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Board of Trustees
Village of Greenport

April 20, 2023

**Public Hearing on Local Law of 2023 Creating Section 150-51 of Greenport
Village Code**

1. Motion to Open Public Hearing
2. Pledge of Allegiance
3. Comments from the Public
4. Motion to close Public Hearing

Public Meeting of the Board of Trustees

1. Motion to Open Public Meeting
2. Board Discussion on Local Law of 2023 Creating Section 150-51 and Adopting Resolution
3. Motion on Resolution on Local Law of 2023 Creating Section 150-51
4. Comments from the Public
5. Mayoral Appointments
6. Adjourn Public Meeting to Work Session

JANUARY 6, 2023

LOCAL LAW NO. OF THE YEAR 2023

A LOCAL LAW CREATING SECTION 150-51 OF THE GREENPORT VILLAGE CODE CREATING A SIX MONTH MORATORIUM ON DEVELOPMENT IN THE WC WATERFRONT COMMERCIAL, CR RETAIL COMMERCIAL AND CG GENERAL COMMERCIAL ZONING DISTRICTS OF THE VILLAGE OF GREENPORT

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF GREENPORT AS FOLLOWS:

Section 1.0 Enactment, Effective Date,

1.1 Title of Local Law

1.2 Enactment.

1.3 Effective Date.

1.4 Purpose and Intent of Local Law.

2.0 General Provisions

2.1 Creation of Section 150-51 of the Greenport Village Code

3.0 Severability

1.1 Title.

This Local Law shall be entitled "Local Law of 2023 A Local Law Creating Section 150-51 of the Greenport Village Code Enacting a Six Month Moratorium on Development in the WC Waterfront Commercial, CR Retail Commercial, and CG General Commercial Zoning Districts of the Village of Greenport".

1.2. Enactment.

Pursuant to Section 10 of the Home Rule Law and the Village Law of the State of New York, the Incorporated Village of Greenport, County of Suffolk and State of New York, hereby enacts by this Local Law of 2023, a Local Law of the Village of Greenport.

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1.3. Effective Date.

This Local Law shall take effect on the filing of the approved Local Law with the Secretary of State of New York, which shall be within twenty (20) days after its approval by the Board of Trustees of the Incorporated Village of Greenport.

1.4 Legislative Findings, Purpose and Intent of Local Law.

A. The Board of Trustees of the Village of Greenport hereby finds as follows:

i. That the Village of Greenport is unique in its location and resources being at the same time distant from other development but also located at the intersection of interstate travel and travel to Shelter Island and the South Fork of Long Island, bringing large numbers of people to the Village, and that the Village itself has become a destination with significant development pressures due to its desirable aesthetics, resources, and waterfront.

ii. That the location of the Village of Greenport on the water has developed a historic reliance by the Village Community on the waterfront and water dependent uses for the character and economy of the Village and the Board finds for the future of the Village as well.

iii. That the Village of Greenport under New York State Law and the guidance of the New York State Department of State adopted a Local Waterfront Revitalization Plan (the "LWRP"), which was first created in 1996. The Village of Greenport determined that the LWRP should be the planning document for the future planning and development of the Village.

iv. That the Village of Greenport started an update of the LWRP in about 2010 which resulted in an updated version of the LWRP in 2014 ("2014 LWRP") which was based on input received from the community and information gathered between 2010 and 2012. The 2014 LWRP was never officially approved by New York State as the official Local Waterfront Revitalization Plan for the Village of Greenport, and therefore the current governing planning and zoning documents for the Village of Greenport are the 1996 Local Waterfront Revitalization Plan and the Greenport Village Code, including Chapter 150 of the Greenport Village Code. While portions of the Greenport Zoning Code, have been revised, there has not been any major revision of the zoning districts or the uses prescribed in those districts in many years, and the growing trend of increased demand in the development of many different types of uses in the commercial districts of the Village has left the Village without guidance from an updated planning document or code to address or support the planning decisions to be made.

