Town of Brighton

Local Law No. 1 of the year 2013.

A local law “to effect a Prohibition Within The Town of Brighton of Natural Gas and Petroleum Exploration and Extraction Activities, The Underground Storage of Natural Gas, and The Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes.”

Be it enacted by the Town Board of the Town of Brighton, as follows:

Section 1. TITLE

This Local Law shall be known as the:

“Prohibition within the Town of Brighton of Natural Gas and Petroleum Exploration and Extraction Activities, the Underground Storage of Natural Gas, and the Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes.”

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE

A. This Local Law is intended and declared 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 Local Law is a police power and land use regulation. This Local Law is intended, and is hereby declared, to address matters of local concern. It is further 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 land uses as are concerned with the
broad area of land use planning and the physical use of land and property within the Town, including physical externalities associated with certain herein-identified land uses, such as negative impacts on roadways, traffic congestion, and other deleterious impacts upon a community. This Law is not intended to regulate the operational processes of any business or industry. This Local Law is a law of general applicability and is intended and declared to promote the interests of the community as a whole.

As is consistent with law (including, without limitation NY ECL § 27-0711) this Local Law intends to, and hereby does, regulate certain land uses so as to promote the health and welfare of the citizens of the Town by, among other things, regulating or prohibiting the dumping, discharging, injection and disposal of materials herein defined as “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes” on lands and in bodies of water within the Town. Further, this Local Law is intended and declared to protect drinking water supplies and is intended and declared to supplement and enhance, but not limit or impinge upon, the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions on certain uses of property that are directly related and incidental to the use of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from certain uses of property that pose a unique risk of adverse impacts to, and effects upon, the comfort, peace, enjoyment, health and safety of residents and their property.

B. The Town Board has found, determined, and made the following declarations of findings:

1. Brighton takes great pride in and assigns great value to its residential character, parkland and open space, and scenic and other natural resources.

2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy. Certain of the activities described in Section 6 of this Local Law have the potential to damage surface and ground water resources, in the event of (by way of example) human error, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Water pollution is hazardous to the public health.

3. Preservation of the Town’s irreplaceable open space, air quality and water quality, and unique character, is of significant value to the inhabitants of the Town and its residents.

4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people; they also deeply affect the way people feel about a place, and effect whether businesses or residents will want to locate within or visit a place.

The Town of Brighton has repeatedly demonstrated this by adopting its open space acquisitions and development plan, funding such plan through the overwhelming approval
of a referendum to issue indebtedness for such principal, and implementing the plan most recently by acquiring approximately 72 acres of open space between Elmwood Avenue and Westfall Road in the Town.

5. Allowing the activities described in Section 6 of this Local Law could impair the existing character of the Town because, by their very nature, such activities have the potential to produce a combination of negative impacts upon the environment and people living in, or in proximity to, the areas or communities in which such activities are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of open space, natural areas and scenic views, the fragmentation of natural communities and valuable wildlife and flora corridors and decreased recreational opportunities.

6. If one or more of the activities described in Section 6 of this Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Certain of the activities described in Section 6 of this Local Law typically involve a large volume of heavy vehicles and accidents involving heavy vehicles have greater potential for death or serious injuries and property damages than those involving smaller vehicles. An increased volume of heavy vehicular traffic may cause, contribute to, or create unsafe conditions for the traveling public and thus place a strain on emergency responders. Increased heavy vehicular traffic also tends to increase air pollution and noise levels, and decrease the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the activities described in Section 6 of this Local Law.

7. If one or more of the activities described in Section 6 of this Local Law are conducted within the Town, the air pollution, dust, noise, vibrations, and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. If one or more of the activities described in Section 6 of this Local Law are conducted within the Town, noise, vibrations, seismic, subterranean, lateral and subjacent support impacts, and light pollution typically caused by such activities, could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, night time lighting, vibrations, and seismic and other impacts to subterranean surface support, can have negative effects on human health and wildlife.
9. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 5 of this Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

10. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 5 of this Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways or in waterways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

11. Pipelines under 125 psi and less than 6” diameter are presently not regulated by the federal or New York state governments; yet such pipelines may pose many of the same dangers as larger or regulated lines when ruptured or impaired. In any event, such pipelines also require a clear zone for reasons of inspection, maintenance, and access.

12. The Town has been the home of limited light industrial activity, and the Town’s Zoning Code does not permit heavy industrial activity nor has such activity been carried out in the Town. The Town Board believes it is appropriate to ensure that any industrial activity contemplated for the Town take place only if compatible with present land uses and with the Town’s Comprehensive Plan.

