

TOWN OF MILFORD
LOCAL LAW NO. 1 OF 2011

**A LOCAL LAW IMPOSING A MORATORIUM ON NATURAL GAS MINING IN THE TOWN
OF MILFORD**

Be it enacted by the Town Board of the Town of Milford as follows:

Section 1. TITLE

This law will be known as the 2011 Moratorium Law on Natural Gas Mining in the Town of Milford.

Section 2. LEGISLATIVE INTENT

The Town Board of the Town of Milford, Otsego County, State of New York, is vested by the State of New York to regulate and control land use within the Town of Milford and to protect the health, safety and welfare of its residents. The New York State Mined Land Reclamation Law permits a local government to enact zoning regulations which determine permissible uses in zoning districts. This moratorium addresses zoning and planning regulations only, and does not regulate or attempt to regulate the actual operations of the oil, gas and solution mining industries or interfere in any manner with the extractive mining process for natural gas

The Comprehensive Plan is the Zoning Ordinance.

The Comprehensive Plan for the Town of Milford is instrumental for the regulation and control of land use within the Town. The Town of Milford currently lists mining as a permitted use in agricultural, commercial, manufacturing and industrial districts. However, changes in the mining industry have given the Town of Milford sufficient reason to reexamine mining within the Town. Specifically, natural gas mining in the surrounding area has expanded to a greater extent than the Comprehensive Plan ever envisioned. The Town Board believes that additional study and examination of necessary land use regulations relating to natural gas mining is warranted. Therefore, the Town Board, through this local law, declares a nine month moratorium on natural gas mining in the Town of Milford.

During this nine month moratorium, the Town of Milford will update the Comprehensive Plan. This moratorium is also intended to allow necessary time for the Town Board to examine whether additional local regulation is necessary, the extent of such regulation, and if such local regulation is necessary, the Town Board may determine the appropriate rules and regulations to ensure comprehensive uniformity, fairness and consistency in such regulations. Further, the Town Board will utilize the moratorium period to further examine the significant environmental issues relating to natural gas mining.

The Town of Milford has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources within the Town and the Town Board believes that studying

this issue is necessary so that natural gas mining is regulated to protect the town from potential negative impacts.

The Town of Milford does hereby find a moratorium of nine months duration is necessary and reasonable in order to afford the Town Planning Board additional time to evaluate and study and to afford such board an opportunity to make recommendations to the Town Board regarding appropriate amendments to the Zoning Ordinance/Comprehensive Plan. A moratorium of nine months will prevent the establishment of natural gas mining facilities and operations that may be contrary to any land use regulations ultimately adopted thus making the new regulations a nullity. The health, safety and general welfare of the residents will be protected by the adoption of the moratorium pending the issuance of final regulations by the Town of Milford.

Section 3. DEFINITIONS

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

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

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

Section 4. SCOPE AND CONTROL

- A. For the period of nine months following the effective date of this local law, no new natural gas mining facilities or operations, as defined by this local law, or expansions beyond existing operations or facilities shall be permitted by any person in the Town of Milford.
- B. During the effective period of this Local Law:
 - 1. The Town Planning Board shall not consider and/or approve any site plan, approve any special use permit or other permit which would have as a result the establishment, implementation, placement, construction or development of any new natural gas mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town of Milford.
 - 2. The Town Zoning Board of Appeals shall not consider and/or grant any variance, or other permit for any use which would result in the establishment,

implementation, placement, construction or development of any new natural gas mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town of Milford.

3. Zoning Enforcement shall not consider and/or issue any land use permit or other permit which would result in the establishment, implementation, placement, construction or development of any new natural gas mining facility or operation, including any activity associated therewith or in furtherance of natural gas mining, or the enlargement of any existing natural gas mining facility or operation within the Town.

- C. If, within nine months, the Town Board adopts a local law relating to natural gas mining, then, in that event, the moratorium imposed by this local law shall expire immediately on the date the Town local law relating to natural gas mining takes effect in accordance with Section 27 of the Municipal Home Rule Law.

Section 5. EXCEPTIONS.

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Town of Milford or other appropriate state or federal agency may be continued, provided that such use shall not be enlarged or extended beyond the existing location and operation.

Section 6. VARIANCES.

- A. The Town Zoning Board of Appeals retains the power and sole discretion to vary or adapt the strict application of the requirements of this Local Law in the case of unnecessary hardship, difficulties with the area or use requirements of the zoning or circumstances that would unconstitutionally deprive the owner of all economically viable and productive use of the lands involved, provided the application is consistent with the intent of this Local Law.
- B. An application for a variance plus seven (7) copies thereof shall be filed with the Town Clerk, together with a filing fee of \$250.00. The application shall specifically identify the land involved, recite the nature of the proposed use of the land, provide a narrative description of the project and identify the circumstances pursuant to which the variance is sought and the reasons why the variance is claimed. Any costs, including expert consulting fees, incurred by the Town shall be paid by the Applicant immediately upon request or the application may be denied.
- C. All decisions on granting or denying such variances shall be made by the Town Zoning Board of Appeals solely, after determining whether or not the requested variance is compatible with the Comprehensive Plan of the Town and the Town zoning regulations. Unless the applicant can prove that the requirements for the proposed variance are satisfied, the Town Zoning Board shall, as appropriate, deny the application.

- D. The Town Zoning Board of Appeals shall conduct a public hearing on any request for a variance within sixty-two (62) days of receipt of a completed application; and shall issue its final decision on requests for a variance within sixty-two (62) days from the public hearing.

Section 7. ENFORCEMENT.

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

Section 8. VIOLATIONS.

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

Section 9. SEQR CLASSIFICATION.

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

Section 10. CONFLICT WITH OTHER LAWS.

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

Section 11. SEVERABILITY.

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