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v. The moratorium on development in three zoning districts in the Village that are most affected by these considerations, is intended to allow the Village the time that is necessary to review and then adopt an updated LWRP, and land use regulations, to provide for the future orderly development and controlled growth that will not unduly impact the public welfare, community services, schools and infrastructure, to preserve and protect the commercial waterfront of the Village and the water dependent uses that remain, and to plan for a proper mix of residential and commercial development in the Village. The overall purpose of this local law is to promote community planning values by regulating land development based on a carefully considered plan and to protect the public interest and welfare until an amended LWPR and revisions to the Zoning Code are adopted.

vi. The Board of Trustees shall by resolution create and appoint a Waterfront Planning and Advisory Committee to seek public input and update both the 2014 draft LWRP and Harbor Management Plan so that they may be submitted for approval to New York State and propose revisions to the Greenport Village Code to reflect the suggestions contained in the updated LWRP.

2.0 General Provisions.

2.1 Section 150-51 of the Greenport Village Code is hereby created to read as follows:

“Section 150-51; Moratorium on Development in the WC Waterfront Commercial, CG General Commercial, and CR Residential Commercial Zoning Districts;

150-51(A) Findings, Purpose and Intent

This Section adopts the Legislative Findings, Purpose and Intent of the creating legislation for this Section and further finds that the time created for the Village of Greenport to complete the updating of the LWRP and the revisions to the Village Code that the moratorium established by this Section and any extensions of that moratorium will provide, are the minimum steps necessary for the Board of Trustees to take in order to preserve and protect the waterfront areas of the Village, the water dependent uses still existing in the Village, the aesthetic qualities of the Village and its quality of life, the vibrant nature of the commercial districts of the Village of Greenport and their relation to the environment, views and waterfront vistas of the Village and to ensure the future orderly planning and development in the Village. This Section is intended to allow the Village to adopt an updated LWRP and land use regulations to provide for controlled growth that will not unduly impact the public welfare, community services, schools and infrastructure, to preserve commercial waterfront space, and to plan for a proper mix of residential and commercial development.

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The Board of Trustees finds it essential that, subject to certain specified exceptions set forth herein, a moratorium on the issuance of building permits and certificates of occupancy, review or approval of site plan applications (including, without limit, those relating to conditional uses), variances and variance applications, and subdivision applications and any other discretionary land use approvals, affecting parcels of land within the CR, CG, and WC Zoning Districts, be instituted for a period of six (6) months from the date of the adoption of this Section, during which time the Building Department, the Board of Trustees, the Planning Board and the Zoning Board of Appeals shall be prohibited from issuing building permits or certificates of occupancy, deeming applications complete, proceeding to a public hearing, or issuing any discretionary approval of any application relating to construction, development or use of property in the CR, CG and WC zoning districts, except as specifically set forth herein.

§ 150-51(B) Moratorium on Applications and Discretionary Approvals, and the issuance of certain Building Permits and Certificates of Occupancy in the WC Waterfront Commercial, CG General Commercial, and CR Residential Commercial Zoning Districts;

(1) For a period of six (6) months following the date of enactment of this Section, no application for the construction, development, or use, of any property in the WC, CG or CR zoning districts shall be accepted or considered and no development approval in respect of any property located in the WC, CG or CR zoning districts shall be considered or granted by the Planning Board, Zoning Board of Appeals, or, if applicable, the Board of Trustees, unless expressly exempted from this moratorium pursuant to this Section. The term "development" or "development approval" shall mean any application for an approval required for development, construction or operation of a business or use in the WC, CG or CR Zoning Districts of the Village, including, but without limitation, any building permit, Planning Board approval pursuant to Village Code Section 65-9, approval of a subdivision, site plan, conditional use approval or variance application relating to such development, construction, or operation. For purposes of this Section "development approval" shall also include any permit for clearing, filling or grading where such permit is not part of, or necessary to an approved, subdivision, conditional use or site plan that has completed the State Environmental Quality Review and has received all requisite approvals under the Village Code. Development approval does not include applications to the Historic Preservation Commission. No new applications for any development approval shall be accepted or processed by any Village official or employee, the Planning Board, Zoning Board of Appeals or Board of Trustees, unless expressly exempted from this moratorium pursuant to this Section. The moratorium created in this Section is binding on all Village boards, officers and employees and on all persons and property requiring a development approval within the Village.

