

TOWN OF DANBY LOCAL LAW #3 OF 2011

AMENDMENTS TO TOWN OF DANBY ZONING ORDINANCE

**A LOCAL LAW AMENDING AND CLARIFYING THE TOWN OF DANBY,
TOMPKINS COUNTY, NEW YORK, ZONING ORDINANCE TO PROHIBIT
GAS AND PETROLEUM MINING AND RELATED ACTIVITIES**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF DANBY AS
FOLLOWS

SECTION 1: TITLE AND APPLICABILITY – The Town of Danby hereby adopts this local law, to be known as the Town of Danby Local Law Number__ of 2011 (the “Local Law”).”

SECTION 2: PURPOSE – The purpose of this Local Law is to clarify, update, and amend the Town of Danby Zoning Ordinance by, among other things: clarifying allowed uses relative to light industrial uses and operations; clarifying allowed uses relative to gas and oil mining and hydraulic (and other) fracturing; and to ensure that Town of Danby zoning laws comport with the Town of Danby Comprehensive Plan.

SECTION 3: DEFINITIONS – The following definitional terms are added to Appendix I, entitled “Definitions,” of the Town of Danby Zoning Ordinance, and these terms shall have the meanings shown:

A. **LIGHT INDUSTRIAL and LIGHT INDUSTRY (and phrases that use such terms, including, but not limited to, references to light industrial uses or impacts)** - Allowed low-impact industrial uses, which may include, subject to the requirements set forth below, light assembly and fabrication businesses, warehousing and wholesale businesses, light manufacturing or finishing businesses, research and testing facilities and operations, and similar uses, each and all of which shall only be deemed and classified as “low impact” or “Light Industrial” only when: (i) the cumulative environmental and social impacts from such uses or impacts shall not significantly and adversely affect the environment, including, but not limited to, air quality, floodplains, steep slopes, riparian and littoral areas and corridors, wetlands, aquifers and aquifer recharge areas and other fresh water sources; and (ii) such uses or operations shall not materially and adversely affect neighboring land uses or any residential areas of the Town; (iii) the effects or impacts attendant to such uses or operations relating to parking, driveways, roads, traffic, landscaping and screening, noise and vibration emissions, lighting and light emissions, odors and smells, and waste disposal or emissions, are not individually or in the aggregate deemed significantly adverse; and (iv) the overall size of any structures or improvements, in terms of size,

height, or the percentage of land coverage of all improvements and parking and road areas, do not, in any such dimension or percentage, exceed the lesser of 2 acres or 50% of the overall lot area; and (v) where required, all variances, site plan approvals (with or without conditions), and special permit approvals (with or without conditions) have been duly applied for, granted, and timely utilized pursuant to the terms and requirements of the Town of Danby Zoning Ordinance (and any other applicable law, ordinance, rule, or requirement of the Town of Danby).

B. **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 rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

C. **NATURAL GAS AND/OR PETROLEUM EXPLORATION** - 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, which include but are not limited to core or rotary drilling or making an excavation in the search for and evaluation of Natural Gas, petroleum, or other subsurface hydrocarbon deposits.

D. **NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS** - Any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of Natural Gas.

E. **NATURAL GAS AND/OR PETROLEUM EXTRACTION** - 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.

F. **NATURAL GAS EXPLORATION AND/OR PETROLEUM PRODUCTION WASTES** - Any garbage, refuse, cuttings, sludge, flow-back fluids, brine, produced waters, or other discarded materials, including solid, liquid, semi-solid, or contained gaseous material that results from or is associated with the exploration, drilling, or extraction of Natural Gas and/or petroleum and any related hydrocarbons, and any natural or non-natural radioactive, carcinogenic, or toxic chemicals or compounds (herein, "Deleterious Substances") used in or for, occurring or arising from, relating to, or produced by any process or operation relating to the exploration for or the extraction or production of, or the processing, treatment, or transportation of, Natural Gas, petroleum, or any related hydrocarbons, regardless of whether such Deleterious Substances 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 regardless of whether considered or classified as "waste" or of a below-regulatory concern level. 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). "Deleterious Substances" shall also include, but not be limited to, crude oil and Natural Gas drilling fluids and their exploration, drilling, production, and processing wastes, such as, but not limited to, fracturing fluids, brine, produced water, flowback water, waste oils, waste emulsified oils, mud and drilling or lubricating mud, contaminated soils, drill cuttings, fracture fluid holding pit or tank contents, sediments or residues, or any of the foregoing whenever transformed into any other liquid, solid or gaseous state by any process.

G. NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES

- The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a Natural Gas or petroleum storage facility, a brine or fracturing/flowback water pit or other enclosed or semi-enclosed container or construct, or a Natural Gas or petroleum gathering line, venting station, compressor, dehydrator, or other appurtenance associated with the exploration or extraction of Natural Gas, petroleum, or any related hydrocarbons.

SECTION 4: AMENDMENTS TO EXISTING DEFINITIONS – The definitions contained in Appendix I of the Town of Danby Zoning Ordinance are hereby amended by amending the following definition, as follows:

A. The current definition of "Industrial Establishment" shall be amended by replacing the same with the following: "**INDUSTRIAL ESTABLISHMENT** - shall mean any property or buildings used for Light Industrial uses or operations, and shall be interpreted and construed to exclude any "heavy industry" or high impact industrial uses or operations, including, but not limited to, and for the purpose of providing examples only, smelting and ore refining processes, Natural Gas and/or Petroleum Extraction, Natural Gas and/or Petroleum Exploration, large-scale meat or poultry processing plants, coal or mineral processing or gasification operations, large-scale chemical and pharmaceutical processing plants, large-scale plastics or rubber manufacturing or extrusion processes, and similar operations and businesses.

SECTION 5: GENERAL AND SPECIFIC ZONING ORDINANCE AMENDMENTS – The following amendments are hereby made to the Town of Danby Zoning Ordinance:

A. A new § 517 is added as follows: "**Section 517 - PROHIBITION AGAINST THE EXPLORATION FOR OR EXTRACTION OF NATURAL**

GAS AND/OR PETROLEUM. No use or operation on any land, parcel, lot, or other area located within the Town of Danby, including but not limited to within any Planned Development Zone, shall be proposed, allowed, or permitted where such use or operation involves: (i) any Natural Gas and/or Petroleum Exploration activities; (ii) storage or staging, for any length of time and whether above or below ground, any Natural Gas and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes; or (iii) any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities; or (iv) any drilling, construction, or excavating of any well to find or produce any Natural Gas or other hydrocarbons, or (v) any storage, staging, processing, or treatment areas, structures, or improvements relating to Natural Gas, petroleum, or any related hydrocarbons, Natural Gas and/or Petroleum Exploration and Production Materials, or Natural Gas Exploration and/or Petroleum Production Wastes, or (vi) any disposal of Natural Gas Exploration and/or Petroleum Production Wastes, or (vii) the erection or construction of any derrick, building, or other structure, or placement or use of any machinery or equipment, for any such purposes. The above restrictions shall not be construed to: (a) prevent or prohibit the transmission of Natural Gas or related hydrocarbons through utility pipes, lines, or related appurtenances for the limited purpose of supplying utility services to residents of the Town of Danby; (b) prevent or prohibit the siting or permitting of a Gasoline Service Station or an Automotive and Other Motorized Vehicle Repair Facility where otherwise allowed under this Zoning Ordinance; or (c) prevent or prohibit the incidental and normal storage or use of reasonable and customary amounts of Natural Gas and other hydrocarbons in relation to any other use that is lawful under this Zoning Ordinance, such as home heating storage facilities (e.g., propane tanks), gasoline pumps and storage tanks, and similar uses that are normally associated with allowed residential, business, commercial, and Light Industrial uses permitted pursuant to and under this Zoning Ordinance.”

B. A new § 518 is added as follows: “**Section 518 – INVALIDITY OF OTHER GOVERNMENTAL PERMITS.** No permit issued by any local, state or federal agency, commission or board shall be deemed valid within the Town of Danby when such permit purports to allow or permit a land use or operation that would violate the prohibitions, terms, requirements, or conditions of this Zoning Ordinance.”

