RESOLUTION

Sponsor: Mr. Golombek

Subject: Dangers of Hydraulic Fracturing and Waste Disposal in New York State

Whereas: A recent advance in techniques for extraction of natural gas from shale rock beds called hydraulic fracturing, or "fracking" has caused environmental and safety concerns across the country; and

Whereas: Widely reported negative effects of fracking include release of methane gas and dangerous chemicals and carcinogens into wells and other public water supplies. Vast amounts of fresh water are required. The chemicals used in fracking are considered proprietary, and are therefore secret. The waste water created in fracking poses a major disposal problem; and

Whereas: The NY DEC's S.G.E.I.S. fails to protect from environmental and health risks. There is no analysis of the public health impacts, drinking water supplies are inadequately protected and susceptible to contamination, there is no solutions to waste disposal issues, the waste is not classified as hazardous, the usage of toxic chemicals has not been limited or prohibited, and so on; and

Whereas: The DEC's S.G.E.I.S. protects the watersheds of N.Y.C. and Syracuse and no other watersheds, including Buffalo's. The rest of the state's watersheds cannot rely on outdated water filtration systems that can't remove the chemicals used in drilling. A Sept. 15, 2011 letter to Cuomo from 59 scientists stated, "We urge the state to reconsider its position that existing water filtration systems provide adequate protection against the risk of hydraulic fracturing."

Whereas: Neighboring Niagara Falls is considering treatment of fracking waste water. No long-term health impact analysis has been done on the safety of the effluent; residents could be exposed to chemicals otherwise not in their environment, and so on. The chemicals used in drilling are not biodegradable and solids from the waste could enter local landfills; and

Whereas: Research investigating the specific risk and benefit of hydraulic fracturing is lacking, with federal environmental exemptions. New York State is scheduled to begin issuing permits for hydraulic fracturing operations in 2012 after review of public comments; and

Whereas: Bill S4220/A7218-2011 is an act to amend the environmental conservation law, in relation to prohibiting the use of hydraulic fracturing and the disposal and/or processing of any fluid which was used in a hydraulic fracturing process; and

Whereas: Such operations may potentially cast negative environmental impacts upon Great Lakes communities and the residents of the City of Buffalo.

Now, Therefore, Be It Resolved:

The Common Council of the City of Buffalo hereby urges Governor Andrew M. Cuomo and the State of New York to issue a prohibition suspending hydraulic fracturing operations in New York State due to possible dangers and environmental impacts of such operations.
Be It Further Resolved:

This Honorable Body requests that the City Clerk forward copies of this resolution to Governor Andrew Cuomo, Senate Majority Leader Dean Skelos, Assembly Speaker Sheldon Silver and all members of the Western New York State Legislative Delegation.

Joseph Golombek Jr.
By: Mr. Golombek

Re: Ordinance Amendment
Chapter 288, Natural Gas Extraction Prohibition

The Common Council of the City of Buffalo does hereby ordain as follows:

That Chapter 288 of the Code of the City of Buffalo be added to read as follows:

Chapter 288, NATURAL GAS EXTRACTION PROHIBITION

Whereas, this ordinance prohibits the exploration for and extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes within the City of Buffalo, in order to preserve and protect the public health, safety and welfare of the residents and neighborhoods of Buffalo; and

Whereas, after review of scientific research from both opponents of natural gas extraction and natural gas extraction industry advocates, the Common Council now seeks to prevent the citizens of Buffalo from the dangers associated with natural gas extraction; and

Whereas, this Ordinance shall be known and may be cited as “Buffalo’s Community Protection from Natural Gas Extraction Ordinance”;

Now Therefore, Be it enacted by the Common Council of the City of Buffalo as follows:

§288-1 Findings and Intent

The Common Council of the City of Buffalo finds, declares and determines that:

(a.) the exploration for natural gas, the extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes in the urban environment of Buffalo poses a significant threat to its residents’ health, safety, and welfare;

(b.) widespread environmental and human health impacts have resulted from natural gas exploration and extraction in other areas;

