



**THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK**

Date: December 21, 2011

Sponsored by Council Members: Weslar, Webb, Massey, Kramer, Collins

Introduced by Committee: Municipal and Public Affairs

LOCAL LAW No. 6 2011
entitled

**A LOCAL LAW TO EFFECT A PROHIBITION
OF NATURAL GAS AND PETROLEUM
EXPLORATION AND EXTRACTION
ACTIVITIES, UNDERGROUND STORAGE OF
NATURAL GAS, AND DISPOSAL OF
NATURAL GAS OR PETROLEUM
EXTRACTION, EXPLORATION AND
PRODUCTION WASTES**

WHEREAS, the City of Binghamton overlies the "Clinton Street Ballpark Aquifer System" which has been designated by the Environmental Protection Agency ("EPA") as a "Sole Source Aquifer;" and

WHEREAS, one or more of the activities intended to be prohibited by § 250-4 of this law to be conducted within the City, would result in the storage, use and discharge of significant quantities of chemicals into the City's environment; and

WHEREAS, the City wishes to protect its residents, its property, and the water resources; and

WHEREAS, a public hearing was duly noticed and held on December 21, 2011.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Code of the City of Binghamton, is hereby amended to add a new Chapter 250, *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* as annexed hereto and made a part hereof.

Section 2. That this Local Law shall take effect upon filing with the Secretary of State.

I hereby certify the above to be a true copy
of the legislation adopted by the Council
of the City of Binghamton at a meeting
held on 12/21/11. Approved by the
Mayor on 12/22/11.

A handwritten signature in dark ink, appearing to read "Shirley J. J. J.", is written over the certification text.

Statement of Proposed Action

The Proposed Action consists of the review, adoption and implementation of a Local Law for the City of Binghamton entitled: ***"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 "Proposed Action" or the "proposed local law")

The Proposed Action is a direct legislative action by the City Council of the City of Binghamton, and is not a specific construction project on a specific site, and will not result in any direct or indirect physical changes to real property or land use. As a direct legislative action, the City Council is the sole agency with jurisdiction over the Proposed Action, and is therefore the sole "involved agency" as defined in SEQR 6 NYCRR Part 617 (an involved agency, "means an agency that has jurisdiction by law to fund, approve or directly undertake an action"). The City Council is the only possible party to act as lead agency for the environmental review of the Proposed Action.

The Environmental Protection Agency (EPA) has designated all of the City of Binghamton as being above the EPA designated Sole Source Aquifer known as the Clinton Street Ballpark Aquifer. The aquifer serves as a public drinking water source.

The Susquehanna and Chenango Rivers are the defining physical elements with the City and important natural resource. The hazard of floods, and their occurrences, has been a defining feature of the City of Binghamton since it's founding. Since 1913, the Susquehanna River has left its banks over 100 times. Pollution that enters the aquifer or the rivers can directly impact the entire Susquehanna River watershed.

The proposed local law would protect the Clinton Street Ballpark Aquifer by reducing the potential for natural gas exploration, extraction and production waste products to contaminate the aquifer and/or the Susquehanna River and/or the Chenango River. The proposed local law is intended to prevent degradation of the aquifer and to ensure the quality of the groundwater, including possible future water supplies for the City. The prohibitions in the proposed local law will serve to protect the health, safety and welfare of the residents of the City of Binghamton. The local is for a twenty-four month duration, after which time the City Council will determine whether or not to continue the prohibition.

The City Council of the City of Binghamton has determined that the proposed local law will protect and preserve the City's interest in the public waters within its boundaries and will ensure the future availability of present and potential sources of water supply for present and future generations. The City Council has

also determined that the Proposed Action will enhance the local physical and visual environment against the dangers of spills and leaks that have the potential to contaminate the water supply and will reduce air, water and land pollution that is reasonably likely to result from the accidental or intentional release, discharge or spreading of Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes. In addition, the City Council has found that the proposed local law will minimize surface and ground water pollution which may affect human, animal or plant life of the aquifer in the City; and minimize impacts from truck traffic carrying Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes.

In order to fulfill the requirements of the New York State Environmental Quality Review Act (SEQRA), a Full Environmental Assessment Form (EAF) has been prepared in order to assess the general environmental impacts of the proposed local law. This Full EAF discusses only the generic impacts of the proposed local law. As mentioned previously, the Proposed Action does not involve the approval of specific developments or land use changes. In preparing the Full EAF, it was determined that the Proposed Local Law, if adopted without modification by the City Council, will not have any significant effect on the environment. Accordingly, it is expected that a Negative Declaration will be prepared on the basis of the Full EAF.

Reasons Supporting This Determination:

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

The City Council, as Lead Agency, has determined that the Proposed Action will not result in any significant adverse environmental impacts.

Specifically, the City Council determines (following the guidance of SEQRA) that the Proposed Action would:

- (i) Not result in "a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;" (§617.7(c)(1)(i))
- (ii) Not result in "the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;" (§617.7(c)(1)(ii))
- (iii) Not result in "the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;" (§617.7(c)(1)(iii))
- (iv) Not result in "the creation of a material conflict with a community's current plans or goals as officially approved or adopted;" (§617.7(c)(1)(iv))

Continued on attachment.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

For Further Information:

Contact Person:

Address: 38 Hawley Street, Binghamton, NY 13901

Telephone Number:

For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:

Chief Executive Officer, ~~Town~~ City / Village of Binghamton

Other involved agencies (If any)

none

Applicant (If any)

Environmental Notice Bulletin, 625 Broadway, Albany NY, 12233-1750 (Type One Actions only)

Attachment to Negative Declaration

Continued

- (v) Not result in "the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;" (§617.7(c)(1)(v))
- (vi) Not result in "a major change in the use of either the quantity or type of energy;" (§617.7(c)(1))
- (vii) Not result in "the creation of a hazard to human health;" (§617.7(c)(1)(vii))
- (viii) Not result in "a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;" (§617.7(c)(1)(viii))
- (ix) Not result in "the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;" (§617.7(c)(1)(ix))
- (x) Not result in "the creation of a material demand for other actions that would result in one of the above consequences;" (§617.7(c)(1)(x))
- (xi) Not result in "changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or" (§617.7(c)(1)(xi))
- (xii) Not result in "two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision." (§617.7(c)(1)(xii))

When considered independently, none of the provisions of the proposed law would result in significant adverse environmental impacts. Considered cumulatively, as required by SEQRA, no significant adverse environmental impacts would result if these specific provisions are considered together as a whole. Therefore, the Proposed Action will not result in any significant adverse environmental impacts.

