

TOWN BOARD OF MOREAU

LOCAL LAW NO. 3 OF 2024:

**ADOPTING A NINE MONTH LAND USE MORATORIUM
TEMPORARILY PROHIBITING THE FOLLOWING:**

- I. THE ISSUANCE OF ANY PERMITS OR APPROVALS ALLOWING INDUSTRIAL USES AND OPERATIONS IN MOREAU'S MANUFACTURING AND INDUSTRIAL ZONES UNTIL THE TOWN BOARD CAN PERFORM AN UPDATED REVIEW OF ITS COMPREHENSIVE PLAN TO DETERMINE THE TYPES AND NATURE OF USES AND/OR OPERATIONS THAT SHOULD BE ALLOWED THEREIN; AND,**
- II. THE ISSUANCE OF ANY PERMITS OR APPROVALS ALLOWING THE DISPOSAL OR PROCESSING BY ANY METHOD OF ANY WASTE OR WASTE MATERIAL NOT ORIGINATING WITHIN THE BOUNDARIES OF THE TOWN OF MOREAU UNTIL THE TOWN CAN CONSIDER THE PROPER APPLICATION OF CHAPTER 92 OF THE TOWN CODE; AND,**
- III. FURTHER PROHIBITING THE COMMENCEMENT OF ANY BUSINESS OR COMMERCIAL OPERATION WHICH INCLUDES THE DISPOSAL OR PROCESSING OF ANY WASTE OR WASTE MATERIAL BY INCINERATION, LANDFILLING, PYROLYSIS, OR ANY OTHER METHOD WHICH MAY RELEASE CONTAMINANTS INTO THE ENVIRONMENT UNTIL THE TOWN CAN CONSIDER WHETHER THE CURRENT TOWN CODE IS SUFFICIENTLY PROTECTIVE OF THE HEALTH AND WELFARE OF THE CITIZENS OF THE TOWN OF MOREAU AND ITS ENVIRONS.**

BE IT ENACTED by the Town Board of the Town of Moreau, Saratoga County, New York, as follows:

_1. Authority and Applicability.

This local law is adopted pursuant to the authority vested in the Town Board of the Town of Moreau pursuant to Municipal Home Rule _ 10 of the State of New York.

2. Legislative Intent/Declaration of Purpose.

(a) The Town Board finds that to better effectuate the purposes and intent of the Town Code and the Town's Comprehensive Plan concerning quality of life issues, community growth, zoning, site plan review, and industrial development in the community, and further, to ensure that said Code and the Town's Comprehensive Plan reflect and address the impacts of the past evolution of development in the Town

upon the current general welfare of its residents, it is deemed necessary to temporarily prohibit the issuance of permits or approvals allowing manufacturing or industrial uses, including but not limited to any operations which involve the disposal or processing of any waste or waste material not originated within the boundaries of the Town of Moreau.

(b) This land use and operational moratorium will permit the Town Board adequate time in which to evaluate and draft updated and necessary legislation to allow for proper and authorized regulation of manufacturing and industrial uses within the Town, including but not limited to those uses or operations which involve the disposal or processing of waste or waste material not originating within the Town. During the term of the moratorium, the Town Board shall work to evaluate, prepare and, if needed, to eventually adopt revised or additional land use provisions and regulatory processes to provide for and promote the safety, health, protection and general welfare of the persons and property in the Town of Moreau.

(c) This land use and operational moratorium is not intended to apply to the issuance and/or renewal of any Industrial or Commercial Waste Hauler License pursuant to Town Code 91-6 and 7, respectively, or the transportation by any resident of its own waste for recycling or disposal.

(d) In reaching its decision to impose this moratorium, (1) the Town Board has considered the comments of the Town Planning Board made at its meeting held on March 18, 2024 at which it approved this moratorium and has added clarifying language in section (iv) below, and (2) the Town Board has considered the comments of the Saratoga County Planning Board made at its meeting held on March 28, 2024 at which it Approved with Comment this moratorium and has added clarifying language regarding the applicability of this moratorium regarding waste haulers and

the transportation of their own waste by residents and has determined that the Town Board has a plan, schedule and budget for implementation of this moratorium and that there are specific criteria for issuance of an unnecessary hardship waiver provided below. The Town Board is cognizant of, and has considered, the following factors and concerns pertinent to each of the above three categories of uses and operations to be prohibited until adequately considered and addressed by the Town Board:

I. THE ISSUANCE OF ANY PERMITS OR APPROVALS ALLOWING INDUSTRIAL USES AND OPERATIONS IN MOREAU'S MANUFACTURING AND INDUSTRIAL ZONES UNTIL THE TOWN BOARD CAN PERFORM AN UPDATED REVIEW OF ITS COMPREHENSIVE PLAN TO DETERMINE THE TYPES AND NATURE OF USES AND/OR OPERATIONS THAT SHOULD BE ALLOWED THEREIN.

