TOWN OF FABIUS
LOCAL LAW NO. 1 OF 2013

A LOCAL LAW IMPOSING A SEVEN MONTH MORATORIUM ON ALL ACTIVITIES RELATED TO THE EXPLORATION FOR, AND THE PRODUCTION OR STORAGE OF NATURAL GAS AND/OR PETROLEUM IN THE TOWN OF FABIUS

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

Section 1. TITLE

THIS LAW WILL BE KNOWN AS LOCAL LAW #1 OF THE YEAR 2013, A LOCAL LAW IMPOSING A SEVEN MONTH MORATORIUM ON ALL ACTIVITIES RELATED TO THE EXPLORATION FOR, AND THE PRODUCTION OR STORAGE OF NATURAL GAS AND/OR PETROLEUM IN THE TOWN OF FABIUS.

Section 2. LOCAL LAW #2 OF THE YEAR 2012

This local law supersedes and replaces Local Law #2 of the year 2012 in its entirety.

Section 3. LEGISLATIVE INTENT AND FINDINGS

A. The Town Board of the Town of Fabius, Onondaga County, State of New York is vested by the State of New York to regulate and control land use within the Town of Fabius and this law is being enacted pursuant to said powers.

B. On May 31, 2012 the Town of Fabius enacted Local Law #2 of the year 2012 imposing a second moratorium as set forth therein, on the practice commonly known as hydraulic fracturing or hydrofracking. The effective date was 6/5/12. Said moratorium ran for a period of 365 days. The Local Law also allowed the Town Board by resolution to extend the moratorium for an additional 180 days.

Prior to enacting Local Law #2 of the year 2012 and in 2011, the Town Board of the Town of Fabius enacted Local Law #1 of the year 2011 imposing a 9-month moratorium on hydraulic fracturing or hydrofracking. That Local Law also allowed for the moratorium to be extended for 180 days, which the Town duly enacted. At the expiration of that Local Law, that is Local Law #1 of the year 2011, the aforementioned Local Law #2 of the year 2012 was enacted.

C. As set forth in both moratoriums, the Town Board is aware of the controversy and concerns regarding the practice commonly known as hydrofracking or hydraulic fracturing. The Town established a committee in 2012 to advise the Town as to the possible impact of this procedure. Also, the Town attorneys and the Town Supervisor and Board members have attended numerous meetings, conferences and other events
to gain knowledge of this procedure and its possible effects on the Town and also on the Master Plan previously enacted by the Board to guide future development in the Town. Also, representatives of various parties interested in hydrofracking, both pro and con, have made presentations to the Town Board and also the town has reviewed films on the subject, visited sites in Pennsylvania where hydrofracking is occurring and the town attorney has attended a number of seminars on the subject.

The Town is also aware of three recent local court decisions that addressed the issue of hydrofracking and the ability of the Town to regulate same, especially concerning the doctrine of preemption. Also the town recently became aware of the decision in the Appellate Division Third Department upholding the authority of the town to ban the practice which is the subject of this moratorium.

A decision in the case of Vestal Gas Coalition, et al v. the City Council, City of Binghamton, 37 Misc. 3d, 1204 called into question a moratorium enacted pursuant to a town’s police powers as opposed to a local law based on zoning authority and land zoning authority.

The Town has also been monitoring the actions of New York State in addressing this issue and the concerns raised on the State level both by the Governor’s office and the Department of Environmental Conservation. Recent newspaper articles have been written about the potential impact of hydrofracking and also the possible detrimental effects on land use in areas where it has been allowed.

This moratorium is intended to allow necessary time for the Town Board to further review whether additional local regulations are necessary. The Town Board needs more time to determine the appropriate rules and regulations to insure a comprehensive uniformity, fairness and consistency in such regulations, if it is deemed necessary to enact restrictions and/or a ban on the practice of hydrofracking. The Town has been examining various proposed local laws to address this issue and is reviewing same.

