

Mamakating Town Board meeting

September 16, 2014

Page 2

Town of Mamakating Local Law No. 8 of the year 2014A local law Prohibition of Natural Gas or Oil Exploration, Extraction or*(Insert Title)*Processing and Prohibition On Use Of Natural Gas or Oil WastesBe it enacted by the Town Board of theTown of Mamakating as follows:Section 1. Legislative findings.Declaration of policy.

The purpose of this ordinance is to protect the health, safety, welfare, and property of the residents of the Town of Mamakating, as well as the Town's public resources, by prohibiting the use, sale, acquisition, storage, handling, treatment, and/or processing of oil or gas wastes, and by further clarifying that natural gas and/or petroleum exploration or extraction are prohibited within the town because they are inconsistent with the character of and comprehensive plan for the Town and would constitute a nuisance if allowed.

Legislative findings.

The Town Board of the Town of Mamakating (the "Board") is vested by the State of New York to regulate and control land use within the Town and to protect the health, safety, and welfare of its residents. The Board hereby finds the following:

1. The exploration for or extraction of natural gas and/or petroleum related support activities, and use or disposal of natural gas or oil wastes, as defined in this law, is incompatible with the character of the Town and its land use development goals:

1. The Town of Mamakating (the "Town") is a predominantly suburban community and takes great pride in its small-town character, agrarian culture, and history. The Town's 2001 Comprehensive Master Plan expresses the Town's desire to reinforce and conserve its rural character and beauty by safeguarding its natural, scenic, historic and cultural resources and promoting growth that is complementary to existing land use patterns. Likewise, the 2005 Comprehensive Plan Update expresses concern that the Town's definition of an "industrial use" is overbroad,

and should be limited only to "appropriate industries," noting that industries creating "exhaust, excessive

noise, odors, or point source pollution are to be avoided.”

1. The exploration for or extraction of natural gas and/or petroleum constitute heavy industrial uses characterized by the following: the production of dust, noxious fumes, and other air emissions; visible landscape impairment and fragmentation; glaring nighttime illumination during various phases of production; persistent heavy truck traffic that can clog and damage local roads; and loud and unpleasant noises created by the drilling and hydraulic fracturing of wells, necessary truck traffic, gas flaring, and the operation of other common accessory uses.

Mamakating Town Board meeting

September 16, 2014

Page 3

1. The Board accordingly finds that the exploration for or extraction of natural gas and/or petroleum threaten the predominantly suburban, agricultural, and residential character of the Town and are inconsistent with the Town’s land use development goals.

1. The exploration for or extraction of natural gas and/or petroleum as defined in this law would, within the Town, constitute a nuisance and a threat to the health, safety, comfort and general welfare of the Town and its residents:

1. The community character effects resulting from the exploration for or extraction of natural gas and/or petroleum would interfere with the use and enjoyment of private lands within the Town and would interfere with the well-being of many residents of the Town.

1. In addition, the effects resulting from the exploration for or extraction of natural gas and/or petroleum—particularly exploration or extraction using “hydraulic fracturing,” defined below—present a significant risk of irreparable damage to the Town, the property of its residents, and its invaluable public resources, such as clean air and clean water. Documented cases of spills of chemicals and wastewater, blowouts, leaking wells, earthquakes, and other environmental accidents are commonplace in a number of states where new oil and/or gas exploration and extraction are widespread, including Texas, Pennsylvania, Ohio, Wyoming, and West Virginia. Such incidents have resulted in the destruction of public and private property and the contamination of local water resources. Furthermore, the long-term risks and consequences of oil and gas production using hydraulic fracturing, such as the possibility of underground migration of hydraulic-fracturing-related contaminants and well integrity failures, are as yet unknown and may also present a significant threat to local property and resources.