Reasons Supporting This Determination

The City Council prepared a full Environmental Assessment Form (EAF) to analyze the potential impacts of the Proposed Action. The EAF includes a detailed analysis of potential impacts of the Proposed Action. The key facts and conclusions supporting the City Council's determination of environmental significance include, but are not limited to the following:

The City of Binghamton overlies the "Clinton Street Ballpark Aquifer System" which has been designated by the Environmental Protection Agency ("EPA") as a "Sole Source Aquifer." The EPA determined that this aquifer is the sole or principal drinking water source for the area and that, if it were contaminated, this would create a significant hazard to public health. In making this determination, the EPA concluded, "contamination of the ground water resources by industrial chemicals is

a problem in [...] Broome County. Highly permeable soils extend over the aquifer, and this "permits any accidental or intentional chemical discharge to percolate down, thus impacting the ground water." The geologic properties of the aquifer "facilitate rapid and direct infiltration [of pollutants] into the ground water zone." Heavy pumping by numerous water wells in the aquifer has created a reverse hydraulic gradient "which allows river water to flow directly into the [aquifer]." The EPA also found that "contamination of this precious resource would create a significant hazard to public health" and that removal of chemicals "on a large scale, if possible, would be very expensive and the water quality would still be questionable." The EPA found that there are no economically feasible alternative drinking water sources that could replace the aquifer in the event of contamination. (*Clinton Street Ballpark Aquifer System Support Document*, October 1984) (the "EPA Report")

The EPA Report identifies the Susquehanna River as the "only possible" replacement source for the aquifer. The EPA Report goes on to conclude that due to the close interrelationship between the aquifer and the river, there would be continuous exchange of contaminants between the two water sources. The City presently obtains its water supply from the Susquehanna River, some 20 miles upstream. Serious chemical contamination of the Susquehanna River or the aquifer would leave the City without an alternative water source. (The "EPA Report")

Allowing one or more of the activities prohibited by Section 4. of the proposed local law to be conducted within the City, would result in the storage, use and discharge of significant quantities of chemicals into the City's environment. The Endocrine Disruption Exchange (TEDX - online at www.endocrinedisruption.com/chemicals.multistate.php) maintains a database of potential health effects of chemicals used during natural gas operations. TEDX's analysis found that only 10% of the chemical products used by the natural gas industry had no known health effects, and 90% had at least one potential health effect. Nearly half of the products contained one or more chemicals considered to be endocrine disruptors, which are chemicals that interfere with the human endocrine system. Unlike almost all other industrial processes, natural gas drilling directly introduces chemicals into the land and subsurface of the earth. The brain and nervous system can be harmed by 55% of the chemicals the industry uses. The storage, handling, use, accidental discharge or intentional discharge of such chemicals could negatively impact the quality of water resources within the City. Water pollution is hazardous to the public health. Accidental chemical spills, discharges of toxic and hazardous materials, and flooding can threaten the quality and quantity of water supplies and resources both in the City and in the towns that rely on the Clinton Street Ballpark Aquifer, posing potential public health and safety hazards. As the EPA Report found, the loss of clean water supplies would have "grave consequences" and would be a "significant hazard to public health."

The fact that Natural Gas Exploration And/Or Petroleum Exploration Activities, and Natural Gas And/Or Petroleum Extraction Activities, and Natural Gas And/Or

Petroleum Support Activities are subject to environmental regulations does not alter the fact that these activities and the wastes that they generate present some hazard to the City. Such environmental regulations seek to limit, but cannot eliminate, pollution. The City is not required to defer action to protect its residents, its property, and the water resources located within the City until it is faced with a serious nuisance or health problem.

Environmental regulations cannot prevent intentional illegal dumping of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes such as the approximately 800 gallons of petroleum sludge from a gas well site was dumped by an oil and gas worker on state-owned hunting lands in Bradford County, Pennsylvania on or about December 2, 2011 (as reported in the Press and Sun Bulletin). The EPA Report specifically notes that "illegal dumping is also a possible source of further contamination." (The EPA Report)

Surface spills and underground migration of liquid wastes that originate from the exploration, drilling and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) can occur, and such products may come into contact with and contaminate and pollute groundwater and/or soil. Experience from states in which hydraulic fracturing is active indicates that contamination of drinking water and streams is not uncommon whether it be due to poorly constructed well casings, cracked well casings, surface spills, leaking containment ponds, migration of contamination through abandoned wells, or for other undocumented or unexplained reasons (Fractured Communities: Case Studies of the Environmental Impacts of Industrial Gas Drilling. Michaels et al. 2010. <http://riverkeeper.org/Fractured-Communities-FINAL-September-2010.pdf>).

State University of New York at Buffalo researchers led by Tracy Bank reported that the Marcellus Shale is naturally enriched in uranium and has enhanced solubility and mobility due to water-rock interactions over millions of years and hence produced water secondary to the fracking process contains unacceptably high levels of radioactivity (http://gsa.confex.com/gsa/2010AM/finalprogram/abstract_181465.htm; <http://www.buffalo.edu/news/11885>).

Environmental regulations cannot control the spate of historic crests of recent flood events, such as the floods that occurred on September 8, 2011 and June 28, 2006. Both the Susquehanna River and the Chenango River are major sources of flooding, and to a lesser extent Park and Pierce Creeks. (Broome County Flood Insurance Survey, 2010) Future flood events could release Natural Gas Extraction, Exploration or Production Wastes onto the land or into the waters in the City.

The City of Binghamton has devoted significant amounts of time and resources to improving the economic and environmental quality of the City. The City's Comprehensive Plan states that "Reestablishing Binghamton as a vibrant regional

center means continued investment in the City's neighborhoods, parks and the overall public realm. **It means protecting the environmental quality of the City.**" (emphasis added, Comp. Plan p. 31) The City's Local Waterfront Revitalization Plan is based upon the establishment of "desirable water-based uses for the City of Binghamton's waterways and adjacent lands, resulting in the establishment of a 'destination'." The City's Rust to Green Hatch Project is designed to shift the City from a "rust belt city" to a green center of vitality and livability. The Rust to Green Hatch Project is based upon the premise that social, economic and ecological renewal is possible and if promoted could seed recovery in the form of a greener, more livable city with a higher quality of life. The Neighborhood Development Project Fund was created in order to provide residents with the resources to improve, beautify, and strengthen their neighborhoods.

Chapter 250,
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
[HISTORY: Adopted by the Council of the City of Binghamton on 12-__-2011 by Permanent Local
Law 11-__]

ARTICLE I, General Provisions

§ 250-1. Title.

This law shall be known as the “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.”

§ 250-2. Authority and intent; findings; purpose.

