

berm or other buffer along part or all of the boundary for safety, visual or other screening purposes.

(2) Lateral support. Lateral support shall be sufficient to prevent the hazard of damage to persons, adjacent properties and public roads by reason of slides, sinking or collapse.

(3) Hours of operation. Excavation and appurtenant activities shall be conducted only between 7:00 a.m. and 5:00 p.m. on Monday through Friday and between 7:00 a.m. and 1:00 p.m. on Saturday, and shall not be allowed on Sundays. Material-hauling loaded trucks shall enter or leave the premises only within the hours permitted for the operation of excavation and appurtenant activities.

(4) Noise. Noise from excavations, appurtenant activities and related operations shall not be such as to interfere with the quiet enjoyment of neighboring properties.

(5) Spillage. Trucks shall be loaded to prevent spillage or windblown matter during transport on public roads.

§ 122-12. Standards for restoration.

A. No slope shall be left with a grade steeper than one foot of vertical rise to three feet of horizontal distance, and the normal angle of repose should not be exceeded in any case.

B. All stumps, boulders and other debris resulting from the excavations, appurtenant activities or related operations shall be disposed of by approved methods. If disposed of on the site, such debris shall be covered with a minimum of two feet of soil.

C. Topsoil shall be spread over the excavated area to a minimum depth of six inches.

D. The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.

E. Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.

F. Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted.

G. Within six months after termination of the excavation operation, all equipment, buildings, structures and other unsightly evidence of the operation shall have been removed from the premises or disposed of by approved methods and all restoration shall have been completed.

§ 122-13. Amendment of provisions.

The Board may from time to time on its own motion, on petition or on recommendation of the Board of Appeals, Planning Board or the Conservation Board, and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations or provisions of this chapter.

§ 122-14. Penalties for offenses.

Any person found guilty of a violation of the provisions of this chapter shall be punishable pursuant to Chapter 115, Enforcement Procedures.

## § 205 Natural Gas & Petroleum Exploration, Extraction and Storage.

§ 205-1 Purpose.

The Town of Perinton believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. Allowing one or more of the Explicitly Prohibited Uses described in §205-2 to be conducted in the Town of Perinton would likely be hazardous to the public health, safety and welfare of the inhabitants of the Town, causing air pollution, dust, odors, and excessive truck traffic to and from the sites of such uses. Furthermore, the high costs associates with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as defined in §205-5) have in other localities resulted, and could in our Town, result in such material being deposited along roadways, in vacant lots, or business sites or in other unauthorized places. The purpose of this law is to avoid the

adverse impacts from these prohibited uses and to protect the health, safety and welfare of the Town residents.

§ 205-2 Explicitly Prohibited Uses. The following uses and activities (being respectively defined in Clause D. below of this § 205) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (a) Land Application Facility;
- (b) Natural Gas And/Or Petroleum Exploration Activities;
- (c) Natural Gas And/Or Petroleum Extraction Activities;
- (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- (e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (f) Natural Gas Compression Facility;
- (g) Natural Gas Processing Facility;
- (h) Non-regulated Pipelines;
- (i) Underground Injection; and
- (j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of §205-2 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance.

§ 205-3 Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Perinton hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, except for methane gas which is produced at a permitted landfill within the Town of Perinton.

§205-4 No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this §205 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.

§205-5 Defined terms applicable to this §205. For purposes of this Law, the following terms shall have the meanings respectively set forth below:

**AGRICULTURAL USE**. The use of the land for agricultural purposes, including, but not limited to, dairying, pasturage, truck farms or nurseries, greenhouses, horticulture, viticulture and apiaries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.

**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 boxes, 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 or a dug hole through which fluids (which may or may not include semi-solids) are injected into the subsurface.

**LAND APPLICATION FACILITY.** A site where any Natural Gas and/or Petroleum Extraction, Exploration or 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, excluding any gas produced by a permitted landfill.

**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, excluding any gas produced by a permitted landfill.

**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.

**NATURAL GAS COMPRESSION FACILITY.** Those facilities or combination of facilities that move natural gas or oil 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 CO<sub>2</sub> 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.

**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 term 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.

**TRANSMISSION LINE.** A pipeline that transports petroleum, natural gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's 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.

§ 208-3. Zoning plan established; intent.

A. There is hereby established a comprehensive zoning plan for the Town of Perinton, Monroe County, New York, which plan is set forth in the text and maps that constitute this chapter. This Zoning Chapter is adopted in accordance with the procedures set forth in § 10 of the Municipal Home Rule Law of the State of New York and Chapter 30, Adoption of Local Laws, of the Town of Perinton under the authority of the provisions of Article 16 of the Town Law (Chapter 61 of the Consolidated Laws of the State of New York). No building or structure; no use of any building, structure or land; and no lot now or hereafter existing shall hereafter be established, altered, moved, divided or maintained in any manner except as authorized by the provisions of this chapter.

B. For the purpose of promoting the health, safety or the general welfare of the people of the Town of Perinton, this Zoning Chapter is adopted to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of

lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such Zoning Chapter, Zoning Map, subdivision regulations and other local laws are designed to lessen congestion in the streets; to secure safety from fire and other dangers; to provide adequate light and air; to prevent the overcrowding of land and to avoid undue concentration of population; to facilitate the efficient and adequate provision of public facilities and services; and to provide the maximum protection to residential areas from the encroachment of adverse environmental influences, and were made after reasonable consideration, among other things, as to the character of the Town and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

§ 208-4. Other laws, ordinances, codes and regulations.

