

## TOWN OF HOMER

### PROPOSED LOCAL LAW NO. 2 OF 2014 A MORATORIUM ON NATURAL GAS OR PETROLEUM EXTRACTION AND EXPLORATION ACTIVITIES, UNDERGROUND STORAGE OF NATURAL GAS, AND DISPOSAL OF NATURAL GAS OR PETROLEUM EXTRACTION RELATED WASTES

#### **Section 1. Title**

The title of this Local Law is “A Moratorium on Natural Gas or Petroleum Extraction and Exploration Activities, Underground Storage of Natural Gas and Disposal of Natural Gas or Petroleum Extraction Related Wastes.”

#### **Section 2. Authority and Purpose**

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Homer under the New York State Constitution, and the Law of the State of New York, including but not limited to Municipal Home Rule Law §10; Statute of Local Governments §10; Town Law §64; Town Law §130; Town Law §135; and Town Law Article 16 (Zoning & Planning); and the holding in Wallach vs. Town of Dryden.

The purpose of this Local Law is to enable the Town of Homer to temporarily prohibit the construction, operation, and establishment of, and the submission and processing of applications for approvals or permits for natural gas or petroleum extraction and exploration activities, underground storage of natural gas, and disposal of natural gas or petroleum extraction related wastes for a reasonable time. The Town needs time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town’s existing zoning law, to address the same. The Town Board finds that a moratorium of six (6) months duration, coupled with a mechanism for an ‘unnecessary hardship’ variance procedure, will achieve an appropriate balancing of interests between, on the one hand, the public need to safeguard the character and other resources of the Town of Homer and the health, safety and general welfare of its residents, and, on the other hand, the rights of individual property owners or businesses desiring to conduct such activities during such period.

This local law is not intended to regulate any activities which fall under the exclusive jurisdiction of the Federal Energy Regulatory Commission.

#### **Section 3. Definitions**

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, or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas Compression Facility – A facility constructed or operated to raise the pressure of natural gas in connection with its extraction, processing, or storage, or its delivery into or out of the transmission pipeline system.

Natural Gas or Petroleum Exploration Activities – Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geological 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 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 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 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 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 or Petroleum Support Activities – Any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas or Petroleum Extraction, Exploration, or Production Wastes Disposal/Storage Facility; (d) Natural Gas or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Underground Injection; or (g) Underground Natural Gas Storage.

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 or produced natural gas.

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.

Subsurface – Below the surface of the earth, or a body of water, as the context may require.

Town – The Town of Homer, Cortland County, New York.

Transmission Line – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulation Commission’s jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York.

Underground Injection – Subsurface emplacement of Natural Gas 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 use of load balancing the production or distribution of natural gas. This includes compression and dehydration facilities, and pipelines.

#### **Section 4. Scope and Control**

From and after the effective 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 or Petroleum Exploration Activities; (ii) any Natural Gas or Petroleum Extraction Activities; or (iii) any Natural Gas or Petroleum Support Activities.

From and after the date of this Local Law, no application for a permit, zoning permit, special permit, building permit, site plan approval, subdivision approval or other Town-level approval will 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 or Petroleum Exploration Activities; (ii) any Natural Gas or Petroleum Extraction Activities; or (iii) any Natural Gas or Petroleum Support Activities. Nothing herein shall preclude the issuance of a variance pursuant to Section 6.

#### **Section 5. Grandfathering of Legal, Pre-existing Non-conforming Uses**

Any legal natural gas related extraction or support activities which are being conducted on the effective date of this local law may be continued. No such use may be extended or expanded beyond the lands currently used for such purposes.

#### **Section 6. Variances**

The Zoning Board of Appeals is hereby authorized to consider applications for variances from this moratorium in accordance with the Town of Homer zoning law (Local Law #1 for 2008) and New York State Town Law §267-b.

#### **Section 7. Penalties**

Any person who violates the provisions of this Local Law, will be subject to:

1. A violation under this Local Law shall be deemed an unclassified misdemeanor for purposes of establishing fines.
2. A penalty in the amount of a minimum of \$1,000 and a maximum of \$15,000 for each day that such violation shall exist; and
3. 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 and/or improvements which may have been built in violation of this Local Law, and further, said Person shall be liable to the Town for all costs and expenses of enforcement of this Local Law, including reasonable attorney's fees incurred by the Town of Homer.

It will be the duty of the Code Enforcement Officer to enforce the provisions of this Local Law.

**Section 8. Superseding Intent and Effect**

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby superseded, for so long as this moratorium remains in effect.

**Section 9. Effective Date**

This Local Law will take effect immediately upon filing in the office of the Secretary of State. It will expire six (6) months after that date.