

Town of Mt. Morris
Local Law No. 1 of the year 2012

A Local Law imposing an interim moratorium on all natural gas and oil exploration, the development and/or operation of facilities for the production of natural gas and oil, the transportation of any equipment, materials or other infrastructure used in furtherance of such activities or the transportation of product resulting from such activity

Be it enacted by the _____ Town Council _____ of the

Town of _____ Mt. Morris _____ as follows:

Section 1. Title.

This Local law shall be known as the “2012 Interim Moratorium on all Natural Gas and Oil Activities” of the Town of Mt. Morris, New York. This Local Law may be cited in short form as the “2012 Interim Moratorium Law” of the Town of Mt. Morris, New York.

Section 2. Statement of Authority.

This Local Law is adopted pursuant to authority vested in the Town Council by Article IX of the New York State Constitution; Articles 2 and 6 of the New York State Municipal Home Rule Law; Article 16 of the New York State Town Law; and in the exercise of the general police power of the Town of Mt. Morris for the purpose of promoting the health, safety, and welfare of all residents and property owners in the Town of Mt. Morris (the “Town”).

Section 3. Statement of Purpose.

This local law is to enact a local law on an interim basis to temporarily prevent all Natural Gas and Oil Activities in the Town, pending the completion and possible adoption of permanent comprehensive regulations.

Section 4. Statement of Legislative Findings and Declaration.

The Town Council of Mt. Morris hereby finds and declares that:

A. There is a potential for natural gas and oil exploration, the development and operation of facilities for the production of the same, the transportation of equipment, materials or other infrastructure used in furtherance of such activities or the transportation of product resulting from such activity (hereinafter the “Natural Gas and Oil Activities”) in the Town.

B. If Natural Gas and Oil Activities as defined herein are not properly regulated, there is a potential that the short term and long term effects of such activities may cause adverse impacts on local infrastructure, as well as on various other community, environmental, and economic resources including but not limited to the following:

- (i) Environmental impacts on water quality and quantity, air quality, waste disposal,

forest and wildlife habitat, noise, historical resources and scenic resources;

(ii) Impacts on local highways and bridges, municipal water and sewer systems and other municipal infrastructure arising from the related increase use thereof;

(iii) Impacts on community resources such as housing availability, school facilities, law enforcement and emergency services;

(iv) Public health impacts due to accidents, spills, increased emissions from motor vehicle traffic, and depletion or contamination of aquifers;

(v) Economic impacts on property values, tourism and economic development;

(vi) General impacts on open spaces, lands surrounding the site of any such natural gas or oil activity as well as upon the site where such activities are carried on and general impacts on land throughout the Town.

C. The Town Code currently does not contain any law, ordinance or regulation which specifically and adequately regulates Natural Gas and Oil Activities.

D. To promote the general public health, safety and welfare it is essential to implement comprehensive laws and which will serve to protect against any adverse impacts from such Natural Gas and Oil Activities and to provide a means for monitoring such activities, to provide a framework to compel compliance with such laws as well as to impose mitigation or remediation measure for conditions arising from such activities.

E. In order to enact a local law which will thoroughly address all relevant considerations it is essential that a detailed and comprehensive process be undertaken to study all substantive and procedural components which must be addressed in such law.

F. It is reasonably expected that the completion of the aforementioned study as well as the compliance with all legal requirements for the enactment of such law will require a period of twelve (12) months. Accordingly it is in the public interest to impose a moratorium which prohibits on an interim basis any such Natural Gas and Oil Activities for a period of twelve (12) months.

G. In order to balance the interests of the community at large with the interests of any individual landowner that may experience extraordinary hardship as a result of the application of this local law it is necessary to provide a process and forum for obtaining a variance from the limitations imposed hereby.

Section 5. Word Usage and Definitions

A. Except where specifically defined herein, all words used in this Local Law shall carry their customary meanings. Doubt as to the precise meaning of any word used in this chapter shall be clarified by reference to Section 106-6 of the Code of the Town of Mt. Morris Code, and that failing, the Town of Mt. Morris Zoning Board of Appeals pursuant to its powers under Section 106-37B of the Code of the Town of Mt. Morris.

B. As used in this Local Law, the following terms shall have the meaning indicated:

“NATURAL GAS AND OIL ACTIVITIES” shall mean all activities in furtherance natural gas and oil exploration, the development and operation of facilities for the production of the same, the transportation of any equipment, materials or other infrastructure used in furtherance of such activities or the transportation of product resulting from such activity. Facilities for the transmission of natural gas which are in existence on the effective date hereof are specifically excluded from this definition.

Section 6. Term of Moratorium Declared

To carry out the above purposes, the Town Council hereby declares for a period of twelve (12) calendar months from the effective date of this Local Law a moratorium on all Natural Gas and Oil Activities, unless earlier terminated by a superceding, duly adopted local law.

Section 7. Prohibited Actions and Reservation of Right.

- A. Prohibited Actions. During effective period of this Local Law, each of the following actions shall be prohibited unless permitted under Section 8 hereunder:
 - (1) No applications for the construction, exploration, erection, processing, development (including drilling) and/or installation of hydrofracking facilities or for approvals of other plans affected by this Local Law and submitted, received or filed after the effective date of this Local Law shall be considered by any board or agency of the Town of Mt. Morris while this Local Law is in effect.
 - (2) Neither the Town Council nor Town Planning Board shall grant any approvals which would have as a result of the commencement or completion of Natural Gas and Oil Activities.
 - (3) The Town of Mt. Morris Planning Board shall not grant any preliminary or final approval for a subdivision plat, site plan, special use permit or wetlands permit, including but not limited to pending applications which would have as a result the authorization of any Natural Gas and Oil Activities.
 - (4) Except as provided herein, the Zoning Board of Appeals shall not grant any variance for any use which would result in any Natural Gas and Oil Activities.
 - (5) The Zoning Enforcement Officer shall not issue any permit which would permit any Natural Gas and Oil Activities.
- B. Reservation of Right. The Town Council reserves the right to direct the Zoning Enforcement Officer or Building Code Inspector to revoke or rescind any Zoning permits, Building Permits, or Certificates of Occupancy issued in violation of this Local Law.

