

CHAPTER IX

RECOMMENDATIONS and PROPOSED AMENDMENTS to TOWN LAWS, REGULATIONS and/or POLICIES

The HF Committee unanimously agrees that hydraulic fracturing for natural gas and natural gas operations are not consistent with the goals and visions described in the Comprehensive Plan.

As described in this report, any local economic benefit of natural gas development is not likely to outweigh the negative local impacts to the rural quality of life, safety, health, and well being of the citizens in the Town of Rensselaerville.

The Hydraulic Fracturing Committee therefore recommends that the Town Board of the Town of Rensselaerville enact a local law or laws relative to the prohibition of heavy industry, including but not limited to natural gas and oil extraction, coal mining and coal processing, covering all the lands in the Town of Rensselaerville.

A PROPOSED MODEL FOR LOCAL LAW:

LOCAL LAW FILING

NEW YORK STATE DEPARTMENT OF STATE

41 State Street
Albany, NY 12231

TOWN OF RENSSELAERVILLE, NEW YORK LOCAL LAW NO. ____ OF THE YEAR 2012

A LOCAL LAW AMENDING AND CLARIFYING THE TOWN OF RENSSELAERVILLE, ALBANY COUNTY, NEW YORK, ZONING ORDINANCE RELATIVE TO TO HEAVY INDUSTRY AND NATURAL GAS AND OIL EXTRACTION, COAL MINING AND COAL PROCESSING.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF RENSSELAERVILLE AS FOLLOWS:

SECTION 1. TITLE AND APPLICABILITY:

This law shall be known as the Prohibition of Heavy Industry Law of the Town of Rensselaerville, Local Law Number ____ of the year 2012.

SECTION 2. PURPOSES AND INTENTS:

A. To promote and to protect significant resources such as water bodies, wetlands, water supplies, habitats, streams, and scenic views; and to promote and protect the order, conduct, health, safety and general welfare of the residents of the Town of Rensselaerville and the lands that lie within the Town's borders.

B. To respond to legitimate concerns of the citizens of the Town about the potential for expansion of Heavy Industry, including but not limited to natural gas extraction, within the lands of the Town of Rensselaerville.

C. To clarify, update, and amend the Town of Rensselaerville Zoning Law by, among other things relative to heavy industry and natural gas and oil extraction, coal mining and coal processing.

D. To ensure that the Town of Rensselaerville zoning laws are congruous with the Town of Rensselaerville Comprehensive Plan. Specifically to:

1. Ensure that new land uses are developed in an environmentally sustainable manner so that the Town's rural character is retained;
2. Protect groundwater resources to ensure that the quantity and quality of water is available to serve future needs.
3. Promote and protect the scenic views, cultural, agricultural and historic character of the town for its intrinsic and economic value;
4. Protect farms, prime soils, soils of statewide importance, and valuable farmlands;
5. Provide for orderly growth in accordance with the Comprehensive Plan;
6. Provide for safe roads and current acceptable levels of traffic;
7. Secure safety from explosions, fire and other dangers.
8. Protect homeowners and current business owners from heavy industrial development.

Among other things, this Local Law has been made with reasonable consideration of the Town's character and quality of life, while encouraging the most appropriate use of land.

This Local Law is intended to be of general applicability, and is intended to regulate all types of Heavy Industry, except as provided herein.

SECTION 3. AUTHORITY:

This Local Law is adopted and enacted by the Town Board of the Town of Rensselaerville pursuant to its authority and power granted by the Constitution, Article IX and Laws of the State of New York including without limitation to Municipal Home

Rule Law, Section 10, which gives authority to towns to enact laws to protect property, physical and visual environment, conduct, safety, health, and well-being of its citizens.

Further, this Local Law is adopted and enacted by the Town Board of the Town of Rensselaerville pursuant to N.Y.S. TOWN LAW § 272-a: NY Code - Section 272-A: Town Comprehensive Plan. State statutes require that all land use laws in the town must be consistent with the comprehensive plan.

SECTION 4. DEFINITIONS:

Definitions for the Town of Rensselaerville Zoning Law are amended by adding new definitions to read as follows:

Heavy Industry: Any use or activity which generates significant volumes of smoke, odor, noise, glare, or other pollution wastes and is not compatible with other uses in the districts of the Town of Rensselaerville. Examples of “Heavy Industry” include but are not limited to: chemical manufacturing; exploration for natural gas; extraction of natural gas; natural gas processing facilities; and/or compressor stations; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; and coal processing. 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 solely to the activities identified in the examples.

