**TEMPORARY MORATORIUM UPON THE ACCEPTANCE AND PROCESSING OF SPECIAL USE PERMIT APPLICATIONS RELATED TO WATER EXTRACTION FOR BOTTLED OR BULK WATER SALES WITHIN A ONE-HALF MILE RADIUS OF THE VILLAGE OF FAIR HAVEN PUBLIC SUPPLY WELLS**

*A local law imposing a temporary moratorium on the acceptance and processing of special use permit applications related to bottled and/or bulk water sales within a one-half mile radius of the* Village *of Fair Haven’s existing public water supply wells, which are located in the Town of Sterling. This law is pursuant to New York State Constitution Article IX, Municipal Home Rule Law §§10, 20, and 22, and Town Law Article 16.*

*The moratorium shall remain in place until such time that the Town of Sterling adds a Section 18-7 to its Land Use Regulations establishing Natural Resource Protection Overlays, and establishes a Wellhead Protection Overlay District as one such overlay;* ***or****a period of one (1) year, whichever occurs first.*

*Be it enacted by the Town Board of Sterling as follows:*

**Section One (1). TITLE**

This local law shall be known as Local Law No 1 of 2022, the “Temporary Moratorium Upon the Acceptance and Processing of Special Use Permit Applications Related to Water Extraction for Bottled or Bulk Water Sales Within a One-Half Mile Radius of the Village of Fair Haven Public Supply Wells.”

**Section Two (2). PURPOSE**

The Town of Sterling wishes to establish stronger protections for the municipal wellfield and the public aquifer, which currently is the sole source of public water for residents and properties in the Village of Fair Haven, and for Water District No. 3 in the Town of Sterling. The Fair Haven wellfield also will be the source for a planned public water system expansion by the Town of Wolcott, which will serve residents and properties in the Blind Sodus Bay area.

Specifically, the Town seeks to protect the sole source public aquifer from potential groundwater contamination and/or resource depletion.

Pursuant to the statutory powers vested in the Town of Sterling to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board declares a moratorium on the acceptance and processing of applications for special use permits for water extraction for bottled and/or bulk water sales within a half-mile radius of the Village of Fair Haven public supply wells.

The moratorium shall remain in place until such time that the Town of Sterling adds a Section 18-7 to its Land Use Regulations establishing Natural Resource Protection Overlays, and establishes a Wellhead Protection Overlay District as one such overlay; **or** *a period of one (1) year*, whichever occurs first.

The area affected by this temporary moratorium is depicted on a map attached and made part of this local law.

**Section Three (3) LEGISLATIVE FINDINGS**

The Town Board has been advised by its Zoning Commission and its Wellhead Protection Committee, which have studied the issue with input from the New York Rural Water Association, that revisions to the Town’s Land Use Regulations are required in order to adequately protect the public aquifer and wellfield. The public aquifer has finite capacity, and thus is vulnerable to depletion from over-pumping or from drought. Areas of the public aquifer have permeable soil characteristics and thus are susceptible to potential contamination from substances seeping from the surface. At the direction of the Town Board, the Zoning Commission is currently working with the New York Rural Water Association to develop draft Land Use Regulation amendments. The Town is desirous of allowing adequate time for stakeholder input and careful deliberation as it considers the Land Use Regulation amendments.

**Section Four (4) DEFINITIONS**

In this Local Law:

The term “Extraction” (or “water extraction” or “extraction of water”) means withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources, aquifers, springs, wells, pumps or similar.

“Aquifer” means a saturated permeable geologic unit that can supply usable quantities of water to wells or springs.

“Bottled Water” shall mean any product, including but not limited to natural spring or well water taken from municipal or private systems or other water, distilled water, deionized water, or any of the foregoing to which chemicals may be added, which put into sealed bottles, packages or other containers, to be sold for domestic consumption or culinary use, involving the likelihood of such water being ingested by human beings.

“Bulk Water” shall mean water intended for potable uses which is transported by tank truck.