D. The Town is also concerned with the potential for damage to groundwater quality and quantity, potential for sediment and erosion and the use of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water, including the use of surface water (rivers, basins, lakes), private ponds, groundwater, municipal water, waste water and produced water. Further, the use of hydrofracking will create more demand for commercial waste water treatment facilities to dispose of produced water. The Town Board is concerned with the potential for groundwater pollution, affecting many water wells in the Town. There may also be further impacts to local roads during the construction and use of any potential well. All of these concerns are in addition to the goals of the Comprehensive Plan to maintain and protect the rural character of this Town.
E. The Town of Fabius has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources with the Town and the Town Board believes that studying this issue is necessary so that hydrofracking operations are regulated to protect the Town’s predominant residential and agricultural land uses and to protect the environment from potential negative impacts.

This Local Law has been referred pursuant to General Municipal Law §239 to the Onondaga County Planning Agency.

{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.}

Section Four. (4) Definitions.

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use – Land use 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).

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.

Gathering Line Or Production Line – Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

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 fewer 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”, “hazardous”, or “toxic”, 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 non-recognizable 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) Non-Regulated Pipelines; (g) Underground Injection; or (h) 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.

**Non-Regulated Pipelines** – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

**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.
Pipeline – All parts of those physical facilities through which petroleum, gas, hazardous liquids or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

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.

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 Regulatory Commissions 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, Article 7, §120(2)(b).

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, and pipelines.

Section Five (5). Moratorium and Prohibitions

A. During the effective period of this local law, and subject to the provisions of §8 hereof:

1. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating
permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, 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.

2. 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.

3. The prohibitions are not intended, and shall not be construed, to: (i) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (ii) 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, so long as such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.

4. 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 seven months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

5. This moratorium and prohibition shall apply to all real property within the Town.

6. 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, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, 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.

The moratorium imposed by this Local Law shall be in effect for a period of seven months from the effective date of this Law.
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, Hydraulic Fracturing and/or Hydrofracking, 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.

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). 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 Nine (9). 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. 1 of 2013 of the (County)(City)(Village)(Town) of Fabius was duly passed by the Town Board of the Town of Fabius on 5-20-2013 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 dully adopted on __________, 19__, (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 190 of the (County)(City)(Village)(Village) of- -________________________ was duly passed by the- -________________________ on ____________________, 19__ , and was (approved)(not approved)(repassed after- -________________________

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.

-6. (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: ___________, 2013

(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  

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  

__________________________________________  
Attorney for the Town  
Title  
County  
City of Fabius  
Village Town  

Date: _______________________, 2013  

*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.
Local Law Filing

(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 (1) of the year 2011

A local law imposing a nine (9) month moratorium on certain activities related to practice(s) commonly known (and as defined herein), as hydraulic fracturing and/or “hydrofracking” 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. 1 of 2011, the “Temporary Moratorium on certain Practices Related to Hydraulic Fracturing (also commonly known as “Hydrofracking”) and Related Activities in the Town of Fabius”.

Section Two (2). Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Fabius to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Fabius declares a nine (9) month moratorium on certain practices related to the practice, processes and methods known as hydraulic fracturing and/or hydrofracking, which terms (“Hydraulic Fracturing” or “Hydrofracking”) and the moratorium imposed hereby shall be in effect in relation to, and shall cover and include any substantially similar or alternative practice(s), process(es) and method(s), and/or variants thereof, to the extent such similar or alternative practices, processes, methods and/or variants thereof involve actions from which the same concerns and issues may arise as described herein in support of the moratorium. Accordingly, for purposes hereof the terms “Hydraulic Fracturing” or “Hydrofracking” shall be broadly interpreted such as to also include any such similar or alternative practices, methods and/or processes or variants thereof (the “Processes”), as well as any activity(ies) associated therewith or in support of such Processes including the establishment, implementation, placement, installation or construction and operation in the Town of Fabius. The foregoing provisions notwithstanding, it is the intent of this local law, in recognition of the Article 23, Title 27 of the New York Environmental Conservation Law and the intent of the (New York) State Legislature to, in adopting same, pre-empt the authority of local government to directly regulate same, to by this moratorium prohibit only those practices and activities related to Hydrofracking/Hydraulic Fracturing and which practices and activities and the regulation thereof are with the legal authority of local government to regulate. By way of example, a proposed
Hydrofracking operation which will be located on a site served by Town Highways shall be subject to this moratorium insofar as the use of Town Highways for such purposes is concerned. As such, pending the adoption of legislation governing Town Highways and enacted to address the potential adverse affects on Town Roads resulting from same. In such case, this moratorium shall apply to any such proposal to the extent the use of Town Highways for access/egress is a requirement of the project.

