Sponsored by: Councilmembers Vescera, Zocca

AN ORDINANCE ADDING TO ARTICLE XII - SUPPLEMENTAL REGULATIONS - DIVISION 3 -
SECTION 2-29-609 “CITY PROHIBITION OF NATURAL GAS EXPLORATION AND EXTRACTION”

WHEREAS, The Common Council did adopt an Ordinance on August 8, 2012 placing a moratorium on construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities in the City of Utica that will expire on December 31, 2013 and

WHEREAS, The Common Council did adopt an Ordinance entitled Section 2-29-480 that prohibits the use of brine from gas extraction wells as a road treatment in city streets and

WHEREAS, The Common Council herein does adopt Section 2-29-609 of the City Zoning Code to replace the Ordinance of August 8, 2012 which is to expire on December 31, 2012, and

WHEREAS, the Mohawk Valley Water Authority did adopt a resolution on November 21, 2011 requesting that the State of New York ban the practice of Hydraulic Fracturing for Natural Gas Extraction in and around the Hinckley Watershed or from any surrounding area from which fracturing chemicals could enter the Hinckley Watershed which is a protected area within the Adirondack Park, and

WHEREAS, The City of Utica does hereby declare by the adoption of Ordinance that natural gas exploration and extraction is prohibited in the City of Utica, therefore, be it

ORDAINED, that the City of Utica does hereby adjust Section 2-29-609 which “Prohibits the Exploration and Extraction of Natural Gas in the City of Utica”.

Section 2-29-609

Section 1. TITLE

PROHIBITION OF NATURAL GAS EXPLORATION AND EXTRACTION

Section 2. The exploration and extraction of natural gas within the limits of the City of Utica is not in the best interest of the residents of the City of Utica and the prohibition of same is a reasonable exercise of the City of Utica's police power to prevent damage to the rights of others, to protect the City of Utica's water supply and to promote the interests of the community as a whole.
Section 3. The exploration for natural gas, the extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and/or petroleum wastes and production wastes and the accompanying use of land for an outdoor factory and heavy industrial use in the City environment of the City of Utica poses a significant threat to its residents' health, safety and general welfare.

Section 4. Widespread environmental and human health impacts have resulted from natural gas exploration and extraction in other areas and other states.

Section 5. Natural gas exploration, and the extraction or the storage transfer, treatment or disposal of natural gas exploration and protection wastes within the City, would endanger the health safety and general welfare of the community through the deposit of toxins into the air, soil, water, environment, and in the bodies of residents.

Section 6. The protection of residents, neighborhoods, and the natural environment through its power to regulate and restrict the use of land for trade, industry or other purposes, constitutes the highest and best use of such land use powers that the City possesses.

Section 7. Clean air and water are essential to most resources and activities in the City of Utica area and the quality of the air and the water will be degraded by natural gas exploration and extraction activities and/or the storage, transfer, treatment or disposal of natural gas exploration and production wastes.

Section 8. Natural gas exploration and extraction activities and the storage, transfer, treatment or disposal of natural gas exploration and production wastes may cause irreparable harm to public and private water supplies pollution of the surface and ground water, soil, and air, and may cause cancer, lung disease, and respiratory diseases.

Section 9. Air, soil and water contamination may occur during the different stages of natural gas exploration and extraction operations and the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and such contamination could have adverse human health impacts.

Section 10. Spills of liquid and solid wastes that originate from the exploration, drilling, for and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) is not uncommon, and such products may come into contact with the contaminate and pollute surface waters, groundwater and/or soil.

Section 11. A large number of the chemicals used in natural gas exploration and extraction and many of the constituents of natural gas exploration and production wastes are likely causes of adverse human health impacts.

Section 12. Natural gas exploration and production waste products are hazardous wastes.

Section 13. The City of Utica through its land use powers has the power to prohibit the exploration and extraction of natural gas and the storage, treatment or disposal of natural gas exploration and production wastes within the City.

Section 14. This amendment to the City of Utica Zoning Ordinance clarifies that the City of Utica has, since the adoption of the original Zoning Ordinance to place a moratorium as the regulated and restricted the use of land for outdoor factories and heavy industrial uses such as are associated with the exploration and extraction of natural gas and the storage, treatment or disposal of natural gas exploration and/or petroleum production wastes, decided that a prohibition is in the best interests of the residents of the City of Utica.
Section 15. This prohibition further reinforces the City of Utica’s Master Plan which Plan notes that:

(a) The City of Utica should continue and expand its efforts to protect and enhance environmental quality through direct actions, and steps to better protect the water resources of the City, in order to protect them for future generations.

