

TOWN OF FREEDOM, NEW YORK
LOCAL LAW NUMBER 2 OF 2020
DRINKING WATER AND CONSERVATION AREA PROTECTION LAW

This Local Law Number 2 of 2020, entitled “DRINKING WATER AND CONSERVATION AREA PROTECTION LAW,” is hereby adopted by Resolution of the Town Board of the Town of Freedom Resolution dated _____, and reads in its entirety as follows:

ARTICLE I – GENERAL STATEMENT AND DEFINITIONS

SECTION 1: TITLE & APPLICATION

This Local Law shall be known as “Local Law Number 2 of 2020” (herein, the “2020 Local Law”). The 2020 Local Law hereby repeals and any prior Local Law or Resolution that is inconsistent herewith.

SECTION 2: LEGISLATIVE FINDINGS

The Town Board of Freedom hereby finds and determines that the Town must protect surface water, groundwater and the aquifer within its borders, particularly such sources used for drinking water. The Town finds that it needs to protect the sensitive areas that rely on such water, including Conservation areas and that in limiting industrial and commercial activities, blasting and HDD, it is best to employ precaution, in view of substantial costs that could be incurred to remediate polluted water. The Town Board of the Town of Freedom adopts this 2020 Local Law also to protect the Town’s drinking water supply, and conservation areas that may rely on such supply from the potential impacts on that supply by non-agricultural industrial and commercial facilities, blasting, excavating and horizontal directional drilling (HDD) beneath sensitive surface water in the Town in order to protect the public health, safety, and welfare of the residents so that the same will not be unreasonably jeopardized.

Further, the Town Board of the Town of Freedom finds and declares that:

- A. The New York State Constitution's "Bill of Rights for Local Governments" (Article IX, §2-10) obligates local legislators to protect the health, safety and well-being of their community.
- B. Regulation of industrial and commercial facilities, blasting, commercial excavation and HDD is necessary for protecting the water supply for the health, safety, and well-being of all residents and property owners, the general public, the local economy and local ecosystems.
- C. Industrial and commercial facilities, blasting, excavation and HDD may impact drinking water supplies and private wells and may be inconsistent with Cattaraugus County’s Comprehensive Plan’s (“Vision 2025”) goals which are to:
 - a) Preserve and maintain the County’s vital and rural character and support protection of the natural beauty, farmland, forests, environmentally sensitive areas and the vibrant plant, ecosystem and human communities that makes up the County;
 - b) Preserve and promote the County’s agricultural heritage and economy;

- c) Protect the County's farmland;
 - d) Protect the County's important environmental assets for both their ecological and economic value;
 - e) Support stewardship of wells, sole source aquifers, wetlands, forests, mineral resources, rivers and other environmental assets;
 - f) Support public education about how these features contribute to the health of the environment in the County, the economy, rural character and quality of life of residents in the County, including the Town of Freedom.
- D. The Town finds that possible contamination of and/or other adverse consequences to the aquifer and well water throughout the Town may result from industrial and commercial activities and construction of said facilities as well as blasting, excavating and HDD and that the same may raise concerns that Residents in the Town who use private wells may be endangered unless certain industrial and commercial facilities occur far enough away from sources of water in the Town such as to prevent water contamination and such adverse consequences.
- E. Further the Town finds that comprehensive well water sampling and testing should be completed prior to and subsequent to any blasting or HDD within a one (1) mile radius of private wells and Conservation Areas.
- F. Constructing commercial and industrial facilities, blasting and/or excavating and HDD may create and/or exacerbate drainage problems through erosion and lack of sediment control which may harm water supply, farmlands and agriculture through construction methods utilized and arable land conversion to industrial purposes.
- G. Because of all of the above the Town Board chooses to use the precautionary Principle in regulating this area.
- H. In formulating this 2020 Local Law, many documents as well as web based resources were reviewed and consulted, including, but not limited to: (1) a document describing the "sole source aquifer" which is described in the "Water Pollution Control, Cattaraugus Creek Basin Aquifer System in Cattaraugus, Erie, Wyoming and Allegany Counties New York, Sole Source Aquifer Final Determination" contained in the Federal Register, Volume 52, No. 186 (Friday September 25, 1987). This sole source aquifer shall hereinafter be referred to as "the CCB Aquifer System." (2) The Genesee/Finger Lakes Regional Planning Council publication: Protecting Water Resources through Local Controls and Practices: An Assessment Manual for New York Municipalities. (3) The EPA Alumni Association's documents and web based materials in support of its "Half Century of Progress" and "Protecting the Environment: A Half Century of Progress." (4) Cattaraugus County materials and the Cattaraugus County Comprehensive Plan.