(2) The moratorium created by this Section may be extended for two (2) three (3) month additional moratorium periods (total of six (6) additional months) by resolution of the Board of Trustees upon a finding by the Board of Trustees of the need for such extension or extensions.

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§ 150-51(C) Planning Work to be Performed during Moratorium Period

(1) During the moratorium period, the Mayor and Board of Trustees shall establish the Waterfront Advisory and Planning Committee, and the Board of Trustees working with that Committee and the Planning Board of the Village of Greenport shall solicit public comment on the updating of the LWRP and the applicable sections of the Greenport Village Code, through public hearings and other means, and endeavor to adopt an amended LWRP and planning and zoning regulations of development in the Village of Greenport through possible amendments to the Greenport Village Code, including without limitation Chapters 88 (Noise), 105 (Sewers), 118 (Subdivision and Merger of Land), 136 (Water), 139 (Waterfront Consistency Review), 142 (Wetlands, Floodplains and Drainage) and 150 (Zoning) of the Greenport Village Code, in order to address and accomplish the purpose and intent of the enacting local law and this Section 150-51.

§ 150-51(D) Exceptions to the Moratorium.

(1) The following development approvals and actions shall be exempt from the moratorium and may proceed during the moratorium period.

(a) Approval by the Zoning Board of Appeals of an application for an interpretation;

(b) Development approvals for an addition, alteration or reconstruction of an existing structure which results in no material change in such structure, including in respect of the square footage of such structure and which are not intended or designed to accommodate any new or different use of such structure or property on which it is located or which is made to cure or remove a hazard or to prevent a loss or further loss or damage to property;

(c) Action by the Planning Board or the Zoning Board of Appeals or Board of Trustees on an application for which a public hearing has already been held and closed.

(d) The issuance of a building permit or permits or a certificate of occupancy to a property that has received a final site plan approval provided, however, that said property is under development at the time of the adoption of this law and that all other applicable development approvals remain in full force and effect;

(e) Development approvals of lot line adjustments;

(f) Development approvals of repairs or restoration to any existing bulkheads, marinas, docking facilities or other related waterfront infrastructure to the extent that such repair or restoration does not result in a material change in the square footage of the affected structure and which are not intended to accommodate any different use of such structure from that in effect as of the date this Section becomes effective;

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(g) Development approvals relating to construction in respect of privately owned homes or dwellings (whether single family, 2 family or multifamily) in existence as of the date this Section is enacted, provided that such construction is not intended to accommodate any new or different use of such structure or property other than as a residence;

(h) Development approvals relating to construction of accessory structures so long as such structures are only used for the storage of vehicles, boats, equipment, and supplies and relate to the primary use of the applicable property;

(i) Extensions or renewals of any development approval in effect as of the date of the enactment of this Section; provided that the applicable property is under development at the time of the enactment of this Section and that any applicable development approvals have not lapsed;

(j) Approvals relating solely to a change in occupancy or tenancy where there is no change in material use in respect of the property and no other approvals would otherwise be required under the Greenport Village Code;

(k) Approvals where the application involves minor additions or renovations, limited to structural repair or replacement occasioned by accidental damage, or compliance with the requirements of health, safety or fire regulations and replacement of any signage that otherwise complies with the requirements of the Village Code, provided that none of the foregoing involve a change of use or an expansion of floor area devoted to the primary use of the premises.

(l) An approval that would otherwise be exempt under this Section shall not be granted unless the approved application complies with all zoning and other requirements in effect on the date of approval.

(m) An application for any development approval that is not described as being for an exempt purpose under this Section shall not be accepted by the Planning Board, Zoning Board of Appeals, Board of Trustees, or the reviewing board or any other Village official during the moratorium. However, if a complete application was submitted, for such development approval to the Planning Board or other reviewing board or official prior to the date of enactment of this Section, the applicant may request the Planning Board to continue review of the application, but such review shall be for SEQR purposes only and for no other purpose. In no event shall the Planning Board make any final determination with respect to such application during the term of the moratorium created by this Section unless such application is permitted to proceed pursuant to any exemption or exception to this Section pursuant to the express terms hereof.

