

Moratorium on Natural Gas and Petroleum Mining and Development within the Town of Milford

Town of Milford Moratorium Local Law No. 1 of 2012

Moratorium on Natural Gas and Petroleum Mining and Development Local Law of the Town of Milford

Be it Enacted by the Town Board of the Town of Milford, Otsego County, New York, as follows:

I. Title

This Local Law shall be known as the "Moratorium on Natural Gas and Petroleum Mining and Development Local Law of the Town of Milford," adopted as Town of Milford Local Law No. 1 of 2012.

II. Enactment

This Local Law is adopted and enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Articles 2 and 3, Town Law, Article 16, and pursuant to Article 2 of the New York State Statute of Local Governments.

III. Purpose

The purposes of this Local Law, which places a moratorium of 180 days on "Natural Gas and Petroleum Mining and Development," as defined herein, within the Town of Milford, are as follows:

It is the purpose of this Local Law to allow the Town of Milford, Comprehensive Plan Committee, Planning Board and Town Board sufficient time to finalize the draft Comprehensive Plan, begun in March of 2012 and since then diligently pursued at over twenty public meetings and workshops, prior to the commencement of any Natural Gas and Petroleum Mining and Development.

It is the purpose of this Local Law to allow the Town of Milford Planning Board and Town Board the opportunity to consider zoning and land use laws in furtherance of a Town Comprehensive Plan before Natural Gas and Petroleum Mining and Development results in irreversible change to the character and direction of the Town.

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It is the purpose of this Local Law to allow the Town of Milford Planning Board and Town Board time to address through planning and legislation environmental factors, particular to Milford that present heightened risks associated with Natural Gas and Petroleum Mining and Development.

It is the purpose of this Local Law to promote the protection, order, conduct, safety, health, and well-being of the residents of Milford and the lands which lie within the Town's borders and jurisdiction.

It is the purpose of this Local Law to facilitate the adoption of a Town Comprehensive Plan and related zoning and land use laws to protect and enhance the Town's physical and visual environment.

It is the purpose of this Local Law to facilitate the adoption of a Town Comprehensive Plan and related zoning and land use laws to protect and enhance the Town's natural, historic and cultural resources.

It is the purpose of this Local Law to facilitate the adoption of a Town Comprehensive Plan and related zoning and land use laws to protect the Town's prime farmland and farmland of statewide importance.

It is the purpose of this Local Law to facilitate the adoption of a Town Comprehensive Plan and related zoning and land use laws to protect the watercourse, which includes the Susquehanna River.

It is the purpose of this Local Law to facilitate the adoption of a Town Comprehensive Plan and related zoning and land use laws to protect the Town's aquifers as the Town of Milford, outside of the Village of Milford, has no municipal water system and residents rely upon private, unfiltered water wells.

It is the purpose of this Local Law to allow time to address through planning and legislation the present, legitimate concerns of the citizens of the Town about the potential for a massive and fast-paced expansion of natural gas drilling in the Town and about the potential for major portions of the Town and its citizens to be adversely impacted by the drilling and operation of natural gas wells and by the activities associated with their operation.

It is the purpose of this Local Law to allow time to consider precautions to protect the citizens of the Town of Milford from potential human health hazards presented by Natural Gas and Petroleum Mining and Development as evidenced by the public statements issued by the medical community.

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It is the purpose of this Local Law to place a moratorium on Natural Gas and Petroleum Mining and Development, which may cause contaminated water supplies, air pollution, traffic congestion, deterioration of roads and bridges, noise, introduction of industrial uses into non-industrial areas, human and animal illness, loss of open space, and irreversible changes to the character of the Town.

IV. Definitions

Agriculture - The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including timber operations as defined in AML Article 25-AA (301).

Aquifer – A geologic formation, group of formations, or part of a formation capable of storing or transmitting and yielding groundwater to wells or springs.

Comprehensive Plan – A long-range plan intended to guide the growth and development of the Town of Milford which includes inventory and analysis leading to recommendations for the Town's land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities, and community design, all related to the Town's goals and objectives for these elements and adopted pursuant to New York State Town Law 272-a.

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.

Environment - All external conditions and influences in an area including geology, water resources, air quality, plants and animals, agricultural resources, aesthetic resources, historic resources, open space resources, recreational, cultural, and municipal resources, road and transportation systems, visual character and community character.

Exploration for Natural Gas and/or Petroleum - Geologic or geophysical activities related to the search for natural gas and/or petroleum 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.

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Extraction of Natural Gas and/or Petroleum - The digging or drilling of a well to explore for, develop or produce natural gas, petroleum or other subsurface hydrocarbons, including, but not limited to any and all forms of fracturing.

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 Petroleum Mining and Development - The Exploration for Natural Gas and/or Petroleum, the Extraction of Natural Gas and/or Petroleum from the ground regardless of the extraction method used, the Processing of Natural Gas and/or Petroleum, and/or the storage, treatment, and/or disposal of waste resultant from Natural Gas and/or Petroleum Exploration, Extraction, and/or Processing. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity and/or use of land and/or water, which facilitates or supports natural gas and/or petroleum exploration, extraction, processing, and/or the storage, treatment, and/or disposal of resultant waste. Examples of activities or uses of land and/or water expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new natural gas and/or petroleum well, regardless of well type;
- Development of a natural gas and/or petroleum well operations site;
- Supporting structures and infrastructure, such as Compression Facilities and Processing Facilities;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the Exploration for, Extraction and/or Processing of Natural Gas and/or Petroleum;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for or in connection with the Exploration, Extraction, and/or Processing of Natural Gas and/or Petroleum, and/or the storage, treatment, and/or disposal of resultant wastes.