(b) The City of Utica is a significant user of the Hinckley Watershed and water quality therein is affected by discharges and runoff from a wide spectrum of local use activities in the City of Utica.

Section 16. The City of Utica’s Master Plan contemplates light industrial and warehousing enterprises, characterized by manufacturing processes that include fabrication, assembly, treatment, packaging and distribution of finished products or parts predominantly from previously processed or prepared materials with the absence of the processing of raw materials such as natural gas or natural gas exploration and production wastes.

Section 17. The protection of the health, safety and general welfare of residents, neighborhoods, and the natural environment is also an appropriate use of the City’s police powers.

Section 18. This Ordinance supports the policies of the State of New York to conserve, improve and protect the natural resources and environment and to prevent, abate, and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being; and “to reduce or eliminate the use of hazardous substances and the generation of such substances, pollution or waste at the source in order to conserve, improve and protect New York’s environment and natural resources; enhance the health, safety and welfare of its citizens …”

Section 19. The Zoning Ordinance is not directed at the regulatory scheme for the operation of natural gas wells under ECL Article 23, it addresses land use and nuisance concerns and the protection of the health, safety and general welfare of the people of the City of Utica and the enhancement of its physical environment.

Section 20. This Zoning Ordinance is enacted to protect and promote the health, safety and general welfare of present and future residents of the City, and is an exercise of the City’s power to adopt land use regulations to protect the health, safety and general welfare of the current and future residents of the City from adverse effects and impacts that would result in the Zoning Ordinance were to be interpreted as permitting land in the City to be used for natural gas exploration and extraction and/or the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and its police power and power to prohibit public nuisances.

Section 21. Prohibited Uses.

(1) Prohibition against the Exploration for or Extraction of Natural Gas and/or Petroleum.

No land in the City of Utica shall be used: to conduct any exploration for natural gas and/or petroleum; to drill any well for natural gas and/or petroleum; to transfer, store, process or treat natural gas and/or petroleum; or to dispose of natural gas and/or petroleum or other structure; or to place any machinery or equipment for any such purposes.

(2) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials.

No land in the City shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.
(3) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Wastes.

No land in the City shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

(4) Prohibition against Natural Gas and/or Petroleum Support Activities.

No land in the City shall be used for natural gas and/or petroleum support activities.

(5) Invalidity of Permits.

No permit issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this section or of this Ordinance shall be deemed valid within the City of Utica;

Section 22. Definitions

"Natural Gas" shall mean 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" shall mean 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 any excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

"Natural Gas and/or Petroleum Exploration and Production Materials" shall mean 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" shall mean 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.

"Natural Gas and/or Petroleum Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

"Natural Gas and/or Petroleum Support Activities" shall mean 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.

FURTHER ORDAINED, that the following SEVERABILITY CLAUSE stipulates that the provisions of this Ordinance are severable. If any Court of competent jurisdiction decides that any section, clause, sentence, part or provision of this ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the ordinance.

BE IT FURTHER ORDAINED This Ordinance shall take effect upon its adoption. June 19, 2013.
City of Utica
Department of Legislation
Common Council

Sponsored by: Councilmembers Vescera, Zecca

AN ORDINANCE ADDING TO ARTICLE XII - SUPPLEMENTAL REGULATIONS - DIVISION III - SECTION 2-29-609 “CITY PROHIBITION OF NATURAL GAS EXPLORATION AND EXTRACTION”

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Section 3. The exploration for natural gas, the extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and/or petroleum wastes and production wastes and the accompanying use of land for an outdoor factory and heavy industrial use in the City environment of the City of Utica poses a significant threat to its residents’ health, safety and general welfare.
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Section 6. The protection of residents, neighborhoods, and the natural environment through its power to regulate and restrict the use of land for trade, industry or other purposes, constitutes the highest and best use of such land use powers that the City possesses.

Section 7. Clean air and water are essential to most resources and activities in the City of Utica area and the quality of the air and the water will be degraded by natural gas exploration and extraction activities and/or the storage, transfer, treatment or disposal of natural gas exploration and production wastes.

