

TOWN OF DRYDEN LOCAL LAW No. _____ OF 2020
A LOCAL LAW PROVIDING FOR A MORATORIUM ON THE USE OF CONSERVATION
SUBDIVISIONS IN THE TOWN OF DRYDEN FOR ONE HUNDRED AND EIGHTY (180)
DAYS

SECTION 1. Findings and Purpose.

1. The Town of Dryden finds:

A. Town of Dryden Subdivision Law, enacted by Local Law Number 4 of 2012, and amended by Local Law Number 4 of 2016, which Subdivision Law is codified as Article IX of the Laws of the Town of Dryden provides for the Conservation Subdivisions as a form of Cluster Subdivision as permitted by New York Town Law. Article VI of the Dryden Subdivision Law defines a “Conservation Subdivision” as a Subdivision in which the otherwise applicable area and bulk regulations of the Zoning Law are modified to encourage flexibility of design and development of land in such a manner that the layout, configuration and design of lots, structures, driveways, roads, parks, trails and landscaping are designed to preserve important natural resources and scenic qualities of the site. A Conservation Subdivision is a cluster development authorized by Town Law Section 278 and the Town of Dryden Subdivision Law.

B. Under the Dryden Subdivision Law Section 900, any Major Subdivision in a Conservation District (CV) is subject to the provisions of Article X1 (Conservation Subdivisions). However, an applicant for proposed subdivisions of land in the Rural Agricultural District (RA), or the Rural Residential District (RR) may opt to utilize the Conservation Subdivision.

C. The tools currently available to applicants for Conservation Subdivisions for assuring preservation of green space and open space include conservation easements, restrictive covenants, homeowners’ association or title transfer to a grantee approved by the Planning Board. However, the Town Planning Board, by Resolution Number 24 of 2019, expressed to the Town Board concern that the current use of a Restrictive Covenant is not a reliable or suitable arrangement to permanently protect open space, and recommended that the Town Board implement a moratorium to allow time to study the issues that are a source of concern .

D. By Resolution Number 163 of 2019, the Town Board accepted the Planning Board’s recommendation and hereby seeks to implement a moratorium to allow sufficient time to study the matter and determine the most effective way to ensure that the continued use of Restrictive Covenants as a tool in the Conservation Subdivision process does not undermine the Town’s goals of preserving open and green space.

2. Any proposed development shall be designed to preserve, as much as practicable, the existing views and line of sight of existing buildings and neighboring properties.

SECTION 2. Prohibited Actions. For a period of one hundred eighty (180) days from the effective date of this local law, the Town Board declares a moratorium prohibiting each of the following actions in the Town, regardless of the submittal or receipt of any application prior to the effective date of this local law, unless permitted under Section 3 hereunder:

A. Acceptance, consideration, preliminary approval or final approval by the Town of Dryden Planning Department and/or the Town of Dryden Planning Board of any application for a Conservation Subdivision which proposes the use of Restrictive Covenant as the tool for ensuring preservation of open space or green space.

B. The issuance of any permits by the Town of Dryden Code Enforcement Officer in connection with any activity prohibited hereunder.

C. The issuance of any permit by the Town of Dryden for highway utility work in connection with any activity prohibited hereunder.

SECTION 3. Exemptions: Applications for a Conservation Subdivision that propose the use of other permissible means of green space preservation such as a Conservation Easement or conveyance of a parcel of land for conservation purpose in a manner approved by the Town are exempt from the moratorium.

SECTION 4. Waivers.

A. Any property owner may appeal to the Town Board for a waiver of the above prohibitions, and the Town Board shall have authority on good cause shown to grant such relief, or so much relief as the Town Board may determine to be necessary and appropriate. In determining the suitability of a waiver under this section, the Town Board shall consider the following factors:

1. Unnecessary hardship to the applicant, which hardship is substantially greater than any harm to the general public welfare that would result from the granting of the waiver (for the purposes of this local law, unnecessary hardship shall not be mere delay in receiving an approval, the granting of which is otherwise prohibited during the period of the moratorium; and

2. The project's harmony (or lack thereof) with the existing character of the community as a whole and the area of the community in which the property is located; and

3. Whether or not the goals of Article IX of the Town of Dryden Subdivision Law can adequately be met by applicant's use of the other green and open space preservation tools provided under Article IX that remain available for use by applicants, without unnecessary hardship to the applicant.

B. Waiver Procedure. Such petition shall be the subject of a public hearing before the Town Board. Upon submittal of a written petition to the Town Clerk by the property owner seeking a waiver of this moratorium in a form to be provided by the Town Clerk, and supported by such documentation as the applicant deems relevant, the Town Board shall, within forty (40) days of receipt of such petition, conduct a public hearing on said petition upon five (5) days public notification in the official newspaper of the Town. At said public hearing, the property owner and other parties wishing to present evidence on the proposed waiver shall have an opportunity to be heard. The Town Board shall, within forty (40) days of the close of the public hearing, render its decision in writing, either granting or denying the petition for a waiver from the strict requirements of the moratorium.

SECTION 5. Statement of Authority and Supersession.

A. The Town Board adopts this local law pursuant to authority in the New York State Constitution, Article IX, Section 2; section 10 of the New York Municipal Home Rule Law; section 10 of the Statute of Local Governments; the relevant provisions of the Town Law of the State of New York; the Zoning Law and other laws of the Town of Dryden; and the general police power vested with the Town of Dryden to promote the health, safety and welfare of all residents and property owners in the Town.

B. During the time that this law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions. It is the intent of the Town Board, pursuant to authority under section 10, subdivision 1(ii)(d)(3), and section 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State Town Law and the Town of Dryden Zoning Law.

1. In particular, it is the intent of the Town Board, pursuant to authority under sections 10 and 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State Town Law and the Town of Dryden Zoning Law, relating to time limits in connection with zoning and planning determinations. Without limitation, the instant local law hereby supersedes the following provisions of the Town Law of New York State:

a. Subdivisions 7 and 8 of section 267-a, relating to time limits for Zoning Board of Appeals hearings and decisions, respectively.

b. Section 267-b, relating to the hearing of appeals for variances by the Zoning Board of Appeals.

c. Subdivision 8 of section 274-a, relating to time limits for hearings and determinations on site plan applications.

d. Subdivision 6 of section 274-b, relating to time limits for hearings and determinations on application for special permits.

2. For the duration of this moratorium, the Town Board also intends to supersede, and the instant local law hereby supersedes, section 262 of the Town Law of New York State to the extent that the provisions of said section are inconsistent with any provision herein.

SECTION 6. This local law shall take effect upon filing with the Secretary of State.

SECTION 7. The provisions of this local law are severable. If any court of competent jurisdiction decides that any section, clause or sentence, part or provision of this local law is illegal, invalid or unconstitutional, such decision shall not affect, impair or invalidate any of the remaining sections, clauses, sentences, parts or provisions of the local law.

SECTION 8. This local law shall supersede or repeal any prior inconsistent local law.