SECTION 3: AUTHORITY

The Town Board of the Town of Freedom enacts this 2020 Local Law under the authority granted by: (a) Article IX of the New York State Constitution, §§ 2(c)(6) and 10; (b) the New York Statute of Local Governments, §§ 10(1) and (7); (c) the New York Municipal Home Rule Law, §§ 10(1)(i) and (ii), and §§ 10(1)(a)(6), (11), (12), and (14); (d) the New York Town Law § 130(1) (Building Code), §130(11) (Peace, Good Order and Safety), §130(15) (Promotion of Public Welfare), §130(15-a) (Excavated Lands), and (e) the New York Town Law § 64(17-a) (Protection of Aesthetic Interests), and §64(23) (General Powers).

SECTION 4: DEFINITIONS

The following terms have the following meaning within and for the purposes of this 2020 Local Law:

2020 LOCAL LAW – Local Law Number 2 of 2020, known as the “Drinking Water and Conservation Area Protection Law.”

AGRICULTURAL OR FARM OPERATIONS – The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation as defined in the Agriculture and Markets Law. A farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

BLAST - the rapid release of heat and large quantities of high-pressure gases that expand rapidly with sufficient force to overcome confining forces resulting from the very rapid decomposition of a chemical compound or mixture initiated by heat, shock, impact, friction, or a combination of these conditions.

BLASTER- a Person licensed as such by the New York State Department of Labor.

BLASTING ENTITY- a Person or other legal business entity that blasts or engages a Blaster to Blast either on its own behalf or on behalf of another person, corporation or other entity.

BLAST AREA-the specific location of the Blast expressed by both physical road address and global positioning system coordinates.

BLAST EFFECT AREA- of all properties within a one (1) mile radius of a blast.

BLAST NOTIFICATION- a written notice to Residents in sent out ninety (90) days in advance of any Blast, sent by a Blaster or Blasting Entity, which shall include, but not be limited to, the following: the Blast area, the date(s) and time(s) of the Blast, how access to the Blast area will be controlled, the types and patterns of blast warnings and signals that will be used and the ability to have one or more private well(s) on the

property tested pre and post Blast for water quality.

COMMERCIAL EXCAVATING-excavating land for non-residential purposes that is done to depth of ten (10) feet or more.

CONSERVATION AREAS – Natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; New York State Forest, the CCB Aquifer System, shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

COUNTY-the County of Cattaraugus.

ENFORCEMENT OFFICER – Any Person appointed by the Town Board to (i) interpret or enforce this 2020 Local Law, or (ii) take any action or make any determination under this 2020 Local Law. Unless the Town Board resolves otherwise, the Town’s Code Enforcement Officer(s) shall be deemed Enforcement Officers under this 2020 Local Law.

HORIZONTAL DIRECTIONAL DRILLING- also known as “HDD” is the science of drilling a wellbore at a predetermined well trajectory, angle and horizontal direction so as to intersect a subsurface target.

HDD ENTITY- a Person or other legal business entity that performs HDD or engages a Person to perform HDD either on its own behalf or on behalf of another person, corporation or other entity.

HDD NOTIFICATION- a written notice to Residents in sent out ninety (90) days in advance of any HDD, sent by a Person wishing to perform HDD or HDD Entity, which shall include, but not be limited to, the following: the HDD area, the date(s) and time(s) of the HDD, how access to the HDD area will be controlled, the types and patterns of HDD warnings and signals that will be used and the ability to have one or more well(s) water on the Resident’s property Tested/Sampled pre and post HDD

INDEPENDENT PROVIDER- any Person certified by the New York State Department of Health and approved and/or designated by the County Department of Health to conduct pre-blast and post-blast water quality sampling, analysis, and reporting on same for residents in the County.

PERMIT-a permit issued by the Town to Blast.

PERSON – Any individual, partnership, limited liability company, corporation, joint venture, business, or other person or entity of whatever kind or nature, but not including the Town, the Town Board, the Planning Board, or any other employee, elected official, or agent of the Town, and not including the State of New York or the Federal Governments and their departments, bureaus, and employees thereof.