1. The effects resulting from the exploration for or extraction of natural gas and/or petroleum would also likely endanger the health, safety and welfare of Town residents. Problems in other states are exemplified by accounts of residents living next to such land uses who report experiencing

headaches, nosebleeds, fatigue, and respiratory problems in conjunction with the commencement of oil and gas exploration or extraction in their neighborhoods. These health problems may be indicators of more serious, debilitating, and/or life-threatening effects from long-term exposure to the effects of such uses. Without a comprehensive and scientific health analysis explaining the cause of these incidents, the Board finds that the exploration for or extraction of natural gas and/or petroleum within the Town have the realistic potential to significantly endanger resident health, safety, and welfare.

1. The exploration for or extraction of natural gas and/or petroleum are not uses that are currently specifically defined or permitted in any zone by the Chapter 199 of the Town of Mamakating Town Code (the “Town Code”).

1. Chapter 199 of the Town Code does not define the exploration for or extraction of natural gas and/or petroleum as a land use, permissible or otherwise. Although the Town Code does define “extractive operations”—a permissible use in industrial/office districts only—it is clear and it is further the intent of this law to clarify that this definition

Mamakating Town Board meeting

September 16, 2014

Page 4

1. only apply to solid mineral mining operations related to the extraction of earth products, such as “topsoil, sand, gravel, clay, or stone,” not oil or gas. Likewise, the definition of “industrial use” is clarified to specifically exclude the bulk of the uses and accessory uses that may be associated with the exploration for or extraction of natural gas and/or petroleum, as that term only applies to uses associated with the “processing and manufacturing of materials or products predominantly from extracted or raw materials,” not the extraction of those materials themselves. Further, no other use defined in Chapter 199 encompasses the exploration for or extraction of natural gas and/or petroleum.
1. In general, all uses not defined in Chapter 199 of the Town Code are prohibited within the Town. If a land use is not defined, then it cannot be specifically listed within a particular zone, and pursuant to § 199-7(C), “any land use not specifically listed for a zoning district shall be deemed to be a prohibited use for that zoning district.”
1. Accordingly, the exploration for or extraction of natural gas and/or petroleum, is a use of land that has not been and is not permitted in any zone by the Town Code. However, given the recent national interest in new oil and gas drilling, and to ensure that the Town is protected from the harms and potential harms outlined in Subsections A and B of this Section, the Town Board believes that it is prudent to clarify that the exploration for or extraction of natural gas and/or petroleum are prohibited within the Town.

1. To the extent that it is determined that the exploration for or extraction of natural gas and/or petroleum were in any way permitted before the passage of this law, this law provides that they are now prohibited.

1. The use, sale, acquisition, storage, handling, treatment, and/or processing of oil or gas wastes presents a hazard to the health, safety, welfare, and resources of the Town.

1. Liquid and solid oil or gas wastes often contain constituents that are dangerous to human health and the environment. These constituents can include corrosive salts, oil and grease, heavy metals, volatile organic compounds, and naturally-occurring radioactive materials, such as radium-226 and radium-228.

1. When oil or gas wastes are spread on roads, rain and snowmelt can wash the associated pollutants into soil, where they can eventually leach into groundwater, or directly into nearby surface water bodies. Exposure to these pollutants through contaminated water and soil, in turn, can cause harm to human health and nearby plant and animal life.

1. The Town's existing treatment facilities are not equipped to treat the contaminants often found in oil and gas wastes. Furthermore, such wastes may also damage these facilities' biological treatment processes, impairing their ability to treat even normal sewage or other wastes.

Mamakating Town Board meeting

September 16, 2014

Page 5

1. Further, oil or gas wastes may be released into the environment where such wastes are inappropriately stored or disposed of. These releases can contaminate essential and invaluable Town resources, such as prized agricultural land or underground drinking water resources.

1. Accordingly, the use sale, acquisition, storage, handling, treatment, and/or processing of oil or gas wastes presents an unacceptable risk to the health, safety, welfare, and resources of the Town.

