

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

*1888 --- 2013
125th City of Middletown Celebration*

THE FOLLOWING WAS PRESENTED

By Ald. Masi _____

Sec'd by Ald. Sierra _____

Date of Adoption 10-16-12 _____

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Amodio				
Ald. Burr				
Ald. Ramkissoo				
Ald. Smith				
Ald. Sommers				
Ald. Masi				
Ald. Sabnis				
Ald. Sierra				
Pres. Rodrigues				
TOTAL				

Introduction of Local Law #1 of 2012:

A LOCAL LAW TO PLACE A MORATORIUM ON LAND USE DEVELOPMENT IN
THE DOWNTOWN MIDDLETOWN AREA PENDING ADOPTION OF A
COMPREHENSIVE DOWNTOWN REZONING PLAN

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF
MIDDLETOWN, NEW YORK, AS FOLLOWS:

Section 1. Purpose of this Enactment

In 1991, the City of Middletown approved the formation of the Downtown Middletown Business Improvement District (“the BID”) to foster economic development and revitalization of the downtown area of the City. The BID, since its creation, has developed projects and has operated in accordance with its approved District Plan. During the time period since the BID’s inception, however, there has been no comprehensive review of the zoning regulations specifically affecting or aimed at property within the BID. At the present time, the downtown is generally zoned in accordance with the C-3 zoning district regulations, but certain properties in the downtown area also are zoned C-1, C-2, R-2, OR-2, R-4, I-1 or I-2, and other commercial areas of the City also are zoned C-3.

More experts in land use law and planning are recognizing that downtown areas in urban settings are unique areas with their own concerns, benefits and attractions. City officials have attended conferences specifically aimed at and discussing the unique aspects of downtowns. In addition, more “big box” buildings in the City’s downtown area have become vacant, and/or ownership of those buildings has been transferred to the City. Such buildings include the former Tompkins building, the former TD Bank building, the former Montgomery Ward building, the former Sears Roebuck/Elliott’s Furniture Store building, the building located at 11-15 King Street and the former Clemson Brothers factory building. Furthermore, there has been an influx of residential development in the downtown area and more may be needed to serve the needs of Orange County Community College and students, faculty and staff of the proposed medical college planned for the former Horton Hospital complex, and those possible residents, and current residents, would benefit from the appropriate and orderly commercial development of the downtown area.

Based upon the above facts, the Common Council finds that existing zoning regulations for the downtown area may not provide the most appropriate answers to the development and use of downtown properties. Additionally, the Common Council has requested, and the New York State Legislature and the Governor have approved, the reinstatement of the City’s Parking Authority and the City’s Community Development Agency, both of which could be used as tools to further downtown development. Therefore, the Common Council finds that it is appropriate, on an interim basis, to suspend any further development of downtown properties pending a review of the zoning regulations affecting the downtown area and to allow City officials to review existing zoning regulations and propose to the Common Council changes to zoning that will specifically address the needs and concerns of the City’s downtown area.

The purpose of this Local Law, then, is to protect the public interest and welfare and prevent premature development which could prejudice the integrity and objectives of any revised zoning designed specifically for the downtown area or result in land use patterns which might be inconsistent with and in violation of the intent of any new and proposed zoning regulations for the downtown area. This Local Law also provides for a review and appeals procedure to avoid and minimize any inequities or hardships which may result from the strict application of this Local Law.

Section 2. Scope of and Restrictions Imposed by Moratorium Controls

A. The controls and limitations imposed by this Local Law shall take effect as of October 1, 2012 and continue until March 31, 2013 (“the Moratorium Period”) and will affect only properties contained within the geographical confines of the Downtown Middletown Business Improvement District (“the Downtown Area”); the Downtown Area, as described in the District Plan for the BID, is defined by the following streets and includes all property abutting said streets:

Fulton Street between Academy Avenue and Mill Street; Mill Street

between Fulton Street and West Main Street; West Main Street between Franklin Square and Union Street; Union Street between West Main Street and Franklin Street; Franklin Street between Union Street and Linden Avenue; Linden Avenue between Franklin Street and Wickham Avenue; Wickham Avenue between Linden Avenue and Grove Street; Grove Street between Wickham Avenue and Railroad Avenue; Railroad Avenue between North Street and Montgomery Street; Montgomery Street between Railroad Avenue and East Main Street; East Main Street from Montgomery Street to Franklin Square; East Avenue from East Main Street to Fulton Street; South Street from Fulton Street to Franklin Square; Canal Street from Fulton Street to West Main Street; Mulberry Street from Fulton Street to West Main Street; South Street from Fulton Street to Franklin Square; North Street from Franklin Square to Wickham Avenue; Cottage Street between Roberts Street and Railroad Avenue; John Street from Linden Avenue to North Street; Courtland Street from Linden Avenue to North Street; Washington Avenue from South Street to East Avenue; and William Street, Orchard Street, Roberts Street, King Street, James Street, Depot Street, Center Street and Henry Street in their entirety.

B. During the Moratorium Period, with respect to all properties in the Downtown Area:

1. No building permit or certificate of occupancy shall be issued by the Building Inspector for any building or structure.
2. The Planning Board shall not grant any preliminary or final approval of a site plan application or a special use permit application.
3. The Zoning Board of Appeals shall not grant any use variance or area variance.

C. The restrictions specified in Subsection B of this Section 2 shall not apply to the following:

1. Applications for additions or alterations of an existing structure, provided such additions or alterations do not constitute a new use of such existing structure. As used in this subsection, the term “new use” shall mean and refer to any change in the type of use of a building or property or any modification or expansion of any use previously approved but shall not include expansion of existing non-conforming uses.
2. Certificates of occupancy may be issued for any and all construction made pursuant to building permits issued prior to the effective date of this Local Law, provided that construction thereon has substantially commenced prior to the effective date of this Local Law.
3. Notwithstanding the foregoing, no building permit shall be renewed once having expired except in accordance with the appeal provisions

of this Local Law.

4. The Common Council reserves the right to direct the Building Inspector to revoke or rescind any building permits or certificates of occupancy issued in violation of this Local Law.

Section 3. Appeal Provisions

A. The Common Council shall have the power to vary or modify the terms or applicability of any provision of this Local Law upon the Common Council's determination, in its absolute legislative discretion after a public hearing, that such variance or modification:

1. Would impose an unreasonable hardship upon the property owner or developer if it were not granted; and
2. Is consistent with the spirit of the intended zoning regulations to be implemented for the Downtown Area; and
3. Would be permitted under the zoning law in existence prior to the adoption of this Local Law; and
4. Is consistent with the health, safety and general welfare of the City and its residents.

.B. Any request for a variance from or modification of any provision of this Local Law shall be filed with the City Clerk/Clerk of the Common Council of the City and shall include a fee of three hundred dollars (\$300.00), and the person requesting such variance or modification must also place in escrow with the City a sum of money sufficient to pay the cost of the City's experts and professionals who, on behalf of the City, review such request.

Section 4. Penalties

A violation of any provision of this Local Law shall constitute an offense within the meaning of the Penal Law of the State of New York, punishable as provided for below:

A. A fine of no less than five hundred dollars (\$500.00) and no greater than one thousand dollars (\$1,000.00) shall be imposed for each day the violation shall exist.

B. The City shall also be entitled to seek injunctive relief in a court of competent jurisdiction for the purpose of ceasing activities, operations or uses which are in conflict with this Local Law.

Section 5. Severability

The invalidity of any word, phrase, sentence, paragraph or provision of this Local

Law shall not affect the validity of any other part or provision of this Local Law.

Section 6. Repeal of Conflicting Laws and Ordinances during the Moratorium Period

All laws, ordinances, or parts of laws or ordinances in conflict with the provisions of this Local Law are hereby repealed or suspended to the extent necessary to give this Local Law full force and effect during the Moratorium Period, as that period is described in Section 2 (A) above.

Section 7. Type II Action for Purposes of SEQRA

With respect to the application of the New York State Environmental Quality Review Act (“SEQRA”), the Common Council finds and determines that the adoption of this Local Law is a Type II Action for purposes of SEQRA.

Section 8. Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State and shall apply as described in Section 2 (A) above.