

LOCAL LAW NO. ____ OF 2019

**CITY COUNCIL
CITY OF BEACON**

**LOCAL LAW REGARDING
ENACTMENT OF A MORATORIUM**

A LOCAL LAW to
enact moratorium on
residential and
commercial
development

BE IT ENACTED by the City Council of the City of Beacon as follows:

SECTION 1. TITLE

This local law shall be entitled, “A Local Law, pursuant to Municipal Home Rule Law § 10, to enact a moratorium with respect to land use approvals to review certain special use, site plan, and subdivision applications involving residential, commercial and mixed use developments within the City of Beacon, by means of amending Chapter 223, Zoning, of the Code of the City of Beacon.”

SECTION 2. LEGISLATIVE INTENT AND PURPOSE

The City Council hereby finds as follows:

1. The City of Beacon has seen an increase in development over the past several years. In 2017, the City was concerned that development of a large number of residential units in such a short period of time would stress the City's water supply. In response, on October 16, 2017, the City Council adopted a moratorium on residential development, including single family and mixed use developments, within the City of Beacon to protect the City and its residents, businesses and visitors from the potential impacts of new development on the City's water supply given the increased rate of development in the City.
2. Thereafter, the City of Beacon retained the services of WSP (Formerly LBG Hydrogeologic & Engineering Services) in order to perform a Comprehensive Water Supply Plan (the “Plan”) for the City. The Plan included evaluating the storage

capacity of the City's three reservoirs to estimate the safe yield of the reservoirs; conducting an extended yield test on the existing bedrock water-supply wells to determine the safe yield of the bedrock wells; conducting a groundwater exploration program at the City's Pump House Road well field to evaluate the potential to develop a high yielding sand and gravel production well; and the evaluation of current and projected City build-out populations to determine if the City has an adequate supply of drinking water to meet the current and projected water demand. The Plan was issued in March 2018 and concluded that the City had an adequate water supply to meet the City's current demands and projected demands through 2035 with existing resources.

3. The City's Water Supply is made up of the following resources:

Water Supply	Water Supply Capacity (Million Gallons Per Day-MGD)
Melzingah Reservoir	0.38 mgd
Mount Beacon Reservoir	0.43 mgd
Cargill Reservoir	0.60 mgd
Well #1	0.58 mgd
Well #2	1.15 mgd
Village of Fishkill	1.20 mgd
Total Water Production	4.34 mgd

4. In February 2019, Well #2 was taken off line because tests of the well showed high turbidity from silting. WSP examined Well #2 and determined that the excessive silting was entering the well from a fracture about 240 feet down. Well #2 has remained off line while the City developed a mitigation plan to restore the well.
5. WSP performed a Water Supply Adequacy review with Well #2 out of service, incorporating and assessing the water needs of existing developments, and projects in the process of being built, recently approved and pending before the Planning Board. WSP's review concluded that there is an adequate supply of water and an approximate surplus of 170,000 gpd (gallons per day).
6. The City has developed a course of action to correct the silting and bring Well #2 back on line. The City is concerned that approving new development proposals while repairs are being made to Well #2 would be imprudent and it would not be fair to applicants to entertain new applications during this time of uncertainty because the success of the repairs to Well #2 will be unknown until the work is completed and evaluated.
7. It is the intent and purpose of this Local Law to establish another temporary moratorium on residential and commercial development in order to protect the City and its residents, businesses and visitors from the potential impacts of new development on the City's water supply given the condition of Well #2. Imposition

of this moratorium will allow the City sufficient time to repair Well #2 and regulate residential and commercial development within the City of Beacon to further protect the City's water supply.