PRECAUTIONARY PRINCIPLE – This principle or precautionary approach generally defines actions on issues considered to be uncertain, for instance applied in assessing risk management. The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) where extensive scientific knowledge on the matter is lacking. The Principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

QUALITY- defined in the County Department of Health's promulgated rules and regulations.

RECHARGE RATE- recharge to aquifers can also adversely impact the yield of water supply wells. Pre-developed groundwater Recharge Rates be maintained at land development sites under post-development conditions.

RESIDENT- a property owner in the Town.

SITE – One or more parcels of land where an industrial or commercial application is proposed to be located, Blasting, Commercial Excavating or HDD occurs. A “Site” may be publicly or privately owned, and may be comprised of multiple parcels owned by one or more Persons. Where a Site is comprised of multiple lots or parcels owned by any one or more Persons, the combined lots or parcels shall be deemed one “Site” for the purposes of applying any setback requirements.

TESTING/SAMPLING—defined by the County department of Health's promulgated rules and regulations and/or encompassing, at a minimum, testing/sampling for the presence of any hazardous substance as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation, Recharge Rate, Turbidity, Quality and Volume/Yield and Well Recovery Rate, of the water of a well.

TOWN – The Town of Freedom, in Cattaraugus County, New York.

TOWN BOARD – The Town Board of the Town of Freedom in Cattaraugus County, New York.

TOWN CLERK – The Town Clerk of the Town of Freedom in Cattaraugus County.

TURBIDITY-is the cloudiness or haziness of water caused by a large number of individual particles ordinarily visible to the naked eye.

VOLUME/YIELD- defined in the County Department of Health's promulgated rules and regulations and/or defined as the amount of water a well produces measured in gallons per minute ~~and~~.

WELL RECOVERY RATE- is the rate at which water runs into a well from the rock fissures and openings into the lower portion of the well below the steel casing, while water is being pumped out of the well as well as the rate at which water runs into the well. A well recovery rate also defines the rate at which water can be pumped out of a well without pumping the well down so far that the pump "runs dry".

ARTICLE II-REQUIRED AND PROHIBITED ACTIVITES

SECTION 1: INDUSTRIAL OR COMMERCIAL ACTIVITIES

No industrial or commercial facility shall be permitted to be built within one thousand feet of any private well, Conservation Area or the CCB Aquifer system.

SECTION 2: BLASTING AND COMMERCIAL EXCAVATING

- A. No Blast or Commercial Excavating shall be permitted to occur within one thousand feet of any water well or Conservation Area.
- B. All Blasters and/or Blasting Entities must receive a Permit to Blast from the Town. A Permit must be applied for and a letter of credit equal to the amount of \$1,000,000 must be secured by the Blaster and/or Blasting Entity to be held by the Town before any Blast occurs. A permit fee of \$15,000 will be charged.
- C. All Blasters and/or Blasting Entity must provide a Blast Notification to all Residents within one (1) mile of a Blast.
- D. All water wells within one (1) mile of a Blast must be subjected to Testing/Sampling by an Independent Provider chosen by the Town, if the Resident owning the well so choses, pre Blast and post Blast, with such testing to be paid for by the Blaster or the Blasting Entity.
- E. Unless proven otherwise by clear and convincing evidence, a Blast within one (1) mile of a water well shall be considered the cause of the presence in a drinking water supply of any hazardous substance, as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation, and, in the case of a well providing water, the cause of any reduction in the Recharge Rate, Volume/Yield, Well Recovery Rate or Quality of any such well, or an increase in the Turbidity of such drinking water supply. After an investigation and upon a finding by the Town that any Person or Blasting Entity that Blasted caused an adverse change in any of the above of a Resident's well water, in addition to the penalties delineated in this law the Blaster shall be required to abate each violation and provide alternate potable water of a type and quality acceptable to the Resident and the Town at the Blaster's expense, until the adverse conditions so above delineated are fully abated and the water in the well is restored to pre-Blast condition.

