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NEW YORK STATE DEPARTMENT OF STATE

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Town of Fabius

Local Law No. One (2) of the year 2012

A local law imposing a twelve (12) month moratorium on certain activities related to practice(s) known (and as defined herein), as (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 in the Town of Fabius pursuant to New York State Constitution Article IX, Municipal Home Rule Law §§10, 20 and 22 and Town Law §§Article 16.

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

Section One (1). Title.

This local law shall be known as Local Law No. 2 of 2012, the "Temporary Moratorium on certain Practices Related to (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 and Related Activities in the Town of Fabius".

Section Two (2). Purpose and Intent.

A. The Town Board of the Town of Fabius 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 Town Board has found, determined, and made the declarations of findings set forth at Section 2 of Appendix A attached hereto and Section 3 set forth hereafter.

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

Section Three (3). Legislative Findings.

The Town Board has been advised that the State of New York Department of Environmental Conservation (DEC) and possibly federal authorities have been and likely intend to further undertake the study of the environmental impacts of (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 and possibly, with the State of New York and/or federal authorities considering the regulation or further regulation of same. This is due, at least in part, to the vast inquiries and expressions of concern from residents of the Town, and individuals throughout the State of New York and other jurisdictions where such practices and operations have

already taken place or are intended in the near future. Such concerns include (without limitation) relative to the potential risk of contamination of ground water, destruction of subcutaneous rock formations, drainage and erosion control, degradation of air quality and roadways, and the scarring of natural landscapes. The Town Board also determines that while the review of these regulations is being undertaken, and in consideration of the significant environmental issues surrounding (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 process and its potentially permanent and irreversible consequences, a moratorium is appropriate and necessary in order to preserve the status quo until any such new federal, state or local legislation or regulations promulgated thereunder can be considered, and as appropriate adopted.

Further, and on February 28, 2011, the Town Board of the Town of Fabius enacted Local Law No. 1 of 2011. This law enacted a Moratorium and the practices as described in that Law and as referred to as "Hydrofracking" in the Town of Fabius, as set forth therein. On March 11, 2011, said Law was filed with the Department of State and pursuant to such Local Law No. 1 of 2011, said Moratorium was extended for an additional period of 180 days, expiring on or about June 3, 2012.

Since the enactment of the Moratorium, the Town Board has studied the issue of Natural Gas Exploration, including Hydrofracking, Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, and Natural Gas and/or Petroleum Support Activities. The Town Board has conducted a number of Public Meetings and has sought the support and interest of Town members and other experts in the field. The Town is also aware that during the period of this Moratorium, two court decisions at the trial level were issued supporting the ability of Towns to enact regulations regulating these activities.

The Town Board and Supervisor have also been in communication on a regular basis with other towns to ascertain what and how they are working through these issues.

The foregoing provisions notwithstanding, it is the intent of the local law, and the moratorium imposed hereunder, to not apply to a proposed project that will not impact those subject matter areas which the Town does have the legal authority to regulate.

This Local Law has been referred pursuant to General Municipal Law §239 to the Onondaga County Planning Agency, and by Resolution under Case No.{OCPB-Z-11-39}

{The subject matter of this Local Law has been determined to be an Unlisted or Type II Action pursuant to the State Environmental Quality Review Act; accordingly, and assuming arguendo the former may be the case, the Town Board has elected to act as Lead Agency, conducted an Uncoordinated Review and by resolution duly adopted has issued a Negative Declaration of Significance.}

{See also Schedule A attached}

Section Four (4). Definitions.

In this Local Law:

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).

Board of Appeals --- The Zoning Board of Appeals of the Town.

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 Town.

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 less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

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," or "hazardous" or "toxic" substances, materials, or

wastes, 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 Town, 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 nonrecognizable 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) Underground Injection; or (g) 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.

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.

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.

Town --- The Town of Fabius, Onondaga County, New York.

Town Board --- The Town Board of the Town.

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.

Section Five (5). Scope of Controls.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance (except as contemplated by Section 5 of this Law), building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town 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. From and after the 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 Town 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.

C. The moratorium and prohibition set forth above in Sections A. and B. of this Section 5 are not intended and shall not be construed, to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; 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 Town.

D. This moratorium and 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 one year **[365 days]** after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law or any extension thereof as allowed by this Law.