SECTION 3. MORATORIUM

1. For a period of six (6) months following the date on which this Local Law is adopted by the City Council, and subject to paragraph 2 below, no application for a building permit (other than a building permit for a project previously approved by a land use board), area variance, use variance, special use permit, site plan approval, or subdivision approval will be processed by the Building Department, or City Council, Planning Board or Zoning Board of Appeals ("Land Use Boards"), and no permit or approval will be issued by the Building Department or any Land Use Board for the modification, expansion or establishment of residential, commercial or mixed use developments within the City until this ordinance has expired as set forth in paragraph 3 below or has been repealed according to applicable law.
2. All applications for building permits, use variance, area variance, special use permit, site plan approval and subdivision approval submitted to the City on or before June 11, 2019, or pending before the Building Department or Land Use Board on or before June 11, 2019 are exempt from this moratorium. Any application submitted after June 11, 2019 may be heard and reviewed by any Land Use Board, but may not be subject to a vote and any application that was submitted to any Land Use Board after June 11, 2019 and received a vote, may not receive a Building Permit. The Land Use Board may hold public hearings and discuss the application, but the Land Use Board may not formally approve or deny such application. Any building permit application for a single family home and any application seeking a modification or extension of an existing approval that does not increase the density (by unit or bedroom count) shall be exempt from this moratorium and any residential application that would result in an increase in water usage of less than 330 gallons of water per day, as determined by the City Building Inspector, is exempt from this moratorium. Any non-residential application that would result in an increase in water usage of less than 2,000 gallons per day, as determined by the City Building Inspector, is exempt from this moratorium. In addition, this moratorium shall not apply to the reuse of any existing non-residential building for industrial or manufacturing uses, as determined by the Building Inspector, where such use does not increase the existing building footprint or otherwise increase the building square footage.
3. This moratorium shall automatically expire thirty (30) days after the City Administrator's receipt of a report from the City's Water Consultant that (i) confirms Well 2 has been repaired; (ii) states the gallons per minute being pumped from Well 2; (iii) confirms the total capacity available to the City from all water production; (iv) advises if any of the Conclusions in its March 2018 Comprehensive Water Supply Plan are affected by the new yield from Well 2 (if less than previously studied); and (v) confirms the City of Beacon has sufficient safe yield from the sources of supply to

meet the current and projected Long Term Build-Out demand as detailed in the March 2018 Comprehensive Water Supply Plan. Should the repairs not be completed or the above referenced report not meet the criteria detailed above, the City Council may extend the moratorium, after following the procedure to adopt a Local Law, for a period of time as the City Council, in its sole discretion, deem necessary.

SECTION 4. ADMINISTRATIVE RELIEF FROM MORATORIUM

4. In order to prevent an unlawful taking of property and to prevent irreparable harm, the City Council is authorized to grant limited relief from this moratorium pursuant to the standards and requirements herein. An applicant seeking such relief shall be required to show by clear and convincing evidence, including credible dollars and cents proof, that the applicant cannot make any reasonable use of its property due solely to the moratorium; that the moratorium prohibits fulfillment of the applicant's reasonable investment-backed expectations; that the moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the moratorium.
5. An application may be made in writing to the City Council requesting an exemption from the provisions herein. After due notice and a public hearing on such application, the City Council may grant an exemption with such conditions as it may deem reasonable and necessary, provided such exemption is the minimum relief necessary.
6. All such applications to the City Council shall be deemed Unlisted actions under SEQRA. In the event relief from the moratorium is granted by the City Council, the applicant shall proceed to the City's Land Use Boards to apply for required development approvals. Notwithstanding any relief granted pursuant to this section, a development approval shall not be granted unless the approved application complies with all zoning and all other requirements in effect on the date of approval.
7. The applicant or any other person aggrieved by a decision of the City Council made pursuant to this section may apply to the state supreme court pursuant to article seventy-eight of the civil practice laws and rules.

SECTION 5. CONFLICTING LAWS SUPERSEDED

All local laws, ordinances, or parts of local laws and ordinances, of the City of Beacon that are in conflict with the provisions of this Local Law are hereby suspended to the extent necessary to give this Local Law full force and effect during the effective period of the moratorium. Pursuant to Municipal Home Rule Law Section 10, this Local Law shall supersede any inconsistent provisions of New York State General City Law for the entire duration of this moratorium, including any extension thereof.

SECTION 6. SEPARABILITY

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect immediately upon adoption and filing with the Secretary of State as provided by the Municipal Home Rule Law.