

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☐ Town ☒ Village
(Select one:)

of Owego

Local Law No. 3 of the year 2012

A local law Effect a moratorium within the Village of Owego on Natural Gas and/or Petroleum

(Insert Title)

Exploration, Extraction and Support Activities.

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

☐ County ☐ City ☐ Town ☒ Village
(Select one:)

of Owego as follows:

Section 1. TITLE.

This Local Law shall be known as the "Moratorium on Gas And/Or Petroleum Exploration, Extraction and Support Activities Within the Village of Owego."

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE.

A. Authority and Intent. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Village Board of the Village of Owego 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); Village Law § 4-412(a); Village Law Article 7 (Building Zones) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and Public Health Law § 228 (2), and (3).

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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 Village 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 Village.

B. Findings. The Village Board of Trustees desires to address, in a careful manner, the activities prohibited by Section 4. of this Local Law by allowing the Village a reasonable time to study the potential impacts, effects, and possible controls over such activities and to consider possible amendments to the Village's zoning laws and comprehensive plan to address the same.

C. Purpose. The purpose of the Local Law is to enable the Village of Owego 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 Village-level approvals respecting the activities prohibited by Section 4. of this Local Law, for a reasonable time, so as to allow the Village time to study the potential impacts, effects, and possible controls over such activities and to consider possible amendments to the Village's zoning laws and comprehensive plan to address the same. The Village Board of Trustees finds that a moratorium of one (1) year duration, coupled with a mechanism for an "unnecessary hardship" variance procedure and a provision for the "grandfathering" of legal, pre-existing non-conforming uses, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Village of Owego 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.

Section 3. DEFINITIONS.

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

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

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 Support Activities --- Shall mean any natural gas compression or processing facility, and any disposal, storage, dumping or underground injection of natural gas and/or Wastes.

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.

Village --- The Village of Owego, Tioga County, New York.

Village Board --- The Village Board of Trustees of the Village.

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 Village, 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). This definition does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by agriculture use.

Section 4. MORATORIUM AND PROHIBITION.

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 8 of this Law), building permit, site plan approval, subdivision approval or other Village-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 Village 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 Village 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 4. are not intended, and shall not be construed, to: (a) prevent or prohibit the digging or drilling of a well for the purposes of exploring for, developing, or producing potable water; (b) prevent or prohibit the right to

use roadways in commerce or otherwise for travel; (c) 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 Village; or (d) 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 Village.

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 after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

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

F. Under no circumstances shall the failure of the Village Board of the Village, the Zoning Board of Appeals of the Village, the Planning Board of the Village, or the Code Enforcement Officer for the Village 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 Village-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. PENALTIES.

A. Compliance Orders. The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in violation of this Local Law. If the condition or activity is not remedied after the issuance of a compliance order, then an appearance ticket may be issued as provided hereinafter.

B. Appearance Tickets. The Code Enforcement Officer is authorized to issue appearance tickets for any violation of this Local Law. Any person who violates any provision of this Local Law shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

C. Civil Penalty. In addition to those penalties prescribed herein, any person who violates any provision of this Local Law shall be liable to a civil penalty of not more than \$2,500 for each day or part thereof during which such violation continues. The civil penalties provided by this section shall be recoverable in an action instituted in the name of the Village of Owego.

D. Injunctive Relief. An action or proceeding may be instituted in the name of the Village of Owego, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Local Law. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Village Board.

E. Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation of this Local Law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section. In addition to the above-provided remedies, the Village Board may also

seek reimbursement to the Village for costs incurred by the Village in identifying and remedying each violation, including but not limited to, reasonable attorney's fees.

Section 6. GRANDFATHERING OF LEGAL, PRE-EXISTING NON-CONFORMING USE.

Notwithstanding any provision hereof to the contrary, any Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration Activities or Natural Gas And/Or Petroleum Support Activities that are being conducted in the Village as of the effective date of this Local Law and 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 such Activities shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of this Section.

Any expansion of a lawful, pre-existing nonconforming use shall not be grandfathered under this Section, and instead shall in all respects be prohibited as contemplated by Section 4 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 7. ~~HARDSHIP USE VARIANCE.~~

The Board of Appeals of the Village is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located: (i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that the alleged hardship has not been self-created.

In the event the Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Village's then applicable zoning laws and other laws and regulations. The Board of Appeals, in the granting of a hardship use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 8. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Village Board of the Village hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 9. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Village Board to supersede any inconsistent provisions of any and all other local ordinances, local laws, or local resolutions or policies of the Village of Owego.

Section 10. GENERAL PROVISIONS.

A. The Code Enforcement Officer is hereby designated as the enforcement officer for purposes of interpreting and enforcing this Local Law.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only, and shall not be used or construed to limit or define the scope or application of the clauses and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

Section 11. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State in accordance with section 27 of the Municipal Home Rule Law.