Section 2. Chapter 199 of the Code of the Town of Mamakating, titled “Zoning ,” Section 199-6 entitled, “Word Usage and Definitions,” is hereby amended to include or amend the following definitions:

HYDRAULIC FRACTURING – A stimulation technique using the introduction of high-pressure volumes of water, liquid mixtures of chemicals and substances, or other gas, liquid, substances, or combination of thereof, into a subsurface carbon-bearing formation to create fractures to increase formation permeability or otherwise enhance the productivity of such formation.

INDUSTRIAL USE – A use engaged in the basic processing and manufacturing materials or products predominantly from extracted or raw materials, or a use involving the manufacture, fabrication, processing, reduction, or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof. The term “industrial use” shall also include light industry. The term “industrial use” shall not include the exploration for or extraction of natural gas and/or petroleum or any other activity prohibited by Chapter 146 of this Code.

NATURAL GAS – Any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

NATURAL GAS AND/OR PETROLEUM EXPLORATION – 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, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS – Any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of natural gas.

NATURAL GAS EXPLORATION AND/OR PETROLEUM PRODUCTION WASTES – Any garbage, refuse, cuttings, sludge, flow-back fluids, produced waters or other discarded materials, including solid, liquid, semi-solid, or contained gaseous material that results from or is associated with the exploration, drilling or extraction of natural gas and/or petroleum.

Mamakating Town Board meeting

September 16, 2014

Page 6

NATURAL GAS AND/OR PETROLEUM EXTRACTION – The digging or drilling of a well of the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES – The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas or petroleum storage facility, or a natural gas or petroleum gathering line, venting station or compressor associated with the exploration or extraction of natural gas or petroleum.

NATURAL GAS EXTRACTION WASTE – (1) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; (2) leachate from solid wastes associated with natural gas extraction activities; (3) any waste that is generated as a result of or in association with the underground storage of natural gas; (4) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and/or (5) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

Mamakating Town Board meeting

September 16, 2014

Page 8

OIL EXTRACTION WASTE – (1) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; (2) leachate from solid wastes associated with oil extraction activities; and/or (3) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

PETROLEUM – Includes oil and crude oil.

Section 3. Chapter 199 of the Code of the Town of Mamakating, titled “Zoning Ordinance,” shall be amended by adding a new provision, § 199-8.1 , titled “Prohibited Uses,” to read as follows:

§ 199-8.1. Prohibited uses.

1. The following uses are specifically prohibited in the Town:

(1) Natural Gas Exploration or Extraction.

- (2) Petroleum Exploration or Extraction.
- (3) Use or disposal of Natural Gas Extraction Wastes.
- (4) Use or disposal of Oil Extraction Wastes.

1. Nothing in this section should be construed as implying that uses not specifically listed as a permitted use or special use in a zoning district are permitted in any way. Pursuant to §199-7(C) of this Code, uses not specifically listed as a permitted use or special use in a zoning district shall be deemed to be a prohibited use in that zoning district.

Mamakating Town Board meeting

September 16, 2014

Page 7

Section 4. The Code of the Town of Mamakating is hereby amended by adding a new Chapter 146, titled “Prohibition on the Use, or Transport, or Disposal of Oil or Gas Extraction Wastes, to read as follows:

§ 146-1. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

APPLICATION – the physical act of placing or spreading natural gas extraction waste or oil extraction waste on any road or real property located within the Town.

HYDRAULIC FRACTURING – A stimulation technique using the introduction of high-pressure volumes of water, liquid mixtures of chemicals and substances, or other gas, liquid, substances, or combination of thereof, into a subsurface carbon-bearing formation to create fractures to increase formation permeability or otherwise enhance the productivity of such formation.

NATURAL GAS EXTRACTION ACTIVITIES – All geologic or geophysical activities related to the exploration for or extraction of natural gas, including, but not limited to, core and rotary drilling and hydraulic fracturing.

OIL EXTRACTION ACTIVITIES –All geologic or geophysical activities related to the exploration for or extraction of oil, including, but not limited, to, core and rotary drilling and hydraulic fracturing.