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Section 18. This Ordinance supports the policies of the State of New York to conserve, improve and protect natural resources and environment and to prevent, abate, and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being; and “to reduce or eliminate the use of hazardous substances and the generation of such substances, pollution or waste at the source in order to conserve, improve and protect New York’s environment and natural resources; enhance the health, safety and welfare of its citizens . . . “

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(2) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials.
No land in the City shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.

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No land in the City shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

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No land in the City shall be used for natural gas and/or petroleum support activities.

(5) Invalidity of Permits.
No permit issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this section or of this Ordinance shall be deemed valid within the City of Utica;

**Section 22. Definitions**

"Natural Gas" shall mean 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.

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"Natural Gas and/or Petroleum Support Activities" shall mean 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.

BE IT FURTHER ORDAINED This Ordinance shall take effect upon its adoption.
PROHIBITING THE USE OF BRINE FROM GAS EXTRACTION WELLS AS A ROAD SURFACE TREATMENT ON CITY ROADS/STREETS AND/OR CITY PROPERTY

WHEREAS, this Common Council hereby finds and determines that brine from gas extraction wells may contain toxic substances, including but not limited to heavy metals and radioactive elements, and

WHEREAS, this Common Council hereby finds and determines that the use of brine from gas extraction wells as a road surface treatment may create health and safety risks to the citizens of City of Utica, Oneida County, New York

BE IT ORDAINED, by the Common Council of the City of Utica, New York, that the Utica City Code of Ordinances §2-29-480, shall read as follows:

SECTION 2.29-480 HYDROFRACKING

This ordinance shall be known by and may be cited as the "Hydraulic Fracturing Brine Prohibition Act".

Section 1: Definitions.

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

"Application" shall mean the physical act of placing Brine on one or more City Street and Roads or one or more pieces of City Property. Each physical act shall be deemed separate when the person committing the act stops for any reason the placement of the Brine for any purpose, including but not limited to stopping a vehicle used in the placement of the Brine, stopping work for any reason, or re-loading or replacing any material or equipment necessary to apply the Brine.

"Brine" shall mean: (a) production brine; or (b) produced waters; or (c) flowback; or (d) flowback fluids; or (e), hydraulic fracturing fluid, any or all, which are generated as a result of drilling for, or seeking gas in wells including but not limited to High Volume Hydraulic Fracturing, as defined herein.
"Commissioner" shall mean: The Commissioner of the Department of Public Works except for the use of the word "commissioner" in Section 5 may mean any other commissioner designated by the Mayor or may mean the Commissioner of Public Works as determined by the Mayor.

"Flowback" shall mean liquids and solids produced during initial completion and clean-up of the well or clean-up of a well following a re-fracture or workover.

"Flowback fluids" shall mean liquids produced following drilling and initial completion and clean-up of the well or clean-up of a well following a re-fracture or workover.

"High Volume Hydraulic Fracturing" shall mean a natural gas well stimulation technique consisting of the injection into the earth of a water and chemical mix with the intent of increasing the ability to extract natural gas from very tight rock."

"Hydraulic fracturing fluid" shall mean fluid used to perform hydraulic fracturing and includes the primary carrier fluid and all applicable additives.

"Municipality" shall mean the City of Utica, County of Oneida, New York.

"Production brine or produced waters" shall mean liquids co-produced during oil and gas production.

"Property" shall mean real property, improved or otherwise, which the City of Utica, County of Oneida, New York owns or controls.

"Roads" shall mean public roads, streets, or bridges owned or controlled by the Municipality.

Section 2: Use of Brine prohibited.

No Brine shall be applied to or placed upon Property or Roads of the Municipality. In any bid for materials, services, or equipment which relate to property maintenance or road improvements or road construction, the Municipality, in a bid specification or bid document describing the nature of the services or equipment sought, and any agency or division of the Municipality, shall expressly state in capitalized, bold font, "THE PLACEMENT OF BRINE ON ANY ROAD OR PROPERTY OF THE CITY OF UTICA IS UNLAWFUL. ANY BIDDER SHALL FILE A SWORN STATEMENT WITH THEIR BID THAT NO BRINE AS DEFINED BY ORDINANCE OF THE MUNICIPALITY WILL BE SOLD TO THE MUNICIPALITY AS PART OF THE BID, OR UTILIZED ON OR PLACED ON ANY PROPERTY OR ROAD OF THE CITY OF UTICA, COUNTY OF ONEIDA, NEW YORK. BIDDERS ARE DIRECTED TO CITY OF UTICA, COUNTY OF ONEIDA ORDINANCE NO. OF 2013 FOR THE DEFINITION OF BRINE."

