

TOWN OF BRISTOL LOCAL LAW NO. 3 OF 2012

A local law to effect a Moratorium within the Town of Bristol, Ontario County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

BE IT ENACTED by the Town Board of the Town of Bristol, Ontario County, New York, as follows:

Section 1. Title

This Local Law shall be known as the "Moratorium on Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."

Section 2. Authority and Intent; Findings; Purpose

A. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board under the New York State Constitution, and the laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2(c)(6), 10; Municipal Home Rule Law § 10; Statute of Local Governments §10, Environmental Conservation Law § 17-1101 and § 27-0711, and Public Health Law §§ 228(2), (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

B. Findings of Fact - The Town makes the following Findings of Fact relating to this Local Law:

The Town Board of the Town of Bristol finds and hereby determines that it is facing growth and development. Concurrently, the Town Board and Town of Bristol remain committed to the Town's Vision Statement to "preserve and encourage a clean, naturally beautiful, rural environment with carefully planned commercial development, aesthetically pleasing, controlled residential growth, and increased recreational opportunities, while encouraging the preservation of agricultural lands." The Town Board of the Town of Bristol also finds and determines that pursuant to the provisions of section 23-0303 (2), the provisions of Article 23 of the Environmental Law of the State of New York shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries within the State of New York; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax laws.

Bristol is a community that takes great pride and assigns extraordinary value in its rural character, recreational assets, agricultural lands, and other natural and scenic resources. Town residents get their water supply from wells and are dependent on aquifers for life-sustaining water. Maintaining the quality of resources within the Town is critical to protecting the natural environment, the public health, and the local economy. Preservation of the Town's irreplaceable recreational and scenic sites, agricultural land, air and water quality, and priceless and unique character is of significant value to the residents, as evidenced by the public's comments at recent

Town Board meetings and the Town of Bristol's Comprehensive Plan. Indeed, Bristol is an oft-sought after area by tourists. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area and is the primary attraction for visitors. The aesthetic quality of a place, the integrity of its natural resources, and the condition of its infrastructure are matters that deeply affect whether people want to live, visit, or locate a business in that place. Therefore, preserving and protecting the distinct scenic, recreational, and other natural resources of the Town are important for both a healthy environment and growing economy.

According to the latest Town of Bristol Comprehensive Plan, compiled from the results of a survey of Town property owners, Section 1 underscores these aforementioned values:

Conservation of Open Space and Environmental Protection

To improve the condition of the environment and protect it from degradation

- *Protect Bristol's natural resources
- *Conservation measures will be taken to protect and further enhance our environment
- *Retain and nurture existing forest lands and open areas
- *Protect, preserve and enhance Bristol's four watersheds (upper and lower Honeoye Creek, Mud-Ganargua Creek and Canandaigua Lake)
- *Encourage environmentally beneficial land uses and land controls in the watersheds

Section 2 of Bristol's Comprehensive Plan further points to its cherished aesthetic qualities:

Community Character

Preserve our rural character, protect our natural resources and maintain scenic vistas

- *Ongoing attention to the preservation of rural character
- *Protect natural resources
- *Maintain scenic vistas

The operations associated with extracting natural gas from the Marcellus and Utica shale and the activities described in Section 4 of this Local Law, pose detrimental health and environmental effects to Bristol's unique treasures. In addition, heavy industrial gas drilling will thereby increase traffic, which could be hazardous and inconvenient for inhabitants of the town. The damage to the Town's roads with the introduction of large volume of heavy trucks will also generate air pollution, dust, and odors that will negatively impact the safety, aesthetic, and environmental stability of Bristol.

The Town of Bristol has not been the home of heavy industrial activity in the past. The Town believes it is appropriate to evaluate the advisability of developing and enacting legislative standards to ensure that any industrial activity contemplated for the Town take place only if compatible with land uses aligned with the Town's Comprehensive Plan. It is the intention of the Town Board of the Town and Bristol to preserve the integrity, safeguard its valuable resources and ensure the Town's unique character remain undisturbed for the future.