NATURAL GAS EXTRACTION WASTE:

- 1) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants;
- 2) leachate from solid wastes associated with natural gas extraction activities;
- 3) any waste that is generated as a result of or in association with the underground storage of natural gas;
- 4) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and/or
- 5) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

OIL EXTRACTION WASTE:

- 1) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants;
- 2) leachate from solid wastes associated with oil extraction activities; and/or
- 3) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

PETROLEUM – Includes oil and crude oil.

TOWN – the Town of Mamakating.

Mamakating Town Board meeting**September 16, 2014****Page 8****§ 146-2. Prohibitions.**

1. The application of natural gas extraction waste or oil extraction waste, whether or not such waste has received a Beneficial Use Determination pursuant to 6 NYCRR Part 360 or similar determination, on any road or real property located within the Town for any purpose is prohibited.

1. The introduction of natural gas extraction waste or oil extraction waste into any wastewater

treatment facility within or operated by the Town is prohibited.

1. The introduction of natural gas extraction waste or oil extraction waste into any solid waste management facility within or operated by the Town is prohibited.
1. The sale, acquisition, storage, handling, treatment and/or processing of natural gas extraction waste or oil extraction waste within the Town is prohibited.
1. The transport of natural gas extraction waste or oil extraction waste on, under or along a Town roadway is prohibited.

§ 146-3. Bids and contracts related to the construction or maintenance of publicly owned and/or maintained roads or real property within the Town.

1. All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas extraction waste or oil extraction waste shall be provided to the Town.
1. All bids and contracts related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas extraction waste or oil extraction waste shall be utilized in providing such a service.
1. The following statement, which shall be a sworn statement under penalty of perjury, shall be included in all bids related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the Town and all bids related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town:

“We, _____ hereby submit a bid for materials, equipment and/or labor for the Town of Mamakating. The bid is for bid documents titled _____. We hereby certify under penalty of perjury that no natural gas extraction waste or oil extraction waste will be used by the undersigned bidder or any contractor, sub-contractor, agent, or vendor agent in connection with the bid; nor will the undersigned bidder or any sub-contractor, agent or vendor agent thereof apply any natural gas extraction waste or oil extraction waste to any road or real property within the Town of Mamakating as a result of the submittal of this bid if selected.”

Mamakating Town Board meeting

September 16, 2014

Page 9

§ 146-4. Duty of employees to be familiar with this Chapter.

The Town Supervisor or, at the Town Supervisor's option, any Department head authorized by the Town Supervisor, is authorized to develop policies to ensure that Town employees are familiar with the provisions of this Chapter and take such steps as are directed by the Town Supervisor or such Department head to ensure a diligent effort by the Town to assure that materials supplied to the Town or used on Town roads or on property in the Town comply with this law. This section shall not excuse non-compliance by a contractor or vendor of the Town.

§ 146-5. Penalties.

This law shall apply to any and all actions occurring on or after the effective date of this law. Any violation of this Chapter shall be an unclassified misdemeanor punishable by a fine not to exceed \$25,000.00 per violation and/or up to one (1) year imprisonment. Each violation of this Chapter, including but not limited to each sale, application, use, disposal or acceptance of natural gas extraction waste or oil extraction waste, shall constitute a separate and distinct violation.

Section 5. Severability.

If a provision of any article, section, subsection, paragraph, subdivision or clause of this local law shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

Section 6. Supersession.

Pursuant to the state Municipal Home Rule Law, this local law is intended to supercede any inconsistent provisions of the state Town Law and any other special law.

Section 7. Effective date.

This local law shall take effect immediately upon filing with the secretary of State.

A motion was made by M. Taylor, seconded by B. Giraldi to close the Public Hearing. All in favor.

A motion to adopt Local Law #8-14 as amended to include the word/s along and/or under regarding the transportation of materials was made by M. Taylor, seconded by B. Giraldi. All in favor.