

LOCAL LAW NO.: 2 - 2024

A LOCAL LAW IMPOSING A SIX (6) MONTH MORATORIUM ON NEW SMOKE SHOP USES WITHIN THE TOWN OF DEWITT

Be it enacted by the Town Board of the Town of DeWitt, Onondaga County, State of New York, that a new Article XXIII of Chapter 192 of the DeWitt Town Code entitled “Moratorium on New Smoke Shop Uses” is adopted as follows:

Chapter 192, Article XXIII – Moratorium on New Smoke Shop Uses

§192-136 Intent.

Pursuant to the statutory powers vested in the Town Board of the Town of DeWitt (hereinafter “Town Board”) to regulate and control land use and to protect the health, safety and welfare of the Town’s residents and occupants, it is the intent of the Town Board to impose a six (6) month moratorium on the establishment, creation, maintenance, advertisement and/or operation of new Smoke Shop uses within the Town of DeWitt.

§192-137 Legislative Purpose.

The Town Board is concerned about the proliferation of smoke shops in the Town and its effect on the health, safety and welfare of the Town’s residents, and in particular young residents. The proposed Moratorium enables the Town to undergo appropriate research with respect to the proliferation of Smoke Shop uses and the compatibility of Smoke Shops with other residential and commercial uses, the correlation of Smoke Shop density with rates of tobacco use in both youth and adult populations, and the overall effect of Smoke Shops with respect to the health, safety and welfare of Town residents. During the Moratorium, the Town may implement such regulations, rules, laws and/or controls as may be deemed necessary to protect the community and further the goals of the Town of DeWitt Comprehensive Plan. It is imperative that the establishment of new Smoke Shops is halted during the term of the Moratorium and the establishment of any regulations, rules, laws and/or controls deemed necessary for the safe and orderly development of the Town and protection of the Town’s residents. A Moratorium is appropriate and necessary in order to preserve the status quo until new regulations, rules, laws and/or controls are adopted by the Town Board.

§192-138 Definitions.

SMOKE SHOP

Any premises dedicated to the display, sale, distribution, delivery, offering, furnishing and/or marketing of tobacco and/or cannabis, tobacco and/or cannabis products, and tobacco and/or cannabis paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells tobacco and/or cannabis as an ancillary sale shall not be defined as a “smoke shop.”

§192-139 Moratorium.

A. During the term of the Moratorium:

1. The Town of DeWitt Planning and Zoning Department (hereinafter “Planning and Zoning Department”) shall not accept, review, or grant any applications for approval(s) resulting in the construction, development, establishment or opening of a Smoke Shop, unless a Planning Board approval has been obtained prior to the date of adoption of this Local Law.
 2. The Town of DeWitt Planning Board (hereinafter “Planning Board”) shall not accept, review, or grant any applications for approval(s) resulting in the construction, development, establishment or opening of a Smoke Shop within the Town of DeWitt.
 3. The Town of DeWitt Zoning Board of Appeals (hereinafter “Zoning Board of Appeals”) shall not accept, review, or grant any applications for approval(s) resulting in the construction, development, establishment or opening of a Smoke Shop within the Town of DeWitt.
 4. No applications for construction or development affected by this Local Law or for approval(s) for a site plan, variance, special use permit, specific use permit or any other permit shall be considered by any Board, Department, officer, or agency of the Town.
- B. The Town Board reserves the right to direct a Code Enforcement Officer to revoke or rescind any building permit(s), certificate(s) of occupancy or any other permits or certificates issued in violation of this Local Law.
- C. Under no circumstance shall the failure of any Board, Department, officer or agency of the Town of DeWitt to take action upon any application for any approval(s) constitute approval by default or approval by virtue of expiration of time to respond to such application.

§192-140 Exceptions.

This Moratorium shall not apply to:

- A. Smoke Shops which are currently in the Town of DeWitt, provided they have been legally established through all proper permitting and approval processes; and
- B. Cannabis retail dispensaries and on-site consumption establishments legally established pursuant to §192-69.1 of the DeWitt Town Code.

§192-141 Term.

The Moratorium imposed by this Local Law shall be in effect for a period of one hundred eighty (180) days from the effective date of this Local Law. This Moratorium may be extended for an additional period of not more than one hundred eighty (180) days by resolution of the DeWitt Town Board.

§192-142 Penalties.

Any individual, partnership, firm or corporation that shall establish, construct, reconstruct, relocate, enlarge or modify any site to be used for a Smoke Shop use in violation of the provisions of this Local Law, shall be subject to the following:

- A. A fine not to exceed one thousand dollars (\$1,000.00). Each day a violation continues shall be deemed as a new and separate violation; and

- B. A civil action inclusive of injunctive relief in favor of the Town to cease any and all actions which conflict with this Local Law and, if necessary, to remove any construction(s), improvement(s), or related items or byproducts which may have taken place in violation of this Local Law.

§192-143 Enforcement.

This Local Law shall be enforced by the Town of DeWitt Code Enforcement Office or any other zoning enforcement individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this Local Law.

§192-144 Hardship.

- A. The Town Board reserves the power and right to vary or adapt the strict application of the requirements of this Local Law in the case of unusual or unnecessary hardship depriving an owner of property affected by this Local Law of all reasonable use of the lands involved.
- B. Should any owner of property affected by this Local Law suffer an unusual or unnecessary hardship by way of carrying out the strict letter of this Local Law, the owner of said property may apply to the Town Board in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unusual or unnecessary hardship.
- C. For the purposes of this Local Law, unusual or unnecessary hardship shall not be mere delay in being permitted to make an application for approval(s) or waiting for a decision on an application for a building permit, variance, special use permit, specific use permit, site plan review, or any other permit during the term of this Moratorium.
- D. Procedure. Upon submission of written application to the Town Clerk by the property owner seeking a variation from the strict application of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing upon five (5) days written notice in an official newspaper of the Town. At the 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 Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer unusual or unnecessary hardship by the strict application of this Local Law to a particular property, the Town Board may vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance of this Local Law.

§192-145 Validity and severability.

If any section or part of this Local Law is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section of this Local Law.

§192-146 Effective date.

This Local Law shall be effective upon filing with the office of the Secretary of State.