

TOWN OF BRISTOL  
LOCAL LAW NO. 2 OF 2013

A local law to establish, impose and extend an existing 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 Local Law No. 2-2013, as the "Extension of the Existing 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 of Bristol to preserve the integrity, safeguard its valuable resources and ensure the Town's unique character remain undisturbed for the future.

The Town Board of the Town of Bristol duly adopted Local Law No. 3-2012 on June 11, 2012 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." The Town Board further finds and hereby determines the necessity to extend Local Law No. 3-2012 for an additional period of eighteen (18) months to temporarily halt and restrict 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. Such extension of Local Law No.3-1012 will permit the consideration and adoption of Comprehensive Plan Amendments if appropriate, together with amendments to zoning regulations. Such moratorium extension will permit the Town to complete its review of the impacts of a ban on high volume hydrofracking and determine is such a ban would pose too great a risk to the Town of Bristol and its residents, to review and analyze local infrastructure, including roads, water drainage systems to create a baseline for future assessment and comparison, to assess current zoning laws regarding land use, road use, traffic restrictions and other facilities and components related to heavy industry and high impact uses and to adopt such additional land use regulations to effect the foregoing.

The Town Board further finds that pending completion of the necessary surveys, local law assessment, impact analysis, studies, meetings, hearings and other actions incident to the proper considerations to amending the regulatory framework related to such uses, significant exploration, extraction storage and disposal activity may, in the absence of action by the Town Board as aforesaid, occur which may be inconsistent with the ultimate guidelines and recommendations for amendment to such zoning laws.

C. Purpose - The purpose of the Local Law is to enable the Town of Bristol to continue 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 an extended moratorium of eighteen (18) 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 exempt 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 CO<sub>2</sub> 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, 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 caves, 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 eighteen (18) 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 and 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.

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 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 A, each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. 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.

C. 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 propert(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 6. 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 7. 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.

A. 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.

B. 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).

C. 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.

D. 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 nuisance, (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.

E. 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.

F. 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 8. 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 9. 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 10. 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 eighteen months. This moratorium may be extended if additional time for review is necessary.

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**(Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**Town of Bristol**

**Local Law No. 1 of the year 2012.**

**A LOCAL LAW TO ESTABLISH AND IMPOSE A TEMPORARY MORATORIUM FOR A PERIOD OF ( 12 ) MONTHS FOLLOWING THE ISSUANCE BY THE NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE FINAL SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT TO RESTRICT EXPLORATION, DRILLING, DEVELOPMENT AND CONSTRUCTION AND THE ISSUING OF SPECIAL USE PERMITS, LICENSES OR OTHER FORMS OF PERMISSION TO DRILL, EXPLORE OR EXTRACT FOR COMMERCIAL AND INDUSTRIAL PURPOSES, HIGH VOLUME HYDRAULIC FRACTURING FOR NATURAL GAS IN ALL DISTRICTS WITHIN THE TOWN OF BRISTOL, COUNTY OF ONTARIO AND STATE OF NEW YORK**

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

**SECTION I. Title**

This Local Law shall be known as and may be cited as Local Law No. - 2012, of the Town of Bristol. This legislation imposes a building and land use moratorium upon the issuance of special use permits, licenses or other forms of permission to drill, explore or extract natural gas when required for the drilling, exploration, development and construction of commercial and industrial high volume hydraulic fracturing for natural gas in all districts in the Town for a period of ( 12 ) months from the time when the Supplemental Generic Environmental Impact Statement (SGEIS) relating to the extraction of natural gas by the process of high-volume hydraulic fracturing now under review by the New York State Department of Environmental Conservation is final and permits for such extraction may be issued so far as the New York Environmental Conservation Law is concerned.

**SECTION II. Legislative Findings**

The Town Board of the Town of Bristol finds and hereby determines that it is facing unprecedented growth and development. 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. Moreover, the preservation of natural fresh water sources must be maintained. There exists the potential for proposals and projects pertaining to high volume hydraulic fracturing for

natural gas within the Town of Bristol for which the current Town Comprehensive Plan and Zoning Ordinance does not adequately address.

The Town further finds and hereby determines that it is in the best interests of the residents of the Town of Bristol to temporarily halt and restrict development or expansion as aforesaid for a short period to permit the review and consideration of the final Supplemental Generic Environmental Impact Statement (SGEIS) as issued by the New York Department of Environmental Conservation, and the consideration and adoption of Comprehensive Plan Amendments and a new set of zoning regulations are prepared for the Town of Bristol. Such moratorium will permit the Department of Environmental Conservation to finalize the SGEIS and provide adequate time for the Town to complete the development of proper planning methods and to restrict and prevent potential uses which presently do not conform with present zoning and which engenders public debate on such extraction and development. The Town Board has duly or shall authorize and empower a committee to prepare and propose Comprehensive Plan and Zoning Amendments and land use regulations including regulations pertaining to high volume hydraulic fracturing for natural gas. Moreover the Town Board wishes to permit the New York State Department of Environmental Conservation and other state and federal agencies the opportunity to complete the development of regulations pertaining to such high volume hydraulic fracturing for natural gas as a means to develop the Town on an economically and environmentally sound basis; thus properly providing for the future growth and development of the Town and affording adequacy of facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its citizens. Thereafter, the committee has been or will be charged with the duty and responsibility of reporting its recommendations for affecting such land use regulations to the Town Board. The Town Board does hereby find that pending completion of the SGEIS and the necessary surveys, studies, meetings, hearings, and other actions incident to the proper considerations to amending the Town Zoning Ordinance, significant development, drilling, high volume hydraulic fracturing may, in the absence of action by the Town Board, occur which may be inconsistent with the ultimate guidelines and recommendation of the Comprehensive Plan.