13. Evaluation and determination of whether the activities described in Section 6 of this Local Law are appropriate for the Town is a legitimate goal of land use policy and laws; indeed, the exclusion of specified industrial uses is a legitimate and judicially recognized and supported goal of such laws.

C. The purposes respecting this Local Law are as follows:

1. Purposes. This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town’s air, water, historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and declared by the Town Board to:
a. promote the purposes of planning and land use regulation by, among other things, preserving the roads and protecting limited and related fire, police, and other emergency response services in the Town;

b. promote the health, safety and welfare of the Town, its present and future inhabitants, by preventing adverse public nuisances and/or land use impacts and effects that could result if the activities prohibited by Section 6 of this Local Law were allowed to be conducted within the Town;

c. protect the Town’s priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town, by protecting it from adverse public nuisances and/or land use impacts and effects that could result if the activities prohibited by Section 6 of this Local Law were allowed to be conducted within the Town; and

d. protect the Town’s irreplaceable historic, scenic, and natural resources, and the Town’s water and air quality, by protecting each and all of the same from adverse public nuisances and/or land use impacts and effects that could result if the activities prohibited by Section 6 of this Local Law were allowed to be conducted within the Town.

Section 3. DEFINITION OF THIS “LOCAL LAW,” “THIS LAW,” ETC., AND CONSTRUCTION OF TERM

As used herein, the term “this Local Law” (or its equivalent) shall mean and refer to Town of Brighton Local Law No. 1 of 2013. As used in Article II of this Local Law, the terms “this Law,” “this chapter,” and “herein” shall mean and refer to this Local Law, as the same may be amended from time to time. The term "shall" is mandatory, and the term "may" is permissive. Any word that is gender-referenced shall be construed to include all genders and the neuter/neutral of such term. Capitalized words shall have the meanings ascribed to them whenever the meaning or context thereof so admits or requires. Defined words and phrases that are not capitalized shall be presumed to be capitalized and deemed defined words and phrases, unless the context thereof admits or requires otherwise.

Section 4. INTERPRETATION

The statements of authority, intent, findings, and purpose are legislatively adopted along with the formal text of this Local Law. Such statements of authority, intent, findings, and purpose are intended and declared to be a material part of this Local Law, a legal guide to the administration and interpretation of this Local Law, and a part of the legislative history of this Local Law.
Section 5. DEFINITIONS

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

Below-Regulatory Concern - Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation thresholds established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line - Any system of pipelines (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) used to move oil, gas, or liquids from a point of production, a treatment facility, or a 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).

Injection Well - A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

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 layers 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 make 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 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 any statutory or regulatory definition(s) 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, and 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, frac 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, production, 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 this Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes.

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/or 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 combinations 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; and/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 including without limitation 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, 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 a public or private easement or 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. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through an industrial process. All 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 Brighton, Monroe County, New York.

Town Board - The Town Board of the Town.

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, including without limitation, emplacement by or into an Injection Well.

Underground Natural Gas Storage – Subsurface storage, including without limitation in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities, and associated pipelines.

ZBA - Zoning Board of Appeals of the Town

Section 6. PROHIBITION WITHIN THE TOWN OF NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES, NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES, AND NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES

A. Subject to the provisions of sub-section B of this Section 6, below, it shall be unlawful for any person to use, cause, allow, or permit to be used, any land (including all surface and subsurface lands), body of water or waterway (whether upon or below-ground), 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.
B. The prohibitions set forth above in sub-section A of this Section 6, above, are not intended, and shall not be construed, to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town or to direct end users in adjoining municipalities in the ordinary course of business; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal residential, business, commercial, and other uses within the Town.

Section 7. PENALTIES.

A. 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 Five Thousand Dollars ($5,000) or imprisonment for not more than 30 days, or both, for the first offense. Any subsequent offense within a twelve month period shall be punishable by a fine of not more than Ten Thousand Dollars ($10,000) or imprisonment for a period of not more than 90 days, or both. For purposes of this Clause A, each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. In addition, an action or proceeding may be instituted in the name of the Town in any court of competent jurisdiction, to prevent, restrain, enjoin, correct, enforce, and/or abate any violation of, or non-conformance with, any provision or requirement of this Local Law. Additionally, any action may be so commenced to declare the rights of the Town and of any other Persons relative to any justiciable controversy arising from, under, or in relation to this Local Law, whether pertaining to its interpretation, application, legality, or enforceability, or otherwise. No such action or proceeding shall be commenced without the appropriate authorization from the Town Board. If equitable relief is requested in the form of an temporary restraining order, a temporary injunction, or an injunction, or by any other form of prohibition or similar relief, the Town shall not be required to post any bond or undertaking as a condition or requirement for or of such relief, and the Town shall not be required to prove or show a lack of an adequate remedy at law. No right, remedy, or penalty specified in this Section 7 shall be the or an exclusive remedy of the Town, and each remedy or penalty specified in this Section 7 shall be in addition to, and not in substitution for or in limitation of, any other remedies or penalties specified in this Local Law or permitted in equity or by any applicable law, rule, order, or regulation. Any remedy or penalty specified in this Local Law may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Section 7.
C. In addition, the Town's Chief of Police or Commissioner of Public Works, or either of their designees, may issue stop work orders or compliance notices relative to any violation of this Local Law. The failure of any Person to comply with any such notice or order shall be and be deemed a violation of any other applicable law or ordinance, including, without limitation, the Town's Comprehensive Development Regulations and its related rules and regulations, and the New York Executive Law, § 382, and, in each case, such non-compliance or violation may also be enforced as such.