“Safe Yield” of a well or an aquifer is defined as the maximum amount of water that can be sustainably withdrawn without producing undesired effect(s).

“Town” when used in this Local Law shall mean Town of Sterling.

“Town Board,” “Planning Board,” and “Zoning Board of Appeals” when used in this Local Law shall refer to the respective boards established in and for the Town of Sterling, and including any joint boards as may be established by and for the Village of Fair Haven and the Town of Sterling for such purposes.

“Village” when used in this Local Law shall mean Village of Fair Haven.

“Zone of Contribution” means the area contributing water to a well or spring.

**Section Five (5). SCOPE OF CONTROLS**

During the effective period of this local law:

1. The Town Board shall not accept, receive, or process any applications for, conduct any review of, nor grant approvals or permits whatsoever that, result in the establishment, implementation, placement, installation or construction of improvements (including fixtures to the land) operations or relative to Water Extraction for Bottled and/or Bulk Water Sales within a one-half mile radius of the Village wellfield (see map).

2. The Town Planning Board shall not accept, receive, or process any applications for, conduct any review of, nor grant approvals or permits or grant any, preliminary or final approval of a special use permit for the establishment, implementation, placement, installation or construction or operation or relative to the processes and/or relating to Water Extraction for Bottled and/or Bulk Water Sales within a one-half mile radius of the Village well field (see map).

3. The Town Zoning Board of Appeals shall not accept, receive, or process any applications for, conduct any review of, or grant approvals or permits or approvals that would have as a result the establishment, implementation, placement, installation or construction or operation or relative to the processes and/or relating to Water Extraction for Bottled and/or Bulk Water Sales within a one-half mile radius of the Village well field (see map).

4. The Code Enforcement Officer shall not accept, receive, or process any applications for, conduct any review of, or grant approvals or permits or any other approvals that would have as a result the establishment, implementation, placement, installation or construction or operation or relative to the Processes and/or relating to Water Extraction for Bottled and/or Bulk Water Sales within a one-half mile radius of the Village well field (see map).

**Section Six (6). TERM**

The moratorium shall remain in place until such time that the Town of Sterling adds a Section 18-7 to its Land Use Regulations establishing Natural Resource Protection Overlays, and establishes a Wellhead Protection Overlay District as one such overlay; **or** *a period of one (1) year*, whichever occurs first.

**Section Seven (7). VARIATION BASED ON HARDSHIP**

Upon submission of an original and ten (10) copies of the written application (articulating the grounds in support of the request and with all applicable legal authority, supporting evidence and documentation relied upon to be submitted with the same) to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon not less than seven (7) days of written notice in the official newspaper of the Town. At said public hearing, the applicant and/or property owner and other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said public hearing render its decision either granting or denying the application for a variation for the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship of this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law and any such variation shall be based upon evidence specific to that particular owner’s plight, and as such not in and of itself establish precedent. As a general rule, supporting documentation, evidence or legal authority (verbal or in writing) may be submitted by the applicant or property owner at the public hearing that was not submitted with and at the time of application filing. Upon such occurrence, the Town Board may restrict or prohibit the introduction of same or continue the public hearing to permit the Town an opportunity to review the same. The Town will also consider in any application the reasonable rate of return for the property, unique hardship, the essential character of the neighborhood and any self-created hardship.

**Section Eight (8). SEVERABILITY/VALIDITY**

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged or determined to be invalid or unconstitutional by any court or other governmental agency of competent jurisdiction, such determination, order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such determination, order or judgment shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or t application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court or governmental agency shall modify same to a provision which is legally binding and enforceable, and accordingly, not invalid or unconstitutional, and which best achieves the intent of the invalid or constitutional provision, or part thereof, as expressed or inferred herein.

**Section Nine (9). REPEAL**

All local laws and parts thereof inconsistent with this Local Law, including Local Law #2 of 2021, are hereby repealed.

**Section Ten (10). EFFECTIVE DATE**

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

