

BE IT ENACTED by the Town Board of the Town of Portage as follows:

SECTION I. TITLE

This local law shall be known and cited as the "2012 Temporary Moratorium on all Natural Gas and/or Petroleum Activities of the Town of Portage, New York."

SECTION II. STATEMENT OF AUTHORITY

This local law is adopted pursuant to authority vested in the Town Board by Article IX of the New York State Constitution, Articles 2 and 6 of the New York State Municipal Home Rule Law; Article 16 of the New York State Town Law; and in the exercise of the general police power of the Town of Portage for the purpose of promoting the health, safety and welfare of all residents and property owners of the Town of Portage, herein after referred to as "Town".

SECTION III. STATEMENT OF PURPOSE

The purpose of this local law is to enable the Town to enact a stay on an interim basis to prevent all natural gas and /or petroleum activities in the Town, pending the completion and possible adoption of permanent comprehensive laws, regulations and/or ordinances.

SECTION IV. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION

The Town Board of the Town of Portage hereby finds and declares that:

- A. There is a potential for natural gas and/or petroleum exploration, the development and operation of facilities for the production of the same or other infrastructure used in furtherance of such activities or the transportation, deposit and/or storage of product and/or byproduct resulting from such activity (hereinafter referred to as "Natural Gas and/or Petroleum Activities") in the Town.
- B. If Natural Gas and/or Petroleum Activities as defined herein are not properly regulated, there is a potential that the short term and long term effects of such activities may cause impacts on local infrastructure, as well as on various other community, environmental and economic resources.
- C. The Town currently does not have any law, ordinance or regulation which specifically and adequately regulates Natural Gas and/or Petroleum Activities.
- D. To promote the general public health, safety and welfare, it is essential to implement comprehensive laws, regulations and/or ordinances that will

serve to protect against any adverse impacts from such Natural Gas and/or Petroleum Activities and to provide a means for monitoring such activities, to provide a framework to compel compliance with such laws, as well as, to impose mitigation or remediation measures for conditions arising from such activities.

- E. In order to enact a local law that will thoroughly address all relevant considerations, it is essential that a detail and comprehensive process be undertaken to study all substantive and procedural components which must be addressed in such law.
- F. It is reasonably expected that the completion of the aforementioned study as well as the compliance with all legal requirements for the enactment of such law will require a period of twelve (12) months. Accordingly, it is in the public interest to impose a moratorium that prohibits on an interim basis any such Natural Gas and/or Petroleum Activities for a period of twelve (12) months.
- G. In order to balance the interests of the community at large with the interests of any party that may experience extraordinary hardship as a result of the application of this local law, it is necessary to provide a process and forum for obtaining a variance from the limitations imposed hereby.

SECTION V. WORD USAGE AND DEFINITIONS

As used in this local law, the following terms shall have the meaning indicated:

- A. "MORATORIUM" shall mean a formally agreed period during which an activity is halted or a planned activity is postponed.
- B. "NATURAL GAS AND/OR PETROLEUM ACTIVITIES" shall mean all activities in furtherance of natural gas and/or petroleum exploration, extraction, the development and operation of facilities for the production of the same or other infrastructure used in furtherance of such activities or the transportation of byproduct resulting from such activity or the deposit and/or storage of such product and/or byproduct. Facilities for the transmission of natural gas and petroleum that are in existence on the effective date hereof are specifically excluded from this definition.
- C. "NATURAL GAS" shall mean a mixture of combustible hydrocarbon gases, mostly methane and ethane, found trapped in the pore spaces of some sedimentary rocks, often along with petroleum deposits.
- D. "PETROLEUM" shall mean crude oil that occurs naturally in sedimentary rocks and consists mainly of hydrocarbons.

SECTION VI. TERM OF MORATORIUM DECLARED

To carry out the above purposes, the Town Board hereby declares for a period of twelve (12) calendar months from the effective date of this local law, a moratorium on all Natural Gas and/or Petroleum Activities, unless earlier terminated by a superseding, duly adopted local law.

SECTION VII. PROHIBITED ACTIONS AND RESERVATION OF RIGHT

A. Prohibited Actions. Unless permitted under Section 8 and Section 9 hereunder, during the effective period of this local law:

1. No new Natural Gas and/or Petroleum Activities shall be commenced in the Town.
2. The Town Board shall not grant any approvals that would have as a result the commencement or completion of Natural Gas and/or Petroleum Activities.
3. The Town Board shall not grant any approval that would have as a result the authorization of any Natural Gas and/or Petroleum Activities.
4. The Town Board shall not accept any application that would permit Natural Gas and/or Petroleum Activities.

B. Reservation of Right. The Town Board reserves the right to revoke or rescind any Building Permit or Certificates of Occupancy issued in violation of this local law.

C. The prohibited actions set forth above in paragraph A of this Section are not intended and shall not be construed to:

1. Prevent or prohibit the transmission of natural gas through utility pipes, lines or related appurtenances for the purpose of supplying natural gas utility services to residents of or buildings located in the Town; or
2. Prevent or prohibit the incidental or normal sale, storage or use of gas and/or petroleum products in connections with agriculture, residential, business, commercial and other uses within the Town, so long as such uses do not involve any Natural Gas and/or Petroleum Activities.