D. 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 attorneys', engineering, consulting, and experts' fees; provided, however, that any responsibility or liability therefor, and the amount thereof, shall be determined by a Court or other tribunal of competent jurisdiction, and this clause shall be interpreted, construed, and applied only to the maximum extent permitted by applicable law.

Section 8. ‘GRANDFATHERING’ OF LEGAL, PRE-EXISTING NON-CONFORMING USES.

Notwithstanding any provision hereof to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including, without limitation, the possession of valid non-revoked permits for all matters for which permits are required, and including compliance with each, any, and any listed permit conditions, as are or may be required by the New York State Department of Environmental Conservation (“DEC”), and all other regulating local, state, and/or federal governments, bureaus, or agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of sub-Clauses B and C of this Section 8. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding standard of this sub-Clause A of this Section 8 shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses), and shall in all respects be prohibited as contemplated by Section 6 hereof.

B. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of sub-Clause A of this Section 8, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then, and in either of such events, the pre-existing and/or non-conforming use status (and any related “grandfathering rights”) of or relating to such activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 6 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by sub-Clause A of this Section 8 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities
extending beyond whatever well bore is authorized in any DEC permit in existence as of the
effective date of this Local Law. Any expansion, or attempted or purported expansion, of such well,
whether as to its production, depth, horizon(s), or otherwise, shall not be grandfathered under sub-
Clause A of this Section 8, and instead shall in all respects be prohibited as contemplated by Section
6 hereof. Any such ‘grandfathered’ and allowed lawful pre-existing uses shall not possess any right
to expand such non-conforming use, whether above or below ground, and no such right shall be
deemed, construed, or implied to exist.

Section 9. CONFLICTING APPROVALS OR PERMITS WITHOUT FORCE OR EFFECT WITHIN THE TOWN.

Except as contemplated by Section 10 of this Local Law, no permit or approval issued by any local
agency, department, commission, or board shall be deemed to grant any rights, permissions, or
approvals to undertake activities within the Town of Brighton when or to the extent that such
activity or activities would violate the prohibition set forth at Section 6 of this Local Law.

Section 10. HARDSHIP EXEMPTION.

A. There is hereby established a mechanism by which persons aggrieved by a decision or
determination of the Town’s Code Enforcement Officer (or other administrative official or body
charged with the enforcement of this Local Law) regarding Section 6 of this Local Law (or
otherwise) may make appeal to the Zoning Board of Appeals for a Hardship Exemption from the
provisions of said Section 6 (or any other provision or requirement of this Local Law). The
Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of
the Code Enforcement Officer or other administrative official or body charged with the enforcement
of this Local Law, after public notice and hearing and in accordance with the requirements of law
and this Local Law, to consider applications for a Hardship Exemption from the provisions of
Section 6 of this Local Law. Applicants for a Hardship Exemption should consult the succeeding
provisions of this Section 10, as well as Section 11 of this Local Law, for a specification of
application requirements and the procedural mechanisms involved in the consideration by the
Zoning Board of Appeals of an application for a Hardship Exemption.

B. No such Hardship Exemption shall be granted by the Zoning Board of Appeals without a showing
by the applicant that enforcement of Section 6 of this Local Law as to such applicant has caused an
“unnecessary hardship.” For purposes hereof, and in order to prove the existence of an
unnecessary hardship for purposes hereof, the applicant must demonstrate to the Zoning Board of
Appeal’s satisfaction compliance with and/or proof of each of the following four standards or
conditions: (i) that unless the applicant is granted a Hardship Exemption from the provisions of
Section 6 of this Local Law the applicant cannot realize a reasonable rate of return on the entire
parcel of property, and such 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 neighborhood or other area in the vicinity of the applicant's
property; (iii) that the alleged hardship has not been self-created; and (iv) that the requested
Hardship Exemption, if granted, will not alter the essential character of the neighborhood or other
area in the vicinity of the applicant's property in an adverse manner. For purposes of interpreting
and applying the above four standards and matters of proof, the following shall apply:
1. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return for purposes hereof, the Zoning Board of Appeals shall examine whether the site of the proposed project and all adjacent lands in common ownership, are incapable of producing a reasonable rate of return. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) unless the applicant is granted a Hardship Exemption from the provisions of Section 6 of this Local Law.

