

Local Law Filing

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

☐ County ☐ City ☒ Town ☐ Village
(Select one.)

of Oneonta

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STATE RECORDS

APR 02 2012

Local Law No. 3 of the year 2012

DEPARTMENT OF STATE

A local law imposing a moratorium on natural gas mining in the Town of Oneonta
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village
(Select one.)

of Oneonta

as follows:

Section 1. LEGISLATIVE INTENT

The Town Board of the Town of Oneonta, Otsego County, State of New York, is vested by the State of New York to regulate and control land use within the Town of Oneonta and to protect the health, safety and welfare of its residents. This moratorium addresses zoning and planning regulations only, and does not regulate or attempt to regulate the actual operations of the oil, gas and solution mining industries or interfere in any manner with the extractive mining process for natural gas.

The Comprehensive Plan for the Town of Oneonta is instrumental for the regulation and control of land use within the Town. The Code of the Town of Oneonta currently prohibits mining in all of their zoning districts. However, changes in the mining industry have given the Town of Oneonta sufficient reason to reexamine the definitions and language within the entire Town code. Specifically, natural gas mining in the surrounding area has expanded to a greater extent than the Comprehensive Plan ever

envisioned. The Town Board believes that additional study and examination of necessary land use regulations relating to natural gas mining is warranted. Therefore, the Town Board, through this local law, declares a twelve month moratorium on Natural Gas and /or Petroleum Exploration, Extraction, and Support Activities in the Town of Oneonta.

During this twelve month moratorium, the Town of Oneonta will update the Comprehensive Plan. The Town Board has deemed this an appropriate amount of time to study whether additional local action is necessary, the extent of such action, and if such local action is necessary, provide the Town Board with the time to adopt the appropriate local rules and regulations to ensure comprehensive uniformity, fairness, and consistency in such regulations. Further, the Town Board will utilize the moratorium period to further examine the significant land use issues and the related impacts of Natural Gas and /or Petroleum Exploration, Extraction, and Support Activities within the Town.

The Town of Oneonta has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources within the Town. The Town Board believes that studying this issue is necessary to clarify the existing code of the Town, to establish geographic areas surrounding drinking water sources and provide protection for those areas, and to ensure that if any Natural Gas and /or Petroleum Exploration, Extraction, and Support Activities are to occur within the Town that such activities are compatible with existing land uses and the Town's Comprehensive Plan. The goal is to protect residents from potential negative impacts including but not limited to the quality of air and water, and their right to be free of intrusions from noise and light pollution.

The Town of Oneonta does hereby find a moratorium of twelve months duration is necessary and reasonable in order to afford the Town Planning Board additional time to evaluate, study and to afford such board an opportunity to make recommendations to the Town Board regarding appropriate amendments to the Zoning Ordinance and other appropriate chapters of the Code of the Town of Oneonta and ensure that the Comprehensive Plan and Zoning Laws are congruous. A moratorium of twelve months will prevent the establishment Natural Gas and /or Petroleum Exploration, Extraction, and Support Activities that may be contrary to any land use regulations ultimately adopted thus making the new regulations a nullity. The health, safety and general welfare of the residents will be protected by the adoption of the moratorium pending the issuance of final regulations by the Town of Oneonta.

Section 2. DEFINITIONS

INJECTION WELL: A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than 90% of such fluids return to the surface within a period of 90 days.

MINING: For the purposes of this Local Law, the term "mining" shall mean the extraction of mineral, liquid or gas from the earth. "Mining" shall not include the excavation, removal and disposition of minerals from soil and gravel mines or construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

NATURAL GAS: For the purposes of this Local Law, the term “natural gas” shall mean natural or petroleum gas in a non-liquid or gaseous state at standard temperature and pressure conditions, whether under pressure or otherwise, and whether or not the product of conversion from liquefied natural gas or liquefied petroleum gas.

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES: Geologic or geophysical 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 boring 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 hydraulic fracturing.

NATURAL GAS AND/OR PETROLEUM EXTRACTION EXPLORATION WASTE: Any of the materials or by-products that are the result of the drilling of a gas well and/or the hydro fracturing of such well, including but not limited to deep source soils, sludge, fracturing fluids, brine flowback, or mud associated with drilling operations associated with the exploration and/or production of natural gas and oil exploration.

NATURAL GAS AND/OR PETROLEUM EXTRACTION WASTE DISPOSAL STORAGE FACILITY:
Any tanks, impoundments, pits, evaporation ponds or other facilities used to store natural gas or petroleum extraction/exploration waste.

NATURAL GAS AND/OR PETROLEUM EXTRACTION WASTE DUMP: Land upon which natural gas and/or petroleum gas extraction, exploration, or production wastes are deposited, disposed, discharged or injected, placed, buried or discarded without any intention of further use.

PERSON: For the purposes of this local law, the term "person" shall include an individual, society, club, firm, partnership, joint venture, corporation, LLC or the association of persons, and the singular shall include the plural number.

