

**Town Board Meeting- Special Meeting**  
**Town of Bergen**  
**November 30, 2021**  
**Town Hall- 10 Hunter Street, Bergen New York**  
**Agenda**

**I. Call to Order 7:00 pm**

**Prayer** Almighty God, as we meet today to conduct matters of Town business, grant us the wisdom to remember as we work that we are servants of our constituency. Assist us to be sure our decisions should be in the best interests of the Town and its citizens, entirely unblemished by any thoughts of personal benefit. Amen.

**Pledge to the flag**

**II. Privilege of the Floor:**

**III. Communications included with this agenda:**

1. E-mail from Gary Fink, Planning Board Chair, dated 11/20/2021 recommending on behalf of the planning board, that the Town opting out of the of the NYS Cannabis Law.
2. Resolutin for Authorizing a Public Hearing and a draft Local Law pursuant to Cannabis Law 131 opting out of licensing and establishing retail cannabis dispensaries and/or on-site cannabis consumption within the entire town of Bergen.
3. Resolution for Authorizing a Public Hearing and three draft options for a Local Law regarding the use of tobacco, vaping and E-cigarette on all town of Bergen Properties:
  - A) Most restrictive: banning the use of tobacco, vaping and E-cigarette on all Town of Bergen Properties
  - B) Middle of the road: allow tobacco usage, vaping and E-cigarette in designated outside areas however, bans us of Cannabis on all Town of Bergen Properties
  - C) Least Restrictive: banning Cannabis use and allows, as currently allows, tobacco usage, vaping and E-cigarettes anywhere outside on town of Bergen properties and as per current state law.
4. Comptroller's approval of the Town of Bergen's application for Permission of the State Comptroller to increase the maximum to be expended on behalf of the WIBA#1.

**IV. Old Business:**

- Town of Bergen Water Improvement Benefit Area #1 project- Update:  
Comptroller's approval  
Bond Anticipation Note 2021 Renewal 12/8/2021

**V. New Business:**

- Water Benefit Improvement Area #1:
  - Supplemental Bond Resolution-
  - Any other Resolutions that may need to be approved in order to proceed with the WIBA #1
- Discussion and possible resolution for public hearing in regards to a Local Law for the Town of Bergen Opting out from the NYS Cannabis Law 131 which allows retail cannabis dispensaries and/or on -site consumption establishments anywhere in the Town of Bergen
- Discussion and possible resolution for a public hearing for a Local law in regard to restriction on use of tobacco, vaping, E-cigarettes and Cannabis on all town of Bergen Properties.
- Discussion of CEO/ZEO position.

**VI. Meeting and Other Upcoming Dates:**

Regular meeting 12/14/2021 6:45 audit of bills, 7 pm regular meeting

**VII. Adjournment**

**From:** Gary Fink <gcfink@hotmail.com>  
**Sent:** Saturday, November 20, 2021 9:54 PM  
**To:** Ernie Haywood  
**Cc:** Gary Fink; secretary@bergenny.org  
**Subject:** Letter

Ernie,  
Having recently become aware of the opt out option for retail marijuana sales in our town, the Planning Board unanimously voted to make the recommendation to the Town Board to opt out. We reasoned that since there is no penalty to opt in at a later date, but once in you cannot opt out, it only makes sense to take a wait and see approach. Opting out would give the Town Board the opportunity to observe the success or failure of the program in adjacent communities and make a more informed and reasoned decision at a later date.

Though the Planning Board's thoughts on the subject were not requested by the Town Board, please consider the recommendation in the spirit in which it is given; what little sovereignty is afforded our town by the State should be preserved as long as possible. Thank-you for your consideration in this matter.

Sincerely,  
Gary C Fink  
Sent from my iPad

RESOLUTION \_\_\_\_\_ Authorizing a Public Hearing Adding Chapter 178 to the Bergen Town Code

WHEREAS, the Bergen Town Board is desirous of adding Chapter 178 to the Bergen Town Code regarding Opting Out of Cannabis Retail Dispensary and On-Site Consumption; and

WHEREAS, the Bergen Town Board is required to hold a Public Hearing on the matter before the passage of this Local Law.

NOW THEREFORE BE IT RESOLVED:

Sec. 1. That the Bergen Town Board calls a Public Hearing to hear all persons for or against the adoption of Chapter 178 to the Bergen Town Code concerning Opting Out of Cannabis Retail Dispensary and On-Site Consumption on December 12, 2021 at 7:00 pm at the Bergen Town Hall, 10 Hunter Street, Bergen, New York.

Sec. 2. That the Bergen Town Clerk is directed to advertise this hearing in the official newspaper of the Town in accordance with Town Law §131.

Sec. 3. That this Resolution shall take effect immediately.