2. Unique Hardship. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Zoning Board of Appeals finds that the entire parcel of land which the project is a part possesses unique characteristics that distinguish it from other properties in the neighborhood or other area in the vicinity of the applicant’s property. The applicant must demonstrate the unique nature of parcel as a whole. The fact that the property is then unimproved, shall not be deemed sufficient to make the plight of the property unique or to contribute thereto. Exceptional topography is an example of a factor demonstrating the unique nature of the property.

3. 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 applicant knew or should have known that the property was subject to this Local Law.

4. Adverse Alteration of Essential Character of the Neighborhood or Other Area in Vicinity. In making its determination of whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant’s property, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the residential, and historic character and resources of the Town; (ii) the Town’s irreplaceable open space, recreation, and historic sites; (iii) the extent of hazard to life or property that may result from the proposed 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 (viii) whether the applicant will use a style of development that may result in degradation to the air quality, water quality, or historic, scenic, and natural resources of the Town.

C. In addition to any other application requirements from time to time established pursuant to this
Local Law, an application for any Hardship Exemption shall contain a narrative explaining what the application is for and how the project meets or exceeds all of the criteria for a Hardship Exemption. Such submissions shall include the following:

1. With respect to a claim that the applicant cannot realize a reasonable rate of return, the applicant shall provide financial evidence containing reasonable specification of the nature and factual particulars of such claim, including, at a minimum (as to the entire parcel of which the proposed project is a part): (a) the date(s) of acquisition of the property; (b) the purchase price; (c) present value of the property; (d) the amount of real estate taxes; (e) the amount of mortgages or liens and other expenses; (f) the asking price for the property when it had been offered for sale; (g) the costs of demolishing any existing structures on the property; (h) efforts to market the property; (i) a schedule of all other property in common ownership at either the date of the enactment of this Local Law or thereafter; and (j) “dollars and cents proof,” such as appraisals, economic studies, and any other such evidence supporting the applicant’s contention that the grant of a Hardship Exemption is appropriate. For purposes of this Local Law, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

2. Environmental Assessment Form. A completed draft of a Long Form Environmental Assessment Form, Part I, regarding the proposed project. Any action in consideration of whether to deny, grant, or grant with conditions such application shall be and be deemed a Type I Action under SEQRA, including, without limitation, 6 NYCRR Part 617, § 617.4.

3. With respect to a claim that, if granted, the requested Hardship Exemption will not adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property, the applicant must demonstrate that the proposed project will not materially adversely affect such essential character with regard to the physical, economic, social or environmental elements of such neighborhood or area. Examples of adverse impacts to the essential character of the neighborhood or other area include, without limitation,

decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic or congestion, decreased road quality or roadway damages, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of viewsheds, the creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

D. In addition to all other application requirements from time-to-time established pursuant to this Local Law, each application for a Hardship Exemption may also include one or more of the following enumerated reports, analyses, or supporting proofs or documents, and the like, whenever required by the Zoning Board of Appeals, any environmental review of such proposed review and/or
granting or denial of a Hardship Exemption application, or otherwise, so as to assist the Zoning Board of Appeals in determining whether a grant of the requested Hardship Exemption will adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant's property and/or so as to assist the Zoning Board of Appeals in its determination of whether to deny, grant, or grant with conditions such application:

1. Description of Surrounding Uses. The approximate location of all neighboring residential, park or recreational areas, any environmental protection overlay districts designated by the Town, all wetlands, intermittent, seasonal and other streams, rivers, and waterways, significant natural communities, endangered and threatened species and species of concern, and historical or archeologically sensitive or mapped areas within a two (2) mile radius of the perimeter of the site of the proposed use.