Section 3: Statement to be included in Bid.

The Statement provided for in Section 3, which shall be a sworn statement under penalty of perjury, shall read substantially as follows:

"We, ___________ hereby submit a bid for materials, equipment, or labor for the ______________ ______________. The bid is for bid documents titled ______________ ______________. We hereby certify under penalty of perjury that no Brine will be used
by the undersigned bidder or any contractor, sub-contractor, agent, or vendor thereof in connection
with the bid; nor will the undersigned Bidder or any sub-contractor, agent, or vendor thereof and/or
therefor apply or supply any Brine to any property or road(s) of the City of Utica, County of Oneida,
New York as a result of the submittal of this bid if selected. " The Statement shall otherwise be sworn
to under penalty of perjury in a form satisfactory to the City Attorney.

Section 4: Duty of Employees to be Familiar with this Ordinance.

The Mayor or, at the Mayor's option, a Department Head or a Commissioner of any Department
appointed by the Mayor is authorized to develop policies to ensure City employees are familiar with
this ordinance and take such steps as are directed by the Mayor or such department head or
commissioner to ensure a diligent effort by the City that materials supplied to the City of Utica or
used on City Streets and Roads or Property comply with this ordinance. This shall not excuse
non-compliance by a contractor or vendor of the City.

Section 5: Penalties for Violations.

A. Breach of Contract. A violation of the provisions of this ordinance shall be deemed a breach of
contract and shall authorize the Director of Purchasing in cooperation with the City Attorney and any
other officer or employee of the City of Utica deemed necessary by the City Attorney, commence a
civil Breach of Contract action against the violator of the provisions of this ordinance. Damages
sought shall be determined by the City Attorney but may include, but shall not be limited to the cost
of any consequential damages of the breach of contract. In addition, the Director of Purchasing may
make a finding that the Contractor is not a responsible bidder. The City Attorney is further
authorized to commence any necessary action to enjoin any violation of this ordinance he or she
believes to be occurring.

B. Criminal Penalties. In addition to prosecution for Perjury as determined by the District Attorney,
any person who violates this article shall be guilty of an unclassified misdemeanor and subject to a fine
not to exceed $25,000.00 per violation and/or up to fifteen days' imprisonment. Each application of
Brine shall constitute a separate and distinct violation.

Section 6: Severability.

If any provision of this ordinance is held invalid, such invalidity shall not affect the remaining
provisions of the Ordinance which shall remain effective absent the invalid provision, and to this end,
the provisions of the Ordinance are declared to be severable.

Section 7: Emergency Clause and Effective Date.

It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation
of the health, safety and welfare of citizens of the City of Utica, Oneida County, New York, shall be
effective immediately upon its passage and approval and filing with the New York State Secretary of
State.
BE IT ORDAINED, That the Common Council of the City of Utica does hereby declare a twelve (12) month moratorium on the construction, exploration, erection, processing, development, (Including Drilling) and/or installation of Hydrofracking Facilities in the City of Utica as set forth herein.

Section 1. Title.

This ORDINANCE shall be known as “Moratorium on Construction. Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of “Hydrofracking Facilities” of the City of Utica. This ORDINANCE may be cited in short form as the “Hydrofracking Moratorium Ordinance” of the City of Utica.

Section 2. Statement of Authority.

This ORDINANCE is adopted pursuant to authority vested in the City of Utica by New York, and the general police power of the City of Utica to promote health, safety, and welfare of all residents and property owners in the City.

Section 3. Statement of Purpose.

It is the purpose of this ORDINANCE declare a City of Utica policy to temporarily prevent the construction, explanation, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities and defer review of permit applications for drilling and exploration begun prior to enactment of this Ordinance, pending the completion and possible adoption of permanent comprehensive regulations.

Section 4. Statement of Legislative Findings and Declaration.

The City of Utica hereby finds and declares as follows:

A. The City faces significant growth and developmental pressures. Novel development of all types increasingly infringes on the landscape and associated natural features of the City including the groundwater supply. These important natural resources provide ecological benefits, recreation and scenic beauty which help define the City and valuable for the City’s economy and quality of life. The City’s natural features and framework of land use and development control typically constrain such growth.

B. The Common Council of the City of Utica has, however, identified a land use which, if advanced under the City’s present zoning framework, would on the basis of scale, location or character frustrate achievement of the future vision for the City. Specifically, this land use has been identified to be hydrofracking.