(i) Although the Moreau Industrial Park was created in 1994 with a goal of attracting business to twenty-two (22) shovel-ready lots, during the 30 years of its existence, only one business has located there. The concern is that a decades-old vision of industrial development in the Town may now be obsolete and need to be revisited with community input to determine whether a change of permitted uses will render the Park more marketable while simultaneously addressing any potential impacts associated with industrial uses.

(ii) During those 30 years of the existence of the Moreau Industrial Park, the density of residential use has increased substantially along the traffic corridors leading to the Park. The Town's Comprehensive Plan warns of a "problematic aspect" of the Park's location which will draw increased, heavy truck traffic. The Comprehensive Plan specifically identifies the concern that the traffic "will need to traverse through traditional residential areas" over roads which are "not well suited to withstanding traffic associated with heavier trucks", (See page 39 of Comprehensive Plan).

(iii) The closing of the Essity paper plant in the Village of South Glens Falls may present a host of land use issues, depending on the nature of any proposed use by its successor. Its past "pre-code" operations may enjoy less developmental scrutiny as a non-conforming use. Although situated within the Village of South Glens Falls and outside of the Town, its location in close proximity to Moreau Industrial Park

will require an anticipatory evaluation of its potential impacts on the Park, going forward.

II. THE ISSUANCE OF ANY PERMITS OR APPROVALS ALLOWING THE DISPOSAL OR PROCESSING BY ANY METHOD OF ANY WASTE OR WASTE MATERIAL NOT ORIGINATING WITHIN THE BOUNDARIES OF THE TOWN OF MOREAU UNTIL THE TOWN CAN CONSIDER THE PROPER APPLICATION OF CHAPTER 92 OF THE TOWN CODE.

(iv) The issue of the importation, disposal and processing of waste generated outside of the Town's boundaries requires a separate, current evaluation of potential impacts in order to determine whether it implicates the need to revise the Town Code and its Comprehensive Plan. For example, in this regard, it was assumed that such an evaluation had already been accomplished by a prior Town Board which, in 2004, had unanimously adopted a specific Code regulation which prohibited the disposal or processing of "any waste or waste material not originating within the boundaries of the Town of Moreau and generated by or from sources or locations outside the boundaries of the Town of Moreau" (See Chapter 92 of the Town Code, supplemented by the Chapter 91 definitions of additional categories of waste that are subject to the "importation prohibition").

However, the recent Planning Board approval of a project (the "Saratoga Biochar" project) did not apply the Chapter 91 and 92 importation prohibition. A review of the Planning Board minutes revealed that the Planning Board and its counsel had been presented with a written opinion stating that Chapters 91 and 92 did not apply to the Saratoga Biochar project. The opinion was submitted by the engineer retained by the applicant. Although the members of the Planning Board and their counsel were not engineers, they exercised the customary good faith offered to responsible applicants. In doing so, upon the recommendation of their counsel, they understandably accepted the opinion of the Saratoga Biochar engineer.

The Town Board has investigated the history of Chapters 91 and 92, and believes that the Saratoga Biochar engineer misinterpreted not only the intent of the importation prohibition, but also the intent of the protective measures and standards set forth in the land use policies of the Town Code and the Town's Comprehensive Plan. Therefore, the Town Board has concluded that the situation calls out for a moratorium "time-out" to address what appears to be either a misinterpretation or an inadequacy of the Code with respect to the applicability of Chapters 91 and 92

thereof. During the period of this moratorium, the Town Board intends to examine the legislative and community history to determine whether additional regulatory safeguards and revisions are warranted.

III. FURTHER PROHIBITING THE COMMENCEMENT OF ANY BUSINESS OR COMMERCIAL OPERATION WHICH INCLUDES THE DISPOSAL OR PROCESSING OF ANY WASTE OR WASTE MATERIAL BY INCINERATION, LANDFILLING, PYROLYSIS, OR ANY OTHER METHOD WHICH MAY RELEASE CONTAMINANTS INTO THE ENVIRONMENT UNTIL THE TOWN CAN CONSIDER WHETHER THE CURRENT TOWN CODE IS SUFFICIENTLY PROTECTIVE OF THE HEALTH AND WELFARE OF THE CITIZENS OF THE TOWN OF MOREAU AND ITS ENVIRONS.

