

# Protection of Rural Environment Local Law of the Town of New Lisbon

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**Town of New Lisbon Local Law No. \_\_\_\_\_ of 2011**

**Protection of Rural Environment Local Law of the Town of New Lisbon**

**Be it Enacted by the Town Board of the Town of New Lisbon, Otsego County, New York, as follows:**

**I. Title**

This Local Law shall be known as the “Protection of Rural Environment Local Law of the Town of New Lisbon”, adopted as Town of New Lisbon Local Law No. \_\_\_\_ of 2011.

**II. Enactment**

This Local Law is adopted and enacted pursuant to the authority and power granted by the Constitution and Laws of the State of New York including without limitation the Municipal Home Rule Law of the State of New York, Articles 2 and 3, and Article 2 of the New York State Statute of Local Governments.

**III. Purpose**

It is the purpose of this Local Law to promote the protection, order, conduct, safety, health, and well-being of the residents of New Lisbon and the lands that lie within the Town’s borders.

It is the purpose of this Local Law to protect and enhance the Town’s physical and visual environment.

It is the purpose of this law to respond to the legitimate concerns of the citizens of the Town about the potential for expansion of Heavy Industry, including but not limited to natural gas drilling, in the Town and about the potential for major portions of the Town and its citizens to be adversely impacted by such Heavy Industry.

It is the purpose and intent of this Local Law to uphold and implement the Town of New Lisbon Comprehensive Plan, as currently adopted.

The Town Board of the Town of New Lisbon, in adopting an updated Comprehensive Plan in 2008, established the following Vision Statement:

In our Vision for the Town of New Lisbon in the future, our community character is preserved, civic pride sustained and quality of life enhanced. In

the coming years, we carefully manage new growth and development while respecting private property rights in order to protect the integrity of our Town, its hamlet centers, small businesses, cultural & civic institutions, public parks, and our natural resources; preserve historic buildings, open space, a vibrant agricultural & farming community and scenic vistas to and from the Butternut Creek; enhance the provision of business services and access to telecommunications infrastructure; provide sustainable public infrastructure and services to meet growing community needs in a cost-effective manner; provide housing opportunities for a range of household incomes; and set quality design standards to ensure that new growth and redevelopment enriches our community aesthetics and is in harmony with the existing fabric of the Town of New Lisbon.

Further, the Town Board, in adopting its Comprehensive Plan, set the following 17 goals pertaining to Natural Resource Protection, Transportation, Recreational, Historic & Cultural Resources, Community Facilities, Agriculture & Farmland, Economic Development, and Land Use Laws:

- A. Protect groundwater resources to ensure that the quantity and quality of water is available to serve future needs.
- B. Protect the Town's scenic views, rural-community atmosphere, and natural quality for its intrinsic and economic value.
- C. Maintain the stability of hillsides to avoid erosion.
- D. Enhance resource protection and public access to the Butternut Creek and West Branch of the Otego Creek and other bodies of water.
- E. Ensure the long-term sustainability of the Town's forestland and sugar bush industry.
- F. Maintain an acceptable level-of-service on all area roadways in a cost-effective manner.
- G. Ensure transportation systems are sufficient to support agri-businesses and other industries.
- H. Provide a variety of recreational resources to serve the needs of the community year-round.
- I. Protect and preserve historic resources.
- J. Provide facilities to meet existing and anticipated community needs.

- K. Keep existing farmland in agricultural production and maintain the viability of area farms.
- L. Support growth in small-scale industries that complement rural character of the community.
- M. Manage growth in relation to Vision Statement.
- N. Preserve open space in order to retain the area's scenic vistas.
- O. Protect homeowners from non-residential development.
- P. Provide housing options that are affordable to a range of household incomes in the Town.
- Q. Encourage Leadership in Energy and Environmental Design (LEED) techniques in the design, construction and operation of new buildings in the Town.

In addition, the Comprehensive Plan identifies the following challenges facing the Town of New Lisbon:

- Preserving the rural character of Town;
- Preservation of prime farmland;
- Increasing the profitability of farming;
- Keeping farming as major industry in the Town and protecting the right-to-farm;
- Protecting natural & historic resources;
- Enhancing recreational opportunities;
- Providing affordable housing opportunities;
- Protecting scenic views;
- Restricting large-scale retail and industrial uses;
- Ensuring good design of new commercial buildings;
- Allowing for small-scale retail uses;
- Identifying where new industrial uses should be permitted;
- Ensuring that new development does not impact nearby farms; and
- Protecting private property rights.

Further, it is the purpose of this Local Law to control those activities related to Heavy Industry, which may impact wetlands, lakes, streams, groundwater resources, drinking supplies, public roads, historic landscapes, Agriculture, small

town character, and the area's tourism and recreational-based economy. Impacts related to Heavy Industry that New Lisbon seeks to avoid include, but are not limited to contaminated water supplies, air pollution, traffic congestion, deterioration of roads and bridges, noise, introduction of industrial uses into non-industrial areas, human and animal illness, and incompatible changes to the rural character of Town.

This Local Law is intended to be of general applicability, and is intended to regulate all types of Heavy Industry, except as provided herein.

#### **IV. Definitions**

Agriculture – The use of land for raising of cows, horses, pigs, poultry and other livestock; growing of grains, fruits, vegetable and other human and animal foods and natural products; horticulture; sap harvesting; silviculture; aquaculture; or orchards.