A. In addition to the provisions of this chapter, other local laws, ordinances, codes and regulations dealing with specific subjects have been adopted by the Town Board pursuant to the authority of Article 16 of the Town Law of the State of New York, including the following local laws, ordinances, codes and regulations:

- (1) Conservation Easement Law (Chapter 103).
- (2) Electrical Code (Chapter 108).
- (3) Enforcement Procedures Law (Chapter 115).
- (4) Excavation Law (Chapter 122).
- (5) Fee Law (Chapter 130).
- (6) New York State Uniform Fire Prevention and Building Code (Chapter 88).
- (7) Sewer Use Ordinance (Chapter 171, Part 2).
- (8) Sign Law (Chapter 174).
- (9) Subdivision Regulations (Chapter 182).
- (10) Unsafe Buildings and Collapsed Structures Ordinance (Chapter 95).
- (11) Wind Energy Conversion (Chapter 204)
- (12) Natural Gas and Petroleum Exploration, Extraction and Storage ( Chapter 205)

B. Such local laws, ordinances, codes and regulations, as the same may be amended, revised, deleted or added from time to time, are incorporated in this chapter by reference, as if they were each specifically set forth herein. If there is conflict between two or more of such local laws, ordinances, codes or regulations as to the same subject matter, the more restrictive one shall apply.

Supervisor Smith read the following motion: The Town Board and staff have reviewed a plethora of material as consideration was given to these proposed changes to our Town ordinance, including articles and videos from a number of web sites. That material is identified as Exhibit A in the Town records. The Town Board also received favorable comments from the Town Conservation Board endorsing these proposed changes to our ordinance, stating that the proposed changes would provide further protections for natural resources within the Town. Based on our review of the available information and the comments from our Conservation Board, I will accept a motion that we give these code changes a negative SEQR declaration as these code changes will not cause any significant adverse environmental impacts and instead will likely protect the Town from adverse environmental impacts attendant to hydrofracking.

Councilperson LaFay made the above motion, seconded by Councilperson Havens.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved.

Supervisor Smith then read the following Motion of Adoption: At the heart of the hydro-fracking debate, is the issue of home rule. We believe that, as the hydrofracking industry and its methodologies stand today, this practice is not compatible with our town, its existing development pattern and its tradition of the preservation of open space. We, therefore, are passing this law based on our town and our perception of this practice and how it would fit (or not) in our town at this time, based on an extensive review of the material listed in Exhibit A. We are not taking any position that should be

interpreted or extended to any area other than our town. We believe that all municipalities should have a measure of control (home rule) over what activities should or should not occur in their respective communities.

With this preamble, and upon receipt of referrals from Monroe County Planning (no comment), the Perinton Conservation Board (endorsement) and the Perinton Planning Board (5-2 opposed to the changes), I will accept a motion of adoption of the various amendments to our code, Sections 122, 205 and 208, that cover this matter.

Councilperson LaFay made a motion, seconded by Councilperson Havens to adopt the various amendments to the Code of the Town of Perinton as outlined above.

A gentleman in the audience questioned, as a perspective land owner with potential revenue opportunities from hydrofracking, why Supervisor Smith feels that it is the Town's responsibility to eliminate that revenue source. Supervisor Smith stated that the Board feels that Perinton is a well-developed community and there is not a lot of space where hydrofracking could occur and that it is not appropriate for Perinton.

Judith McNulty, 647 Thayer Road, asked whether the new codes would prevent any hydrofracking waste from going to High Acres Landfill and from being trucked through the Town. Supervisor Smith stated that the Town cannot control what is trucked through the Town on State and County roads, however, hydrofracking waste cannot go to High Acres.

The Board then voted as follows:

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved.

DECISION  
SPECIAL USE PERMIT  
PERINTON JOINT FIRE TRAINING FACILITY

Supervisor Smith stated that the Board held a Public Hearing on June 13, 2012 relative to a Special Use Permit for a Perinton Joint Fire Training Facility. He then read a proposed motion for SEQRA and the following motion was made:

Councilperson Knapp moved and Councilperson Havens seconded that the Town Board grant a negative declaration for this Special Use Permit action. No adverse environmental impacts will be created in the area. This determination is consistent with the recommendation from the Conservation Board, dated June 29, 2012.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved

Councilperson Van Vreede then made a motion seconded by Councilperson LaFay that the Board approve the Special Use Permit for the Perinton Joint Training Facility proposed to be located on the Waste Management parcel, High Acres landfill. Reasons supporting this approval are:

- The Fire Departments involved held a "neighborhood" meeting to which they invited homeowners in adjacent subdivisions to the south of the proposed site. The Town Board held a Public Hearing on June 13, 2012 relative to the Special Use Permit. No objections were raised by the public concerning the proposed use at the hearing.
- Referral from Monroe County Planning Dept. on June 13, 2012 which had no comment.
- Referral from the Perinton Conservation Board dated June 29, 2012 endorsing the