Motion for adoption:

Second:

Discussion:

VOTE BY ROLL CALL AND RECORD:

Councilman Anderson  
Deputy Supervisor Grant  
Councilwoman Sapienza  
Councilman Starowitz  
Supervisor Haywood

Local Law No. #      of the year 2021 Adding Chapter 178 To the Bergen Town Code  
Opting out of Cannabis Retail Dispensary and On-Site Consumption

Be it enacted by the Bergen Town Board, County of Genesee, State of New York as follows:

Section 1. Title

This Local Law shall be referred to as “Local Law #      of 2021 Opting Out of Hosting Retail Cannabis Dispensaries and/or On-site Cannabis Consumption Establishments Within its Boundaries.

Section 2. Authority

This local law is adopted pursuant to Cannabis Law § 131, which expressly authorizes cities and villages to opt-out of allowing retail cannabis dispensaries and/or on-site cannabis consumption establishments to locate and operate within their boundaries.

Section 3. Local Cannabis Retail Dispensary and On-Site Consumption Opt-Out

The Town Board of the Town of Bergen, Genesee County, hereby opts-out of allowing retail cannabis dispensaries and on-site cannabis consumption establishments from locating and operating within the boundaries of the Town of Bergen.

Section 4. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court’s order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date

This local law shall take effect immediately upon filing with the Secretary of State. Pursuant to Cannabis Law § 131, this local law is subject to a permissive referendum and thus may not be filed with the Secretary of State until the applicable time period has elapsed to file a petition or a referendum has been conducted approving this local law.

RESOLUTION \_\_\_\_\_ Authorizing a Public Hearing Adding Chapter 179 to the Bergen Town Code

WHEREAS, the Bergen Town Board is desirous of adding Chapter 179 to the Bergen Town Code regarding Usage of Tobacco, Vaping, E-Cigarette and THC Containing Products on Town Property; and

WHEREAS, the Bergen Town Board is required to hold a Public Hearing on the matter before the passage of this Local Law.

NOW THEREFORE BE IT RESOLVED:

Sec. 1. That the Bergen Town Board calls a Public Hearing to hear all persons for or against the adoption of Chapter 179 to the Bergen Town Code concerning Usage of Tobacco, Vaping, E-Cigarette and THC Containing Products on Town Property on December 12, 2021 at 7:15 pm at the Bergen Town Hall, 10 Hunter Street, Bergen, New York.

Sec. 2. That the Bergen Town Clerk is directed to advertise this hearing in the official newspaper of the Town in accordance with Town Law §265.

Sec. 3. That this Resolution shall take effect immediately.

Motion for adoption:

Second:

Discussion:

VOTE BY ROLL CALL AND RECORD:

Councilman Anderson  
Deputy Supervisor Grant  
Councilwoman Sapienza  
Councilman Starowitz  
Supervisor Haywood

(A)

**Most restrictive – bans smoking of all substances at all Bergen Properties**

LOCAL LAW # \_\_\_\_\_ OF 2021 ADDING CHAPTER 179  
TO THE BERGEN TOWN CODE CONCERNING  
USAGE OF TOBACCO, VAPING, E-CIGARETTE  
AND THC- CONTAINING PRODUCTS ON TOWN PROPERTY

Be it enacted by the Bergen Town Board, County of Genesee, State of New York  
(hereinafter referred to as the Board), as follows:

SECTION 1. TITLE (§179-1)

This Local Law shall be referred to as "Local Law # \_\_\_\_\_ of 2021 Adding Chapter 179  
to the Bergen Town Code Concerning Usage of Tobacco, Vaping, E-Cigarette and THC-  
Containing Products Use on Town Property.

SECTION 2. AUTHORIZATION (§179-2)

This Local Law is adopted pursuant to the New York State Constitution Article IX, Town  
Law §261-§264 and Municipal Home Rule Law §10.

SECTION 3. PURPOSE AND INTENT (§179-3)

The Town of Bergen (hereinafter referred to as Bergen) has a responsibility to protect the  
health, safety, welfare and quality of life to Bergen residents, Bergen employees and the public at

large. It is acknowledged and recognized that tobacco, vaping, e-cigarette and/or THC-containing products can contribute to significant health concerns and/or death to individuals. Consequently, individuals using property owned and/or maintained by Bergen are entitled to an environment devoid of tobacco, vaping, e-cigarette and THC-containing products in order to promote the best interests of the public.

SECTION 4. – PROHIBITED USAGE OF TOBACCO, VAPING,  
E-CIGARETTE AND THC-CONTAINING PRODUCTS (§179-4)

- A) The prohibitions and restrictions set forth in this section pertain to properties owned and/or maintained by Bergens.
- B) All usage of THC-containing products are prohibited and restricted at all properties owned and/or maintained by Bergen.
- C) All usage of tobacco, vaping and/or e-cigarette are prohibited and restricted at all properties owned/and or maintained by Bergen including all town buildings, enclosed office spaces, conference rooms, meeting rooms, private offices, restroom facilities, auditoriums, gymnasiums, sports fields, trails or walkways, water parks, hallways, playgrounds and vehicles.
- D) As is deemed necessary from time to time, the Bergen Employee Handbook is to be amended to reflect the policy set forth herein.

