

**CITY OF PORT JERVIS
INTRODUCTORY LOCAL LAW NO. 8 OF 2023**

**A LOCAL LAW ESTABLISHING A SIX-MONTH MORATORIUM PROHIBITING
THE REVIEW AND APPROVAL OF APPLICATIONS FOR THE RETAIL SALE OF
CANNABIS, CBD AND TOBACCO PRODUCTS WITHIN THE CITY OF PORT
JERVIS**

Be it enacted by the Common Council of the City of Port Jervis, County of Orange, State of New York, as follows:

Section 1. Title.

This Local Law shall be referred to as “**A LOCAL LAW ESTABLISHING A SIX-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF APPLICATIONS FOR THE RETAIL SALE OF CANNABIS, CBD AND TOBACCO PRODUCTS WITHIN THE CITY OF PORT JERVIS**”.

Section 2. Definitions.

“Code” means the City of Port Jervis Code.

“City” means the City of Port Jervis.

“Common Council” means the Common Council of the City of Port Jervis.

“City Clerk” means the City Clerk-Treasurer of the City of Port Jervis.

“Land Use Approvals” means building permits, certificates of occupancy or completion, site plan approvals, subdivision plats, special use permits, and variances.

Section 3. Legislative Findings, Purpose and Intent.

The State of New York recently enacted the Marihuana Regulation and Taxation Act (hereinafter the “Cannabis Law”), which, in relevant part, allows the retail sale of cannabis and cannabis products and provides for the licensing of cannabis dispensaries. The Cannabis Law also provides that “towns, cities and villages may pass local laws and regulations governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries provided such law or regulation does not make the operation of such licensed retail dispensaries unreasonably impracticable.” Pursuant to this authority, the Common Council enacted Local Law No. 11 of 2022 creating Section 535-38 of the City of Port Jervis Zoning Code, which enumerates procedures to allow the establishment of cannabis retail dispensaries as well as

tobacco retailers in locations and manners consistent with the zoning and land use goals of the City of Port Jervis.

Since the enactment of Local Law No. 11 of 2022, the Common Council has determined that amendments to the aforesaid local law must be considered in order to protect the general health, safety and welfare of the Port Jervis community. In order to enact meaningful legislation, a thoughtful review of the relevant portion of the zoning code regulating the sale of cannabis, CBD and tobacco products must be conducted. The Common Council hereby finds that such reviews require careful time and consideration and should not be subjected to potential development pressures.

Pursuant to the statutory powers vested in the City to regulate and control land use and to protect the health, safety and welfare of its residents, the Common Council of the City of Port Jervis hereby declares a six-month moratorium on the submission and processing of any applications of land use approvals, including building permits, certificates of occupancy or completion, site plan approvals, subdivision plats, special use permits, and variances (hereinafter “Land Use Approvals”) for the development, construction and operation of retail sales establishments for cannabis, CBD and tobacco products within the City pending the Common Council’s review of City Code Section 535-38 and consideration of any necessary amendments to same.

Section 4. **Scope of Controls**

- A. During the effective period of this Local Law:
1. No Land Use Approvals shall be issued for the development, construction and operation of retail sales establishments for cannabis, CBD and tobacco products within the City, as such terms are defined in Chapter 535 of the Port Jervis City Code, without the approval of the Common Council of the City of Port Jervis, which approval will not be considered except in the event of proven hardship.
 2. The City Planning Board shall not accept any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit or other permit that includes the permitting, construction, development and/or operation of retail sales establishments for cannabis, CBD and tobacco products, as such terms are defined in Chapter 535 of the Port Jervis City Code, within the City within the City or would have as a result of the enlargement, relocation, or modification of any existing use in such zones.
 3. The City Zoning Board of Appeals shall not accept any application or grant any approval for a variance or other permit that would have as a result the permitting, construction, development and/or operation of retail sales establishments for cannabis, CBD and tobacco products, as such terms are defined in Chapter 535 of the Port Jervis City Code, within the City.
 4. The City of Port Jervis Building Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for any new retail sales establishments for cannabis, CBD and tobacco products, as such terms are defined in Chapter 535 of the Port Jervis City Code, within the City.

Section 5. Specific Exemptions.

Notwithstanding the foregoing, the following are hereby exempt from the moratorium and may proceed with the usual permitting and licensing procedures as are currently provided by the City Code.

- A. Any project that has received a Negative Declaration (Notice of Determination of Non-Significance) from the lead agency charged with reviewing the proposed project pursuant to Title 6, Chapter VI, Part 617 of the New York State Environmental Quality Review Regulations (“SEQR”) or if said lead agency has accepted a fully completed Draft Environmental Impact Statement (“DEIS”) for review in the event that a Positive Declaration pursuant to the SEQR regulations has been issued.
- B. Any project that has received final project approval from the City Planning Board prior to the effective date of this Local Law, provided that the property owner and/or applicant has received a lawful extension which has not expired.

Section 6. Term.

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

Section 7. Hardship.

- A. Should any owner of property affected by this Local Law suffer an unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Common Council of the City of Port Jervis 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 or extraordinary hardship shall not be:
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
 - b. the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.
- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the City Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and 00/100 Dollars (\$1,000.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Common Council, shall prescribe as necessary for the Common Council to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the City Clerk by the property owner seeking a variance of this Local Law, the Common Council shall, within forty-five (45) days of receipt of a completed application, schedule a Public

Hearing on said application upon five (5) days' written notice in the official newspaper of the City of Port Jervis. 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 Common Council shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a variation from the strict requirements of this Local Law. If the Common Council determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Common Council shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

- D. Standard of Review. In reviewing an application for an exception based upon a claim of unnecessary or extraordinary hardship, the Common Council shall consider the following criteria:
- a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the City.
 - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative used of the property.

Section 8. Penalties.

Any person, firm or entity that shall construct and/or develop a structure related to any type of use in any district within the City or would have as a result the enlargement, relocation, or modification of an existing use in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided by applicable local laws, ordinances, rules, regulations of the City for violations; and
- B. A fine not to exceed \$2,500.00 per day from the date that any action is taken in contravention of this local law or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law; and
- C. Injunctive relief in favor of the City to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction that may have taken place in violation of this Local Law.

Any application accepted or approval granted in violation of this Local Law shall be null and void.

Section 9. Superseding and Repealer Provisions.

This Local Law shall supersede the City of Port Jervis Zoning Code in its entirety, all sections of Article 3 and Article 5-A of the New York State General City Law, Article 8 of the New York State Environmental Conservation Law and its associated DEC regulations at 6 NYCRR 617.1 et seq., and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof.

Section 10. Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Common Council of the City of Port Jervis hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 11. Repeal.

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 12. Effective Date.

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.