

Local Law Filing

41 STATE STREET,
ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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.

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.

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2012 of the (County)(City)(Village)(Town) of Fabius was duly passed by the Town Board of the Town of Fabius on 5-31-12 in accordance with the applicable provisions of law.

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed _____ (Name of legislative Body)~~

~~disapproval) by the _____ and was deemed duly adopted on _____, 199_ (Elective Chief Executive Officer*)~~

~~in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No of 199_ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed after _____ (Elective Chief Executive Officer*)

~~Such local law was _____ to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19__, in accordance with the applicable provisions of law.~~

~~4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No _____ of 19__ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not approved)(repassed after _____ (Name of Legislative Body)~~

disapproval) by the _____ on _____ 19__ Such local law was subject to ~~(Elective Chief Executive Officer*)~~

~~permissive referendum and no valid petition requesting such referendum was filed as of _____ 19__, in accordance with the applicable provisions of law.~~

~~5. (City local law concerning Charter revision proposed by petition.)~~

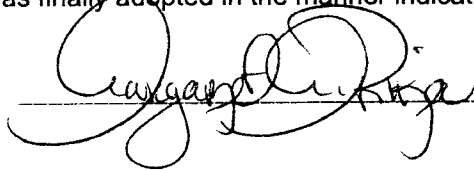
I hereby certify that the local law annexed hereto, designated as local law No _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19__, became operative.

~~6. (County local law concerning adoption of Charter.)~~

I hereby certify that the local law annexed hereto, designated as local law No _____ of 19__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Villages of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.



Margaret Riker, Town Clerk

(Seal)

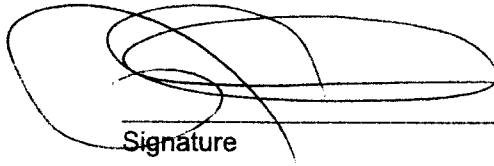
Date:

5-31-2012

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK)
COUNTY OF ONONDAGA)ss.:

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Robert S. DeMore

Attorney for the Town
Title

County
City of Fabius

Village Town

Date: 5/31/12 _____

2012

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a Village where such officer is vested with the power to approve or veto local laws or ordinances.