(v) Most importantly, consideration will also be given to evaluate safeguards and oversight capabilities pertaining to waste disposal methods which are known to discharge or emit contaminants into the environment, such as by incineration, landfilling, pyrolysis, or otherwise, *regardless of the source of said waste.*

Much is already known of the hazardous nature of emissions generated by incineration and landfilling. Since 1980, the Town Board has taken regulatory measures to eliminate the possibility that Moreau could be the host for these two waste disposal methods. In contrast, there is little known about the emission of contaminants by pyrolysis. An internet search will reveal countless scientific studies in disagreement over the ability of *any* process, including pyrolysis, to eliminate the toxic and carcinogenic attributes of air-borne so called “forever chemicals” (collectively known as per- and polyfluoroalkyl substances, i.e “PFAS”) known to be found in the sewage sludge presently proposed to be transported and processed within Moreau boundaries. Further, the potential for downstream contamination of the food chain and for environmental soil and groundwater damage during the post processing use of the sludge as a fertilizer are also the subject of many studies which are voicing scientific concern for public health and safety.

The concern of the scientific community is amplified by the results of a recent audit of the NYS Department of Environmental Conservation by the NYS Comptroller’s Office. The audit criticizes DEC’s current ability to adequately test and monitor the emissions of any facility requiring an air pollution control permit. Less than six months ago, on September 20 of 2023, the State Comptroller’s Office reported that it had completed its audit of the DEC for the purpose of determining

“whether the Department of Environmental Conservation is taking necessary action to adequately enforce certain aspects of the State’s air contamination and pollution requirements to protect the public and environment from the adverse effects of exposure to pollutants”.

As of April 2022, the Comptroller noted that there were 8,941 facilities operating under such permits. “FINDINGS” of the Comptroller included: **“weaknesses” in several aspects of DEC’s oversight, including monitoring of permitted facilities, that “reduce its ability to ensure compliance with the Air Pollution Control Permitting Program and protect the State’s air from harmful pollutants”.**

An additional troublesome finding of the audit was that the *“DEC is not always taking action to enforce compliance with the Program for facilities operating without a valid permit”*, (e.g. when a facility’s permit has expired but yet is allowed to continue its operations under the expired permit).

Whatever is the basis underlying the audit’s findings of an inadequate ability of DEC to monitor hazardous air emissions, the only sensible and moral action this Town Board believes is appropriate is to put further implementation of these proposed facilities on hold until an assessment can be made regarding whether the public health is in jeopardy.

In view of the absence of incontrovertible support in the current research of the scientific community, and, the absence of a time-tested governmental regulatory oversight and monitoring capability with respect to PFAS, the Town Board presently is of the opinion (shared by the vast majority of its residents) that members of its community do not deserve to be the guinea pigs associated with a process that does not share a comforting degree of scientific approval of its safety. Therefore, it is appropriate for the Town to consider and re-assess whether current Town Code provisions are sufficient to protect the health and welfare of Town residents.

(vii) **Adherence to the Town Comprehensive Plan:**

This moratorium is also informed by the obligations imposed upon the Town Board by its Comprehensive Plan which requires the Town to:

“Revise and update the zoning chapter of the Town Code so

that:”

“(a) Land use schedule and discretionary approval of commercial and industrial projects is *up-to-date and based upon sound definition of permitted use;*”

“(d) The use schedule for designated industrial uses which are in the midst of or near residential neighborhoods is *adjusted to remove industrial uses that could have a potentially adverse impact to these residential areas* (e.g. excessive noise, odors, heavy truck traffic, extended hours of operation, etc.)”

(See page 41 of Comprehensive Plan).

In short, the above mandate of the Comprehensive Plan succinctly underlies the intent and purpose of this moratorium.

3. Scope of Moratorium.

(a) There is hereby adopted in the Town of Moreau a nine (9) month moratorium on the consideration, receipt, or grant of any permits or approvals pursuant to the Town Code and the laws and regulations of the Town of Moreau: (1) allowing any manufacturing or industrial uses or operations in Moreau’s Industrial/Manufacturing Zones; (2) allowing the disposal or processing of any waste or waste material not originating within the boundaries of the Town of Moreau; and (3) allowing the commencement of any use, business or operation which includes the disposal or processing of any waste or waste material by incineration, landfilling, pyrolysis, or any other method which may release contaminants into the environment.