SECTION 3: HORIZONTAL DIRECTIONAL DRILLING

- A. No HDD shall be permitted to occur within one thousand feet of any well, or Conservation Area.
- B. All Persons or HDD Entities wishing to perform HDD must receive a Permit to HDD from the Town. A Permit must be applied for and a letter of credit equal to the amount of \$1,000,000 must be secured by the Person and/or HDD Entity wishing to perform HDD to be held by the Town before any HDD occurs. A permit fee of \$15,000 will be charged.
- C. All Persons and/or HDD Entities wishing to HDD must provide HDD Notification to all Residents within five thousand feet of the proposed HDD.
- D. All water wells within five thousand feet of the proposed HDD must be subjected to pre- and post-disturbance Testing/Sampling by an Independent Provider chosen by the Town, if the Resident owning the well so chooses, pre HDD and post HDD, with such testing to be paid for by the Person and/or HDD Entity wishing to perform HDD.
- E. Unless proven otherwise by clear and convincing evidence, HDD within five thousand feet of a water well shall be considered the cause of the presence in a drinking water supply of any hazardous substance, as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation, and, in the case of a well providing water, the cause of any reduction in the Recharge Rate, Volume/Yield, Well Recovery Rate or Quality of any such well, or an increase in the Turbidity of such drinking water supply. After an investigation and upon a finding by the Town that any Person performing HDD and/or an HDD Entity caused an adverse change in any of the above of a Resident's well water, in addition to the penalties delineated in this law the Person performing HDD and/or HDD Entity shall be required to abate each violation and provide alternate potable water of a type and quality acceptable to the Resident and the Town at the Person performing HDD and/or HDD Entity's expense, until the adverse conditions so above delineated are fully abated and the water in the well is restored to pre-HDD condition.
- F. All Aquifers within Five Thousand Feet of HDD must be tested by an Independent Provider for Recharge Rate and hazardous substances Pre and Post Blast with such testing to be paid for by the Person wishing to perform HDD and/or the HDD Entity.
- G. Unless proven otherwise by clear and convincing evidence, HDD within Five Thousand Feet of an Aquifer shall be considered the cause of any adverse change in the Recharge Rate or the presence of any hazardous substance as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation. After an investigation and upon a finding by the

Town that any Person performing HDD or any HDD Entity caused an adverse change in the aquifer, in addition to the penalties delineated in this law the Person performing HDD or any HDD Entity shall be required to abate such conditions at the Person performing HDD or any HDD Entity's expense, until the adverse conditions so above delineated are fully abated and the water in the aquifer is restored to pre-HDD condition. Any adverse changes to the aquifer Post Blast shall be satisfied to the Town by way of the Letter of Credit.

SECTION 4: WATER WELL DRILLERS

This 2020 Local Law shall not apply to water well drillers subject to state regulation under Title 15 of Article 15 of the Environmental Conservation Law.

ARTICLE III-PENALTIES AND REMEDIES

SECTION 1: PENALTIES. Any Person that (i) violates or fails to comply with this 2020 Local Law, or (ii) fails to obey the lawful order or direction of the Enforcement Officer, or (iii) who assists, aides, or abets any such violation, non-compliance or lack of adherence to a lawful order, shall be guilty of an offense and (i) subject to prosecution civilly or criminally, and (ii) subject to the fines and penalties as set forth below:

1. First Violation: Any Person that violates 2020 Local Law shall be (1) guilty of a criminal offense and subject to a fine of not more than \$50,000.00 per violation per day, or (2) subject to a civil penalty of not more than \$50,000.00 per violation per day to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each day that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each day that such violation, disobedience, omission, neglect or refusal shall continue.
2. Second Violation: Any violation that is found to have occurred within one (1) year of any prior civil or criminal determination of any other violation of this 2020 Local Law shall be deemed a second violation. Any Person that commits any second violation shall be (1) guilty of an offense and subject to a fine of not more than \$50,500.00 per violation per day, or (2) subject to a civil penalty of not more than \$50,500.00 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each day that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each day that such violation, disobedience, omission, neglect, or refusal shall continue.
3. Third and Subsequent Violations: Any violation that is found to have occurred within one year (1) year of any prior civil or criminal determination of any second violation of this 2020 Local Law shall be deemed a third or subsequent violation, as applicable. Any Person who commits a third or subsequent violation of this 2020 Local Law shall be (1) guilty of an unclassified misdemeanor and subject to a fine not more than \$60,000.00 per violation per day, or (2) subject to a civil penalty of not more than \$60,000.00 per violation per day to be recovered by the

Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each day that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each day that such violation, disobedience, omission, neglect, or refusal shall continue.