A. The City Council of the City of Binghamton hereby adopts this law pursuant to the authority described at § 250-12 of Article II, *Authority and Findings*.

B. The City Council has found, determined, and made the declarations of findings set forth at § 250-13 of Article II, *Authority and Findings*.

C. The purposes underlying the City Council’s passage of this law, as articulated, found, and declared by the City Council, are set forth at § 250-14 of Article II, *Authority and Findings*.

§ 250-3. Definitions.

For purposes of this law, the following terms shall have the meanings respectively set forth below:

Agriculture Use—Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern—Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the City.

City—The City of Binghamton, Broome County, New York.

Gathering Line, Or Production Line—Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission’s jurisdiction under

section 1(b) of the Natural Gas Act, and which does not meet the definition of a “Major utility transmission facility” under the Public Service Law of New York, Article 7, § 120(2)(b).

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 ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include:

- (i) single family septic systems that receive solely residential waste;
- (ii) drainage wells used to drain surface fluids, primarily storm runoff, into the ground;
- (iii) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power; or
- (iv) bore holes drilled to produce potable water to be used as such.

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 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—Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste:

- (i) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the City, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons;

- (ii) natural gas or petroleum drilling fluids;
- (iii) natural gas or petroleum exploration, drilling, production or processing wastes;
- (iv) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material);
- (v) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum;
- (vi) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum;
- (vii) drill cuttings from natural gas or petroleum wells; or
- (viii) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Production Wastes does not include:
 - (a) recognizable and non-recognizable food wastes, or
 - (b) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility—Any of the following:

- (i) tanks of any construction (metal, fiberglass, concrete, etc.);
- (ii) impoundments;
- (iii) pits;
- (iv) evaporation ponds; or
- (v) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that:
 - (a) are being held for initial use;
 - (b) have been used and are being held for subsequent reuse or recycling;
 - (c) are being held for treatment; or
 - (d) 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:

- (i) Natural Gas Compression Facility;
- (ii) Natural Gas Processing Facility;
- (iii) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;

- (iv) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (v) Land Application Facility;
- (vi) Non-Regulated Pipelines;
- (vii) Underground Injection; or
- (viii) 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 City. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material—Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation—The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

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

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:

- (i) the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act; or
- (ii) 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.

§ 250-4. Prohibition.

A. From and after the effective date of this law, no person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the City 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.

B. The prohibitions set forth above in Clause A of this § 250-4 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 City; or
- (ii) prevent or prohibit the incidental or normal sale, 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 City, 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.

C. This prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on December 31, 2013, unless extended by City Council.

§ 250-5. Penalties.

A. Failure to comply with any of the provisions of this law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both, for the first

offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A, each day that a violation of this law exists shall constitute a separate and distinct offense.

B. Compliance with this law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the City by the City Council.

C. In the event the City is required to take legal action to enforce this law, the violator will be responsible for any and all necessary costs incurred by the City relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the City on which the violation occurred, by including such expense in the next annual City tax levy against such property, and such expense shall be a lien upon such property until paid.

§ 250-6. "Grandfathering" of legal, pre-existing non-conforming use.

Notwithstanding any provision hereof to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the City as of the effective date of this law shall be subject to the following:

A. Where, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the City, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses C and D of this § 250-6.

B. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the City as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A of this § 250-6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by § 250-4 hereof.

C. Upon the depletion of any well which is allowed to remain in operation after the effective date of this law by virtue of Clause A of this § 250-6, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A of this § 250-6 for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by § 250-4 hereof.

D. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A of this § 250-6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities

extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A of this § 250-6, and instead shall in all respects be prohibited as contemplated by § 250-4 hereof.

§ 250-7. Hardship Exemption.

There is hereby established a mechanism by which persons aggrieved by a decision or determination of the City's (Code) Enforcement Officer (or other administrative official or body charged with the enforcement of this Law) regarding § 250-4 of this law may make appeal to the City Council for a Hardship Exemption from the provisions of said § 250-4. The City Council shall have the power, upon an appeal from a decision or determination of the (Code) Enforcement Officer or other administrative official or body charged with the enforcement of this Law, after public notice and hearing and in accordance with the requirements of law and this law, to consider applications for a Hardship Exemption from the provisions of § 250-4 of this law. Application requirements and the procedural mechanisms involved in consideration by the City Council of an application for a Hardship Exemption shall be as set forth in Article III, Hardship Exemption.

§ 250-8. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the City Council hereby declares that it would have enacted this law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

§ 250-9. Invalidity of any conflicting approvals or permits.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the City of Binghamton when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibition set forth at § 250-4 of this law.

§ 250-10. Superseding intent and effect.

During the time this law is in effect, it is the specific intent of the City Council to supersede any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the City of Binghamton.

ARTICLE II, Authority and Findings

§ 250-12. Authority and intent.

A. Authority. This law is intended to be consistent with and is adopted pursuant to the authority granted to the City Council of the City of Binghamton under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities:

- (i) New York State Constitution Article IX, Section 2 (c)(ii)(6) [acquisition, care, management and use of its highways, roads, streets, avenues and property];
- (ii) New York State Constitution Article IX, Section 2(c)(ii) (10) [government, health, and well-being of persons or property];
- (iii) Municipal Home Rule Law § 10(1)(i) [local government's property, affairs, or government];
- (iv) Municipal Home Rule Law § 10(1)(ii)(a)(6) [acquisition, care, management and use of its highways, roads, streets, avenues and property];
- (v) Municipal Home Rule Law § 10(1)(ii)(a)(11) [protection and enhancement of the physical and visual environment];
- (vi) Municipal Home Rule Law § 10(1)(ii)(a)(12) [government, protection, order, conduct, safety, health and well-being of persons or property];
- (vii) Municipal Home Rule Law § 10(1)(ii)(a) (14) [the powers granted in the statute of local governments];
- (viii) Municipal Home Rule Law § 10(2) [power to adopt local laws to the extent there is the power to act by ordinance, resolution, rule or regulation];
- (ix) Municipal Home Rule Law § 10(3) [specific enumeration of powers does not restrict general grant];
- (x) Municipal Home Rule Law § 10(4)(a), and (b)[authorization of appearance tickets and enforcement of local laws];
- (xi) Statute of Local Governments §10(1) [power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of functions, powers and duties];
- (xii) Statute of Local Governments §10(7) [power to perform comprehensive or other planning work];
- (xiii) Environmental Conservation Law § 17-1101 [right to suppress nuisances and to abate pollution of the waters of the state];
- (xiv) Environmental Conservation Law §19-0703 [right to suppress nuisances and to prevent or abate air pollution or air contamination];
- (xv) Environmental Conservation Law §27-0711 [jurisdiction over solid waste disposal and landfills] and
- (xvi) New York State Law, Public Health Law § 228 (2), and (3) [local laws for public health].