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 Hydrofracking 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. This Board is desirous of utilizing this moratorium period to review the findings of any such study(ies) and any legislation or proposed legislation based thereon, and to determine the extent to which such legislation may play a role in the regulation and/or determination of the scope of the authority to regulate Hydrofracking by the Town. Thus, and notwithstanding the requirements of Article 23, Title 27 of the New York State Environmental Conservation Law, because of the differences between the practices, methods and processes of Hydrofracking from more traditional mining operations, and the established authority of the Town of Tully to legally review, consider and regulate certain related and incidental actions and practices, which the Town can and should properly and legally regulate (such as, without limitation, the use of its highways in relation to such operations) the Town Board desires ample time to undertake consideration of same. Accordingly, this moratorium is intended to provide ample time for study of these issues so that comprehensive, reasonable and fair legislation can be crafted to address same. The Town Board also determines that while the review of these regulations is being undertaken, and in consideration of the significant environmental issues surrounding the Hydrofracking 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.

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.}
Section Four (3). Definitions.
In this Local Law:

The terms “Hydraulic Fracturing” and/or “Hydrofracking” shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well for the purpose of breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground. For purposes hereof, such terms shall also mean and include any similar or alternative actions, practice(s), process(es) and method(s), and/or variants thereof, to the extent such alternatives or variants involve practices, methods and/or processes out of which the same concerns or issues may arise as legal, described herein in support of the moratorium. Accordingly, for purposes hereof the terms “Hydraulic Fracturing” and “Hydrofracking” shall include any such practices, methods and/or processes as aforementioned, as well as any activity associated therewith or intending to support such process including the establishment, implementation, placement, and the installation and/or construction of such process or activity in the Town of Fabius.

“Town” when used in this Local Law shall mean the Town of Fabius.

“Town Board”, “Planning Board” and “Zoning Board of Appeals” when used in this Local Law shall refer to the respective boards established in and for the Town of Fabius, and including any joint boards as may be established by and for the Village and Town of Fabius for such purpose(s).

Section Five (5). Scope of Controls.

A. During the effective period of this local law, and subject the provisions of §8C hereof:

1. The Town Board shall not accept, receive, nor process any applications for, conduct any review of, nor grant any approvals or permits whatsoever that, as the result the establishment, implementation, placement, installation or construction of improvements (including fixtures to land) and/or placement of equipment, operations or relative to the Processes and/or otherwise, relating to Hydraulic Fracturing and/or Hydrofracking.

2. The Town Planning board shall not or process any applications for, conduct any review of, nor permit or grant any preliminary or final approval to a site plan, special authorization permit, or any other permits or approvals that would have as a result the establishment, implementation, placement, installation or construction or operation of the Processes or Hydraulic Fracturing and/or Hydrofracking.

3. The Town Zoning Board of Appeals shall not accept, receive, nor process any applications for, conduct any review of, nor permit or grant any variances, interpretations, special authorization permits, or any other permits or approvals that would have as a result the establishment, implementation, placement, installation or construction of or operations of the Processes or Hydraulic Fracturing and/or Hydrofracking.
4. The Code Enforcement Officer shall not accept, receive, nor issue any permit that would have as a result the establishment, implementation, placement, installation or construction of or operations of the Processes known as Hydraulic Fracturing and/or Hydrofracking.

B. The Town Board of the Town of Fabius reserves the right to direct the Code Enforcement Officer to revoke or rescind any building permits, certificates of occupancy or other permits, approvals or certificates issued in violation of this Local Law.

C. Exemption. The foregoing provisions of this Local Law notwithstanding, upon the application of any individual or entity seeking to conduct Hydrofracking/Hydraulic Fracturing within the Town of Fabius, to the Town Board, and which application proposed project, as constructed and operated will not impact any of the subject matter areas the Town has legal authority to regulate, the Town Board shall issue an order upon its determination that the proposed project will not so impact any of the subject matter areas, that the proposal is exempt from the moratorium required hereunder. In connection with this the Town Board may require a hearing whereat witnesses shall be sworn and testimony provided. The Town Board shall require a hearing for such purposes unless the applicant provides conclusive, credible evidence at the time of and in support of its application.

Section Six (6). Term.

