

**TOWN OF COPAKE
LOCAL LAW No. 2 OF 2012**

A LOCAL LAW ENTITLED: "Town of Copake Natural Gas Mining Moratorium Law"

Be it enacted by the Town Board of the Town of Copake as follows:

Section 1 TITLE

This law shall be known as the "Town of Copake Natural Gas Mining Moratorium Law". It may be cited as "Town of Copake Local Law No. 2 of 2012" or "L.L. 2 of 2012".

Section 2 LEGISLATIVE INTENT

The Town Board of the Town of Copake is authorized by the State of New York to regulate and control land use within the Town of Copake and has the duty to protect the health, safety and welfare of Town residents. Article 23, Title 27 of the Environmental Conservation Law of New York State authorizes a local government to enact zoning regulations which determine permissible uses in zoning districts. This moratorium addresses zoning and planning regulations only, and does not regulate or attempt to regulate the actual operations of the oil, gas and solution mining industries or interfere in

any manner with the extractive mining process for natural gas.

The Town of Copake has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources within the Town and the Town Board

believes that studying this issue is necessary so that zoning regulation with respect to natural gas mining is formulated so as to protect the town from potential negative impacts. Changes in the mining industry have given the Town of Copake sufficient reason to believe that additional study and examination of necessary land use regulations

relating to natural gas mining is warranted. Therefore, the Town Board, through this local

law, declares an eighteen-month moratorium on natural gas mining and activities ancillary to natural gas mining in the Town of Copake.

It is the intent of the Town Board that, during this eighteen-month moratorium, the Town of Copake will examine whether additional local zoning regulation is necessary and the extent of such regulation. If such local zoning regulation is necessary, the Town Board may determine the appropriate rules and regulations to ensure comprehensive uniformity,

fairness and consistency in such regulations. Further, the Town Board will utilize the moratorium period to further examine the significant environmental issues relating to natural gas mining within the Town of Copake.

Section 3 DEFINITIONS

NATURAL GAS MINING: For the purposes of this Local Law, the term "natural gas mining" shall mean the extraction from the earth of natural or petroleum gas in a nonliquid or gaseous state, whether under pressure or otherwise contained, and whether or not the product of conversion from liquefied natural gas or liquefied petroleum gas.

PERSON: For the purposes of this local law, the term "person" shall include an individual, society, club, firm, partnership, joint venture, corporation, LLC or other business venture or association of persons, and the singular shall include the plural number.

Section 4 SCOPE AND CONTROL

A. For the period of eighteen months following the effective date of this local law, natural gas mining, and activities associated with or in furtherance of natural gas mining, including but not limited to the receipt, transfer, storage, processing or disposal of fluids or other substances utilized in natural gas mining, shall not be permitted uses in any zoning district within the Town of Copake.

B. For the period of eighteen months following the effective date of this local law, no new natural gas mining facilities or operations, or facilities for activities associated with or in furtherance of natural gas mining, including but not limited to the receipt, transfer, storage, processing or disposal of fluids or other substances utilized in natural gas mining, or expansions beyond existing such operations or facilities, shall be permitted in the Town of Copake.

C. For the period of eighteen months following the effective date of this local law, no person shall commence or carry on any new natural gas mining activity or operation, establish any new natural gas mining facility or operation, establish or commence any new facility, operation or activity associated with or in furtherance of natural gas mining, including but not limited to any facility for the receipt, transfer, storage, processing or disposal of fluids or other materials utilized in natural gas mining, enlarge or expand any existing such facility, operation, or activity, or commence the development or construction of any such operation or facility, unless such person is in possession of a valid permit issued by the Town of Copake therefor, pursuant to the granting of a variance as provided in section six of this Local Law.

D. During the effective period of this Local Law:

1. Neither the Town Board, Planning Board or Zoning Board shall consider and/or approve any site plan, special use permit or other permit, variance or other application which would allow for the establishment, implementation, placement, construction or development of any new natural gas mining facility or operation, or of a facility for any activity associated therewith or in furtherance of natural gas mining, including but not limited to any facility for the receipt, transfer, storage, processing or disposal of fluids or other materials utilized in natural gas mining, or the enlargement of any such existing natural gas mining facility, operation, or activity within the Town of Copake.

