

LOCAL LAW NO. 1 A OF 2012

A LOCAL LAW AMENDING CHAPTER 80 OF
THE ROME CODE OF ORDINANCES TO
PROHIBIT HYDROFRACKING WITHIN THE
CITY OF ROME, NEW YORK.

By Councilor Rogers:

WHEREAS, the City of Rome has been apprised of the potential danger to citizens and the environment relative to the exploration for and extraction of natural gas, more commonly referred to as “hydrofracking,” and

WHEREAS, City of Rome, as a local government, may exercise its police powers to protect and preserve the health, safety and welfare of its residence pursuant to New York Municipal Home Rule Law Section 10(6), as well as under the City of Rome Charter, and

WHEREAS, there is some support for the proposition that a municipality may not regulate the operational processes of gas mining but may prohibit the industry altogether within its boundaries, and

WHEREAS, the City is authorized pursuant to state law to adopt, amend and repeal zoning regulations to secure the health, welfare and safety of its residents, and

WHEREAS, the City of Rome has abundant natural resources and a quality of life worthy of protection which will be adversely impacted by the exploration for and extraction of natural gas, and

WHEREAS, the Common Council of the City of Rome believes that it is in the best interests of the citizens of the City of Rome to prohibit the exploration for and extraction of natural gas within its jurisdictional boundaries,

WHEREAS, a public hearing will be held on 12th day of October, 2011, regarding said amendment and public comment will be heard thereon, now, therefore,

BE IT ENACTED, by the Common Council of the City of Rome, New York, that the Rome Code of Ordinances Chapter 80, Article III entitled “Establishment of Districts” shall have the following language added:

Article III Establishment of Districts

Section. 80-3.7.1. State Authorization to Enact Prohibition. The City of Rome hereby exercises its authority and right under New York Environmental Law

Section 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this local law complies with at least the minimum applicable requirements set forth in such statute, and the rules and regulations promulgated pursuant to Article 27.

Section 80-3.7.2. Definitions.

- a. “Corporations” for the purposes of this law shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state in the United States or under the laws of any country, and any other business entity that possesses state confirmed limited liability status or protections for its owners, directors, officers and/or managers.**
- b. “Exploration” shall mean geologic or geophysical activities related to the search for natural gas or other subsurface hydrocarbons including prospecting, geophysical or geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas deposits.**
- c. “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.**
- d. “Natural Gas” shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.**
- e. “Natural Gas Exploration and Production Wastes” shall mean garbage, refuse, sludge, or other discarded materials, including solid, liquid, semisolid, or contained gaseous materials that results from exploration, drilling or extraction of natural gas.**
- f. “Pollution” shall mean the contamination or degradation of the physical, chemical or biological properties of land, water or air that will or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to wildlife, birds, fish, or other aquatic life.**

Section 80-3.7.3. Prohibition Against Deleterious Substances. It shall be unlawful for any person, firm or corporation to produce, store, inject, discharge, dispose of, release, or maintain or to suffer, cause, or permit to be produced, stored, injected, discarded, discharged, released or maintained any deleterious substance, anywhere within the City.

Section 80-3.7.4. Prohibition Against the Exploration for or Extraction of Natural Gas. No person, firm or corporation shall conduct any exploration for natural gas, drill any well for natural gas, transfer, store, treat or dispose of natural gas exploration or production wastes, or erect any derrick building, or other structure or place any machinery or equipment for such purpose within the territorial boundaries of the City of Rome.

Section 80-3.7.5. Deleterious Substance. 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,” “toxic,” and whether or not such substances are generally characterized as waste, shall be deemed deleterious substances for the purposes of this Code:

- 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;
- b. crude oil or natural gas drilling fluids;
- c. crude oil or natural gas exploration, drilling, production or processing wastes;
- d. crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment, and/or any other liquid or semi-liquid materials);
- e. solution mining brine or mineral brines;
- f. any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in drilling, development, transportation, processing or refining of crude oil or natural gas;
- g. soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas;
- h. drill cuttings from crude oil or natural gas wells;
- i. any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas;
- j. waste from the extraction or processing of ores or minerals, including slag, mud, ash and process waste water and waste solids; and/or
- k. cement kiln dust waste.

This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes” which are not hazardous wastes under 40 CFR Section 261.4(b). This definition does not include animal manure and/or recognizable food wastes, or storage of farm generated waste.

Section 80-3.7.6. Industry, High Impact. Industrial uses or industrial operations that are more likely than not to involve any four (4) or more of the following impacts in the City at any time during such use or operation:

- a. combined total surface disturbance of more than two (2) acres of land;
- b. the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
- c. high frequency, high impact truck traffic;
- d. an operation that, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to typical work days and mornings to early evening hours, but rather instead is often conducted at any and all times of day and night with either truck traffic entering or leaving the site, or other noise, vibrations or light that extends beyond the property boundaries;
- e. open air industrial use;
- f. open air storage;
- g. flammable or explosive materials are present, used, stored or disposed of;
- h. a private electric power generation facility;
- i. the sequestering water use of five hundred thousand (500,000) or more gallons of water;
- j. construction or use of more than forty-five thousand (45,000) square feet of impervious surface;
- k. construction or use of a staging facility; or
- l. construction of pipelines, roadways and other infrastructure to move product and materials to and from the proposed project site.

Section 80-3.7.7. Enforcement. Any person, corporation or other entity that violates any provision of the aforesaid provisions shall be guilty of a summary offense and, upon conviction thereof, shall be subject to the maximum fine allowable under this Code for said violation. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Code found to be violated. The City may also enforce the aforesaid prohibitions through an action in equity brought in New York State Supreme Court. In such action, the City shall be entitled to recover all costs of litigation, including, without limitation, expert and attorneys' fees.

Section 80-3.7.8. Severability. The provisions of this section are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this section.