

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.

County City Town Village

(Select one.)

of OTEGO

Local Law No. 1 of the year 2013

A Local Law to Effect a Moratorium within the Town of Otego on Natural Gas and/or
Petroleum Exploration, Extraction and Support Activities.

(Insert Title)

Be it enacted by the **Town Board** _____ of the
(Name of Legislative Body)

County City Town Village of OTEGO

(Select one.)

as follows:

SEE ATTACHED TEXT

(If additional space is *needed*, attach pages the same size as this sheet, and number each.)

(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 (Town) of Otego was duly passed by the Town Board on February, 2013, in accordance with the applicable provisions of law.
(Name of Legislative Body)

~~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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____~~
(Name of Legislative Body)

~~(repassed after disapproval) by the _____ on _____ 20____, and was (approved)(not approved)~~
(Elective Chief Executive Officer*)

~~on _____ 201____, 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)

(repassed after disapproval) by the _____ on _____ 20____
(Elective Chief Executive Officer*)

Such local law was submitted 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 _____ 20____, 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____ and was (approved)(not approved)~~
(Name of Legislative Body)

~~(repassed after disapproval) by the _____ on _____ 20____. Such local~~
(Elective Chief Executive Officer*)

~~law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.~~

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide 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 town where such officer is vested with the power to approve or veto local laws or ordinances.

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 20 _____ 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 _____ 20_____, 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 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20_____, 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 towns 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 , 1 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body _____

(Seal)

Date: _____, 2013

**TOWN OF OTEGO
LOCAL LAW NO. 1 OF 2013**

**A LOCAL LAW TO EFFECT A MORATORIUM WITHIN THE TOWN OF OTEGO
ON NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION AND SUPPORT ACTIVITIES.**

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

Section 1. TITLE.

This Local Law shall be known as the “Moratorium on Gas and/or Petroleum Exploration, Extraction and Support Activities within the Town of Otego.”

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE.

A. Authority and Intent. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Otego under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, §2 (c); Municipal Home Rule Law §10(1), §10(2), §10(3), §20 and §27; Statute of Local Governments §10(1), §10(6), and §10(7); and Environmental Conservation Law §27-0711.

This Local Law is a land use regulation. This Local Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern.

B. Findings. The Town Board of the Town of Otego desires to address the land use activities prohibited by Section 4 of this Local Law, so as to allow the Town a reasonable time to study the potential impacts, effects, and possible controls over such land use activities and to consider possible amendments to the Town’s zoning laws and comprehensive plan to address the same.

C. Purpose. The purpose of this Local Law is to enable the Town of Otego to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting the land use activities prohibited by Section 4 of this Local Law, for a reasonable time, so as to allow the Town time to study the potential impacts, effects, and possible controls over such land use activities and to consider possible amendments to the Town’s zoning laws and comprehensive plan to address the same. The Town Board finds that a moratorium of one (1) year duration, coupled with a mechanism for an “unnecessary hardship” variance procedure and a provision for the “grandfathering” of legal, pre-existing non-conforming uses, will achieve an appropriate balancing of interests between: (i) the public need to safeguard the character and other resources of the Town of Otego and (ii) the rights of individual property owners or businesses desiring to conduct such land use activities.

Section 3. DEFINITIONS.

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

“Board of Appeals” means the Town of Otego Zoning Board of Appeals.

“Natural Gas and/or Petroleum Exploration Activities” means 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 any 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” means 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 Support Activities” means any natural gas compression or processing facility, and any disposal, storage, dumping or underground injection of natural gas and/or Wastes.

“Person” means 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.

“Town” means the Town of Otego, Otsego County, New York.

“Town Board” means the Town Board of the Town of Otego.

“Wastes” means 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 and whether or not such substances are generally characterized as waste: (a) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production, processing, or treatment wastes (including any fluid, liquid, semi-liquid, or solid materials); (c) any chemicals, oils, or sediments used or produced in connection with Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities; (d) radioactive material (not regulated by another regulatory agency otherwise having jurisdiction over such material) relating to, arising in connection with, or produced by or incidental to Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum

Extraction Activities, or Natural Gas and/or Petroleum Support Activities; (e) drill cuttings from natural gas or petroleum wells; or (f) any other wastes associated with Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas

and/or Petroleum Support Activities. This definition does not include (i) recognizable and non-recognizable food wastes or (ii) waste generated by agricultural use.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance (except as described in Section 7 of this Local 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) Natural Gas and/or Petroleum Exploration Activities; (ii) Natural Gas and/or Petroleum Extraction Activities; or (iii) 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) Natural Gas and/or Petroleum Exploration Activities; (ii) Natural Gas and/or Petroleum Extraction Activities; or (iii) Natural Gas and/or Petroleum Support Activities.