SECTION VIII. "GRANDFATHERING" OF LEGAL, PRE-EXISTING NONCONFORMING USE

- A. Notwithstanding any provision hereof to the contrary, any Natural Gas and/or Petroleum Activities that are being conducted in the Town as of the effective date of this local law shall be subject to the following:
1. Where, as of the effective date of this local law, substantive Natural Gas and/or Petroleum Activities are occurring in the Town and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Conservation (hereinafter referred to as "DEC") and all other regulating agencies, then and only then, will such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provision of paragraphs B and C of this section.
 2. Natural Gas and/or Petroleum Activities that are being conducted in the Town as of the effective date of this local law and which do not qualify for treatment under the preceding Paragraph A (1) of this section shall not be grandfathered and shall in all respects be prohibited as contemplated by Section VII hereof.
- B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this local law by virtue of Paragraph A (1) above or upon any other substantive cessation of Natural Gas and/or Petroleum Activities (otherwise grandfathered by virtue of Paragraph A (1) for a period of more than twelve (12) months, then and in only such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Activities shall in all respects be prohibited as contemplated by Section VII hereof.

SECTION IX. EXCEPTION

Any party claiming that this local law has caused such party to experience an unnecessary hardship may apply to the Town Board for an exception from this local law subject to the following terms and conditions.

- A. Substantive requirements. A valid application for an exception based on unnecessary hardship shall be filed with the Town Clerk as of the effective date of this local law pertaining to a proposal, including a fee not to exceed two thousand dollars (\$2,000.00) to cover processing and advertising costs by the property owner or the applicant with the written consent.

- B. The Town Board shall determine whether the application is complete and reserves the right to require the applicant to provide supplemental information in addition to that submitted initially with the application.
 - C. Risk of loss. The applicant assumes the sole risk of pecuniary or other loss, including without limitation, the costs to technical and legal consultation and the costs of preparation of any submission, reports or information required by the Town Board, the State Environmental Quality Review Act or other applicable federal and state laws or regulations, arising out of such continued consideration and review during the pendency of this local law.
 - D. Public hearing. Such application shall be the subject of public hearing before the Town Board. A public hearing on any application for an exception for extraordinary hardship shall be held by the Town Board no later than forty-five (45) days after the complete application for the variance exception has been filed with the Town Clerk. Public notice of the date, time and place of such hearing shall be published in the legal newspaper of the Town not less than ten (10) days prior to the hearings. At said public hearing, the applicant and other parties wishing to present evidence on the proposed exception shall have the opportunity to be heard.
 - E. Relief. The Town Board is authorized to consider all relevant facts upon proof of an unnecessary hardship and may grant an exception. In reviewing an application and determining the suitability of an exception under this Section, the Town Board shall consider criteria, including but not limited to the following, which the applicant should demonstrate by clear and convincing evidence.
 - 1. The extent to which the applicant has, prior to the effective date of this local law, received any development approval for the proposed development.
 - 2. The extent to which the Natural Gas and/or Petroleum Activities would cause significant environmental degradation, adversely impact adjacent natural resources areas, harm the public health, safety and /or welfare.
 - 3. Whether the Moratorium will expose the applicant to substantial monetary liability to a third person; or would leave the applicant completely unable, after thorough review of alternative solutions to earn a reasonable return on the property belonging to the person.
 - 4. The extent to which the applicant establishes that the proposed activity would not lead to significant environmental degradation.
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5. Adverse effect on the goals or objectives of the Town in revising the associated zoning code hereunder; and
 6. The project's harmony, or lack thereof, with the existing character of the community as a whole and the area of the community in which that property is located; and the consistency with any interim data, recommendations or conclusion which may be drawn from the studies in progress hereunder; and
 7. Any other factors deemed relevant by the Town Board based on the circumstances of the particular application.
- F. At the conclusion of the public hearing and after reviewing the evidence and testimony places before it, the Town Board shall act upon the application. The Town Board shall, within forty-five (45) days of the close of the public hearing, render its decision in writing, either granting in whole or in part, or denying the required exception from the strict requirements of this local law.

SECTION X. PENALTIES

Any person, partnership, firm or corporation that shall engage in any Natural Gas and/or Petroleum Activities in violation of the provisions of this local law shall be subject to:

- A. A fine not to exceed two hundred fifty dollars (\$250.00) or imprisonment not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil penalties as may otherwise be provided by law, rule and regulation for such violation for the first offense. For the purposes of this section, each day that a violation of this local law exists shall constitute a separate and distinct offense; and
- B. 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 which may have taken place in violation of this local law.
- C. In the event the Town is required to take legal action to enforce this local law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto including attorney's fees and such amount shall be determined and assessed by the court.

SECTION XI. STATEMENT OF SUPERSESSION

To the extent permitted under the New York State Constitution, or otherwise permitted by State enabling legislation, this local law shall supersede any State law or regulation which conflicts herewith.

SECTION XII. SEVERABILITY

Should any section, sub-section, paragraph, sub-paragraph, sentence, clause, phrase or other portion of this local law be declared invalid by a court of competent jurisdiction such action shall not be construed to invalidate the remaining portion of this local law.

SECTION XIII. EFFECTIVE DATE

This local law shall be effective immediately upon filing with the New York Secretary of State.