2. Traffic Impact Report. A traffic impact report containing: (a) the proposed traffic circulation plan and the projected number of motor vehicle trips to enter or leave the site, as estimated for daily and peak hour traffic levels, if the Hardship Exemption is granted; (b) existing and proposed daily and peak traffic hour levels as road capacity levels; (c) a determination of the areas of impact of traffic to and from the proposed project; (d) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles; (e) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed project if the Hardship Exemption is granted; (f) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (g) a traffic impact analysis of the effects of the proposed project on the transportation network in the Town using passenger car equivalents if the Hardship Exemption is granted; (h) an articulation of the effects and impacts of the proposed project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system if the Hardship Exemption is granted; and (i) an evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire, and emergency response vehicles, or degrade the quality of life or roadways, and/or otherwise contribute to hazardous traffic conditions if the Hardship Exemption is granted.

3. Road Impact Report. An evaluation of: (a) appropriate roadway geometry, including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, and horizontal and vertical curves along the proposed traffic routes; and (b) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any trucks and construction vehicles likely to be used in connection with the proposed project if the Hardship Exemption is granted.

4. Transportation Plan. A description of ingress and egress through the proposed project site through which vehicles, equipment, and supplies will be delivered, including: (a) any temporary
or permanent access routes or points provided, or to be provided, during and after construction if the Hardship Exemption is granted; and (b) an identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging any public or private roads, highways, culverts, or other ways or appurtenances, and the measures that will be taken to restore damaged public or private roads, highways, culverts, or other ways or appurtenances following construction and during operations should the Hardship Exemption be granted.

5. Noise Impact Report. A report that shall measure, project, factor, cover, and provide conclusions about, without limitation, low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noises, containing the following information, studies, or descriptions and conclusions: (a) a description of the existing audible conditions at the project site to identify a baseline sound presence and pre-existing ambient noise, including seasonal variation; (b) a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site if the Hardship Exemption is granted, including noise impacts from vehicular traffic travelling within the Town and/or to and from, or in support of, the proposed project site; (c) with respect to the noise to be generated by construction and the proposed uses of the proposed project site, the range of noise levels and the tonal and frequency characteristics expected, together with a written explanation for the bases for any such expectations or conclusions; (d) a description and map of the existing land uses and structures, including any sensitive area sound receptors (e.g., residences, hospitals, libraries, schools, places of worship, parks, areas with outdoor workers, etc.) within one mile of the project parcel boundaries, which description shall include the location of the structure/land use, distances from the proposed project, and expected decibel readings for each receptor; and (e) a description of the project’s proposed noise-control features, including any specific measures proposed to protect off-site persons and/or to mitigate noise impacts for sensitive area receptors.

6. Visual Assessment. A visual presentation of how the site of the proposed project will relate to and be compatible with the adjacent and neighboring areas, within a one mile radius of the perimeter of the site of the proposed project, if the Hardship Exemption is granted. This presentation shall include computerized photographic simulation showing the site during construction and fully developed which shows and/or demonstrates any visual impacts from at least four strategic vantage points within the said one mile radius. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility’s components and any visual screening incorporated into the project that is intended to lessen visual prominence.

7. Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Wastes. A report containing a description of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and other solid wastes, industrial wastes, hazardous wastes, toxic and/or poisonous substances and pollutants (whether or not any such substances enjoy
exemption or definitional exceptions from state or federal laws otherwise intended to protect the public with respect to hazardous, toxic, or poisonous substances) expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site if the Hardship Exemption is granted.

8. Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the Town’s and/or the neighborhood’s (or other area’s) suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses if the Hardship Exemption is granted.

9. Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed project if the Hardship Exemption is granted.

10. Fire Prevention, Equipment Failure and Emergency Response Report. A report containing: (a) a description of the potential fire, equipment failures, and emergency scenarios associated with the proposed project that may require a response from fire, emergency medical services, police, or other emergency responders if the Hardship Exemption is granted; (b) an analysis of the worst case disaster associated with the proposed project if the Hardship Exemption is granted, together with an analysis of the impacts of such a disaster upon the health, safety, and welfare of the inhabitants of the Town and their property; (c) a designation of the specific agencies that would respond to potential fires, equipment failures, accidents, or other emergencies if the Hardship Exemption is granted; (d) a description of all emergency response training and equipment needed to respond to a fire, accident, equipment failure, or other emergency, including an assessment of the training and equipment available to local agencies; and (e) the approximate or exact location of all fire, police, and emergency response service facilities within a five mile radius of the perimeter of the site of the proposed use.