TOWN: the Town of Oneonta, Otsego County, New York

UNDERGROUND INJECTION: Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by/or into an Injection Well.

Section 3. MORATORIUM AND PROHIBITION

- A. For the period of twelve months following the effective date of this local law, no new natural gas/ petroleum mining, extraction, exploration, underground injection, disposal or dumping facilities or operations, as defined by this local law, or expansions

beyond existing operations or facilities shall be permitted by any person at any location within the Town of Oneonta.

B. During the effective period of this Local Law:

1. 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: Natural Gas/Petroleum Exploration, Extraction, Underground Injection, Waste Disposal Facility or as a Waste Dump.
2. The Town Planning Board shall not consider and/or approve any site plan, approve any special use permit or other permit which would have as a result the establishment, implementation, placement, construction or development of any new natural gas/petroleum mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town of Oneonta.
3. The Town Zoning Board of Appeals shall not consider and/or grant any variance, or other permit for any use which would result in the establishment, implementation, placement, construction or development of any new natural gas/petroleum mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town of Oneonta.
4. The Code Enforcement Officer shall not consider and/or issue any land use permit or other permit which would result in the establishment, implementation, placement, construction or development of any new natural gas mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town.
5. This moratorium and prohibition shall apply to all real property within the Town.
6. 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, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town level approval, constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

C. If, within twelve months, the Town Board amends its local law relating to natural gas mining, then, in that event, the moratorium imposed by this local law shall expire

immediately on the date the Town local law relating to natural gas mining takes effect in accordance with Section 27 of the Municipal Home Rule Law.

Section 4. EXCEPTIONS.

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Town of Oneonta or other appropriate state or federal agency may be continued, provided that such use shall not be enlarged or extended beyond the existing location and operation. It is understood that this moratorium shall not apply to wells drilled for the purpose of obtaining water or for geo-thermal HVAC applications.

Section 5. HARDSHIP USE VARIANCES.

- A. The Town Zoning Board of Appeals retains the power and sole discretion to vary or adapt the strict application of the requirements of this Local Law in the case of unnecessary hardship, difficulties with the use variation requirements of the zoning or circumstances that would unconstitutionally deprive the owner of all economically viable and productive use of the lands involved, provided the application is consistent with the intent of this Local Law and that it is documented that the hardship is viable during the time frame of this moratorium.
- B. An application for a variance plus seven (7) copies thereof shall be filed with the Town Code Enforcement Office, together with a filing fee of \$100. The application shall specifically identify the land involved, recite the nature of the proposed use of the land, provide a narrative description of the project and identify the circumstances pursuant to which the variance is sought and the reasons why the variance is claimed. It shall also provide documentation, clearly expressing and satisfying all requirements of NYS Law regarding the granting of use variances including that a use variance may only be granted where (a) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence, (b) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood: (c) the requested use variance if granted, will not alter the essential character of the neighborhood, (d) the alleged hardship has not been self created. Any costs, including expert consulting fees, incurred by the Town shall be paid by the Applicant immediately upon request or the application may be denied.
- C. All decisions on granting or denying such variances shall be made by the Town Zoning Board of Appeals based solely on their careful examination of the required evidence as stated above, and based on whether or not the requested variance is compatible with the Comprehensive Plan of the Town and the Town zoning regulations. Unless the applicant can prove that all of the above requirements for the proposed variance are satisfied, the Town Zoning Board shall be obligated to deny the application.
- D. The Town Zoning Board of Appeals shall conduct a public hearing on any request for a variance within the time frame outlined in section 103-85 (C) of the Town Code.

Section 6. ENFORCEMENT.

This local law shall be enforced by the Code Enforcement Officer of the Town of Oneonta, or such other zoning enforcement individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to the office and to file the same in the office of the Town Clerk.

Section 7. VIOLATIONS.

In addition to the criminal penalties and other remedies set forth in Town Law section 268, any person violating any of the provisions of this local law shall be guilty of an offense and upon a conviction thereof, be given a civil penalty of no less than \$500.00 and no more than \$1,000.00 per day for this violation. Each day's violation shall constitute a separate and additional violation. An action may be commenced in a court of competent jurisdiction to recover such penalty. In addition thereto, violations of this local law shall be subject to being restrained by injunctive relief.

Section 8. SEQR CLASSIFICATION.

As a land use moratorium, this local law shall be classified as a Type II action for the purposes of SEQR.

Section 9. CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the Town Law and section 10 of the Municipal Home Rule Law of the State of New York. During the duration of times that this Law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law related to zoning and subdivisions. Specifically, this Law is intended to supersede Town Law Sections 130, 261, 262, 263, 264, 265, 267, 267-a, 267-b, 267-c, 268, 269, 274-a, 274-b, 276, 277, 278 and 279.

Section 10. SEVERABILITY.

If any clause, sentence, paragraph, section, article or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 11. EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Secretary of State.