This moratorium imposed by this Local Law shall be in effect for a period of Two Hundred Seventy (270) 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, Hydraulic Fracturing and/or Hydrofracking, 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.

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). 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
Section Nine (9). 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 Thirteen (13). 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. 1 of 2011 of the (County)(City)(Village)(Town) of Fabius was duly passed by the Town Board of the Town of Fabius on 2-28-11 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)(Town) of ________________ was duly passed by the ____________________________________________ on ________________ and was (approved)(not approved)(repassed).
disapproved by the ________________ and was deemed duly adopted on ________________.

(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 ________________ of the ________________ of ________________ was duly passed by the ________________ on ________________ and was approved (not approved) (repassed after disapproval) by the ________________ on ________________ ________________. Such local law was ________________ (Elective Chief Executive Officer)

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 ________________ of the ________________ of ________________ was duly passed by the ________________ on ________________ and was approved (not approved) (repassed after disapproval) by the ________________ on ________________ ________________. Such local law was subject to a (mandatory (permissive) referendum and no valid petition requesting such referendum was filed as of ________________ ________________ 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 ________________ having been submitted to referendum pursuant to the provisions of section ________________ of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors voting thereon at the (special) general election held on ________________, ________________, 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 ________________ of the ________________ State of New York, having been submitted to the voters at the General Election of November ________________, ________________, pursuant to subdivisions 5 and 7 of section ________________ 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 theretofrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.

(Signature)

Date, ______________, 2011

(Margaret Reiter, Town Clerk)

(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

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

Attorney for the Town
Title
County
City of Fabius
Village Town
Date: 12/15/2011

*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.
WHEREAS, the Onondaga County Planning Board, pursuant to General Municipal Law, Section 239 l, m and n, has considered and reviewed the referral for a MORATORIUM from the Town of Fabius Town Board at the request of Town of Fabius for the property located Town Wide; and

WHEREAS, General Municipal Law Section 239-m allows the County Planning Board to review the adoption or amendment of moratoriums; and

WHEREAS, the Town is proposing a nine month hydrofracking moratorium, Local Law No. 1 of 2011, entitled the "Temporary Moratorium on certain Practices Related to Hydraulic Facturing (also commonly known as "Hydrofracking") and Related Activities in the Town of Fabius;" and

WHEREAS, the proposed local law states that its purpose "is due, at least in part, to the vast inquiries and other expressions of concern from residents of the Town, and individuals throughout the State of New York and other jurisdictions," including "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;" and

WHEREAS, the proposed local law states that the moratorium will "prohibit only those practices and activities related to Hydrofracking/Hydraulic Fracturing and which practices and activities...and the regulation thereof are with the legal authority of local government to regulate," for example, a Hydrofracking operation located on a site served by town highways would be subject to the proposed moratorium; and

WHEREAS, Article 23 of the Environmental Conservation Law (6NYCRR) regulates the development, production and utilization of natural resources of oil and gas in the State of New York; and

WHEREAS, per the New York State Department of Environmental Conservation’s web site, on September 30, 2009 the Department released a draft Supplemental Generic Environmental Impact Statement (SGEIS) for Well Permit Issuance for Horizontal Drilling And High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs; the comment period ended December 31, 2009 and the Department is now evaluating the many comments received; and when completed the Final SGEIS will set additional Departmental SEQRA review parameters for well permits; and

WHEREAS, per the United States Geologic Survey (USGS), Marcellus Shale is a sedimentary rock formation that contains significant quantities of natural gas that extends across New York on the Appalachian Plateau in the highlands south of New York State Route 5; and

NOW THEREFORE BE IT RESOLVED, that the Onondaga County Planning Board has determined that said referral will have no significant adverse inter-community or county-wide implications and may consequently be acted on solely by the referring board.
Resolution sent to:
Melanie Vilardi

Lisa M. Welch, Staff Planner
Onondaga County Planning Board
Transmittal Date: 02-28-2011
Local Law Filing

(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.

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 __________________, 19__

(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 19__ of the (County)(City)(Village)(Village) of __________________ was duly passed by the __________________ on __________________, 19__, and was (approved)(not approved)(repassed after

Such local law was __________________ (Elective Chief Executive Officer) 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.

