
Protection of Rural Environment Local Law of the Town of Roseboom

Be it Enacted by the Town Board of the Town of Roseboom, Otsego County, New York, as follows:

I. Title

This Local Law shall be known as the "Protection of Rural Environment Local Law of the Town of Roseboom", adopted as Town of Roseboom Local Law No. ____ of 2012.

II. Enactment

This Local Law is adopted and enacted pursuant to the authority and power granted by the New York State Constitution, Article IX, Municipal Home Rule Law of the State of New York, Articles 2 and 3, the New York State Statute of Local Governments, Article 2, the Town Law of the State of New York, Environmental Conservation Law, Articles 17 and 27, and New York State Public Health Law §228(2) in conformance with the Comprehensive Plan for the Town of Roseboom, to protect and promote public health, safety, comfort, convenience, economy, natural and cultural resources, aesthetics, and the general welfare, and for the purposes outlined in Section III.

III. Purpose

The purposes of this Local Law, which prohibits Heavy Industry within the Town, are as follows.

It is the purpose of this Local Law to promote the protection, order, conduct, safety, health, and well-being of the residents of Roseboom and the lands which lie within the Town's borders.

It is the purpose of this Local Law to protect and enhance the Town's physical and visual environment.

It is the purpose of this Local Law to respond to the present, legitimate concerns of the citizens of the Town about the potential for a massive expansion of natural gas

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drilling in the Town and about the potential for major portions of the Town and its citizens to be adversely impacted by the drilling and operation of natural gas wells and by the activities associated with their operation.

It is the purpose of this Local Law to protect the citizens of the Town of Roseboom from potential human health hazards presented by natural gas exploration, extraction or processing as evidenced by the recent public statements issued by the medical community.

It is the purpose of this Local Law to uphold and implement the Town of Roseboom Comprehensive Plan.

The Town Board of the Town of Roseboom, in adopting a comprehensive plan in May of 2012, established town policy guiding future growth and development as follows:

- A. Protect the Town's natural resources in an effort to assure their sustainability and availability by preventing irreplaceable loss, misuse and/or degradation.
- B. Effectively plan for and manage future changes in land use that allow development while preventing the loss of natural and cultural resources.
- C. Maintain and restore community character to encourage high quality diversified housing that meets the needs of all age and income groups resulting in neighborhoods that are safe, clean, and promote increased residency.
- D. Promote small business growth in the area to increase the tax base and encourage families to move to and stay in the area.
- E. Promote and protect our historic structures and landscapes.
- F. Maintain and protect the Town's roads and bridges. Minimize hazards and congestion of roads within the Town.
- G. Protect water resources, flood plains and wetlands in an effort to assure their sustainability by preventing irreplaceable loss, misuse, and/or degradation.
- H. Identify, protect, and preserve significant historical, archeological and other cultural resources within the Town of importance to the community, state and nation. Protect, preserve and as appropriate, encourage the adaptive reuse of historic properties.

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- I. Encourage the creation and maintenance of high quality diversified housing that meets the needs of all age and income groups resulting in neighborhoods that are safe, clean, friendly, and conveniently accessible to community services and public facilities.

Further, the Town Board, in adopting its comprehensive plan, incorporated analysis of natural resources from the Otsego County Planning Department which established that:

- J. Based on review of the Otsego County Flood Map, those portions of Roseboom that are not within steep slopes are typically associated with 100 and 500 year flood plain areas. Resultant from this is a Town largely compromised in its development potential; where it is not steep, it floods.
- K. Roseboom is located at the headwaters of the Cherry Valley Creek, which flows into the Susquehanna River. The Town's eastern streams flow to the Mohawk and Hudson Rivers.
- L. The Town of Roseboom Soil Map shows that the soils in the Town of Roseboom are clay, rock, slate, shale, and prime farmland soil.
- M. The Town of Roseboom houses a variety of wildlife including those on the endangered and threatened list issued by the NYS Department of Conservation. Jacob's Ladder (*Polemonium van-bruntiae*), a globally rare plant, is located within Lordsland Conservancy, a nature preserve in Roseboom.
- N. A well-known scenic vista is at the top of Jocelyn Hill Tower Road showing rolling hills, woodlands, fields, and scenic valley views. On top of County Route 39, known as Tower Hill Road, there is a panoramic view of valleys and woodlands. Honey Hill Road's viewshed is compromised of hilltops, rolling fields, and lush woodlands. Adair Road also has a similar valley viewshed. Many scenic vistas exist throughout the Township.

Further, the Town Board, in adopting its comprehensive plan specifically established the following principles and priorities:

- O. Protect and preserve the rural character, natural resources and landscapes, scenic vistas, and clean and safe land, air, and water with the full enforcement of all local, state and federal laws and mandates.
- P. Preserve and maintain accessibility to open spaces.
- Q. Maintain safety and security for residents and future generations.