(b) During the term of the moratorium, the Town Board intends, and shall exercise reasonable efforts, to complete the necessary review and analysis in order to develop, consider and adopt changes to its land use local laws and to the terms and goals of its Comprehensive Plan. As may be necessary, the Town Board shall update them, including redefining permitted manufacturing and industrial uses, and, removing any such uses that could have a potentially adverse impact to residential areas or to the community at large.

(c) While the moratorium is in effect, no applications for the establishment of any manufacturing or industrial activity shall be eligible for, accepted for, or receive, any permits or approvals, whether preliminary, final or otherwise, given by any agency or department of the Town except as authorized pursuant to Section 4 below. This includes any application currently pending before the planning board or zoning board of appeals.

(d) This moratorium may be extended by the Town Board upon a finding of the necessity of such extension.

(e) Early Termination: In the event that any new local law which addresses the substantive issues set forth in this Local Law should be enacted by the Town Board prior to the date that the moratorium imposed by this Local Law expires, then the moratorium imposed by this Local Law shall expire on the date that such new local law takes effect in accordance with NYS Municipal Home Rule Law _ 27.

§4. Waivers.

(a) Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purposes of this moratorium, the definition of unnecessary hardship shall be determined in the sole discretion of the Town Board, and shall not include the mere delay in being permitted to make an application or waiting for a decision on the application for any permit, variance or other approval during the period of the moratorium.

(b) Substantive requirements: No relief shall be granted hereunder unless the Town Board shall specifically find and determine, in its sole and unqualified discretion, and shall set forth in its resolution granting such waiver, that:

1. Failure to grant a waiver to the petitioner will cause the petitioner substantial, irrevocable and unnecessary hardship, which hardship is substantially greater than any harm to the general public welfare

resulting from the granting of the waiver; and

2. The grant of the waiver will clearly have no adverse effects upon any of the Town's goals or objectives in adopting this moratorium, and

3. The project or activity for which the petitioner seeks a waiver is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town Board's review and planning effort then in progress.

(c) Procedure: Upon submission of a written application to the Town Clerk by the property owner seeking relief from this moratorium, the Town Board shall, within 30 days of receipt of said application, schedule a public hearing on said application upon ten (10) days written public notice. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard. The Town Board shall, within 30 days of the close of said public hearing, render its decision either granting or denying the application for relief

from the strict requirements of this moratorium, or, it may impose any conditions on any waiver grant that it may deem appropriate.

(d) An application for relief from the prohibitions of the moratorium shall be accompanied by the applicant's written undertaking, in a form to be approved by the Town's attorney, to pay all expenses of the Town Board, including the fees of any attorney or consultant retained by the Town Board to evaluate and consider the merits of such application.

5. SEQRA.

The Town Board has designated itself as the lead agency for the purpose of evaluating any environmental impacts associated with this Local Law. In this regard, the Town Board has determined that the proposed enactment of this Local Law is classified as a Type II action under 6 NYCRR 617.5(c)(36), and requires no further review, and is otherwise exempt from SEQRA.

6. Violations and Permits Issued in Violation of this Local Law.

(a) The Town Board reserves the right to direct the building inspector, code enforcement officer and/or zoning administrator, to revoke or

rescind any permits, approvals or relief issued in violation of this Local Law.

(b) Any person violating or attempting to violate this Local Law shall be guilty of a violation pursuant to the Penal Law of the State of New York and be punishable by a fine not exceeding \$1,000.00 or by imprisonment for a term not exceeding 15 days or by both such fine and imprisonment. For each twenty-four hour period such violation continues, every such person shall be deemed guilty of a separate offense. Where the person committing such violation is a partnership, association or corporation, the principal executive officer, partner, agency or manager may be considered to be the "person" for the purpose of this section.

(c) Alternative remedy. In the case of any violation or threatened violation of any of the provisions of this Local law, in addition to other remedies herein provided, the Town Board may institute any appropriate action or proceeding to prevent or enjoin such violation or threatened violation and to collect penalties or fines assessed hereunder.

(d) Stop-work order:

(1) The Town Board herein grants the Code Enforcement Officer the administrative responsibility of determining in the first instance whether a violation has occurred or threatened violation is about to occur and to immediately terminate or prevent such violation or threatened violation by posting a stop-work order, or cease and desist order, on the premises wherein the violation has occurred or threatened violation is about to occur.