C. Section 604, entitled “**PLANNED DEVELOPMENT ZONES,**” is amended by replacing the first paragraph thereof with the following: “The purpose of the Planned Development Zone and the following regulations is to accommodate certain developments of land and buildings that are to be planned and executed as a unit, such as, but not limited to, large subdivisions, business parks (which may include Light Industrial uses, mobile home parks, and similar

types of land uses, and to establish standards by which development in such zones shall occur.”

D. Section 702, entitled “**ENCLOSURE OF EXCAVATION SITES,**” is amended by adding the following clause at the end thereof: “This section shall not be construed to allow or permit any Natural Gas and/or Petroleum Exploration, any Natural Gas and/or Petroleum Extraction, or any Natural Gas and/or Petroleum Support Activities, and is intended to, and shall be deemed and construed to, apply only to extractive surface-based mining activities that seek to and actually extract only naturally occurring rocks, sands, gravels and similar excavations and their overburdens.”

E. Section 703, entitled “**ABANDONMENT OF QUARRIES, ETC.,**” is amended by adding the following clause at the end thereof: “For the purposes of this Section 703, no reference to a quarry or to the extraction of natural resources shall include Natural Gas, any Natural Gas and/or Petroleum Exploration, any Natural Gas and/or Petroleum Extraction, or any Natural Gas and/or Petroleum Support Activities, and is intended to, and shall be deemed and construed to, apply only to extractive surface-based mining activities that seek to and actually extract only naturally occurring rocks, sands, gravels and similar excavations and their overburdens.”

F. Section 708 is amended in its entirety as follows: “**Section 708 – LIGHT INDUSTRIAL ESTABLISHMENTS.** Light Industrial uses and/or operations may only be allowed, established, or conducted within approved Planned Development Zones, except where otherwise permitted in a different Zone.”

SECTION 6: CONSTRUCTION AND SUPERSESSION – In their interpretation and application, the provisions and requirements of this Local Law (and of related provisions of the Zoning Ordinance) shall be held to be the minimum requirements so adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Local Law are inconsistent with the requirements of any other Town of Danby laws, ordinances, rules, regulations or procedures, the more restrictive provision, or those imposing the higher standard, shall govern. The provisions of this Local Law shall supersede or repeal any prior inconsistent local law, ordinance, rule, regulation, or procedure of the Town of Danby that purports to allow or permit any Natural Gas and/or Petroleum Exploration, the storage, whether above or below ground, of any Natural Gas and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes, the conduct of any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities, or any other activity or operation seeking to otherwise drill or excavate any well to find or produce any Natural Gas or other hydrocarbons, or any other activity or operation seeking to erect any derrick, building, or other structure, whether permanent or non-permanent, or to

place any machinery or equipment for any such purposes. Further, the Town of Danby hereby declares its intent to exercise its supersession authority under the Municipal Home Rule Law, to the greatest extent permitted by law, as regards the zoning power and the regulation and permitting of any Natural Gas and/or Petroleum Extraction activities and any Natural Gas and/or Petroleum Support Activities in the Town of Danby.

SECTION 7: PARTIAL INVALIDITY AND SAVINGS – If any part, clause, requirement, standard, or other provision of this Local Law, or the application thereof to any person or entity, or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in each such event, such judgment or declaration shall be confined in its interpretation and operation only to the part, clause, requirement, standard, or other provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment, declaration, 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, entities, or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed and the Town Board of the Town of Danby hereby declares that it would have enacted this Local Law and its Zoning Ordinance(s), or the remainders thereof, even if, as to such particular provisions, persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

SECTION 8: LIMITATION OF TOWN LIABILITY - The Town of Danby, and its employees, officers, and agents shall not be liable to or responsible for any injuries to any persons or entities for injuries, losses, or damages arising from or related to persons, property, or property or other rights in property due, in whole or in any part, to the Town's actions or failures to act under or pursuant to this Local Law or the Zoning Ordinance, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town or its officers and agents. This Section 7, and its provisions, shall be construed and applied to the maximum extent permitted by law, and do not create any theory or claim of liability where none exists at law or in equity.

SECTION 9: EFFECTIVE DATE – This Local Law shall be and become effective immediately upon filing with the Secretary of State of the State of New York in accordance with the provisions of, *inter alia*, § 27 of the Municipal Home Rule Law.