SECTION 5. DISCIPLINARY ACTION (§179-5)

Any Town employee or official who is determined to have violated this Local Law is subject to appropriate disciplinary action including loss of wages, suspension of

employment and/or termination of employment. Bergen reserves the right to additionally pursue legal recourse if appropriate.

SECTION 6. PENALTY FOR OFFENSES (§179-6)

A) Any person determined to be in violation of this Local Law may be ejected and removed from Town property.

B) Any person who is determined to be in violation of this Local Law shall be punishable by a fine of not less than \$75.00 or no more than \$150.00, and/or imprisonment of up to fifteen (15) days for each violation.

SECTION 7. SEVERABILITY AND/OR VALIDITY (§179-7)

If any clause, sentence, paragraph, subdivision, section or part of this Local Law, or the application thereof to any person, individual, firm or corporation, or circumstance, shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law, or in its application to the person, individual, firm or corporation, or circumstance, directly involved in the controversy in which said order or judgment shall be rendered.

SECTION 8. EFFECTIVE DATE (§179-8)





(B)

**Middle of the Road – Bans Cannabis use, allows tobacco in designated areas**

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TO THE BERGEN TOWN CODE CONCERNING  
USAGE OF TOBACCO, VAPING, E-CIGARETTE  
AND THC- CONTAINING PRODUCTS ON TOWN PROPERTY

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(hereinafter referred to as the Board), as follows:

SECTION 1. TITLE (§179-1)

This Local Law shall be referred to as "Local Law # \_\_\_\_\_ of 2021 Adding Chapter 179  
to the Bergen Town Code Concerning Usage of Tobacco, Vaping, E-Cigarette and THC-  
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SECTION 2. AUTHORIZATION (§179-2)

This Local Law is adopted pursuant to the New York State Constitution Article IX, Town  
Law §261-§264 and Municipal Home Rule Law §10.

SECTION 3. PURPOSE AND INTENT (§179-3)

The Town of Bergen (hereinafter referred to as Bergen) has a responsibility to protect the  
health, safety, welfare and quality of life to Bergen residents, Bergen employees and the public at

large. It is acknowledged and recognized that tobacco, vaping, e-cigarette and/or THC-containing products can contribute to significant health concerns and/or death to individuals. Consequently, individuals using property owned and/or maintained by Bergen are entitled to an environment devoid of tobacco, vaping, e-cigarette and THC-containing products in order to promote the best interests of the public.

SECTION 4. – PROHIBITED USAGE OF TOBACCO, VAPING,  
E-CIGARETTE AND THC-CONTAINING PRODUCTS (§179-4)

A) The prohibitions and restrictions set forth in this section pertain to properties owned and/or maintained by Bergen.

B) All usage of THC-containing products are prohibited and restricted at all properties owned and/or maintained by Bergen.

C) All usage of tobacco, vaping and/or e-cigarette are prohibited and restricted at all properties owned and/or maintained except for specific designated areas in said locations to be identified by signage conspicuously placed for the public to see.

D) As is deemed necessary from time to time, the Bergen Employee Handbook is to be amended to reflect the policy set forth herein.

SECTION 5. DISCIPLINARY ACTION (§179-5)

Any Town employee or official who is determined to have violated this Local Law is subject to appropriate disciplinary action including loss of wages, suspension of

employment and/or termination of employment. Bergen reserves the right to additionally pursue legal recourse if appropriate.

SECTION 6. PENALTY FOR OFFENSES (§179-6)

A) Any person determined to be in violation of this Local Law may be ejected and removed from Town property.

B) Any person who is determined to be in violation of this Local Law shall be punishable by a fine of not less than \$75.00 or no more than \$150.00, and/or imprisonment of up to fifteen (15) days for each violation.

SECTION 7. SEVERABILITY AND/OR VALIDITY (§179-7)

If any clause, sentence, paragraph, subdivision, section or part of this Local Law, or the application thereof to any person, individual, firm or corporation, or circumstance, shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law, or in its application to the person, individual, firm or corporation, or circumstance, directly involved in the controversy in which said order or judgment shall be rendered.

SECTION 8. EFFECTIVE DATE (§179-8)



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**Least restrictive – banning cannabis, leaving tobacco use as currently governed**

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The Town of Bergen (hereinafter referred to as Bergen) has a responsibility to protect the  
health, safety, welfare and quality of life to Bergen residents, Bergen employees and the public at

large. It is acknowledged and recognized that tobacco, vaping, e-cigarette and/or THC-containing products can contribute to significant health concerns and/or death to individuals. Consequently, individuals using property owned and/or maintained by Bergen are entitled to an environment devoid of tobacco, vaping, e-cigarette and THC-containing products in order to promote the best interests of the public.

