provisions of this Local Law area hereby superseded and suspended for a period of six (6) months from the effective date of this Local law. This Local Law also supersedes, amends, and takes precedence over any inconsistent provisions of New York Town Law under 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.

In particular, this Local Law supersedes any inconsistent provisions of New York Town Law §267, §267-a, §267-b, §274-a, §274-b, §276 and §277 for the purpose of vesting the Town Board of the Town of Gardiner with the authority to accept, hear, process and determine applications for variances from this Local Law.

Section 10. Effective Date

This Local Law shall take effect immediately when it is filed in the Officer of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.