Section 8. Variances.

Any party claiming that this local law has caused such party to experience an unnecessary hardship as defined by New York State Town Law 267-b. 2(b) may apply to the Town Council for a variance from this local law subject to the following terms and conditions.

- A. Substantive requirements. A valid application for a variance based on unnecessary hardship shall be filed with the Town Clerk as of the effective date of this local law pertaining to a proposal, including a fee of Two Thousand and 00/100 Dollars (\$2,000.00) to cover processing and advertising costs, by the property owner, or the applicant with the written consent of the property owner. The application shall recite all of the specific facts which are alleged to support the claim of extraordinary hardship, and shall contain such other information and/or documentation as the Town Council or its designee, shall prescribe as necessary for the Town Council to be fully informed with respect to the application.
- B. The Town Council shall determine whether the application is complete, and reserves the right to require the applicant to provide supplemental information in addition to that submitted initially with the application.
- C. Risk of loss. The applicant assumes the sole risk of pecuniary or other loss, including without limitation the costs of technical and legal consultation and the costs of preparation of any submissions, reports, or information required by the Town Council, Planning Board or Zoning Board of Appeals pursuant to the Code of the Town of Mt. Morris, the State Environmental Quality Review Act or other applicable federal and state laws or regulations, arising out of such continued consideration and review during the pendency of this Local Law.
- D. Public Hearing. Such application shall be the subject of public hearing before the Town Council. A public hearing on any application for an exception for extraordinary hardship shall be held by the Town Council no later than forty-five (45) days after the complete application for the variance exception has been filed with the Town Clerk. Public Notice of the date, time and place of such hearing shall be published in the legal newspaper of the Town not less than ten (10) days prior to the hearings. At said public hearing, the applicant and other parties wishing to present evidence on the proposed variance shall have the opportunity to be heard.
- E. Relief. The Town Council is authorized to consider all relevant facts upon proof of an unnecessary hardship and may grant a variance. In reviewing an application and determining the suitability of an exception under this section the Town Council shall consider the following criteria, which the petitioner should demonstrate by clear and convincing evidence.
 - (1) The extent to which the applicant has, prior to the effective date of this law, received any development approval for the proposed development.

- (2) The extent to which the Natural Gas and Oil Activities would cause significant environmental degradation, adversely impact adjacent natural resource areas, harm the public health, safety and/or welfare.
- (3) Whether the Moratorium will expose the applicant to substantial monetary liability to a third person; or would leave the applicant completely unable, after thorough review of alternative solutions, to earn a reasonable return on the property belonging to the person.
- (4) The extent to which the applicant establishes that the proposed activity would not lead to significant environmental degradation.
- (5) The extent to which the applicant establishes that the proposed activity would not lead to adverse effects on the goals or objectives of the Town in revising the comprehensive zoning plan and associated zoning codes hereunder; and
- (6) The project's harmony, or lack thereof, with the existing character of the community as a whole and the area of the community in which the property is located; and the consistency with any interim data, recommendations, or conclusions which may be drawn from the studies in progress hereunder.

- F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Council shall act upon the application. The Town Council shall, within forty-five (45) days of the close of the public hearing, render its decision in writing, either granting or denying the requested variance from the strict requirements of this Local Law.
- G. It shall be within the discretion of the Town Council to grant in whole or in part, or deny, the petition for relief from the terms of this Local Law. In the event that the Town Council grants the petition, the petitioner shall be permitted to submit the proposed project to the Planning Board and if necessary the Zoning Board of Appeals for a full review of the proposed project in accordance with all applicable code provisions. Any approval by the Planning Board or the Zoning Board of Appeals must comply with code provisions in effect at the time of such approval, including any applicable provisions which the Town Council may adopt pursuant to the studies undertaken hereunder.
- H. Unless a variance is granted, the Planning Board and Zoning Board of Appeals shall not issue any preliminary or final approval on any application subject to this Local Law during its term.
- I. Applications processed under this section shall, unless otherwise stated herein, be determined by the provisions of the Code of the Town of Mt. Morris in effect at the time of such determination, and not as of the effective date of this Local Law.

Section 9. Penalties.

Any person, partnership, firm, or corporation that shall engage in any Natural Gas or Oil Activities in violation of the provisions of this Local Law shall be subject to:

- A. A fine not to exceed Five Thousand(\$5,000.00) Dollars or imprisonment not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil penalties as may otherwise be provided by law, rule and regulation for such violations; and
- B. Injunctive relief in favor of the Town of Mt. Morris to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction which may have taken place in violation of this Local Law.

Section 10. Statement of Supersession.

- A. To the extent that any other provision of the Code of the Town of Mt. Morris conflicts herewith, this local law shall supercede such conflicting provisions.
- B. To the extent permitted under the New York State Constitution, or otherwise permitted by State enabling legislation this local law shall supercede any State law or regulation which conflicts herewith.

Section 11. Severability.

Should any section, sub-section, paragraph, sub-paragraph, sentence, clause phrase, or other portion of this Local Law be declared invalid by a court of competent jurisdiction such action shall not be construed to invalidate the remaining portion if this Local Law.

Section 12. Effective Date.

This Local Law Shall Take Effect Immediately upon its filing with the New York Secretary of State