The Town Board further finds that further significant development in the Town of Bristol prior to the completion of the revisions and actions which may be necessary for the proper consideration and formulation of revisions to existing regulations and the adoption of appropriate zoning laws and any revisions and amendments to other existing land use laws, ordinances and regulations may substantially reduce the effectiveness of such zoning laws, and other land use laws, ordinances and regulations adopted, result in a potentially negative environmental impact upon the Town's valuable natural resources and interfere with the ability of the Town Board to properly plan for growth and development and its ability to afford adequate facilities for the distribution of public services, comfort, convenience, public health and safety, and the general welfare of the citizenry of the Town of Bristol. It is the intention of the Town Board to protect the Town and preserve its integrity and valuable resources by adopting reasonable interim development regulations during the preparation and consideration of the aforementioned Plan, zoning laws, or ordinances and protective changes in the other existing land use laws, ordinances, and regulations, which protective changes in the other existing land use laws, ordinances and regulations, which will thereby protect the public interest and welfare until such have been implemented. The Town Board finds that the within interim law is the most appropriate means to accomplish the objectives set forth in this statement of legislative intent pending completion of the necessary surveys, studies, meetings, hearings, and other actions incident to the proper consideration of a comprehensive zoning plan and the development of a

comprehensive plan for the future development of the Town of Bristol.

The Town Board of the Town of Bristol further finds that a review and appeals procedure is appropriate in order to avoid or minimize any inequities or undue hardships which may derive from the strict application of this Local Law.

**SECTION III. Moratorium**

For a period of ( 12 ) months from the date of completion and filing of the SGEIS by the New York Department of Environmental Conservation, which date of completion and filing shall be herein defined as the effective date of this Local Law, the following interim development restrictions shall apply, and no applications for special use permits, licenses or other forms of permission shall be granted as it would apply to the following:

A. High volume hydraulic fracturing for natural gas.

Said interim moratorium shall restrict and prohibit development of the aforementioned uses in all districts within the Town of Bristol.

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.

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; and

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.

**SECTION IV. Appeal Provisions/Variances**

The Town Board shall have the power to vary or modify the application of any provision of this Local Law upon its determination, in its absolute legislative discretion, after Public Hearing on Notice, that this Local Law would impose extraordinary hardship upon a landowner or developer, and that a variance from this legislation will not adversely affect the health, safety and general welfare of the Town of Bristol. Any request for an exception or variance shall be filed with the Town Supervisor or his designee and shall include a fee of One Hundred and 00/100 Dollars (\$100.00) for the processing of such application. All such applications shall be promptly referred to the Planning Board for Hearing and recommendation, and shall thereafter be remanded to the Town Board for a Public Hearing and final decision.

**SECTION V. Penalties**

Any person, firm, entity, or corporation who/which shall construct, erect, enlarge or alter any use, facility, building or structure in violation of the provisions of this Local Law shall be subject to the following:

- A. A penalty in the amount of One Hundred and 00/100 Dollars (\$100.00) for each day the violation shall exist; and
- B. Furthermore, the Town of Bristol shall also be entitled to seek injunctive relief in favor of the Town for the purpose of ceasing activities or operations which are in conflict with this Local Law.

**SECTION VI. Validity and Severability**

Should any word, section, clause, paragraph, sentence, part or provision of this Local Law be declared invalid by a Court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

**SECTION VII. Repeal, amendment and Supersession of Other Laws**

This Local Law hereby repeals all other Ordinances or Local Laws of the Town of Bristol in conflict with the provisions of this Local Law and the same are hereby superceded or repealed to the extent necessary to give this Local Law full force and affect during its effective period. Without limiting the foregoing, this Local Law supercedes the provisions of Section 276 of the Town Law of the State of New York, including, but not limited to, Subdivision 4 contained therein, as well as any Local Law, Ordinance, or regulation inconsistent with this Local Law, specifically with regard to default approval provisions.

**SECTION VIII. Effective Date**

This Local Law after its adoption by the Town Board of the Town of Bristol, shall take effect upon its filing with the Office of the Secretary of State of the State of New York and shall remain in effect for a period of ( 12 ) months after the completion of the final SGEIS by the New York State Department of Environmental Conservation.