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples. This definition shall be construed to encompass and include any activity

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and/or use of land and/or water, which facilitates or supports Natural Gas and/or Petroleum Exploration, Extraction, Processing, and/or the storage, treatment, and/or disposal of resultant waste with the exception of (1) any public utility as defined within this Law (2) pipelines and compression facilities under the jurisdiction of the Federal Energy Regulatory Commission and the New York Public Service Commission, (3) gathering lines that connect petroleum and gas development in another municipality with a regulated pipeline or a public utility, (4) the sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal farm, residential, business, commercial, and other permitted uses within the Town, (5) subsurface fracturing only as a result of a permitted well operation located in another municipality, (6) water withdrawals and other water management issues under the jurisdiction of county, state, and/or federal agencies and/or commissions, and (7) management, administrative, accounting, advocacy, and other such professional, non-industrial services within the Town of Milford that may concern the Oil and Gas Industry.

Non-Conforming Use – A use or activity that was lawful prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of the law.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, or estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Petroleum - Crude petroleum oil and all other hydrocarbons, regardless of gravity, in liquid form.

Processing Facility – An industrial operation and/or plant that processes and refines natural gas and/or petroleum into other commodities.

Processing of Natural Gas and/or Petroleum – The production of any commodity made from and/or by-product of natural gas or petroleum including, but not limited to refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from petroleum or gas, whether herein enumerated or not.

Public Utility – An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility use provides

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electric, gas, steam, telephone service, water or sewerage directly to the general public.

Road – A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

Waterbody - Any natural or artificial pond, lake, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

Watercourse –

- i. Rivers, streams, brooks and waterways, which are delineated on the most recent edition of the United States Geological Survey topographic maps of the Town.
- ii. Any other streams, brooks and waterways containing running water for a total of at least three (3) months a year.
- iii. Lakes, ponds, marshes, swamps, bogs, natural springs and all other waterbodies, natural or artificial, which are fed by or have discharge to another wetland, waterbody or watercourse.

V. Regulation

- A. Beginning on the effective date of this Local Law and for a period of 180 days thereafter, it shall be unlawful for any person to engage in “Natural Gas and Petroleum Mining and Development,” as the term is defined in this Local Law, within 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, any special use permit or other permit which would result in the establishment, implementation, placement, construction, development or expansion of “Natural Gas and Petroleum Mining and Development” as defined within this Law.
 2. The Town Zoning Board of Appeals shall not consider, nor grant any variance or other permit for any use which would result in the establishment, implementation, placement, construction, development or expansion of “Natural Gas and Petroleum Mining and Development” as defined within this Law.

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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, development or expansion of "Natural Gas and Petroleum Mining and Development" as defined within this Law.

VI. Enforcement and Violations

- A. 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.
- B. Upon authorization by the Town Board, the Town may institute an action or proceeding in a court of competent jurisdiction to prevent, restrain, enjoin, correct, or abate any violation of or to enforce any provision of this Law.
- C. The Town Board may seek in a court of competent jurisdiction any and all applicable remedies provided under New York State Town Law §268.

VII. Non-Conforming Uses

"Natural Gas and Petroleum Mining and Development," as defined elsewhere in this Law, shall be prohibited in the Town of Milford beginning on the effective date of this Local Law and for 180 days thereafter.

Any leases of property for the purpose of allowing "Extraction of Natural Gas and/or Petroleum" as defined within this Law which are being presently conducted on land in the Town as of the effective date of this Law, shall be subject to the following:

- A. Existing Leases:
 1. Where a lease which allows "Extraction of Natural Gas and/or Petroleum" as defined within this Law has been executed and where no substantive Extraction of Natural Gas and/or Petroleum

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has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities beginning on the effective date of this Local Law and for 180 days thereafter. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

B. Existing Extraction Operations

1. Where a lease which allows "Extraction of Natural Gas and/or Petroleum" as defined within this Law has been executed, and where substantive extraction activity is occurring as of the effective date of this Law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.
2. Upon the depletion of any natural gas and/or petroleum well which is allowed to remain in operation pursuant to this provision, or upon any other termination of the extraction activity for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity shall not be renewed.
3. Further, no "Extraction of Natural Gas and/or Petroleum" allowed to remain in operation as a non-conforming use shall be permitted to expand after the effective date of this Local Law.

C. Other Existing Operations

1. Where substantive "Natural Gas and Petroleum Mining and Development" as defined within this Law is occurring as of the effective date of this Law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.
2. Upon any discontinuance or upon any termination of "Natural Gas and Petroleum Mining and Development" for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity shall not be renewed.

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3. Further, no "Natural Gas and Petroleum Mining and Development" allowed to remain in operation as a non-conforming use shall be permitted to expand after the effective date of this Local Law.

VIII. Variances

The Town Zoning Board of Appeals retains the power and discretion to vary or adapt the strict application of the requirements of this Local law in the case of difficulties that would unconstitutionally deprive the owner of all economically viable and productive use of the lands involved.

IX. SEQRA Classification

As a local land use moratorium, this Local Law shall be classified as a Type II action for the purposes of the State Environmental Quality Review Act ("SEQRA"), 6 NYCRR §617.

X. Severability

If any specific part or provision or standard of this Local Law, or the application thereof to any person or circumstance, be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof.

XI. Interpretation; Conflict With Other Laws

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

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XII. Effective Date

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.