SECTION 2: OTHER REMEDIES. The Town shall have the following additional rights or remedies:

- A. The Enforcement Officer, upon observation of any violation or non-compliance with this 2020 Local Law, shall be empowered to issue a stop work order. Any Person receiving a stop work order shall immediately cease and desist from all further construction, Blasting, HDD or Commercial Excavating and/or shall cease all acts, or failures to act, that are in violation of or non-compliance with this 2020 Local Law or the order of the Enforcement Officer. No actions, work or operations shall be continued or re-commenced until the stop work order is lifted by the Enforcement Officer.
- B. In the event of any violation or threatened violation of any of the provisions of this 2020 Local Law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such actual or threatened violation. In the event the Town seeks any equitable order or relief, the Town shall not be required to prove that there exists, or is likely to exist, an imminent threat of irreparable harm, and under no circumstances shall the Town be required to post any bond or undertaking.
- C. In the event of any violation or non-compliance with this 2020 Local Law, the Town and/or the Enforcement Officer may withhold any violator's application extensions, permits, permit renewals, certificates of compliance, certificates of occupancy, approvals, and the like, and any applications upon the same, regardless of whether the same is related to the project in violation or not, until such time as such violation or non-compliance is cured.
- D. To order cleanup, remediation, removal, of any industrial or commercial facility and failing compliance with such order, the Town may recover its expenses pursuant to the following procedures. The Town may proceed against any Letter of Credit posted by a Blaster. Further, the Enforcement Officer may order any Person to (i) cleanup, remediate, and restore any Site to its condition prior to its use to its natural condition, and/or (ii) remove any facility when authorized or required under this 2020 Local Law. Such Person shall then have a period of no more than ninety (90) days in which to remove facilities, cleanup, remediate, and restore the Site(s). Upon notification given by the Enforcement Officer to the Town Board that the Owner has failed or refuses to remove facilities, cleanup, remediate, and/or restore the Site within that 90-day period, the Town Board may, but is not required to, cause the Town to commence or contract-out the removal, cleanup, remediation, and restoration of such Site(s). After the work has been completed the Enforcement Officer shall file in the office of the Town Clerk a verified statement (herein, the "Verified Statement") of all the direct costs of the

removal, cleanup, remediation or restoration of the Site(s), together with a 50% surcharge as compensation to the Town for administering, supervising and handling said work in accord with the provisions of this 2020 Local Law. Such Verified Statement shall be served by certified mail upon the Person so ordered to cleanup, remediation, removal of any Facility. Upon such filing and service, each such Person shall, within thirty (30) days, pay the amount(s) indicated as due to the Town under such Verified Statement. Absent payment within the said thirty (30) days, (i) the Town may enter a civil judgment in the amount of any Verified Statement through the Town Court, or any other court of competent jurisdiction, and enforce the same in accord with law, and/or (ii) the Town Clerk may, where such Person owns the land upon which is situate the affected Site, enter the same in the records of the Town Clerk as a lien against the affected properties, shall add the same to the next assessment roll of general Town taxes, and collect and enforce the assessment in the same manner, by the same proceedings, at the same time, and under the same penalties as the general Town tax, and as a part thereof.

SECTION 3: CUMULATIVE EFFECT. Each and all remedies and rights of the Town under this Article shall be cumulative. The Town's pursuit of any one right or remedy does not effect a waiver or an election of remedies, and the Town may thereafter pursue or continue to pursue any other right or remedy it may have in law, equity, or in admiralty. The rights and remedies herein stated are not the exclusive rights and remedies of the Town.

ARTICLE IV-MISCELLANEOUS

SECTION 1: CONSTRUCTION

Section and paragraph headings are for convenience only and do not limit or define the contents of such paragraph or section. Words in the singular or plural shall be construed in the singular or plural as the context thereof so requires or admits. Words in the masculine, feminine or neuter gender shall be construed as in such gender the context thereof so requires or admits.

SECTION 2: EFFECTIVE DATE AND FILING

This 2020 Local Law shall be and become effective immediately upon filing with the Secretary of State in accordance with Municipal Home Rule Law. In addition, this 2020 Local Law shall be filed with the Cattaraugus County Department of Health.