(n) This moratorium shall not prohibit the denial of an application.

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(o) Building or demolition permits or certificates of occupancy in those districts where (i) the building permit or renewal of an expired building permit will not require an application to and or approval by the Planning Board or other Board; or is (ii) to cure or remove a hazardous condition; or is (iii) to prevent loss or damage to person or property; (iv) the renewals of previously issued and renewable building permits for work that has not been started; or (v) for the renewal of expired building permits for work that has already been completed; or (vi) on an application in writing to the Board of Trustees for an exemption based on hardship as provided herein;

§ 150-51(E) Administrative Relief from Moratorium based on Hardship

(1) The Board of Trustees of the Village of Greenport is authorized to grant, after a public hearing, limited relief from this moratorium pursuant to the standards and requirements contained in this Section. An applicant seeking such relief shall be required to establish that the hardship shall not be a mere delay in making an application or waiting for a decision on the application for a building permit, certificate of occupancy, site plan or other approval during the period of the moratorium but rather that there is a unique and pervasive hardship suffered by the applicant demonstrated by clear and convincing evidence, including credible dollars and cents proof, that the moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the moratorium.

(2) Any applicant seeking relief from this Section shall file an application in writing setting forth in detail: (A) whether the proposed project or use conforms to the existing Greenport Village Code, and, if not, what variances would be required; (B) details of the proposed project or use; (C) the specific hardship suffered by the applicant as a result of this Section; and (D) such other information as the Board of Trustees shall prescribe as necessary for the Board of Trustees to take action on such application. Mere delay or concern that regulations may be adopted or the Greenport Village Code or LWRP may be amended shall be insufficient to constitute hardship for the purpose of requesting relief from this Section; and setting forth in specific detail supported by financial or other information that (i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) that the requested exemption, if granted, will not alter the essential character of the neighborhood or frustrate the goals of the moratorium; and (iv) that the alleged hardship has not been self-created.

(3) In connection with any request for relief from this Section and the moratorium, the Village Board shall have the right to request the following information in order to render a decision (and such information shall be required to be provided before an application shall be deemed to be complete for purposes of setting a public hearing):

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- (a) Studies and reports pertaining to the potential effects of the proposed project or use on the health, safety and welfare of the community, including but not limited to with respect to traffic and parking;
- (b) A list and description of any outstanding violations relating to the proposed project or use;
- (c) Any documents which the Planning Board or Zoning Board of Appeals would customarily request in considering any applicable development approval for such proposed project or use;
- (d) The status of any other required agency (whether County, State or Federal or otherwise) permits or approvals necessary for the proposed project or use.

(4) Any application for relief shall be required to pay a fee to the Village in the amount of \$100. In addition, any application for relief shall be required to reimburse the Village from time to time upon request in respect of any fees, expenses and costs incurred by the Village for legal, engineering or other professional consulting services incurred in connection with the consideration of the request for relief from this Section.

(5) The Board of Trustees shall conduct a public hearing on any request for a hardship exemption from the Moratorium at its next regularly scheduled meeting occurring not less than 30 days following receipt of a complete application for relief. The Board of Trustees shall then issue a final decision on such request in the form of a Statement of Findings and Determinations which shall contain detailed findings and basis for the decision of the Board of Trustees, within 30 days (or at the next scheduled public meeting after 30 days should such meeting be more than 30 days) from the closing of such public hearing, however, a failure to act shall not constitute approval of such request for relief. The Board of Trustees may and shall include and impose such conditions on any relief granted as the Board of Trustees may determine is necessary to protect the purpose and intent of the Moratorium, to limit impacts on the neighborhood and surrounding properties, or to limit the relief to the amount necessary to mitigate any established hardship.

