The Town Tea: Modifying and Repealing/Rescinding Local Laws

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Panelists: Sarah Brancatella, Esq. and Katie Hodgdon, Esq.

Link to video recording

Modifying – keeping most of the underlying law but making changes to it; e.g. – changing the fees charged on a license, adding a new section to your zoning code

Repealing/Rescinding – getting rid of an existing local law

Superseding – Replacing an old local law with a new one

Doctrine of legislative equivalency — the principle that legislative acts must be repealed or modified only by other legislative acts of equal [or greater] import (New York Public Interest Research Group v. Dinkins, 83 NY2d 377, 384 [1994])

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<th>Legislative Act</th>
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If an initial local law is subject to a referendum, is the local law repealing or modifying the initial local law subject to a referendum?

No, unless there is specific statutory authority calling for a referendum (1985 NY Op Attorney General 85-15).

Example 1 – Cannabis Law stated the local law to opt out of cannabis dispensaries was subject to a permissive referendum under MHRL § 24; however, there is no authority stating that a local law repealing the opt-out local law is subject to a permissive referendum

Example 2 – The town adopted a local law changing the terms of office for an elected position. Local laws changing terms of office are subject to a mandatory referendum under Municipal Home Rule Law § 23. If the town wants to adopt a local law repealing the initial law, the repealing law would be a local law changing the terms of office and therefore would also be subject to a referendum.

What if the town just wants to make a small change to the law, do they really need to go through the process of adopting a whole other local law?

Yes, yes you do. Period. No shortcuts or getting around it.