(c.) if natural gas exploration or extraction or the storage, transfer, treatment or disposal of natural gas exploration and production wastes were to occur within the City, this activity would endanger the health, safety and welfare of City residents through the deposit of toxins into the air, soil, water, environment, and the bodies of residents within the City;

(d.) the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police and land use powers that the City possesses;
(e.)  clean air and water are essential to most resources and activities in the Buffalo area and
the quality of the air and the water will be degraded by natural gas exploration and extraction activities
and/or the storage, transfer treatment or disposal of natural gas exploration and production wastes;

(f.)  natural gas exploration and extraction activities and the storage, transfer, treatment or
disposal of natural gas exploration and production wastes may presently or in the future cause irreparable
harm to the City’s water supply, pollution of the water, soil and air, and may cause cancer, lung disease,
and respiratory diseases;

(g.)  air, soil, and water contamination may occur during the different stages of natural gas
exploration and extraction operations and the storage, transfer, treatment or disposal of natural gas
exploration and production wastes, and such contamination could have adverse human health impacts;

(h.)  spills of liquid and solid wastes that originate from the exploration, drilling and extraction
of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal
facilities) is not uncommon, and such products may come into contact with and contaminate and pollute
groundwater and/or soil;

(i.)  a large percentage of the chemicals used in natural gas exploration and extraction and
many of the constituents of natural gas exploration and production wastes are likely causes of adverse
human health impacts;

(j.)  natural gas exploration and production waste products are hazardous wastes within the
meaning of Section 235-1 of the Buffalo City Code;

(k.)  the City of Buffalo has the authority to prohibit the exploration and extraction of natural
gas and the storage, treatment or disposal of natural gas exploration and production wastes within its
borders;

(l.)  this Ordinance addresses land use and nuisance issues and is intended to only incidentally
impact the state law set forth in New York State Environmental Conservation Law Article 23;

(m.)  this Ordinance endorses the Buffalo Comprehensive Plan. The Comprehensive Plan
notes that “The Great Lakes contain 20 percent of the world’s fresh water supply. This is a resource of
immense and increasing global value. The Comprehensive Plan also notes a need to reduce the total area
zoned for heavy industrial use and the need to promote sustainable “green” development. The City of
Buffalo chooses not to permit additional sites for extraction of fossil fuels within its city limits, but rather
seeks to preserve areas that might otherwise be dedicated to fossil fuel extraction for other more
sustainable alternatives.

(n.)  The Common Council believes that the protection of residents, neighborhoods, and the
natural environment is an appropriate use of its police powers. The Common Council thus hereby adopts
this ordinance, which bans the extraction of natural gas within the City of Buffalo because that extraction
cannot be achieved without endangering the health, safety, and welfare of the residents of the City of
Buffalo.
§288-2  Legislative Objectives and Authority

A. This Ordinance is enacted to protect and promote the health, safety and general welfare of present and future residents of the City. This Ordinance is an exercise of the City’s police power, its power to prohibit public nuisance and a land use regulation designed to protect the health, safety and welfare of the of the current and future residents of the City from adverse effects and impacts that would result if natural gas exploration and extraction and/or the storage, transfer, treatment or disposal of natural gas exploration and production wastes were allowed within the City.

B. This Ordinance is promulgated pursuant to the Authority set forth in Article 9, §§1 and of the of the New York State Constitution and §10 of the New York State Municipal Home Rule Law.

C. This ordinance supports the policies of the State of New York (1) “to conserve, improve and protect its natural resources and environment and to prevent, abate, and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being (ECL1-0101); and (2) “to reduce or eliminate the use of hazardous substances and the generate of such substances, pollution or waste at the source in order to conserve, improve and protect New York’s environment and natural resources; enhance the health, safety and welfare of its citizens…”

D. This Ordinance is an exercise of the City of Buffalo’s prohibition on any activity “involving the treatment, storage or disposal of hazardous wastes which cause substantial harm or a risk of substantial harm to the public health and safety or to the environment …” (Buffalo City Code §235-2).