C. The Common Council finds that existing laws do not sufficiently address the issues raise by recent interest in construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities in the City of the Zoning code lacks a framework which complicates the Planning Board’s ability to impose controls needed to address long-range community planning and zoning objectives. For example the City has no rules, regulations, or guidelines regarding hydrofracking or gas/oil exploration and lacks contemporary standards for the groundwater supply or evaluating the utilization of hydrofracking. These inadequacies may result in the loss of potential growth opportunities for the City by damaging the Planning Board’s ability to make resource assessments, and regulate the impacts of new residential, commercial, and industrial projects in a manner which directs change according to a larger community vision.
D. In addition to developmental pressures, rapidly emerging technologies, information and initiatives arising in rural areas of the Northern United States within the last few years, particularly those in Central and Upstate New York, have been receiving increased attention from proponents of new land use. The state of New York has declared hydrofracture to be such concern that they are proposing to adopt and/or extend a moratorium on hydrofracture. Review of the City’s Comprehensive Zoning Plan and associated zoning ordinances is warranted in light of the burgeoning interest in exploring hydrofracturing in the City, because of the City’s geographic location and plentiful natural resources; the high costs of electrical, thermal, mechanical, and chemical energy in the region; the legislative mandates of the State of New York, and federal tax incentives.

E. In order to ensure that Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities does not cause the City of Utica to lose these resources forever, the Common Council finds it necessary to review and address a number specific issues related to the intensity and impacts of development and growth on the City.

F. After careful consideration of relevant information received, assembled and reviewed in relation to the Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities in the City. The Common Council determines to review the foregoing factors, conditions and information, to update the City’s Comprehensive, Zoning Plan and associated zoning ordinances:

1. Promotion and regulation of agricultural growth in the City and

2. Controlled Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities such that it is compatible with other residential uses and commercial enterprises; and

3. Potential impacts on public health and wildlife species of hydrofracking as currently designed compared to the public health, pollution and ecosystem impacts of traditional fossil fuel generation, and

4. Monetary costs and/or benefits of hydrofracking; and

5. Engineering, environmental and architectural standards for integration of Hydrofracking Facilities with local review processes; and

6. Design, siting and collocation of Hydrofracking Facility proposals to minimize any potential impacts upon the reasonable use and enjoyment of properties contiguous to such development and safeguard local persons, fauna, and flora, and

7. Mitigation of possible adverse visual impacts by calculated minimum setback requirements and reasonable preservation of the aesthetics of the City of Utica, and

8. Possible regulation of use-related nuisance, e.g., noise pollution, and groundwater contamination, and

9. Participation of informed local residents focused on specific and real proposals in an open and meaningful process; and consideration of the needs residents and property owners of the City of Utica and,

10. Federal, state, and local tax implications for the City of Utica, and its residents and property owners; and
(11) Regulatory measures that ensure appropriate levels of insurance are obtained, public improvement bonds are in place to protect local infrastructure, and removal of surety bonds and decommissioning plans are established to protect local residents, and

(12) Clarification and review of the existing codes relating to use districts, overlay zones, the protection of environmentally sensitive features, documentation, dimensional, standards, filing fees, special use permits and standards, visibility, security measures to prevent unauthorized entry, review of permit approval, and assignment and transfer, and

(13) Evaluation of proposals pursuant to the State Environmental Quality Review Act ("SEQRA") and consideration of additional Type I and/or Type II actions, in accordance with 6 NYCRR Part 617.14; and

(14) Protection of the City of Utica historic, geographic and scenic resources; and

(15) Open space preservation; and

(16) Compliance with state and federal laws, and other regulatory agencies having jurisdiction, and

(17) Consult New York State Energy Research Development Authority ("NYSERDA"). New York State Department of Environmental Conservation ("NYSDEC"), and other knowledgeable and regulatory bodies, and

G. The Common Council is concerned that applicants may respond to the commencement of the aforementioned study by attempting to pursue permit applications and approvals for hydrofracking before relevant codes and plans are revised or adopted. Completion of these studies and compliance with revision procedures will require twelve (12) calendar months. Thus, unless reasonable measures are taken during this interim period to preserve existing resources pending completion of the contemplated studies and revisions, increased development under the existing Comprehensive Zoning Plan and associated codes may materially damage the objectives of the study and revision process.