B. Intent. This Law is a police power and is enacted to protect the public health, safety and general welfare of the community. 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 City to address

matters of statewide concern. This Local Law is intended to and is hereby declared to have been enacted in order:

- (i) to protect and preserve the City's interest in the public waters within its boundaries;
- (ii) to ensure the future availability of present and potential sources of water supply for present and future generations;
- (iii) to enhance the local physical and visual environment against the dangers of spills and leaks that have the potential to contaminate the water supply;
- (iv) to reduce air, water and land pollution that is reasonably likely to result from the accidental or intentional release, discharge or spreading of Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes;
- (v) to minimize surface and ground water pollution which may affect human, animal or plant life of the aquifer in the City; and
- (vi) to minimize impacts from truck traffic carrying Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes.

§ 250-13. Findings of fact.

A. The City of Binghamton overlies the "Clinton Street Ballpark Aquifer System" which has been designated by the Environmental Protection Agency ("EPA") as a "Sole Source Aquifer." The EPA determined that this aquifer is the sole or principal drinking water source for the area and that, if it were contaminated, this would create a significant hazard to public health. In making this determination, the EPA concluded, "contamination of the ground water resources by industrial chemicals is a problem in [...] Broome County. Highly permeable soils extend over the aquifer, and this "permits any accidental or intentional chemical discharge to percolate down, thus impacting the ground water." The geologic properties of the aquifer "facilitate rapid and direct infiltration [of pollutants] into the ground water zone." Heavy pumping by numerous water wells in the aquifer has created a reverse hydraulic gradient "which allows river water to flow directly into the [aquifer]." The EPA also found that "contamination of this precious resource would create a significant hazard to public health" and that removal of chemicals "on a large scale, if possible, would be very expensive and the water quality would still be questionable." The EPA found that there are no economically feasible alternative drinking water sources that could replace the aquifer in the event of contamination, (*Clinton Street Ballpark Aquifer System Support Document*, October 1984, cited hereinafter as the "EPA Report").

B. The EPA Report identifies the Susquehanna River as the "only possible" replacement source for the aquifer. The EPA Report goes on to conclude that due to the close interrelationship between the aquifer and the river, there would be continuous exchange of contaminants between the two water sources. The City presently obtains its water supply from the Susquehanna River, some 20 miles upstream. Serious chemical contamination of the Susquehanna River or the aquifer would leave the City without an alternative water source.

C. Allowing one or more of the activities prohibited by § 250-4 of the law to be conducted within the City, would result in the storage, use and discharge of significant quantities of chemicals into the City's environment. The Endocrine Disruption Exchange (TEDX - online at www.endocrinedisruption.com/chemicals.multistate.php) maintains a database of potential health

effects of chemicals used during natural gas operations. TEDX's analysis found that only 10% of the chemical products used by the natural gas industry had no known health effects, and 90% had at least one potential health effect. Nearly half of the products contained one or more chemicals considered to be endocrine disruptors, which are chemicals that interfere with the human endocrine system. Unlike other almost all other industrial processes, natural gas drilling directly introduces chemicals into the land and subsurface of the earth. The brain and nervous system can be harmed by 55% of the chemicals the industry uses. The storage, handling, use, accidental discharge or intentional discharge of such chemicals could negatively impact the quality of water resources within the City. Water pollution is hazardous to the public health. Accidental chemical spills, discharges of toxic and hazardous materials, and flooding can threaten the quality and quantity of water supplies and resources both in the City and in the towns that rely on the Clinton Street Ballpark Aquifer, posing potential public health and safety hazards. As the EPA Report found, the loss of clean water supplies would have "grave consequences" and would be a "significant hazard to public health."

D. The fact that Natural Gas Exploration And/Or Petroleum Exploration Activities, and Natural Gas And/Or Petroleum Extraction Activities, and Natural Gas And/Or Petroleum Support Activities are subject to environmental regulations does not alter the fact that these activities and the wastes that they generate present some hazard to the City. Such environmental regulations seek to limit, but cannot eliminate, pollution. The City is not required to defer action to protect its residents, its property, and the water resources located within the City until it is faced with a serious nuisance or health problem.

E. Environmental regulations cannot prevent intentional illegal dumping of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes such as the approximately 800 gallons of petroleum sludge from a gas well site was dumped by an oil and gas worker on state-owned hunting lands in Bradford County, Pennsylvania on or about December 2, 2011 (as reported in the Press and Sun Bulletin). The EPA Report specifically notes "illegal dumping is also a possible source of further contamination."

F. Environmental regulations cannot control the spate of historic crests of recent flood events, such as the floods that occurred on June 28, 2006 and September 8, 2011. Both the Susquehanna River and the Chenango River are major sources of flooding, and to a lesser extent Park and Pierce Creeks. (*Broome County Flood Insurance Survey*, 2010) Future flood events could release Natural Gas Extraction, Exploration or Production Wastes onto the land or into the waters in the City.

§ 250-14. Purposes.

The purpose of the law is to enable the City of Binghamton to prohibit the activities prohibited by § 250-4 of the law. The City Council finds that an expiration on December 31, 2013, unless extended by City Council, duration for the law, 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 City of Binghamton 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.

ARTICLE III, Hardship Exemption

§ 250-15. Hardship exemption mechanism, standards.

A. The law establishes a mechanism by which persons aggrieved by a decision or determination of the City's Code Enforcement Officer (or other administrative official or body charged with the enforcement of the Local Law) regarding § 250-4 of the law may make appeal to the City Council for a Hardship Exemption from the provisions of said § 250-4. By virtue of the law, the City Council shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer or other administrative official or body charged with the enforcement of the law, after public notice and hearing and in accordance with the requirements of law and this law, to consider applications for a Hardship Exemption from the provisions of § 250-4 of the law.

B. No such Hardship Exemption shall be granted by the City Council without a showing by the applicant that enforcement of § 250-4 as to such applicant has caused "unnecessary hardship" for purposes hereof. In order to prove unnecessary hardship for purposes hereof, the applicant must demonstrate to the City Council satisfaction of each of the following four conditions:

- (i) that, unless the applicant is granted a Hardship Exemption from the provisions of § 250-4 of this Law, the applicant cannot realize a reasonable rate of return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence;
- (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the neighborhood or other area in the vicinity of the applicant's property;
- (iii) that the alleged hardship has not been self-created; and
- (iv) that the requested Hardship Exemption, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property in an adverse manner.

C. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return for purposes hereof, the City Council shall examine whether the entire original or expanded property holdings of the applicant (as opposed to only the site of the proposed project) are incapable of producing a reasonable rate of return. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Law, the City Council finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) unless the applicant is granted a Hardship Exemption from the provisions of § 250-4 of this law.

D. Unique Hardship. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Law, the City Council finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the neighborhood or other area in the vicinity of the applicant's property. The applicant must demonstrate the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in

disrepair or the fact that the property is then unimproved shall not be deemed sufficient to make the plight of the property unique or to contribute thereto. Exceptional topography is an example of a factor demonstrating the unique nature of the property.

E. Self-Created Hardship. The City Council may find that the applicant suffers from a self-created hardship in the event that the Board finds that:

- (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision;
- (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or
- (iii) when the applicant purchased the property, he or she knew or should have known that the property was subject to this law.

F. Adverse Alteration of Essential Character of the Neighborhood or Other Area in Vicinity. In making its determination of whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, the City Council shall take into account factors that are of vital importance to the citizens of the City including without limitation:

- (i) the residential and historic character of the City;
- (ii) the City's irreplaceable recreation, scenic, and tourism sites;
- (iii) the extent of hazard to life, limb or property that may result from the proposed project;
- (iv) health impacts;
- (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances;
- (vi) the impact on property values; and
- (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or historic, scenic and natural resources of the City. In order to find that the proposed project does not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property, the City Council shall interpret the public interest in said essential character of the neighborhood or other area to require, at a minimum, that the project will not do any of the following:
 - (a) pose a threat to the public safety, including public health, water quality or air quality;
 - (b) cause an extraordinary public expense; or
 - (c) create a nuisance.

G. In addition to any other application requirements from time to time established pursuant to this Law, an application for any Hardship Exemption shall contain a typewritten narrative explaining what the application is for, how the project meets or exceeds all of the criteria for a Hardship Exemption, and inclusion of the information outlined in § 250-15.H and § 250-15.I below.

H. With respect to a claim that the applicant cannot realize a reasonable rate of return, the applicant shall provide financial evidence containing reasonable specification of the nature and factual particulars of such claim, including, at a minimum (as to the entire parcel of which the proposed project is a part) specification of the following:

- (i) the date(s) of acquisition of the property;
- (ii) the purchase price;
- (iii) present value of the property;
- (iv) the amount of real estate taxes;
- (v) the amount of mortgages or liens and other expenses;
- (vi) the asking price for the property when it had been offered for sale;
- (vii) the costs of demolishing any existing structures on the property;
- (viii) efforts to market the property;
- (ix) a schedule of all other property in common ownership at either the date of the enactment of this Law or thereafter; and
- (x) “dollars and cents proof” such as appraisals, economic studies, and any other such evidence supporting the applicant’s contention that the grant of a Hardship Exemption is appropriate.

For purposes hereof, common ownership means all other interests in property either located within the City or contiguous to the City that is held by the any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a/an other corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

I. With respect to a claim that, if granted, the requested Hardship Exemption will not adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property, the applicant must demonstrate that the proposed project will not adversely affect essential character with regard to physical, economic, social or environmental elements. Examples of adverse impacts to the essential character of the neighborhood or other area include (without limitation) decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of roads, increased noise, dust, odor and/or glare, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents. In addition to all other application requirements from time to time established pursuant to this Law, each application for a Hardship Exemption shall include (without limitation) the following reports, so as to assist the City Council in determining whether a grant of the requested Hardship Exemption will adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property:

- (i) Environmental Assessment Form. A completed draft of an Environmental Assessment Form, Part I, regarding the proposed project.
- (ii) Description of Surrounding Uses. The approximate location of all neighboring

residential, park/recreational, and/or agricultural areas, as well as all county-designated Unique Natural Areas and locally designated Critical Environmental Areas (if any) within a two (2) mile radius of the perimeter of the site of the proposed use.

- (iii) Traffic Impact Report. A traffic impact report containing:
 - (a) the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels, if the Hardship Exemption is granted;
 - (b) existing and proposed daily and peak traffic hour levels as road capacity levels;
 - (c) a determination of the area of impact of traffic to and from the proposed project;
 - (d) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles;
 - (e) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed project if the Hardship Exemption is granted;
 - (f) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities;
 - (g) a traffic impact analysis of the effects of the proposed project on the transportation network in the City using passenger car equivalents if the Hardship Exemption is granted;
 - (h) articulation of the effects and impacts of the proposed project on traffic based on existing conditions and projected future background traffic on the state, county, and City road system if the Hardship Exemption is granted;
 - (i) evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions if the Hardship Exemption is granted; and
 - (j) determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic if the Hardship Exemption is granted.
- (iv) Road Impact Report. An evaluation of:
 - (a) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes;
 - (b) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any high-impact trucks likely to be used in connection with the proposed project if the Hardship Exemption is granted; and
 - (c) impacts to the rural or scenic character of any roads along the proposed traffic route if the Hardship Exemption is granted.
- (v) Transportation Plan. A description of ingress and egress through the proposed project site through which equipment and supplies will be delivered and which will

provide access during and after construction if the Hardship Exemption is granted, and identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging access/traffic routes and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.

(vi) Noise Impact Report. A report containing the following:

- (a) a description of the existing audible conditions at the project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation;
- (b) a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site if the Hardship Exemption is granted, including noise impacts from truck traffic travelling within the City to and from the proposed project;
- (c) with respect to the noise to be generated by construction and use of the proposed project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for such expectation (Such report shall cover, without limitation, low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise);
- (d) a description and map of the existing land uses and structures including any sensitive area sound receptors (e.g., residences, hospitals, libraries, schools, places of worship, parks, areas with outdoor workers, etc.) within one (1) mile of the project parcel boundaries. (Said description shall include the location of the structure/land use, and distances from the proposed project, and expected decibel readings for each receptor); and
- (e) a description of the project's proposed noise-control features, including specific measures proposed to protect workers and mitigate noise impacts for sensitive area receptors.