C. Purpose - The purpose of the Local Law is to enable the Town of Bristol to stay

the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to address the same. The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Bristol and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

Section 3. Definitions

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use - Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section 301 of the New York State Agriculture and Markets Law).

Gathering Line, Or Production Line - Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Horizontal Or Directional Drilling-The practice of digging a well, first, down vertically to a depth above a target gas-bearing rock formation, then, on a curve so that the hole is drilled horizontally or at an angle within the gas-bearing rock.

Hydraulic Fracturing Or Hydro-Fracking-The practice of pumping fluid and a propping material, typically composed of sand or other chemicals, down a well under high pressure to create fractures in gas-bearing rock.

Land Application Facility – A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas – Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas and/or Petroleum Exploration Activities – Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas and/or Petroleum Extraction Activities – The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes – Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frack fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, productions or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes

Disposal/Storage Facility – Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump –

Land upon which Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas and/or Petroleum Support Activities – Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

Natural Gas Compression Facility – Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility – Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Pipeline – All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material – Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, *whether or not* it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation – The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface – Below the surface of the earth, or of a body of water, as the context may require.

Town – The Town of Bristol, Ontario County, New York.

Transmission Line – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

Underground Natural Gas and Storage – Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

Section 4. Moratorium

1. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance temporary certificate, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or

operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

2. Said interim moratorium shall prohibit development of the aforementioned uses in all districts within the Town of Bristol.
3. During the period of the moratorium, the Planning Board and Code Enforcement Officer of the Town of Bristol shall not review, grant approval, or issue permits to such developments and uses prohibited by this Local Law.
4. The above-stated regulations shall not apply to the following development or construction:
 - A. The continuance, maintenance, repair, replacement, modification, or alteration of existing commercial or industrial natural gas extraction facilities (“Facilities”) that do not use the so-called high volume hydraulic fracturing process for natural gas extraction; provided, however, that such does not constitute a new use of such existing Facilities;
 - B. Additions, alterations, rebuilding, or reconstruction of existing Facilities;
 - C. Certificate of Occupancy for any and all construction performed pursuant to building permits issued prior to the effective date of this Local Law;
 - D. Building permits and Certificates of Occupancy for Facilities on lots of record or lots within subdivision plats which have received final approval from the New York State Department of Environmental Conservation and the Town of Bristol Planning Board prior to the effective date of this Local Law;
 - E. As used in this Section, the term “new use” shall mean and refer to any change in the type of use of Facility (e.g. to high volume hydraulic fracturing) or any modification or expansion of any use previously approved or which constitutes a non-conforming use prior to the enactment of this Local Law;
 - F. The Town Board reserves the right to direct the Code Enforcement Officer to revoke or rescind any building permits or Certificates of Occupancy issued in violation of this Local Law.
5. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
6. This moratorium and prohibition shall apply to all real property within the Town.
7. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site

plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. Penalties.

1. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause 1., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.
2. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
3. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 7. Invalidity of any Conflicting Approvals or Permits.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of Bristol when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

Section 8. Hardship Use Variance.

The Town Board of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Town Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

1. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Town Board that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) 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) the requested use variance, if granted, will not alter the essential

character of the rural, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.

2. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Town Board must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the applicant has clearly demonstrated, by detailed "dollars and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).
3. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
4. Essential Character of the Neighborhood. In making the determination of whether the proposed development project will alter the essential character of the neighborhood, the Town Board shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will engage in a type of development that will result in degradation to the air quality, water quality, and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Town Board shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (a) pose a threat to the public safety, including public health, water quality or air quality, (b) cause an extraordinary public expense, or (c) create a nuisance.
5. Self-Created Hardship. The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.
6. In evaluating an application for a Hardship Exemption, the Town Board shall comply with any applicable provisions of the state environmental quality review act (SEQRA) under Article 9 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes Rules and Regulations, as the same may from time to time be amended.

In the event the Town Board grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Town Board deems

necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 9. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 10. Superseding Intent and Effect.

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Code of the Town of Bristol; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Bristol.

Section 11. Effective Date.

This Local Law shall take effect immediately upon filing with the New York Department of State and shall remain in effect for a period of twelve months. This moratorium may be extended if additional time for review is necessary.