C. The moratorium and prohibition set forth above in Sections A and B of this Section 4 are not intended, and shall not be construed, to: (a) prevent or prohibit the digging or drilling of a well for the purposes of exploring for, developing, or producing water; (b) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (c) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to buildings located in the Town; or (d) 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 agricultural, residential, business, commercial, or 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) one year after said effective date or (ii) the effective date of a duly enacted repeal of this Local 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, the Board of Appeals, the Town Planning Board, 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 5. PENALTIES.

A. Compliance Orders. The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in violation of this Local Law. If the condition or activity is not remedied after the issuance of a compliance order, then an appearance ticket may be issued as provided hereinafter.

B. Appearance Tickets. The Code Enforcement Officer is authorized to issue appearance tickets for any violation of this Local Law. Any person who violates any provision of this Local Law shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

C. Civil Penalty. In addition to those penalties prescribed herein, any person who violates any provision of this Local Law shall be liable to a civil penalty of not more than \$2,500 for each day or part thereof during which such violation continues. The civil penalties provided by this section shall be recoverable in an action instituted in the name of the Town of Otego.

D. Injunctive Relief. An action or proceeding may be instituted in the name of the Town of Otego, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Local Law. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board.

E. Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation of this Local Law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section. In addition to the above-provided remedies, the Town Board may also seek reimbursement to the Town for costs incurred by the Town in identifying and remedying each violation, including but not limited to, reasonable attorney's fees.

Section 6. GRANDFATHERING OF LEGAL, PRE-EXISTING NON-CONFORMING USE.

Notwithstanding any provision hereof to the contrary, any Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration Activities or Natural Gas and/or Petroleum Support Activities that are being conducted in the Town as of the effective date of this Local Law and 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, shall be considered a pre-existing, nonconforming use and shall be allowed to continue, subject, however, to the provisions of this Section.

Any lawful pre-existing nonconforming use has no right to expand such pre-existing nonconforming use, whether above or below ground, and no such right shall be deemed, construed, or implied to exist. Any change to or expansion of a lawful, pre-existing nonconforming use shall in all respects be prohibited as described in Section 4 hereof.

Section 7. HARDSHIP USE VARIANCE.

The Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of this Local Law and the Town of Otego Zoning Ordinance, as it may be amended from time to time) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such hardship use variance shall be granted by the Board of Appeals without a showing by the applicant that the provisions of this Local Law have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that, as a result of the requirements of this Local Law: (i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and (iii) that the requested hardship use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that the alleged hardship has not been self-created.

In the event the Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations. The Board of Appeals, in the granting of a hardship use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

Section 8. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 9. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board to supersede any inconsistent provisions of any and all other local ordinances, local laws, or local resolutions or policies of the Town of Otego.

Section 10. GENERAL PROVISIONS.

A. The Code Enforcement Officer is hereby designated as the enforcement officer for purposes of interpreting and enforcing this Local Law.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only, and shall not be used or construed to limit or define the scope or application of the clauses and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

Section 11. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State in accordance with §27 of the Municipal Home Rule Law.

Local Law #1 of 2013

The town attorney advised the board that a super majority vote (four members) of the town board is necessary to pass the law. This is because of the protest petition that was filed with the board in September 2012 that had enough signatures to make a super majority vote necessary.

A motion was made by Terry Brown, seconded by Barbara Stanton, to approve Local law #1 of 2013 as per the following resolution:

WHEREAS, a proposed Local Law No. 3 of 2012 entitled "A Local Law to Effect a Moratorium within the Town of Otego on Natural Gas and/or Petroleum Exploration, Extraction, and Support Activities" was introduced to the Town Board of the Town of Otego at a regular meeting on July 18, 2012 and the Town Board referred a copy of the Local Law to the Town of Otego Planning Board for review and recommendation; and

Whereas, the Town of Otego Planning Board reviewed the proposed Local Law and submitted a memorandum to the Town Board dated August 7, 2012, supporting the passage of the proposed Local Law; and

WHEREAS, a resolution was duly adopted by the Town Board for a public hearing to be held by the Town Board at the Otego Elementary School in Otego at 6 pm on Wednesday, September 26, 2012, to hear all interested parties on the proposed Local Law; and

