

## **Local Law Filing**

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**(Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate a new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE

**FILED**

DEC 24 2012

**Town of Wayland**

**Local Law No. 4 of the year 2012**

MISCELLANEOUS  
& STATE RECORDS

**A local law to extend the Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes enacted by Local Law #2 of the Year 2011.**

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

**Section 1.** It is the purpose of this local law to extend the Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes enacted by local law #2 of the year 2011.

**Section 2.** The justification for this local law is set forth in Appendix A attached to local law 2 of the year 2011, a true and complete copy of which is attached hereto.

**Section 3.** That the said Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes enacted by local law #2 of the year 2011, is hereby extended and shall be in effect beginning on the effective date of this local law and shall expire on the earlier of (1) that date which is one year after said effective date or (2) the effective date of a Town Board resolution of permanently stating that the Town Board is determined that the need for this Moratorium and Prohibition no longer exists.

**Section 4.** This local law shall take effect immediately upon filing with the New York State Department of State.

**(If additional space is needed, attach pages the same size as this sheet, and number each.)**

**APPENDIX A**  
**ATTACHED TO AND FORMING A PART OF**  
**TOWN OF WAYLAND (NY) LOCAL LAW NO. 2 of the YEAR 2011,**  
**known as:**

**“Moratorium on and Prohibition of**  
**Gas and Petroleum Exploration and Extraction Activities,**  
**Underground Storage of Natural Gas,**  
**and Disposal Of**  
**Natural Gas or Petroleum Extraction, Exploration, And Production Wastes.”**

The “Moratorium on and Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes” to which this Appendix A is attached is herein sometimes referred to as “this Local Law” or “this Law.”

This Appendix A is a part of the Local Law to which it is attached for all purposes.

**Section 1. Authority and Intent.** This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Wayland under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

**Section 2. Findings of Fact.**

1. Wayland is a community in the northern portion of Steuben County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources.
2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural

environment of the Town, the general health and welfare of Town residents, and the local economy.

3. Preservation of the Town's irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.
5. Allowing the activities prohibited by Section 4. of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.
6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 4. of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.
8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.
10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration Or Production Wastes(as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
11. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.
12. The explicit proscription of the activities prohibited by Section 4.of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

*the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*  
416 U.S. at 6.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.* 87 N.Y. 2d at 683, 684. (emphasis added.)

**Section 3. Purposes.** The purpose of the Local Law is to enable the Town of Wayland to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to address the same. The Town Board finds that a moratorium of one (1) year duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Wayland and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.