E. This moratorium and prohibition shall apply to all real property within the Town.

F. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section Six (6). Term.

This moratorium imposed by this Local Law shall be in effect for a period of Three Hundred Sixty-five (365) days from the effective date of this local law. This moratorium may be extended for an additional period of not to exceed One Hundred Eighty (180) days by duly adopted resolution of the Town Board.

Section Seven (7). Penalties.

Any person, firm, corporation or other entity including those authorizing or directing or acting under or at the direction of same, and that shall take any action whatsoever to or toward establishment, implementation, placement, construction or installation of the processes, methods and/or practices defined herein as the Processes, (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 in the Town, in violation of the provisions of this Local Law shall be guilty of a misdemeanor offense; such person in violation hereof or who shall otherwise violate any of the provisions of the Fabius Town Code shall also be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town of Fabius for violations. {Local Law # 1 of 2007 Art. X §23}.

B. Injunctive relief in favor of the Town of Fabius to cease any and all such actions which violate with this Local Law and/or other provisions of the Town of Fabius Code and, if necessary, to restore and/or remove any installation, construction or reconstruction (including the restoration of excavated lands) that may have taken place in violation of this Local Law or Town Code and/or to otherwise effect the restoration of premises affected thereby to its condition prior to such actions.

Section Eight (8). “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 Town as of the effective date of this Local Law shall be subject to the following:

A.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation pursuant to and in compliance with 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 8.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town 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 8 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 5 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 8, 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 8 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 5 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 8 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 8, and instead shall in all respects be prohibited as contemplated by Section 5 hereof. 'Grandfathered' and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use, whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

Section Nine (9). Variation Based Upon Hardship.

- A. Procedure. Upon submission of an original and ten (10) copies of the written application (articulating the grounds in support of the request and with all applicable legal authority, supporting evidence and documentation relied upon to be submitted with same) to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon not less than seven (7) days written notice in the official newspaper of the Town. At said public hearing, the applicant and/or property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said public hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law and any such variation shall be based upon evidence specific to that particular owner's plight, and as such shall not in and of itself establish precedent. As a general rule, supporting documentation, evidence or legal authority (verbal or in writing) may be submitted by the applicant or property owner at the public hearing that was not submitted with and at the time of application filing. Upon such occurrence, the Town Board may restrict or prohibit the introduction of same or continue the public hearing to permit the Town an opportunity to review the same.

The Town will also consider in any application the reasonable rate of return for the property, unique hardship, the essential character of the neighborhood and any self-created hardship.

Section Ten (10). Severability/Validity.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged or determined to be invalid or unconstitutional by any court or other governmental agency of competent jurisdiction, such determination, order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such determination, order or judgment shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court or governmental agency shall modify same to a provision which is legally binding and enforceable, and accordingly, not invalid or unconstitutional, and which best achieves the intent of the invalid or unconstitutional provision, or part thereof, as expressed or inferred herein.

Section Eleven (11). Effective Date.

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APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF FABIUS (NY) LOCAL LAW #2 of the YEAR 2012,
known as:

"Moratorium on and 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 "Moratorium on and 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. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Fabius under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments § 10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, § 27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. 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 Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

Section 2. Findings of Fact.

1. Fabius is a community in the southwest corner of Onondaga County that takes great

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pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources.

2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town's irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place - whether or not businesses will want to locate, or people will want to live in and visit a place.
5. Allowing the activities prohibited by Section 5 of the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.
6. If one or more of the activities prohibited by Section 5 of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 5 of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
7. If one or more of the activities prohibited by Section 5 of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the

public health.

8. Allowing one or more of the activities prohibited by Section 5 of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.
9. If one or more of the activities prohibited by Section 5 of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.
10. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
11. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 4 of the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.
12. The explicit proscription of the activities prohibited by Section 5 of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.
416 U.S. at 6.

And see also *Matter of Gematt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a

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claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

We have never held, however, that the ... ['exclusionary zoning] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y.2d at 683, 684. (emphasis added.)

Section 3. Purposes. The purpose of the Local Law is to enable the Town of Fabius to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 5 of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities to address the same. The Town Board finds that a moratorium of one year [365 days] duration, 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 Town of Fabius 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.

---END---