(vii) Visual Assessment. A visual presentation of how the site of the proposed project will relate to and be compatible with the adjacent and neighboring areas, within a two (2) miles radius of the perimeter of the site of the proposed project, if the Hardship Exemption is granted. This presentation shall include computerized photographic simulation showing the site during construction and fully developed and demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

(viii) Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Wastes. A report of:

- (a) a description of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and other solid wastes, industrial wastes, hazardous wastes, toxic and/or poisonous substances and pollutants (whether or not any such

- substances enjoy exemption or definitional exceptions from state or federal laws otherwise intended to protect the public with respect to hazardous, toxic, or poisonous substances) expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site if the Hardship Exemption is granted;
- (b) a description of controls and practices to eliminate or minimize release all such materials into the environment; and
 - (c) a plan for ultimate disposal of such materials whether on or off-site.
- (ix) Sustainability Analysis. A discussion of:
- (a) the extent of the use of nonrenewable resources during the initial and continued phases of the proposed project if the Hardship Exemption is granted;
 - (b) the expected duration of the initial and continued phases of the proposed project; and
 - (c) the extent to which the proposed project may contribute to an irreversible commitment to the continuation of this proposed use by future generations.
- (x) Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the City's and/or the neighborhood's (or other area's) suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses if the Hardship Exemption is granted.
- (xi) Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on City revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed project if the Hardship Exemption is granted.
- (xii) Fire Prevention, Equipment Failure and Emergency Response Report. A report containing:
- (a) description of the potential fire, equipment failures and emergency scenarios associated the proposed project that may require a response from fire, emergency medical services, police or other emergency responders if the Hardship Exemption is granted;
 - (b) an analysis of the worst case disaster associated with the proposed project if the Hardship Exemption is granted and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the City and their property;
 - (c) designation of the specific agencies that would response to potential fires, equipment failures, accidents or other emergencies if the Hardship Exemption is granted;
 - (d) description of all emergency response training and equipment needed to response to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and
 - (e) the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the site of the proposed use; and a detailed fire control and pollution prevention and emergency response plan.
- (xiii) Public Facilities and Services Assessment. An assessment describing:
- (a) whether current City public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed project (taking into account

all other uses that have been permitted or are currently operating in the City) if the Hardship Exemption is granted;

(b) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed project if the Hardship Exemption is granted (in determining the effect and impact of the proposed project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations); and

(c) a review of the impact of the proposed project on the safety if the Hardship Exemption is granted of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks, elevated sidewalks, green space buffers for pedestrians/bikes where established walking/biking route overlap/run along intended truck routes so as to prevent accidents.

(xiv) Property Value Assessment. A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the project if the Hardship Exemption is granted on the value of properties adjoining the project site.

(xv) Health Impact Assessment. A human health impact assessment identifying ways in which the proposed project could adversely affect the health of City residents if the Hardship Exemption is granted, and a priority list of recommendations to minimize the potential health impacts of the proposed project. The health impact assessment shall include:

(a) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the project site;

(b) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas;

(c) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, a perceived loss of shared community ideals and cohesion, declining property values, impacts to the education system and sudden changes in population numbers, demographics and customs, and

(d) proposed remedies to address principal findings.

§ 250-16. Hardship exemption application procedures; City Council consideration procedure.

A. Every application for a Hardship Exemption shall be in writing on forms from time to time prescribed by the City Council, and shall be signed by the applicant. If the applicant is not the owner of the property involved, the owner of the property shall nonetheless attest to the accuracy of the statements and representations made in the application, and both the applicant and the owner shall certify that he (or she or it) has undertaken due diligence with respect to the matters contained in the application. Ten (10) copies of the application and supporting

documentation shall be filed with the Board, accompanied by a fee in the amount of \$500. The City Council is hereby authorized to adopt rules and regulations for the conduct of hearings on applications for Hardship Exemptions, consistent with this Law and State statutes.

B. In evaluating an application for a Hardship Exemption, the City Council shall comply with any applicable provisions of the state environmental quality review act (SEQRA) under Article 9 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes Rules and Regulations.

C. The City Council shall schedule a hearing on all applications for a Hardship Exemption within sixty-two (62) days of the filing of a complete application therefor. Public notice of the hearing shall be given at least five (5) days prior to the date thereof by publication in a newspaper of general circulation in the City. The cost of sending or publishing any notices relating to any application shall be borne by the applicant, and shall be paid to the City Council prior to the hearing. At least five (5) days before any hearing on an application for, the City Council shall mail all notices that the City Corporation Counsel may advise are necessary or advisable.

D. In addition to such other procedures as may be required by applicable law, the following shall apply with respect to the conduct of hearings regarding applications for Hardship Exemptions:

- (i) the burden of proof shall remain with the applicant to show that he (or she or it) has satisfied the conditions necessary to qualify for a Hardship Exemption, and the burden shall never shift to the City;
- (ii) any party may appear in person or by agent or by attorney;
- (iii) no decision or determination shall be made except upon consideration of the record as a whole and as supported by and in accordance with substantial evidence;
- (iv) all evidence shall be made a part of the record; and
- (v) official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the City Council. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could be taken, every party shall be given notice thereof and shall on a timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

E. Decisions by the City Council on applications for a Hardship Exemption shall be made within sixty-two (62) days from the date of the final hearing on such matter. The time within which the City Council must render its decision may, however, be extended by mutual consent of the applicant and the Board. The final decision on such matter shall be made by written order signed by the chairperson of the City Council. Such decision shall state the findings of fact that were the basis for the City Council's determination. The City Council's decision as to each application for a Hardship Exemption shall be filed in the office of the City Clerk no later than five (5) business days after the day such decision is rendered, and shall be made a public record.

F. The City Council, in the granting of Hardship Exemptions, shall grant only the minimum Exemption that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

G. The City Council, in the granting of Hardship Exemptions, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such Hardship Exemption may have on the neighborhood or other area in the vicinity of the applicant's property. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, location and layout of buildings, and limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the Hardship Exemption shall be denied.

H. Any person aggrieved by a decision of the City Council with respect to an application for a Hardship Exemption may apply to the Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted no later than thirty (30) days after the filing of the City Council's decision in the City Clerk's office.

I. Any grant by the City Council of a Hardship Exemption shall expire if a building permit for the proposed project is not obtained by the applicant within one hundred twenty (120) days from the date of the decision granting such Exemption.

J. Whenever the City Council denies an application for a Hardship Exemption, the City Council shall refuse to hold further hearings on such or a substantially similar application by the same property owner or his successor or assign for a period of one (1) year following such denial, unless the City Council shall find and determine from the information supplied that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.

Statement of Proposed Action

The Proposed Action consists of the review, adoption and implementation of a Local Law for the City of Binghamton entitled: ***"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 "Proposed Action" or the "proposed local law")

The Proposed Action is a direct legislative action by the City Council of the City of Binghamton, and is not a specific construction project on a specific site, and will not result in any direct or indirect physical changes to real property or land use. As a direct legislative action, the City Council is the sole agency with jurisdiction over the Proposed Action, and is therefore the sole "involved agency" as defined in SEQR 6 NYCRR Part 617 (an involved agency, "means an agency that has jurisdiction by law to fund, approve or directly undertake an action"). The City Council is the only possible party to act as lead agency for the environmental review of the Proposed Action.

