

Town of Sterling Local Law No. \_\_ of the year 2021

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 located in the Town of Sterling until such time that the Town of Sterling obtains a Water Withdrawal Permit from the New York State Department of Conservation (NYSDEC) for a new public water supply well to be drilled adjacent to the Village of Fair Haven's well field or a period of one year occurs whichever is first. This law is pursuant to New York State Constitution Article IX, Municipal Home Rule Law §§ 10, 20, and 22 and Town Law §§ Article 16.

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

**Section One (1). TITLE**

This local law shall be known as Local Law No. \_ of 2021, 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 plans on drilling a public water supply well adjacent to the Village of Fair Haven's existing public well field off State Route 104A for the purpose of supplying its water district(s) and provide an additional backup supply for the Village. As part of this process, a Water Withdrawal Permit is to be obtained from the NYSDEC. A determination of the safe yield of the well field and aquifer is required as part of the application for this permit, as well as a delineation of the well(s) zone of influence, 60-day time of travel area, zone of contribution area (recharge area), and the aquifer boundary area (see the NYSDEC document entitled "*Recommended Pumping Test Procedures for Water Withdrawal Applications*").

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 one-half mile radius of the Village of Fair Haven public supply wells until the Town of Sterling obtains a Water Withdrawal Permit for a new public supply well or a period of one year has occurred, whichever is first.

The area affected by this temporary moratorium is depicted on a map attached and made part of this local law. Only after the hydrogeologic data is collected and analyzed as part of the Town of Sterling Water Withdrawal Application can the impacts of additional

withdrawals in the immediate vicinity of the Village and Town public supply wells be adequately evaluated.

### **Section Three (3). LEGISLATIVE FINDINGS**

The Town Board has been advised that in order to adequately protect the existing and future Village and Town public water supply sources from disruption or depletion, critical data such as the safe yield of the well field and adjacent aquifer must be collected before adjacent facilities for water extraction for bottled and/or bulk water sales can be evaluated. This board is desirous of utilizing this moratorium period to collect this and other necessary hydrogeologic data that will be necessary to determine potential impacts upon the municipal well field from future extraction of water in the area.

### **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. "Village" when used in this Local Law shall mean Village of Fair Haven.

"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.

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

“Zone of Influence” is the area surrounding a pumping well within which groundwater levels have been lowered due to pumping.

### **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) and/or placement of equipment, operations or relative to Water Extraction for Bottled and/or Bulk Water Sales within a one-half radius of the Village well field (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 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 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 radius of the Village well field (see map).

### **Section Six (6). TERM**

This moratorium imposed by this Local Law shall be in effect for a period of one year or until the Town of Sterling obtains a Water Withdrawal Permit from the New York State Department of Conservation (NYSDEC) for a new public water supply well to be drilled adjacent to the Village of Fair Haven's well field, whichever occurs first. This moratorium may be extended for an additional period of not to exceed six (6) months by duly adopted resolution of the Town Board.

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

Procedure.

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.

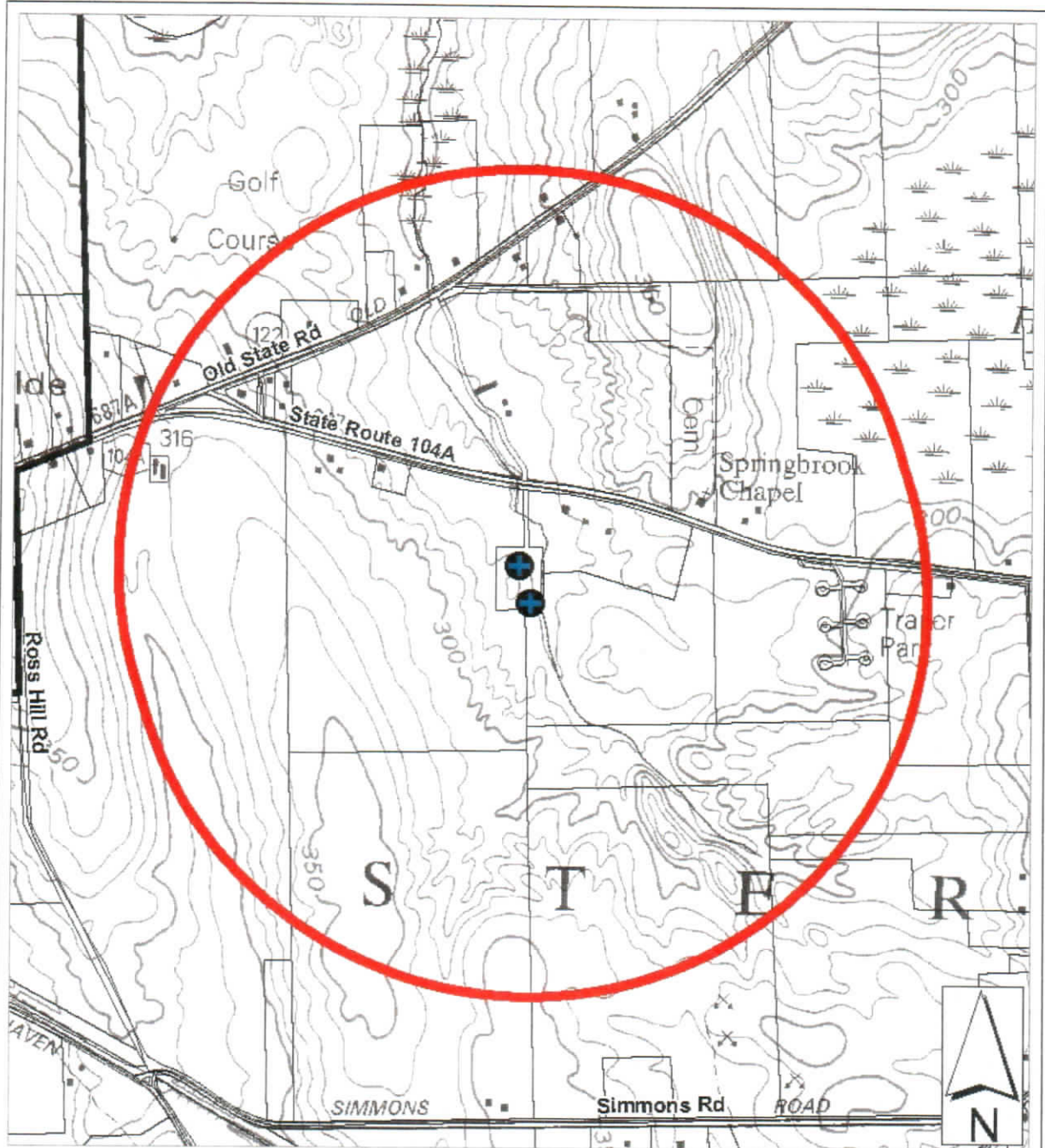
The Town will also consider in any application the reasonable rate of return for the property, unique hardship, the essential character of the neighborhood and any self-created hardship.

**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 judgement 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 judgement shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or the 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). EFFECTIVE DATE**

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



**Legend**

- Fair Haven Supply Well
-  Fair Haven Supply Well
-  1/2-Mile Well Buffer
-  Village of Fair Haven Boundary



**1/2-Mile Buffer Area  
Village of Fair Haven  
Water Supply Wells**