11. Public Facilities and Services Assessment. An assessment describing: (a) whether current Town public facilities and services, including water supplies, sewer capacity, fire protection, school services, recreation facilities, police protection, roads and stormwater facilities, are adequate for the proposed project (taking into account all other uses that have been permitted or are currently operating in the Town) if the Hardship Exemption is granted; (b) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed project if the Hardship Exemption is granted (in determining the effect and impact of the proposed project on fire, police, and emergency services, the review shall take into consideration response times and the number and location of available apparatus and fire, police, and emergency service stations that are manned by full time professional service personnel; and where applicable a calculation of response times shall also include the time it takes volunteer emergency personnel to get to their stations); and (c) if the Hardship Exemption is granted, a review of the impacts of the proposed project upon the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours, including an analysis of whether existing or proposed safety measures, such as signaled cross walks, elevated sidewalks, signage, traffic controls, traffic management or calming plans, and green space buffers for pedestrians or bicyclists, including an analysis of whether any walking or bicycle trails or routes overlap, cross, or run alongside intended traffic routes; each and all so as to mitigate or help prevent accidents.
12. Property Value Assessment. A property value analysis showing the impact upon adjoining
property values, prepared by a licensed appraiser in accordance with industry standards,
regarding the potential impact of the project if the Hardship Exemption is granted.

the proposed project could adversely affect the health of Town residents if the Hardship
Exemption is granted, and a priority list of recommendations to minimize the potential health
impacts of the proposed project. The health impact assessment shall include: (a) a risk
assessment of the possible impacts of chemical exposure(s) on the health of residents, including
the Chemical Abstract Service number of all chemicals proposed to be used or generated at the
project site; (b) an assessment of possible health effects due to industrial operations in non-
heavy industrial use areas; and (c) an assessment of possible health effects due to community
changes, including the presence of an industrial activity in a previously non-heavy industrial
area, declining property values, impacts to the education system, and the impacts and effects of
any sudden changes in population numbers, demographics, and customs (if any).

E. To the extent any of the information, data, studies, reports, and the like, referenced above in
this Section 10 have been prepared or submitted to the State of New York (or other government
or governmental department, agency, or authority) in relation to any permit application, unit or
spacing authorization, or any related environmental review, or otherwise, the Zoning Board of
Appeals may accept such previously prepared materials in lieu of any of the above items which
may be so requested or mandated. However, nothing shall prevent the Zoning Board of Appeals
from requiring updates, supplemental information, or site-specific analyses relative to such
proposed use within the Town or such application for a Hardship Exemption.

Section 11. HARDSHIP EXEMPTION APPLICATION & REVIEW PROCEDURES

A. Every application for a Hardship Exemption shall be submitted in writing, upon forms from time-
to-time established, approved, or prescribed by the Zoning Board of Appeals, and shall be signed by
the applicant. If the applicant is not the owner of the property involved, the owner of the property
shall none-the-less attest to the accuracy of the statements and representations made in the
application, and both the applicant and the owner shall certify that he (or she or it) has
undertaken due diligence with respect to the accuracy of the matters contained in the application.
Ten copies of the application and supporting documentation shall be filed with the Zoning Board
of Appeals, accompanied by a fee in the amount set from time-to-time by resolution of the Zoning
Board of Appeals. The Zoning Board of Appeals (ZBA) is hereby authorized to adopt rules and
regulations for the conduct of hearings on applications for Hardship Exemptions, consistent with
this Local Law and other legal or state statutes or requirements.

B. In evaluating an application for a Hardship Exemption, the Zoning Board of Appeals shall
comply with any applicable provisions of 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, known as the State Environmental Quality Review Act (SEQRA), as the same may from
time-to-time be amended.

C. The Zoning Board of Appeals shall hold a hearing on all applications for a Hardship Exemption
within 62 days of the filing of a complete application therefor. Said 62 day period may be extended by mutual agreement of the Zoning Board of Appeals and the applicant, or whenever required by law, including but not limited to the completion of any required SEQRA procedures. Public notice of the hearing shall be given at least ten days prior to the date thereof by publication in the Town’s official newspaper. The Zoning Board of Appeals may adjourn or continue such public hearing from time-to-time. The cost of sending or publishing any notices relating to any application shall be borne by the applicant, and shall be paid to the Town prior to the hearing. At least ten days before any hearing upon any application, the Zoning Board of Appeals shall mail notices to all adjacent property owners and such other notices that may be required by Sections 239-1, 239-m, and/or 239-n of the NYS General Municipal Law or other applicable provisions of law, rules or regulation.

D. In addition to such other procedures as may be required by applicable law, the following shall apply with respect to the conduct of hearings regarding applications for Hardship Exemptions: (a) the burden of proof shall remain with the applicant to show that he (or she or it) has satisfied the conditions, requirements, and proofs necessary to qualify for a Hardship Exemption, and the burden shall never shift to the Town; (b) any party may appear in person or by agent or by attorney; (c) no decision or determination shall be made except upon consideration of the record as a whole and as supported by and in accordance with substantial evidence; (d) all evidence shall be made a part of the record; and (e) official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Zoning Board of Appeals. When official notice is taken of a material fact not appearing in the evidence or in the record, and it is one of which judicial notice could be taken, every party shall be given notice thereof and shall, upon timely requires, be afforded an opportunity prior to decision to support or dispute the fact or its materiality.