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- R. Ensure viability of agriculture and the farming community.
- S. Safeguard the Town's rural character.
- T. Maintain the Town's important national historic character rich with the history of America's earliest colonial beginnings.
- U. Responsibly manage and improve new growth while respecting property rights in order to protect the integrity of the Town.
- V. Support well-built and maintained roadways, but also control traffic volume and speed to be in harmony with the gentle nature of the Township.
- W. Set quality design standards to ensure that new growth and development will enrich community aesthetics.
- X. Hold together the fabric of the Town while still connecting the people of Roseboom to the rest of the world.

Further, it is the purpose of this Local Law to prohibit those activities related to heavy industry, which may impact wetlands, lakes, streams, groundwater resources, public drinking supplies, public roads, historic landscapes, agriculture, small town, rural character, and the area's tourism and recreational-based economy. Impacts related to heavy industry that Roseboom seeks to avoid include, but are not limited to contaminated water supplies, air pollution, traffic congestion, deterioration of roads and bridges, noise, introduction of industrial uses into non-industrial areas, human and animal illness, and incompatible changes to the rural character of Town.

IV. Definitions

Agriculture - The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including timber operations as defined in AML Article 25-AA (301).

Aquifer – A geologic formation, group of formations, or part of a formation capable of storing or transmitting and yielding groundwater to wells or springs.

Comprehensive Plan – A long-range plan intended to guide the growth and development of the Town of Roseboom which includes inventory and analysis leading to recommendations for the Town's land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities,

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and community design, all related to the Town's goals and objectives for these elements and adopted pursuant to New York State Town Law 272-a.

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.

Environment - All external conditions and influences in an area including geology, water resources, air quality, plants and animals, agricultural resources, aesthetic resources, historic resources, open space resources, recreational, cultural, and municipal resources, road and transportation systems, visual character and community character.

Exploration for Natural Gas and/or Petroleum - Geologic or geophysical activities related to the search for natural gas and/or petroleum 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.

Extraction of Natural Gas and/or Petroleum - The digging or drilling of a well to explore for, develop or produce natural gas and/or petroleum, including, but not limited to any and all forms of fracturing.

Heavy Industry - Any use or activity, which generates significant volumes of smoke, odors, noise, or other polluting wastes and is inconsistent with the rural, non-industrial character of the Town of Roseboom. Examples of "heavy industry" which are intended to be included in this definition are: chemical manufacturing; natural gas and petroleum mining (as defined elsewhere in this Law) including exploration, extraction, processing, and resultant waste; coal mining; coal processing; and steel manufacturing. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to the activities identified in the examples.

Generic examples of uses not intended to be included in the definition of "heavy industry" are: milk processing plants; dairy farms; office and communications uses; garment factories; woodworking and cabinet shops; automobile repair shops; wineries and breweries; warehouses; equipment repair and maintenance facilities; helipads; parking lots and parking garages; light manufacturing or light industrial facilities (as defined elsewhere in this Law); agriculture; and surface gravel and sand

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mining. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

Light Manufacturing And Light Industrial Operations - A facility or use which does not produce high volumes of polluting wastes, is compatible with the Town of Roseboom's rural, non-industrial character, does not require heavy, noisy or otherwise objectionable machinery or transporting equipment, and in addition, meets one of the following descriptions:

- i. Light Manufacturing. A use involving the manufacture of a product, subject to compliance with any other applicable ordinances, laws or regulations, in one of the following categories:
 - A. Food and beverage production, including but not limited to such uses as a dairy processing plant, bakery, and bottling plant.
 - B. Apparel and other textile products.
 - C. Furniture and fixtures.
 - D. Printing and publishing.
 - E. Electrical and electronic machinery and equipment.
 - F. Metal fabrication.
 - G. Mail order distribution center.
 - H. Warehousing ancillary to the authorized use.
- ii. Light Industrial. A facility, which manufactures, designs, assembles, or processes a product for wholesale or retail sale.

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.

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Natural Gas and Petroleum Mining - The Exploration for Natural Gas and/or Petroleum, the Extraction of Natural Gas and/or Petroleum from the ground, the Processing of Natural Gas and/or Petroleum, and the storage, treatment, and/or disposal of waste resultant from Natural Gas and/or Petroleum Exploration, Extraction, and/or Processing. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity and/or use of land and/or water, which facilitates or supports natural gas and/or petroleum exploration, extraction, processing, and/or the storage, treatment, and/or disposal of resultant waste. Examples of activities or uses of land and/or water expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new natural gas and/or petroleum well, regardless of well type;
- Development of a natural gas and/or petroleum well operations site;
- Supporting structures and infrastructure, such as Compression Facilities and Processing Facilities;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the Exploration for, Extraction and/or Processing of Natural Gas and/or Petroleum;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for or in connection with the Exploration, Extraction, and/or Processing of Natural Gas and/or Petroleum, and/or the storage, treatment, and/or disposal of resultant wastes.