WHEREAS, notice of the public hearing was duly advertised in the Oneonta Daily Star, the official newspaper of the Town and was posted on the Town Clerk's sign board and posted on the Town's website, at least ten days prior to the public hearing; and

WHEREAS, on or about July 27, 2012, a copy of the proposed Local Law was referred to the Otsego County Planning Department for review and recommendation under section 239 of the General Municipal Law; and

WHEREAS, by recommendation dated August 17, 2012, the Otsego County planning Department returned the matter for local action and found no significant county-wide of inter-community impacts; and

WHEREAS, the public hearing was duly held at the Otego Elementary School at 6 pm on September 26, 2012, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof; and

WHEREAS, at the public hearing September 26, 2012, the Town Board received a protest petition from some members of the public, relating to section 265 of the New York State Town Law; and

WHEREAS, following the public hearing on September 26, 2012, the Town Board was made aware of a recent court decision involving a moratorium local law, and based on that recent decision, was advised by counsel that the Board should revise the proposed Local law and should conduct a second public hearing; and

WHEREAS, at a regular Town Board meeting on December 12, 2012, the revised proposed Local Law, re-numbered as Local Law No. 1 of 2013 was introduced to the Town Board and a resolution was duly adopted by the Town Board for a second public hearing to be held at the Otego Municipal Building at 6 pm on Wednesday, January 23, 2013, to hear all interested parties on the revised proposed Local Law; and

WHEREAS, on or about December 12, 2012 a copy of the revised proposed Local Law was referred to the Otsego County Planning Department for a second review and recommendation under section 239 of the General Municipal Law; and

WHEREAS, by recommendation dated January 3, 2013, the Otsego County Planning Department returned the matter for local action and found no significant county-wide or inter-community impacts; and

WHEREAS, notice of the second public hearing was duly advertised in the Oneonta Daily Star, the official newspaper of the town, and was posted on the Town Clerk's sign board and posted on the Town's website, at least ten days prior to the second public hearing, and in addition, notice was sent to all of the Municipalities bordering the Town of Otego, as well as the Village of Otego; and

WHEREAS, the second public hearing was duly held at the Otego Municipal Building at 6 pm on January 23, 2013, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said revised proposed Local Law, or any part thereof; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA) and based upon advice of counsel and the Otsego County Planning Department 239 recommendation, the Town Board has determined that the adoption of Local Law No. 1 of 2013 is a Type II action pursuant to 6 NYCRR section 617.5(c)(30) and thus would not result in any significant adverse environmental impacts and therefore is not subject to further environmental review under SEQRA; and

WHEREAS, at both public hearings, the Town received verbal and written comments and submissions relation to the proposed Local Law and the Town Board has viewed those submissions and retained them on file in the Town Clerk's Office;

WHEREAS, the Town Clerk has caused the protest petition to be reviewed and has verified that the petition is a valid petition including more then twenty percent (20%) of the owners of the area of land in the Town; and

WHEREAS, upon advice of counsel and the recommendation of the Otsego County Planning Department, and pursuant to the New York State Town Law section 265, the Town Board has determined that the passage of the proposed Local Law will require a vote of at least a majority plus one of the Town Board, for a total of four (4) votes; and

WHEREAS, the Town Board, after due deliberation and review of all the submissions, finds it in the best interest of the Town to Adopt said Local Law No. 1 of 2013,

NOW, THEREFORE, the Town Board of the Town of Otego hereby adopts said Local Law as Local Law No. 1 of 2013, a copy of which is attached hereto and made a part hereof, and the town Clerk be and she is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Otego, and to give due notice of the adoption of said Local Law to the Secretary of State, and to provide a copy of the adopted Local Law and a report of the Board final action to the Otsego County Planning Department, and to publish an abstract of the Local Law once in the official newspaper of the Town.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows: 4 Ayes, 1 Nay (Sheldon)

Before voting, Mr. Sheldon read a statement, under advice of counsel, that he works for a gas company which has no connection with this issue, and so there is no conflict in him voting on this local law.

Mr. Hurlburt wants all residents to understand that this is a divisive issue but we are all Otego residents and must continue to live in this community together. Also, this is not a vote banning gas drilling, just a vote for a moratorium.

Barbara Stanton commended the public for their civility during the meetings and hearings on this issue. She also thanked the town clerk for the work she does.