SECTION 4. – PROHIBITED USAGE OF TOBACCO, VAPING,  
E-CIGARETTE AND THC-CONTAINING PRODUCTS (§179-4)

A) The prohibitions and restrictions set forth in this section pertain to properties owned and/or maintained by Bergen.

B) All usage of THC-containing products are prohibited and restricted at all properties owned and/or maintained by Bergen.

C) All usage of tobacco, vaping and/or e-cigarette are restricted at all properties owned and/or maintained by Bergen in accordance with all federal, state and county laws and regulations governing same.

D) As is deemed necessary from time to time, the Bergen Employee Handbook is to be amended to reflect the policy set forth herein.

SECTION 5. DISCIPLINARY ACTION (§179-5)

Any Town employee or official who is determined to have violated this Local Law is subject to appropriate disciplinary action including loss of wages, suspension of

employment and/or termination of employment. Sweden reserves the right to additionally pursue legal recourse if appropriate.

SECTION 6. PENALTY FOR OFFENSES (§179-6)

A) Any person determined to be in violation of this Local Law may be ejected and removed from Town property.

B) Any person who is determined to be in violation of this Local Law shall be punishable by a fine of not less than \$75.00 or no more than \$150.00, and/or imprisonment of up to fifteen (15) days for each violation.

SECTION 7. SEVERABILITY AND/OR VALIDITY (§179-7)

If any clause, sentence, paragraph, subdivision, section or part of this Local Law, or the application thereof to any person, individual, firm or corporation, or circumstance, shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law, or in its application to the person, individual, firm or corporation, or circumstance, directly involved in the controversy in which said order or judgment shall be rendered.

SECTION 8. EFFECTIVE DATE (§179-8)



This Local Law shall take effect upon the date it is filed in the Office of the New York State Secretary of State in accordance with the Municipal Home Rule Law §27.

Dated: Brockport, New York  
                                , 2021

In the Matter  
of the

Application of the Town of Bergen, Genesee County, New York, for permission of the State Comptroller to increase the maximum amount to be expended on behalf of Water Improvement Benefit Area No. 1 in said town, pursuant to Article 12 of the Town Law

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WHEREAS, upon the application of the Town Board of the Town of Bergen, Genesee County, New York, duly made, the Comptroller of the State of New York, on the 29<sup>th</sup> day of January, 2020, did make an order granting permission for the establishment of Water Improvement Benefit Area No. 1 within said town at a maximum cost of \$8,958,000; and

WHEREAS, an application by the Town Board of the Town of Bergen, dated August 17, 2021, has been duly made to the undersigned for permission to increase the maximum amount authorized to be expended for Water Improvement Benefit Area No. 1 from \$8,958,000 to the maximum amount of \$10,485,000; and

WHEREAS, we are informed that the Town of Bergen has received confirmation from the United States Department of Agriculture, Rural Development indicating that this project has been approved for loans in the amount of \$5,900,000 and \$950,000, and grants in the amount of \$3,058,000 and \$577,000; and

WHEREAS, the undersigned has duly examined such application,

NOW, THEREFORE, pursuant to such examination and upon such application of the Town Board of the Town of Bergen, the undersigned does hereby find and determine after due deliberation:

- (1) That the public interest will be served by the proposed increase in the maximum amount to be expended for Water Improvement

Benefit Area No. 1.

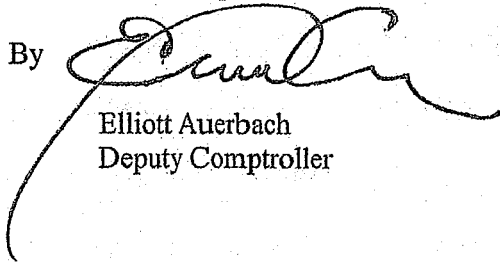
- (2) That the additional amount to be expended for such purpose will not be an undue burden upon the property that is to bear the cost of the improvement.

I, THOMAS P. DiNAPOLI, Comptroller of the State of New York, do hereby order that such application of the town board of the Town of Bergen for permission to increase the maximum amount to be expended on behalf of Water Improvement Benefit Area No. 1 be, and the same hereby is granted and that said permission is to increase the maximum amount to be expended from \$8,958,000 to \$10,485,000.

Executed in duplicate by the Comptroller of the State of New York, this 28<sup>th</sup> day of November, 2021.

THOMAS P. DiNAPOLI  
State Comptroller

By

  
Elliott Auerbach  
Deputy Comptroller