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples. This definition shall be construed to encompass and include any activity and/or use of land and/or water, which facilitates or supports Natural Gas and/or Petroleum Exploration, Extraction, Processing, and/or the storage, treatment, and/or disposal of resultant waste with the exception of (1) any public utility as defined within this Law (2) pipelines and compression facilities under the jurisdiction of the Federal Energy Regulatory Commission and the New York Public Service Commission, (3) gathering lines that connect oil and gas development in another municipality with a regulated pipeline or a public utility, (4) the sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal farm, residential, business, commercial, and other permitted uses within the Town, (5) subsurface fracturing only as a result of a permitted well operation located in another municipality, (6) water withdrawals and other water management issues under the jurisdiction of county, state, and/or federal agencies and/or commissions, and (7) office-based management, administrative, accounting,

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advocacy, and other such professional, non-industrial services within the Town of Roseboom that may concern the Oil and Gas Industry.

Non-Conforming Use – A use or activity that was lawful prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of the law.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, or estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Petroleum - Crude petroleum oil and all other hydrocarbons, regardless of gravity, in liquid form.

Processing Facility – An industrial operation and/or plant that processes and refines natural gas and/or petroleum into other commodities.

Processing of Natural Gas and/or Petroleum – The production of any commodity made from and/or by-product of natural gas or petroleum including, but not limited to refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from petroleum or gas, whether herein enumerated or not.

Public Utility – An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility use provides electric, gas, steam, telephone service, water or sewerage directly to the general public.

Road – A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

Waterbody - Any natural or artificial pond, lake, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

Watercourse –

- i. Rivers, streams, brooks and waterways, which are delineated on the most recent edition of the United States Geological Survey topographic maps of the Town.

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- ii. Any other streams, brooks and waterways containing running water for a total of at least three (3) months a year.
- iii. Lakes, ponds, marshes, swamps, bogs, natural springs and all other waterbodies, natural or artificial, which are fed by or have discharge to another wetland, waterbody or watercourse.

V. Regulation

- A. Beginning on the effective date of this Local Law, it shall be unlawful for any person to conduct any new "Heavy Industry," as the term is defined in this Local Law, within the Town of Roseboom.
- B. During the effective period of this Local Law:
 - 1. The Town Planning Board shall not consider and/or approve any site plan, any special use permit or other permit which would result in the establishment, implementation, placement, construction, development and/or expansion of "Heavy Industry" as defined within this Law.
 - 2. The Town Zoning Board of Appeals, if appointed, shall not consider, nor grant any variance or other permit for any use, which would result in the establishment, implementation, placement, construction, development and/or expansion of "Heavy Industry" as defined within this Law.
 - 3. Zoning Enforcement, if appointed, shall not consider and/or issue any land use permit or other permit, which would result in the establishment, implementation, placement, construction, development and/or expansion of "Heavy Industry" as defined within this Law.

VI. Enforcement and Violations

- A. Upon authorization by the Town Board, the Town may institute an action or proceeding in a court of competent jurisdiction to prevent, restrain, enjoin, correct, or abate any violation of or to enforce any provision of this Law.

VII. Non-Conforming Uses

"Natural Gas and Petroleum Mining," as defined elsewhere in this Law and included within the definition of "Heavy Industry," shall be prohibited in the Town of Roseboom beginning on the effective date of this Local Law.

Any leases of property for the purpose of allowing "Natural Gas and Petroleum Mining" as defined within this Law which are being presently conducted on land in the Town as of the effective date of this Law, shall be subject to the following:

A. Existing Leases:

1. Where a lease which allows "Natural Gas and Petroleum Mining" as defined within this Law has been executed and where no substantive "Natural Gas and Petroleum Mining" as defined within this Law has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities beginning on the effective date of this Local Law. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

B. Existing Operations

1. Where a lease which allows "Natural Gas and Petroleum Mining" as defined within this Law has been executed, and where substantive extraction activity is occurring as of the effective date of this Law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.
2. Upon the depletion of any natural gas and/or petroleum well which is allowed to remain in operation pursuant to this provision, or upon any other termination of the extraction activity for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity shall not be renewed.
3. Further, no "Natural Gas and Petroleum Mining" allowed to remain in operation as a non-conforming use shall be permitted to expand after the effective date of this Local Law.

VIII. Severability

If any specific part or provision or standard 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, 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 this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof.

IX. Interpretation; Conflict With Other Laws

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

X. Effective Date

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.