The Environmental Protection Agency (EPA) has designated all of the City of Binghamton as being above the EPA designated Sole Source Aquifer known as the Clinton Street Ballpark Aquifer. The aquifer serves as a public drinking water source.

The Susquehanna and Chenango Rivers are the defining physical elements with the City and important natural resource. The hazard of floods, and their occurrences, has been a defining feature of the City of Binghamton since it's founding. Since 1913, the Susquehanna River has left its banks over 100 times. Pollution that enters the aquifer or the rivers can directly impact the entire Susquehanna River watershed.

The proposed local law would protect the Clinton Street Ballpark Aquifer by reducing the potential for natural gas exploration, extraction and production waste products to contaminate the aquifer and/or the Susquehanna River and/or the Chenango River. The proposed local law is intended to prevent degradation of the aquifer and to ensure the quality of the groundwater, including possible future water supplies for the City. The prohibitions in the proposed local law will serve to protect the health, safety and welfare of the residents of the City of Binghamton. The local is for a twenty-four month duration, after which time the City Council will determine whether or not to continue the prohibition.

The City Council of the City of Binghamton has determined that the proposed local law will protect and preserve the City's interest in the public waters within its boundaries and will ensure the future availability of present and potential sources of water supply for present and future generations. The City Council has

also determined that the Proposed Action will enhance the local physical and visual environment against the dangers of spills and leaks that have the potential to contaminate the water supply and will reduce air, water and land pollution that is reasonably likely to result from the accidental or intentional release, discharge or spreading of Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes. In addition, the City Council has found that the proposed local law will minimize surface and ground water pollution which may affect human, animal or plant life of the aquifer in the City; and minimize impacts from truck traffic carrying Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes.

In order to fulfill the requirements of the New York State Environmental Quality Review Act (SEQRA), a Full Environmental Assessment Form (EAF) has been prepared in order to assess the general environmental impacts of the proposed local law. This Full EAF discusses only the generic impacts of the proposed local law. As mentioned previously, the Proposed Action does not involve the approval of specific developments or land use changes. In preparing the Full EAF, it was determined that the Proposed Local Law, if adopted without modification by the City Council, will not have any significant effect on the environment. Accordingly, it is expected that a Negative Declaration will be prepared on the basis of the Full EAF.

LOCAL LAW FILING

New York State Department of State
41 State Street, Albany, NY 12231

(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 underlining to indicate new matter.

County
City of Binghamton
City
Village

Local Law No. _____ of the year **2011**.

A local law “to effect a Prohibition of
**Natural Gas And Petroleum Exploration And Extraction Activities,
Underground Storage Of Natural Gas,
And Disposal Of
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”**

Be it enacted by the City Council of the

County
City of Binghamton, as follows:
City
Village

Section 1. TITLE

This Local Law shall be known as the
“**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.**”

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE

A. The City Council of the City of Binghamton hereby adopts this Local Law pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Local Law for all purposes by this reference.

B. The City Council has found, determined, and made the declarations of findings set forth at Section 2. of Appendix A attached hereto.

C. The Purposes underlying the City Council's passage of this Local Law, as articulated, found, and declared by the City Council, are set forth at Section 3. of Appendix A attached hereto.

Section 3. DEFINITIONS

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use--- Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern --- Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the City.

Gathering Line, Or Production Line --- Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

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 ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include: (a) single family septic systems that receive solely residential waste; (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground; (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power; or (d) bore holes drilled to produce potable water to be used as such.

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 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 --- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the City, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

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 City. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material --- Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is "radioactive material" for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation --- The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

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

City --- The City of Binghamton, Broome 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. PROHIBITION.

A. 1. From and after the effective 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 City 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.

2. The prohibitions set forth above in Clause 1. of this Section 4. A. are not intended, and shall not be construed, to: (y) 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 City; or (z) prevent or prohibit the incidental or normal sale, 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 City, 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.

B. This 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 is [24 months?] after said effective date; or (ii) the effective date of a duly-enacted local law repealing this Local Law.

Section 5. PENALTIES.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the City by the City Council.

C. In the event the City 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 City relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the City on which the violation occurred, by including such expense in the next annual City tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 6. 'GRANDFATHERING' OF LEGAL, PRE-EXISTING NON-CONFORMING USE

Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the City as of the effective date of this Local Law shall be subject to the following:

A.1. Where, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the City, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the City as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A. 1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 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 Clause A. 1. of this Section 6, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A. 1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. HARSHIP EXEMPTION.

There is hereby established a mechanism by which persons aggrieved by a decision or determination of the City's (Code) Enforcement Officer (or other administrative official or body charged with the enforcement of this Law) regarding Section 4. of this Law may make appeal to the City Council for a Hardship Exemption from the provisions of said Section 4. The City Council shall have the power, upon an appeal from a decision or determination of the (Code) Enforcement Officer or other administrative official or body charged with the enforcement of this Law, after public notice and hearing and in accordance with the requirements of law and this Law, to consider applications for a Hardship Exemption from the provisions of Section 4. of this Law. Application requirements and the procedural mechanisms involved in consideration by the City Council of an application for a Hardship Exemption shall be as set forth on Appendix B attached to this Law and hereby incorporated by this reference.

Section 8. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the City Council hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 9. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the City of Binghamton when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibition set forth at Section 4. of this Local Law.

Section 10. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the City Council to supersede any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the City of Binghamton.

Section 11. EFFECTIVE DATE.

This Local Law shall take effect immediately upon _____. |

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 2011 of the City of Binghamton, was duly passed by the City Council on _____ in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in above.

(Seal)

Angela Fagerstrom, City Clerk

Date: _____

STATE OF NEW YORK
COUNTY OF BROOME

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Kenneth J. Frank, Esq.