Generic examples of uses not included in the definition of “Heavy Industry” are: dairy farms; dairy processing plant; bakery; office and communications uses; printing and publishing; woodworking and cabinet shops; automobile repair shops; wineries and breweries; warehousing ancillary to an authorized use; truck terminals; equipment repair and maintenance facilities; helipads; parking lots and parking garages; Light Industrial and Manufacturing Operations; agriculture; excavation of earth materials; sawmills; apparel and other textile products.

Natural Gas Exploration, Extraction, or processing: The exploration for natural gas, the extraction of natural gas from the ground regardless of the extraction methods used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to vertical drilling, horizontal drilling, low volume hydraulic fracturing and/or high volume hydraulic fracturing. This definition shall also be construed to encompass and include any activity or use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- a. Drilling and/or installation of a new natural gas well, regardless of well type;
- b. Development of a natural gas well site and associated structures and infrastructure;
- c. Mixing, storage, treatment, and/or disposal of chemicals, wastewater, flowback, brine, cuttings, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;

d. Installation and/or use of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with the exploration for or extraction of natural gas.

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.

SECTION 5. REGULATION:

Beginning on the effective date of this Local Law, it shall be unlawful for any person to conduct “Heavy Industry” within the Town of Rensselaerville. “Heavy Industry” is added to Article IV, Section 5. Prohibited Uses.

As an exception to the above-stated prohibition, because of its vital importance to sustaining and enhancing an agricultural community, the conduct of activities that are directly related to Agriculture, including but not limited to sap processing, milk processing, grain mills, logging, sawmills, and slaughterhouses, shall not be unlawful, notwithstanding that such conduct may comprise Heavy Industry.

SECTION 6. ENFORCEMENT:

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.

SECTION 7. NON-CONFORMING USES:

A. Conduct of activities and uses of land that comprise Heavy Industry lawfully in existence and ongoing as of the effective date of this Local Law, shall be considered a Non-Conforming Use and shall be allowed to continue provided such activity does not materially enlarge or expand in size or scope and further provided that if such activity ceases for a period of more than one (1) year, the Non-Conforming Use status of that activity shall terminate and the activity may not be resumed, re-started or renewed.

B. The preceding provision relating to continuation of Non-Conforming Uses shall apply to the exploration for natural gas; vertical or horizontal drilling and low or high volume hydraulic fracturing for natural gas; extraction of natural gas; natural gas processing facilities; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; and coal processing as set forth hereinbelow. For the purposes of this Section 7, and solely for the ease of drafting and reading, all those uses and activities shall be referred to collectively as “natural gas, oil, and coal extraction.”

C. Any leases of property for the purposes of allowing natural gas, oil, and coal operations which are being presently conducted on land in the Town as of the effective date of this law, shall be subject to the following:

1. Existing Leases:

a. Where a lease which allows natural gas, oil or coal extraction has been executed and where no substantive gas, oil or coal extraction activity 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. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

2. Existing Natural Gas, Oil and Coal Extraction

a. Where a lease which allows natural gas, oil or coal extraction has been executed, and where substantive natural gas, oil or coal mining 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.

b. Upon the depletion of any natural gas or oil well or coal mine which is allowed to remain in operation pursuant to this provision, or upon any other termination of the natural gas, oil or coal extraction activity for a period of more than one (1) year, the Non-Conforming Use status of that activity shall terminate and the activity may not be resumed, re-started or renewed.

c. Further no natural gas, oil or coal extraction activity allowed to remain in operation pursuant to this provision shall be permitted to enlarge or expand after the effective date of this Local Law.

SECTION 8. 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.

SECTION 9. INTERPRETATION OR CONFLICT WITH OTHER LAWS

In the 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 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.

SECTION 10. EFFECTIVE DATE:

This Local Law shall take effect immediately upon filing with the Office of the Secretary of the 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.

End of Law

Furthermore, it is recommended that Town Council seek legal support with attorneys who have expertise and experience in drafting heavy industry bans in the State of New York.

This proposed model for legal review can also be found in Appendix IX.