(2) The stop-work order or cease and desist order shall serve notice to the owner, builder, developer, agent and/or any other individual or business on or using the premises that all such actions specified in the order must be terminated immediately.

(e) In the event the Town Board is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including but not limited to attorney's fees, and such amounts as may 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.

7. Conflict with State Statutes and Authority to Supersede.

To the extent that any provisions of this Local Law are in conflict with or are construed as inconsistent with the provisions of any local law of the Town of Moreau, or any laws of the State of New York, this Local Law supersedes, amends and takes precedence over any inconsistent authority in accordance with the Municipal Home Rule Law. This Local Law specifically supercedes any and all provisions contained in the New York State Town Law and the New York State Environmental Conservation Law which require action by the Town Planning Board or Zoning Board of Appeals within specified time periods. Further, notwithstanding any law, rule or regulation to the contrary, no approvals or permits or activities which are the subject of this moratorium shall be granted or approved as a result of the passage of time. This Local Law also specifically supercedes Town Law and any other New York State or local laws, rules or regulations pertaining to the granting of any variance authority to the Zoning Board of Appeals, it being the intention of this Local Law that any authority to grant variances or waivers by any boards or bodies other than the Town Board is hereby superceded by this Local Law so as to vest any authority to approve a variance or waiver from this Local Law solely in the Town Board of Moreau.

8. Severability.

If any clause, sentence, phrase, paragraph or any part of this Local Law or the application thereof to any person or circumstance shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the provisions of this Local Law or the application thereof to any persons or circumstance, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this Local Law would have been duly adopted had any such invalid application or provisions been excluded.

9. Effective Date.

This Local Law shall become effective upon filing in the Office of the NYS Secretary of State in accordance with Section 27 of the Municipal Home Rule Law, and shall remain in force for a consecutive period of nine (9) months from its effective date, unless extended by local law adopted after public hearing upon no less than ten (10) days public notice.

Dated: April 1, 2024

BOARD

BY ORDER OF THE TOWN
OF THE TOWN OF MOREAU.

APPENDIX TO LOCAL LAW NO. 3 OF 2024

A. TOWN OF MOREAU COMPREHENSIVE PLAN

Portions of the Town's Comprehensive Plan describe the location of the Moreau Industrial Park as "constrictive" and "problematic" due to an expected increase in heavy truck traffic from further development impacting highway composition and areas of significant residential land use (pg. 39). The Plan requires that the Town Code be revised and updated where permitted uses are no longer based upon "sound definition". The Plan further requires that when "potentially adverse impacts" are associated with certain industrial uses near residential areas, those industrial uses are to be *removed* from the Code's schedule of permitted uses (pg. 41). Finally, "**land area used for these purposes must be used firstly in a manner that is consistent with public input**" (pg. 36).

B. CHAPTERS 92 & 91 OF TOWN CODE.

Chapter 92 was adopted in 2004 and prohibits the disposal or processing of waste or waste material which did not originate within the Town's boundaries. In addition to the four categories of "prohibited waste" listed in Chapter 92, Chapter 92 also incorporates the additional categories of commercial and industrial wastes as prohibited wastes as defined in Chapter 91.

C. NY STATE COMPTROLLER'S AUDIT OF DEC'S ABILITY TO PROTECT THE PUBLIC AND THE ENVIRONMENT FROM THE ADVERSE EFFECTS OF EXPOSURE TO POLLUTANTS.

The Comptroller's investigation and audit of DEC found "weaknesses" in the ability of DEC "to ensure compliance with the Air Pollution Control Permitting Program and protect the State's air from harmful pollutants".

D. CASELAW:

PETE DROWN INC. vs. TOWN BOARD OF ELLENBURG

Our Appellate Court has previously ruled in a similar case that a developer's application to DEC for a permit to build a medical waste incinerator was **lawfully banned by virtue of the town's subsequent**

adoption of a moratorium, followed by its enactment of a zoning law which prohibited the incineration of waste in the town. In that case, the developer challenged the town, arguing that it had a “vested right” to build the plant because it had already spent over \$850,000 developing the project before the town enacted the law. The Court rejected the claim because there had been no construction or other change to the land itself, and, because there was no evidence that the developer could not recoup his expenditure “in the marketplace” (i.e. by relocating the project to a site in a proper zone). The same reasoning would apply to the banning of any waste processing facility which is known to discharge hazardous emissions and which requires a DEC air pollution control permit.