(6) The Village Board shall only grant relief to an applicant for so long as the Board of Trustees determines, in its sole discretion, that;

(a) A failure to grant such relief to the applicant would result in a unique and pervasive hardship to the applicant, which hardship is substantially greater than any harm to the general public welfare resulting from the grant of such relief; and

(b) The applicant's circumstances are different from any other member of the community to the extent that the applicant's is burdened by the moratorium substantially greater than any other member of the community; and

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(c) The granting of the exemption will clearly have no adverse effect upon any of the goals or objectives enumerated in the Moratorium; and

(d) The project or activity for which the applicant seeks an exemption and the relief that is requested or to be granted;

(i) is in harmony with the existing character of the Village and the area of the applicant's property; and

(ii) is consistent with the health, safety and general welfare of the residents of the Village and their property;

(iii) is in harmony with the spirit and purposes of this Section; and

(iv) will not cause significant environmental degradation or adversely impact adjacent natural resources or waterfront area; and

(v) the proposed project or use will not require any variance or conditional use approval under the existing Greenport Village Code.

(vi) that the exemption and the relief requested will be consistent with any interim data, recommendations, or conclusions which may be drawn from any planning effort then in progress or under review by the Village or its committees.

(7) Any relief granted by the Village Board shall be the minimum necessary and the Village Board may impose conditions on any relief granted. The authorization of the granting of this relief by the Board of Trustees shall not include the authority to grant variance relief from either area or use limitations of the Greenport Village Zoning Code. Notwithstanding any relief granted pursuant to this section, an approval under this subsection shall not be granted unless the approved application complies with all zoning and all other requirements in effect on the date of approval.

(8) In the event that the Board of Trustees of the Village of Greenport authorizes relief from the moratorium pursuant to this Section, any development approval then granted by the Planning Board or Zoning Board of Appeals, if any, shall be limited to the relief that was granted by the Board of Trustees and no other relief, and subject to any conditions imposed by the Board of Trustees.

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§ 150-51(F) Conflicts of Law and Application

(1) No further action shall be taken by the Board of Trustees, the Planning Board or the Zoning Board of Appeals on any pending application, in respect of any development approval, that was filed but has not been accepted as complete, and which is for the development or use of property within the scope of the moratorium, that is, located in the WC, CR or CG zoning districts for which a public hearing has not been held and closed. To the extent that any conflict arises between the provisions of this Section and the requirements of the New York State Village Law which provide time limitations on the review or processing by a board of trustees, planning board or zoning boards of appeals of applications for site plan, conditional use, variances or subdivision approvals, the stay of action under these provisions shall supersede those requirements of State Law to the extent provided by the New York State Municipal Home Rule Law and the provisions of the New York State Constitution relating to legislation by local government.

(2) Notwithstanding any law, rule or regulation to the contrary, no development approval shall be granted, deemed granted or dispensed with as a result of a passage of time during the effectiveness of this Section. Any and all development approvals granted during the effectiveness of this Section shall require the affirmative vote of a majority of the reviewing boards with jurisdiction in accordance with the applicable law. To the extent that any provision of the Village Law imposes a time frame for action by a municipal entity, board or body so that a default approval will result from any inaction, the time of any such action shall be and hereby is extended until this Section and any and all extensions thereof have expired.

§ 150-51(G) Penalties

(1) Any owner, manager, agent, contractor or tenant of a property that perform construction or improvements in violation of or in an attempt to circumvent the moratorium established by the Section shall be liable for a fine of not less than one thousand dollars (\$1,000) and not more than two thousand five hundred dollars (\$2,500) and each and every day that a violation should exist shall be a separate violation with a separate fine.

(2) In addition, nothing in this Section shall be construed as depriving the Village or the Board of Trustees or any official thereof of the right to apply for an injunction to prevent any violation of this Section or the right to employ any other available remedy, including but not limited to stopping all work.

§ 150-51(H) Effective Date.

This Section enacting a temporary moratorium shall take effect upon the filing of the adopted local law creating this Section with the New York State Secretary of State after having been duly adopted by the Board of Trustees.

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Including Planning Board Comments from Dec. 15, and Dec. 19, 2022

§ 150-51(I) Severability

Should any part or provision of this Section be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Section as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.”

3.0 Severability

3.1. In the event that any provision of this Local Law should be deemed or determined to be invalid or unenforceable for any reason, then the remaining sections of this Local Law shall continue in full force and effect.