

**TOWN OF CANANDAIGUA
LOCAL LAW NO. 10 OF 2011**

**A MORATORIUM ON NATURAL GAS AND/OR PETROLEUM EXPLORATION
ACTIVITIES, NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES,
AND/OR NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES
IN THE TOWN OF CANANDAIGUA**

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

Section 1. Title

This law shall be known as the 2011 Moratorium on Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, and/or Natural Gas and/or Petroleum Support Activities in the Town of Canandaigua.

Section 2. Legislative Purpose and Intent

The Town of Canandaigua recognizes the unprecedented possibility that Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, and/or Natural Gas and/or Petroleum Support Activities (collectively "Natural Gas Operations") may increase exponentially throughout New York State due to technological advances in extraction techniques that will permit the exploitation of previously hard-to-extract natural gas that is apparently abundant throughout New York State. The Town of Canandaigua is aware that Natural Gas Operations are currently the subject of exacting environmental reviews by the State of New York and that the Department of Environmental Conservation is expected to promulgate rules and regulations relative to Natural Gas Operations in the immediate future. The Town of Canandaigua further recognizes that significant legal questions exist concerning Natural Gas Operations and the interplay of the explicit Field Pre-emption provisions of the New York State Environmental Conservation Law, the express continuation of local government jurisdiction over local roads and local real property tax law, as well as the existing jurisdiction of local governments to regulate land uses within their borders.

The purpose of this Local Law is to temporarily prohibit the consideration, review, and/or approval of any and all Natural Gas Operations to insure that the Town of Canandaigua is afforded adequate time to review and understand the potential impacts of Natural Gas Operations on land uses within the Town of Canandaigua. The Town of Canandaigua intends to amend the Canandaigua Town Code, as necessary, to adequately protect the residents and land uses within the Town of Canandaigua, and to otherwise prevent serious detrimental health and environmental effects posed by various land use practices related to Natural Gas Operations including the degradation of significant environmental, natural, aesthetic and agricultural resources, roads and/or other infrastructures, and such other negative impacts that are as yet unknown, all in furtherance of the Town's dominant purpose of protecting the health, safety and welfare of town residents.

Section 3. Definitions

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 and all related land use 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 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 CO₂ 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, but specifically excluding all pipelines that existed prior to the effective date of this Local Law.

Subsurface --- Below the surface of the earth, or of a body of water, as the context may require.

Town --- The Town of Canandaigua, 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 Storage --- Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, 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. Scope and Control

From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval 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.

From and after the date of this Local Law, no Person shall use, cause, or permit to be used, 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, unless such use existed prior to the date of this Local Law.

The prohibitions set forth above are not intended, and shall not be construed, to: (i) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (ii) prevent or prohibit the incidental or normal storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town, *so long as* such uses do not involve any Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or Natural Gas And/Or Petroleum Support Activities.

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 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.

This moratorium and prohibition shall apply to all real property within the Town.

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, the Code Enforcement Officer and/or Zoning Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, 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

Any Person who shall violate the provisions of this Local Law, shall be subject to:

1. A violation under this Local Law shall be deemed an unclassified misdemeanor for purposes of establishing fines.
2. A penalty in the amount of a minimum of \$5,000 and a maximum of \$15,000 for each day that such violation shall exist; and
3. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction and/or improvements which may have been built in violation of this Local Law, and further, said Person shall be liable to the Town for all costs and expenses of enforcement of this Local Law, including attorney's fees incurred by the Town.

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Local Law.

Section 6.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of the Local Law or the application thereof to other persons or circumstances, and the Town of Canandaigua Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 7.

All Ordinances, Local Laws and parts thereof inconsistent with this Local Laws and parts thereof inconsistent with this Local Law are hereby repealed. This Local Law is further intended to supersede, to the greatest extent permitted by law, any general state law relating to zoning, planning and land use.

Section 8.

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