Comprehensive Plan – A long-range plan intended to guide the growth and development of the Town of New Lisbon which includes inventory and analysis leading to recommendations for the Town's land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities, and community design, all related to the Town's goals and objectives for these elements and adopted pursuant to New York Town Law 272-a.

Natural Gas Exploration, Extraction, or Processing – The exploration for natural gas, the extraction of natural gas from the ground regardless of the extraction method used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity or use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new natural gas well, regardless of well type;
- Development of a natural gas well operations site and associated structures and infrastructure;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Installation and/ or use of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with, the exploration for or extraction of natural gas

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

Heavy Industry – Any use or activity which generates significant volumes of smoke, odor, noise, glare, or other pollution wastes and is not compatible with other uses in the district. Examples of “Heavy Industry” include but are not limited to: chemical manufacturing; exploration for natural gas; extraction of natural gas; natural gas processing facilities (as defined elsewhere in this law) and/or compressor stations; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; coal processing; and steel manufacturing. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning scope or application of this definition solely to the activities identified in the examples.

Generic examples of uses not included in the definition of “Heavy Industry” are: dairy farms; office and communications uses; garment factories; woodworking and cabinet shops; automobile repair shops; wineries and breweries; warehouses; equipment repair and maintenance facilities; helipads; parking lots and parking garages; Light Manufacturing or Light Industrial Operations; Agriculture; and surface gravel and sand mining. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

Light Manufacturing and Light Industrial Operations – A facility or use which does not employ more that twenty-five (25) people, does not produce high volumes of polluting wastes, is compatible with other uses in its surrounding area or neighborhood, does not require heavy or noisy machinery or transporting equipment, and in addition meets one of the following descriptions:

1. Light manufacturing. A use involving the manufacture of a product, subject to compliance with any other applicable ordinances, laws or regulations, in one of the following categories:
  - A. Food and beverage production, including but not limited to such uses as a dairy processing plant, bakery, and bottling plant;
  - B. Apparel and other textile products.
  - C. Furniture and fixtures
  - D. Printing and publishing.
  - E. Electrical and electronic machinery and equipment.
  - F. Metal fabrication.
  - G. Mail order distribution center
  - H. Warehousing ancillary to an authorized use.

2. Light Industrial. A facility that manufactures, designs, assembles, or processes a product for wholesale or retail sale.

Non-Conforming Use – A use or activity that was lawfully in existence prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of this Local Law.

## **V. Regulation**

- A. Beginning on the effective date of this Local Law, it shall be unlawful for any person to conduct “Heavy Industry” within the Town of New Lisbon.
- B. As an exception to the above-recited prohibition, because of its vital importance to sustaining and enhancing an agricultural community, the conduct of activities that are directly related to Agriculture, including but not limited to sap processing, milk processing, grain mills, logging, sawmills, and slaughterhouses, shall not be unlawful, notwithstanding that such conduct may comprise Heavy Industry.

## **VI. Enforcement**

- A. Upon authorization by the Town Board, the Town may institute an action or proceeding in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this law.

## **VII. Non-Conforming Uses**

- A. Conduct of activities and uses of land that comprise Heavy Industry lawfully in existence and ongoing as of the effective date of this Local Law, shall be considered a Non-Conforming Use and shall be allowed to continue provided such activity does not materially enlarge or expand in size or scope and further provided that if such activity ceases for a period of more than one (1) year, the Non-Conforming Use status of that activity shall terminate and the activity may not be resumed, re-started or renewed.
- B. The preceding provision relating to continuation of Non-Conforming Uses shall apply to the exploration for natural gas; extraction of natural gas; natural gas processing facilities; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; and coal processing as set forth hereinbelow. For the purposes of this Section VII, and solely for the ease of drafting and reading, all those uses and activities shall be referred to collectively as “gas, oil and coal extraction”.

C. Any leases of property for the purposes of allowing gas, oil or coal extraction, or any gas, oil or coal extraction operations which are being presently conducted on land in the Town as of the effective date of this law, shall be subject to the following:

1. Existing Leases:

a. Where a lease which allows gas, oil or coal extraction has been executed and where no substantive gas, oil or coal extraction activity has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

2. Existing Gas, Oil and Coal Extraction Operations

a. Where a lease which allows gas, oil or coal extraction has been executed, and where substantive gas, oil or coal mining extraction activity is occurring as of the effective date of this law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a Non-Conforming Use and shall be allowed to continue.

b. Upon the depletion of any gas or oil well or coal mine which is allowed to remain in operation pursuant to this provision, or upon any other termination of the gas, oil or coal extraction activity for a period of more than one (1) year, the Non-Conforming Use status of that activity shall terminate and the activity may not be resumed, re-started or renewed.

c. Further, no gas, oil or coal extraction activity allowed to remain in operation pursuant to this provision shall be permitted to enlarge or expand after the effective date of this Local Law.

## **VIII. Severability**

If any specific part or provision or standard of this Local Law, or the application thereof to any person or circumstance, be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof.



## **IX. Interpretation; Conflict With Other Laws**

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

## **X. Effective Date**

This Local Law shall take effect immediately upon filing with the Office of the Secretary of the State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.