

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231**Town of Sparta
Local Law No. 1 - 2012****A LOCAL LAW TO EFFECT A TEMPORARY MORATORIUM ON ALL NATURAL GAS AND/OR PETROLEUM ACTIVITIES IN THE TOWN OF SPARTA, NEW YORK**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF SPARTA,
LIVINGSTON COUNTY, NEW YORK AS FOLLOWS:

Section 1. Title.

This Local Law shall be known and may be cited in short form as the "2012 Temporary Moratorium on all Natural Gas and/or Petroleum Activities Law" of the Town of Sparta, New York.

Section 2. Statement of Authority.

This Local Law is adopted pursuant to authority vested in the Town Board 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 Sparta for the purpose of promoting the health, safety, and welfare of all residents and property owners in the Town of Sparta (hereinafter referred to as "Town").

Section 3. Statement of Purpose.

The purpose of this Local Law is to enable the Town to enact a stay on an interim basis to prevent all Natural Gas and/or Petroleum Activities in the Town, pending the completion and possible adoption of permanent comprehensive laws, regulations and/or ordinances.

Section 4. Statement of Legislative Findings and Declaration.

The Town Board of the Town of Sparta hereby finds and declares that:

- A. There is a potential for natural gas and/or petroleum exploration, the development and operation of facilities for the production of the same or other infrastructure used in furtherance of such activities or the transportation, deposit and/or storage of product and/or byproduct resulting from such activity (hereinafter referred to as "Natural Gas and/or Petroleum Activities") in the Town.
- B. If Natural Gas and/or Petroleum 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 impacts on local infrastructure, as well as on various other community, environmental, and economic resources.
- C. The Town Code currently does not contain any law, ordinance or regulation which specifically and adequately regulates Natural Gas and/or Petroleum Activities.

- D. To promote the general public health, safety and welfare it is essential to implement comprehensive laws, regulations and/or ordinances which will serve to protect against any adverse impacts from such Natural Gas and/or Petroleum 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 measures 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/or Petroleum 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 party 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 1000 and Section 1001 in Article X of the Zoning Code of the Town of Sparta.

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

"MORATORIUM" shall mean a formally agreed period during which an activity is halted or a planned activity is postponed.

"NATURAL GAS AND/OR PETROLEUM ACTIVITIES" shall mean all activities in furtherance of natural gas and/or petroleum exploration, extraction, the development and operation of facilities for the production of the same or other infrastructure used in furtherance of such activities or the transportation of byproduct resulting from such activity or the deposit and/or storage of such product and/or byproduct. Facilities for the transmission of natural gas and petroleum which are in existence on the effective date hereof are specifically excluded from this definition.

"NATURAL GAS" shall mean a mixture of combustible hydrocarbon gases, mostly methane and ethane, found trapped in the pore spaces of some sedimentary rocks, often along with petroleum deposits.

"PETROLEUM" shall mean crude oil that occurs naturally in sedimentary rocks and consists mainly of hydrocarbons.

"MORATORIUM" shall mean a formally agreed period during which an activity is halted or a planned activity is postponed.

Section 6. Term of Moratorium Declared.

To carry out the above purposes, the Town Board 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/or Petroleum Activities, unless earlier terminated by a superseding, duly adopted Local Law.

Section 7. Prohibited Actions and Reservation of Right.

- A. Prohibited Actions. Unless permitted under Section 8 or Section 9 hereunder, during the effective period of this Local Law:

- (1) No new Natural Gas and/or Petroleum Activities shall be commenced in the Town.
- (2) Neither the Town Board, Town Planning Board nor Code Enforcement Officer shall grant any approvals which would have as a result the commencement or completion of Natural Gas and/or Petroleum Activities.
- (3) The Town 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/or Petroleum Activities.
- (4) The Zoning Board of Appeals shall not grant any variance for any use which would result in any Natural Gas and/or Petroleum Activities.
- (5) The Code Enforcement Officer shall not accept any application which would permit any Natural Gas and/or Petroleum Activities.

- B. Reservation of Right. The Town Board reserves the right to direct the Code 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.

- C. The prohibited actions set forth in the above Clause A. of this Section 7 are not intended, and shall not be construed, to:

- (1) Prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the purpose of supplying natural gas utility services to residents of or buildings located in the Town; or.
- (2) Prevent or prohibit the incidental or normal sale, storage or use of gas and/or petroleum products in connection with agriculture, residential, business, commercial, and other uses within the Town, so long as such uses do not involve any Natural Gas and/or Petroleum Activities.

B. Reservation of Right. The Town Board reserves the

Section 8. 'Grandfathering' of Legal, Pre-existing Non-Conforming Use

- A. Notwithstanding any provision hereof to the contrary, any Natural Gas and/or Petroleum Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:
- (1) Where, as of the effective date of this Local Law, substantive Natural Gas and/or Petroleum 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 all permits required to be issued by the New York State Department of Conservation (hereinafter referred to as "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 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 7 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 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 only such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Activities shall in all respects be prohibited as contemplated by Section 7 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 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 7 hereof.

Section 9. 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 Board 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 Code Enforcement Officer as of the effective date of this Local Law pertaining to a proposal, including a fee not to exceed 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 not be construed to authorize any expansion or attempted or purported expansion of the non-conforming status conferred and recognized by Clause A. (1) of this Section 8, and shall not be construed to authorize any expansion or attempted or purported expansion of the non-conforming status conferred and recognized by Clause A. (1) of this Section 8.

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 Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

B. The Town Board 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 Board, 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 Board. A public hearing on any application for an exception for extraordinary hardship shall be held by the Town Board no later than forty-five (45) days after the complete application for the variance exception has been filed with the Code Enforcement Officer. 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 Board 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 9 the Town Board shall consider criteria, including but not limited to the following, 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 Local Law, received any development approval for the proposed development.

(2) The extent to which the Natural Gas and/or Petroleum Activities would not 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) Would not have an adverse effect on the goals or objectives of the Town in revising the associated zoning codes hereunder; and

Local Law, received any development approval for the proposed development.

- (5) 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; and,
 - (6) Any other factors deemed relevant by the Town Board based on the circumstances of the particular application.
- F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall act upon the application. The Town Board shall, within forty-five (45) days of the close of the public hearing, render its decision in writing, either granting in whole or in part, or denying the requested variance from the strict requirements of this Local Law.

Section 10. Penalties.

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

- A. A fine not to exceed Two Hundred Fifty (\$250.00) 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 for the first offense. For the purposes of this Clause A. of this Section 10, each day that a violation of this Local Law exists shall constitute a separate and distinct offense; and
- B. Injunctive relief in favor of the Town 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.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court.

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

Section 11. Statement of Supersession.

- A. To the extent that any other provision of Town Code conflicts herewith, this Local Law shall supersede 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 supersede any State Law or regulation which conflicts herewith.

Section 12. 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 of this Local Law.

Section 13. Effective Date.

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

Section 13. Effective Date.