[Signature]
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.
MEMORIALIZING THE NEW YORK STATE SENATE AND THE ASSEMBLY OF THE STATE OF NEW YORK TO REPEAL AND AMEND APPROPRIATE STATE LAWS TO PROTECT THE RIGHTS OF LANDOWNERS; TO REGULATE THE PRACTICE OF LAND-LEASING FOR THE PURPOSE OF GAS DRILLING; AND TO ESTABLISH A COMPENSATION AND REMEDIATION FUND TO ADDRESS UNFORESEEN DAMAGES TO LANDOWNERS AND MUNICIPALITIES AS A RESULT OF ACTIVITY RELATED TO GAS-DRILLING.

WHEREAS, gas-drilling includes hydrofracking, a technology for obtaining natural gas and is proposed for use in the Town of Fabius and other areas in Central New York and beyond; and

WHEREAS, hydrofracking involves pumping large quantities of water and additives at extremely high pressures into deep vertical wells, fracturing the rock and injecting sand into the cracks to release the natural gas; and

WHEREAS, there are many questions about environmental risk to land and to aquifers as a result of hydrofracking and related gas-drilling activity; and

WHEREAS, there is a law in New York State, “Compulsory Integration,” which allows the gas industry an eminent domain tactic which is unconstitutional and coercive, and

WHEREAS, there is an effort on the part of gas companies to lock up rights to drilling in areas of their own determination referred to as “Spacing Units;” and

WHEREAS, the Compulsory Integration Law allows gas companies and their agents the ability to take control of land against the will of landowners; and

WHEREAS, the Compulsory Integration Law permits gas companies and their agents to use coercive methods in obtaining leases under the threat of compulsory integration, whereby landowners who fail to sign a lease will have their land included in the gas company “Spacing Unit” against their will and be compensated at a lesser amount than other leasees, and

WHEREAS, the environmental and health concerns including the potential contamination of aquifers and fresh water supply, the use of massive quantities of water, the disposal of the fracking fluids, the release of chemicals used in the process, and the impact upon local landscapes are rarely disclosed by gas companies and their agents in the course of securing a lease; and

WHEREAS, concerns have been raised about the potential of hydrofracking to pollute our drinking water by injecting unknown contaminants underground; and

WHEREAS, issues have been raised about the requirements and incentives for the gas drilling industry to restore the land and clean up any waste, creating questions about the possible impact upon our local landscape, the potential impact upon the health of our residents, and damage to private property; and
WHEREAS, it is acknowledged that gas drilling, including hydrofracking and similar operations are governed by the rules and regulations of the State of New York and that it is the responsibility of the State of New York to protect its citizens; and

WHEREAS, New York State law prohibits local municipalities, including the towns, from regulating the gas mining industry; and

WHEREAS, it is the desire of the Fabius Town Board for the New York State Senate and the New York State Assembly to amend appropriate state laws, to address the practice of gas drilling, including hydrofracking, as follows:

1. **Repeal Compulsory Integration.**

2. **Enact a Landowner’s Bill of Rights** requiring gas companies and their representatives (Landmen) to disclose the true nature of gas drilling, including hydrofracking, and the liabilities which landowners may face as follows:
   a. A detailed description and diagram of the type of well, including vertical and horizontal distance proposed.
   b. A list of the chemicals which are used in the process of high-pressure drilling, or created as by products, or which may be released from deep within the rock below.
   c. A thorough description of the waste created by the drilling, and illustration of how is will be stored on the land.
   d. An estimate of the number and type of trucks, and other equipment, which will travel over both the private land and public roads, with tonnage calculation.
   e. A list of possible negative environmental impacts, including gas contamination of water sources
   f. A thorough explanation of Compulsory Integration, which apparently removes the right of neighboring landowners to decide if the mineral resources will be removed from under their lands.
   g. A thorough explanation about the value of base-line testing for wells and springs prior to gas grilling.

3. **Establish a Compensation and Remediation fund** to compensate landowners and communities who suffer losses as a result of hydrofracking.

RESOLVED, that the Clerk of the Town of Fabius is hereby directed to transmit a copy of this resolution to the New York State Senate and the New York Assembly representatives for the Town of Fabius and requests them to enact legislation to accomplish the goals of the resolution.

RSD/km
T/Fabius LAND STEWARDS OF NY Resolution