Corporation Counsel, City of Binghamton

Date: _____

APPENDIX A
ATTACHED TO AND FORMING A PART OF
CITY OF BINGHAMTON (NY) LOCAL LAW NO. ____ of the YEAR 2011,
known as:

**“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 “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.

a. Authority. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the City Council of the City of Binghamton under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities:

- (i) New York State Constitution Article IX, Section 2 (c)(ii)(6) [acquisition, care, management and use of its highways, roads, streets, avenues and property];
- (ii) New York State Constitution Article IX, Section 2(c)(ii) (10) [government, health, and well-being of persons or property];
- (iii) Municipal Home Rule Law § 10(1)(i) [local government's property, affairs, or government];
- (iv) Municipal Home Rule Law § 10(1)(ii)(a)(6) [acquisition, care, management and use of its highways, roads, streets, avenues and property];
- (v) Municipal Home Rule Law § 10(1)(ii)(a)(11) [protection and enhancement of the physical and visual environment];
- (vi) Municipal Home Rule Law § 10(1)(ii)(a)(12) [government, protection, order, conduct, safety, health and well-being of persons or property];
- (vii) Municipal Home Rule Law § 10(1)(ii)(a) (14) [the powers granted in the statute of local governments];
- (viii) Municipal Home Rule Law § 10(2) [power to adopt local laws to the extent there is the power to act by ordinance, resolution, rule or regulation];
- (ix) Municipal Home Rule Law § 10(3) [specific enumeration of powers does not restrict general grant];
- (x) Municipal Home Rule Law § 10(4)(a), and (b)[authorization of appearance tickets and enforcement of local laws];

- (xi) Statute of Local Governments §10(1) [power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of functions, powers and duties];
- (xii) Statute of Local Governments §10(7) [power to perform comprehensive or other planning work];
- (xiii) Environmental Conservation Law § 17-1101 [right to suppress nuisances and to abate pollution of the waters of the state];
- (xiv) Environmental Conservation Law §19-0703 [right to suppress nuisances and to prevent or abate air pollution or air contamination];
- (xv) Environmental Conservation Law §27-0711 [jurisdiction over solid waste disposal and landfills] and
- (xvi) New York State Law, Public Health Law § 228 (2), and (3) [local laws for public health].

b. Intent. This Law is a police power and is enacted to protect the public health, safety and general welfare of the community. 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 City to address matters of statewide concern. This Local Law is intended to and is hereby declared to have been enacted in order:

- (i) to protect and preserve the City's interest in the public waters within its boundaries;
- (ii) to ensure the future availability of present and potential sources of water supply for present and future generations;
- (iii) to enhance the local physical and visual environment against the dangers of spills and leaks that have the potential to contaminate the water supply;
- (iv) to reduce air, water and land pollution that is reasonably likely to result from the accidental or intentional release, discharge or spreading of Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes;
- (v) to minimize surface and ground water pollution which may affect human, animal or plant life of the aquifer in the City; and
- (vi) to minimize impacts from truck traffic carrying Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes.

Section 2. Findings of Fact.

a. The City of Binghamton overlies the "Clinton Street Ballpark Aquifer System" which has been designated by the Environmental Protection Agency ("EPA") as a "Sole Source Aquifer." The EPA determined that this aquifer is the sole or principal drinking water source for the area and that, if it were contaminated, this would create a significant hazard to public health. In making this determination, the EPA concluded, "contamination of the ground water resources by industrial chemicals is a problem in [...] Broome County. Highly permeable soils extend over the aquifer, and this "permits any accidental or intentional chemical discharge to percolate down, thus impacting the ground water." The geologic properties of the aquifer "facilitate rapid and direct infiltration [of pollutants] into the ground water zone." Heavy pumping by numerous water wells in the aquifer has created a reverse hydraulic gradient "which allows river water to flow directly into the [aquifer]." The EPA also found that "contamination of this precious resource would create a significant hazard to public health" and that removal of chemicals "on a large scale, if possible, would be very expensive and the water quality would still be questionable." The EPA found that there are no economically feasible alternative drinking water sources that could

replace the aquifer in the event of contamination. (*Clinton Street Ballpark Aquifer System Support Document*, October 1984) (the "EPA Report")

- b.! The EPA Report identifies the Susquehanna River as the "only possible" replacement source for the aquifer. The EPA Report goes on to conclude that due to the close interrelationship between the aquifer and the river, there would be continuous exchange of contaminants between the two water sources. The City presently obtains its water supply from the Susquehanna River, some 20 miles upstream. Serious chemical contamination of the Susquehanna River or the aquifer would leave the City without an alternative water source. (The "EPA Report")
- c.! Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the City, would result in the storage, use and discharge of significant quantities of chemicals into the City's environment. The Endocrine Disruption Exchange (TEDX - online at www.endocrinedisruption.com/chemicals.multistate.php) maintains a database of potential health effects of chemicals used during natural gas operations. TEDX's analysis found that only 10% of the chemical products used by the natural gas industry had no known health effects, and 90% had at least one potential health effect. Nearly half of the products contained one or more chemicals considered to be endocrine disruptors, which are chemicals that interfere with the human endocrine system. Unlike other almost all other industrial processes, natural gas drilling directly introduces chemicals into the land and subsurface of the earth. The brain and nervous system can be harmed by 55% of the chemicals the industry uses. The storage, handling, use, accidental discharge or intentional discharge of such chemicals could negatively impact the quality of water resources within the City. Water pollution is hazardous to the public health. Accidental chemical spills, discharges of toxic and hazardous materials, and flooding can threaten the quality and quantity of water supplies and resources both in the City and in the towns that rely on the Clinton Street Ballpark Aquifer, posing potential public health and safety hazards. As the EPA Report found, the loss of clean water supplies would have "grave consequences" and would be a "significant hazard to public health."
- d.! The fact that Natural Gas Exploration And/Or Petroleum Exploration Activities, and Natural Gas And/Or Petroleum Extraction Activities, and Natural Gas And/Or Petroleum Support Activities are subject to environmental regulations does not alter the fact that these activities and the wastes that they generate present some hazard to the City. Such environmental regulations seek to limit, but cannot eliminate, pollution. The City is not required to defer action to protect its residents, its property, and the water resources located within the City until it is faced with a serious nuisance or health problem.
- e.! Environmental regulations cannot prevent intentional illegal dumping of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes such as the approximately 800 gallons of petroleum sludge from a gas well site was dumped by an oil and gas worker on state-owned hunting lands in Bradford County, Pennsylvania on or about December 2, 2011 (as reported in the Press and Sun Bulletin). The EPA Report specifically notes "illegal dumping is also a possible source of further contamination." (The EPA Report)
- f.! Environmental regulations cannot control the scope of historic crests of recent flood events, such as the floods that occurred on September 8, 2011 and June 28, 2006. Both the Susquehanna River

and the Chenango River are major sources of flooding, and to a lesser extent Park and Pierce Creeks. (Broome County Flood Insurance Survey, 2010) Future flood events could release Natural Gas Extraction, Exploration or Production Wastes onto the land or into the waters in the City.

Section 3. Purposes. The purpose of the Local Law is to enable the City of Binghamton to prohibit the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the City time to study the impacts, effects, and possible controls over such activities and to consider the advisability of enacting new laws and/or amendments to the City's existing laws to address the same. The City Council finds that a twenty-four month duration for the Local Law, 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 City of Binghamton 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.