E. Decisions by the Zoning Board of Appeals on applications for a Hardship Exemption shall be made within 62 days from the close of the public hearing on such matter. The time within which the Zoning Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Zoning Board of Appeals, or whenever required by law, including but not limited to the completion of any required SEQRA procedures. The final decision on such matter shall be made by written order signed by the Secretary or Chair of the Zoning Board of Appeals. Such decision shall state the findings of fact that were the basis for the Zoning Board's determination. The Zoning Board of Appeal's decision as to each application for a Hardship Exemption shall be filed in the office of the Town Clerk no later than five business days after the day such decision is rendered, and shall be made a public record.

F. The Zoning Board of Appeals, in the granting of Hardship Exemptions, shall grant only the minimum level of exemption that it shall deem necessary and adequate to allow an economically beneficial use of the property, while at the same time preserving and protecting the essential character of the neighborhood and the health, safety, and welfare of the community.
G. The Zoning Board of Appeals, in the granting of Hardship Exemptions, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Local Law, and shall be imposed for the purpose of minimizing any adverse impact such Hardship Exemption may have on the neighborhood or other area in the vicinity of the applicant’s property. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, location and layout of buildings, and limitations upon the use or characteristics of the use which are reasonably related to the public health, safety, and general welfare and/or as may be necessary to carry out the intent of this Local Law. If the applicant refuses to accept such requirements and conditions, the Hardship Exemption shall be denied. No action in violation of the requirements of Section 6 of this Local Law shall be conducted under or pursuant to any Hardship Exemption unless in strict compliance with any conditions and/or restrictions stated in such decision or order granting such Hardship Exemption.

H. Any person aggrieved by a decision of the Zoning Board of Appeals with respect to an application for a Hardship Exemption may apply to the Supreme Court of the State of New York in Monroe County for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted no later than thirty (30) days after the filing of the Zoning Board of Appeals decision in the Town Clerk’s office.

I. Any grant by the Zoning Board of Appeals of a Hardship Exemption shall expire if a building permit for the proposed project is not obtained by the applicant within one hundred twenty (120) days from the date of the decision granting such Hardship Exemption.

J. Whenever the Zoning Board of Appeals denies an application for a Hardship Exemption, the Zoning Board of Appeals shall refuse to hold further hearings on such application, or a substantially similar application, by the same property owner or his successors or assigns for a period of one year following such denial, unless the Zoning Board of Appeals shall find and determine from the information supplied that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare and that, accordingly, reconsideration is justified.

K. The procedural and other requirements of this Section 11 shall be interpreted and applied to the fullest extent permitted by applicable law, and the Constitutional standards of due process. To the extent any such procedural or other requirement is held or deemed inapplicable, unconstitutional, or ultra vires, then, and in such event, such procedural or other requirement shall be interpreted and enforced to the extent permitted, and no other listed procedural or other requirement shall be affected thereby.
Section 12.  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 13.  SUPERSEding INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board, to supersede any inconsistent provisions of any and all other local ordinances, local laws, or local resolutions of the Town of Brighton.

Section 14.  GENERAL PROVISIONS

A. The Code Enforcement Officer of the Town is hereby designated as the enforcement officer for purposes of interpreting and enforcing this Local Law. The Town Board reserves the right, by resolution, to change or designate additional enforcement officers.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only and shall not be used or construed to limit or define the scope or application of the clauses and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

Section 15.  EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the New York Department of State.
LOCAL LAW of 2011
TOWN OF BRIGHTON
"HYDRAULIC FRACTURING AND RELATED ACTIVITIES
MORATORIUM LOCAL LAW"

Section 1. Title

This Local Law shall be known as the "Hydraulic Fracturing and Related Activities Moratorium Local Law" of the Town of Brighton.

Section 2. Purpose

While hydraulic fracturing and directional gas drilling are not currently permitted uses in any zoning district in the Town of Brighton, the Town Board desires to take further steps to ensure that neither hydraulic fracturing, directional gas drilling nor any ancillary or related uses or activities take place within the Town, pending review, drafting and adoption of Town Code provisions relevant to such activities. Serious health and environmental impacts caused by these uses could threaten the health of the residents in the Town, could require the use of massive amounts of water, or the transportation of massive amounts of water causing impact to Town highways and could cause other aesthetic, environmental and public health impacts, resulting in the degradation of the quality of life in the Town of Brighton and the Town’s infrastructure. It is the purpose of this local law to enable the Town to have sufficient time to consider, draft and enact a local law or laws relating to hydraulic fracturing, directional gas drilling and related or ancillary uses to avoid such negative impact within the Town of Brighton.