E. This Ordinance is not directed at the regulatory scheme for the operation of natural gas wells under the Oil, Gas & Solution Mining Law of New York State. This Ordinance addresses land use and nuisance concerns and the protection of the health, safety and welfare of the people of the City of Buffalo and the enhancement of its physical environment.

§288-3  Definitions

A. “Corporations,” for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability status or protections for its owners, directors, officers, and/or managers.

B. “Exploration” shall mean geologic or geophysical activities related to the search for natural gas or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas deposits.

C. “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.
D. "Natural Gas" shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

E. "Natural Gas Exploration and Production Wastes" shall mean any garbage, refuse, sludge, or other discarded materials, including solid, liquid, semisolid, or contained gaseous material that results from the exploration, drilling or extraction of natural gas.

F. "Pollution" shall mean the contamination or other degradation of the physical, chemical or biological properties of land, water or air that will or is likely to: create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to wildlife, birds, fish, or other aquatic life.

§288-4 Prohibition Against the Exploration for or Extraction of Natural Gas

No person, firm or corporation shall: conduct any exploration for natural gas; drill any well for natural gas; transfer, store, treat, or dispose of natural gas exploration or production wastes; or erect any derrick, building, or other structure or place any machinery or equipment for such purpose within the territorial boundaries of the City of Buffalo.

§288-5 Prohibition Against the Storage, Treatment and Disposal of Natural Gas Extraction Wastes

The storage, transfer, treatment and/or disposal of natural gas exploration and production wastes are hazardous wastes within the meaning of this Code. No person, firm or corporation shall engage in the storage, transfer, treatment and/or disposal of natural gas exploration and production wastes within territorial boundaries of the City of Buffalo. No permit issued by any state or federal agency, commission or board to any person, firm or corporation, which would violate the prohibitions of this Ordinance shall be deemed valid within the City of Buffalo.

§288-6 Enforcement

A. Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction thereof, shall be subject to the maximum fine allowable under this Charter and Code for said violation. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

B. The City of Buffalo may also enforce this Ordinance through an action in equity brought in New York State Supreme Court. In such an action, the City of Buffalo shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.

C. Any City resident shall have the authority to enforce the provisions of this Chapter through an action brought in New York State Supreme Court. In such an action, a resident who enjoins a violator of this Chapter from a continuing violation of this Chapter shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees from the violator.
§288-7 Effective Date and DEC Permit Holders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all extractions of natural gas in the City of Buffalo regardless of the date of any applicable DEC permits.

§288-8 Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance.

§288-9 Repealer

This Ordinance shall repeal any prior inconsistent ordinances contained in the Buffalo City Code purporting to regulate or allow natural gas extraction or the transport, storage, treatment or disposal of natural gas exploration or extraction waste.

APPROVED AS TO FORM

Asst. Corporation Counsel

NOTE: Matter underlined is new, matter in brackets is to be deleted.
Present – David A. Franczyk, President of the Council, and Councilmembers: Fontana, Golombek, Kearns, LoCurto, Pridgen, Rivera, Russell & Smith - 9
Absent - None

On a motion by Mr. Fontana, Seconded by Mr. Rivera, the minutes of the stated meeting held on January 25, 2011 were approved.

* A Y E * N O *
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FONTANA
FRANCZYK
GOLOMBEK
KEARNS
LOCURTO
PRIDGEN
RIVERA
RUSSELL
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February 8, 2011
Ordinance Amendment - Chapter 288 – Natural Gas Extraction Prohibition
(Item No. 87, C.C.P., Jan. 25, 2011)

That the above item be, and the same hereby is, returned to the Common Council
without recommendation.

Mr. Golombek moved:

That the Ordinance Amendment as contained in Item No. 87, C.C.P.,
January 25, 2010, be and the same hereby is approved.

Passed

Recommended by the Committee on Legislation

Chairman

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Voting: Maj 5, 2/3 6, 3/4 7