2. The Building Inspector or other town officer shall not consider and/or issue any land use or building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new natural gas mining facility or operation, or of a facility for any activity associated therewith or in furtherance of natural gas mining, including but not limited to any facility for the receipt, transfer, storage, processing or disposal of fluids or other materials utilized in natural gas mining, or the enlargement of any such existing natural gas mining facility, operation, or activity within the Town of Copake.

C. If, within eighteen months from the effective date of this Local Law, the Town Board adopts a local law relating to natural gas mining, the moratorium imposed by this local law and the provisions of this local law provided to be in effect during such moratorium shall expire immediately on the date the Town local law relating to natural gas mining takes effect in accordance with Section 27 of the Municipal Home Rule Law, unless the local law adopted relating to natural gas mining imposes or continues the moratorium imposed by this local law.

Section 5 EXCEPTIONS.

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Town of Copake or other appropriate state or federal agency may be continued, provided that such use, if prohibited under this Local Law, shall not be enlarged or extended beyond the existing location and operation.

Section 6 VARIANCES.

A. The Zoning Board of Appeals retains the power and sole discretion to vary or adapt the strict application of the requirements of this Local Law in the case of unnecessary hardship, difficulties with the area or use requirements of the zoning regulations or circumstances that would unconstitutionally deprive the owner of all economically viable and productive use of the lands involved, provided the application is consistent with the intent of this Local Law.

B. An application for a variance shall be governed by and subject to the requirements and procedures generally applicable for a variance application in the Town of Copake. In addition, any costs, including expert consulting fees, incurred by the Town shall be paid by the Applicant immediately upon request. The applicant may be required to place into escrow funds sufficient to ensure the payment of any such costs, as the Zoning Board of Appeals shall direct. Failure to provide such escrow funds or to promptly pay any costs incurred by the Town in connection with the variance application may result in denial or suspension of the application.

C. All decisions on granting or denying such variances shall be made by the Zoning Board of Appeals solely, after determining whether or not the requested variance is compatible with the Comprehensive Plan of the Town and the Town zoning regulations. Unless the applicant can prove that the requirements for the proposed variance are satisfied, the Zoning Board of Appeals shall, as appropriate, deny the application.

Section 7 ENFORCEMENT.

This local law shall be enforced by the Zoning Enforcement Officer of the Town of Copake, or such other zoning enforcement or law enforcement individual(s) or agency as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to the office and to file the same in the office of the Town Clerk.

Section 8 VIOLATIONS.

A. In addition to the criminal penalties and other remedies set forth in Town Law section 268, any person violating any of the provisions of this local law shall be guilty of a violation and upon a conviction thereof, be subject to a civil penalty of no less than five hundred dollars (\$500.00) and no more than one thousand dollars (\$1,000.00) per day for this violation. Each day's violation shall constitute a separate and additional violation. An action may be commenced in a court of competent jurisdiction to recover such penalty. In addition thereto, violations of this local law shall be subject to being restrained by injunctive relief.

B. The provisions of this section are expressly intended to supersede the penalty provisions of Town Law section 268, as authorized by section ten of the Municipal Home Rule Law. If a penalty provision of this section shall be adjudged by any court of competent jurisdiction to be invalid, then a person convicted of violating any provision of this local law shall be subject to the maximum penalties that may be imposed pursuant to section 268 of the New York Town Law.

Section 9 SEQRA CLASSIFICATION.

As a land use moratorium, this local law shall be classified as a Type II action for the purposes of SEQRA. As such, SEQRA does not apply to the enactment of this moratorium.

Section 10 CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the Town Law and section 10 of the Municipal Home Rule Law of the State of New York. During the duration of times that this Law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, provisions in the Code of the Town of Copake and the statutes set forth in the New York Town Law related to zoning and subdivisions. Specifically, this Law is intended to supersede Town Law Sections 130, 261, 262, 263, 264, 265, 267, 267-a, 267-b, 267-c, 268, 269, 274-a, 274-b, 276, 277, 278 and 279.

Section 11 SEVERABILITY.

If any clause, sentence, paragraph, section, article or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 12 EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Secretary of State.

BE IT ENACTED this ___ day of _____, 2012 by the Town Board of the Town of Copake of Columbia County, New York.