Section 3. Moratorium

The Town Board hereby enacts a Moratorium which shall prohibit the review of any application, the grant of any approval or permit, the issuance of any use or area variance, the grant of any preliminary or final site plan or subdivision approval, and/or the issuance of any other Town approval or permit relating to any wells involving the practices involving of directional gas drilling or hydraulic fracturing, or any use, business or project involving the storage or vehicular transport of water to be used for hydraulic fracturing or any hydraulic fracturing fluids or waste materials on, over, or about any real property within the Town.

Section 4. Supersession of Provisions of State Law

This Local Law is enacted pursuant to Section 10 of the Municipal Home Rule Law, and under section 22 of such Law, is intended to supersede Sections 261-a, 264, 267, 267-a, 267-b, 273, 274-a,
274-b, 276, 277, 278, 279, 280 and 280-a, as well as all inconsistent provisions of the Town of Brighton Code or Town ordinances.

Section 5. **Term of Moratorium**

This Local Law and the Moratorium established hereunder, shall expire one year from its effective date.

Section 6. **Effective Date**

This Local Law shall take effect immediately upon filing with the Secretary of State.

Section 7. **Severability**

If any clause, sentence, phrase, paragraph or any part of this Local Law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Local Law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this Local Law would have been adopted had any such provision been excluded.
At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 8th day of June, 2011.

PRESENT:

SANDRA L. FRANKEL, Supervisor
JAMES R. VOGEL
RAYMOND J. TIERNEY III
LOUISE NOVROS
SHEILA A. GADDIS

Councilpersons

WHEREAS, the process known as hydraulic fracturing, also known as hydrofracking, which involves the injection into the earth of water mixed with various combinations of often toxic chemicals, in order to force natural gas from certain rock formations, has caused significant environmental issues in other areas where it has been used to extract natural gas from the ground, including but not limited to potential damage to natural watersheds; and

WHEREAS, the Town Board of the Town of Brighton is aware that the State of New York legislature is considering legislation to establish a one year moratorium on the use of hydraulic fracturing in the State, to attempt to ensure that it not be allowed in New York unless it can be done in a manner that does not put the environment and people’s health and safety at serious risk; and

WHEREAS, the New York Assembly has adopted legislation to establish a one year moratorium on hydraulic fracturing, but the State Senate must now act on the legislation and the Governor must sign it in order for it to become effective; and

WHEREAS, the Supervisor and Town Board support state legislation that would establish a one-year moratorium on hydraulic fracturing and will send correspondence to local, state, and federal elected officials, the Governor and Attorney General of New York, and other state and federal officials as may be appropriate, to publicly declare their concern about the current process of hydraulic fracturing; and

Brigress 6.11-8
WHEREAS, the Supervisor and Town Board urge that hydraulic fracturing not be permitted in New York State until regulations are adopted by the State of New York regulating the use of hydraulic fracturing in the State and until the Environmental Protection Agency study of hydraulic fracturing is completed and it is determined that hydraulic fracturing can be done in a manner that does not involve significant environmental and/or health risks; and

WHEREAS, the Supervisor and Town Board oppose the disposal of waste water and other materials from hydraulic fracturing sites within New York and from locations outside of New York State, until such time as research studies demonstrate that such disposal will not pose health and/or environmental hazards and impose additional costs to communities; it is therefore

RESOLVED, that the Town Board of the Town of Brighton hereby declares that it supports legislation to establish a one year moratorium on the use of hydraulic fracturing in New York State, as recently passed the New York Assembly, and further directs that correspondence be sent to local, state, and federal elected officials, Governor Cuomo, Attorney General Schneiderman and such other state and federal officials as may be appropriate, with a copy of this resolution, communicating the position of the Supervisor and Town Board of Brighton in support of such legislation and that hydraulic fracturing not be permitted in New York until state and federal regulations governing the use of hydraulic fracturing are adopted to avoid the risk to the environment, health and safety, and to mitigate financial burdens on local infrastructure and waste water treatment systems caused by hydraulic fracturing.

Dated: June 3, 2011

Sandra L. Frankel, Supervisor  
James R. Vogel, Councilman  
Raymond J. Tierney III, Councilman  
Louise Novros, Councilperson  
Sheila A. Gaddis, Councilperson  

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