H. To fulfill the City’s constitutional, statutory, and legal obligations to protect the public health, welfare, and safety of the residents of the City of Utica; and to protect the value, use, and enjoyment of property in the City, the Council intends to hereby adopt an Ordinance establishing a moratorium on hydrofracking for a reasonable time during which the Common Council of the City of Utica will conduct a formal study of the issues involved herein, devise a uniform regulatory scheme for construction and operation of new enterprises which is based on neutral criteria, and develop procedural controls for the rigorous review of subject land use petitions.

I. A waiver procedure excepting sufficiently aggrieved applicants from the requirements of this Ordinance is included herein to balance interests between the public need to safeguard the resources and character of the City; and protect the health, safety and general welfare of its residents as well as the rights of individuals who may seek to construct and operate Hydrofracking Facilities on their property.

Section 5. Word Usage and Definitions

A. Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Doubt as to the precise meaning of any word used in this chapter shall be clarified by reference to Article 1 of the City of Utica Code, and that failing, the City of Utica Zoning Board of Appeals under its power of interpretation by appeal.

B. As used in this Ordinance, the following terms shall have the meaning indicated:
HYDROFRACKING - The process of initiating, and subsequently propagating a fracture in a rock layer, employing the pressure of a fluid as the source of energy. The fracturing is done from a wellbore drilled into reservoir rock formations, in order to increase the extraction and ultimate recovery rates of oil and natural gas.

Section 6. Term of Moratorium Declared.

To carry out the above purposes, the Common Council hereby declares for a period of twelve (12) calendar months from the effective date of this Ordinance a moratorium on the Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities unless earlier terminated by other Ordinance, duly adopted.

Section 7. Prohibited Actions and Reservation of Right.

A. Prohibited Actions. During effective period of this Ordinance, each of the following actions shall be prohibited unless permitted under Sections 7 and 8 hereunder:

1. No applications for the construction, exploration, erection, processing, development (Including Drilling) and/or installation of Hydrofracking Facilities or for approval of other plans affected by this Ordinance submitted, received or filed prior to the effective date of this Ordinance shall be considered by any board or agency of the City of Utica while this Ordinance is in effect unless the waiver provision of Section 6 hereunder is applicable.

2. No applications for the construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities or for approvals of other plans affected by this Ordinance and submitted, received or filed after the effective date of this Ordinance shall be considered by any board or agency of the City of Utica while this Ordinance is in effect.

3. The Common Council shall not grant any approvals which would have as the result the establishment, placement, construction, enlargement or the erection of hydrofracking facilities.

4. The City of Utica Planning Board shall not grant any preliminary or final approval for a subdivision plat, site plan, special use permit or wetlands permit, including but not limited to pending application which would have as a result the construction, erection or installation of Hydrofracking Facilities.

5. The Zoning Board of Appeals shall not grant any variance for any use which would result in the construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities.
RESOLUTION TO BAN HYDROFRACKING IN
THE CITY OF UTICA WATER SUPPLY WATERSHED

WHEREAS, The process known as hydrofracking for the extraction of natural gas from Macellus shales has come to the attention of the nation as an alternative means for securing energy self-sufficiency; and

WHEREAS, Hydrofracking involves the use of a high pressure water-and-chemicals mix injected potentially thousands of feet into the earth to break or fracture shale layers, thereby releasing the natural gas for harvesting by the hydrofracking companies; and

WHEREAS, Significant potential damages to water supplies can result from the practice of hydrofracking; and

WHEREAS, The State of New York has determined that hydrofracking may be undertaken in shale deposits in New York State, provided however that the practice may not be employed in the Catskill and Adirondack Parks and within the New York City and Syracuse watersheds, due to the potential of contamination of such watersheds; and

WHEREAS, The potential for contamination of significant municipal watersheds exists elsewhere in New York State and should be protected against through appropriate action on the state level; and

WHEREAS, Residents and municipal water users deserve to be protected against the potential pollution of their waters by the practice of hydrofracking and the potential for hydrofracking chemicals to enter into the waters that they consume.

NOW, THEREFORE, BE IT RESOLVED, The City of Utica Common Council hereby petitions Governor Andrew Cuomo and the New York State Department of Environmental Conservation, Assembly Person’s Tenney; Butler, Brindisi; Senator’s Griff; Seward, Gillibrand, Schumer also Mohawk Valley Water Authority to forthrightly act to protect the City’s water resources and supplies including the Hinckley Reservoir by prohibiting the use of hydrofracking or any similar technology for the purpose of extracting natural gas resources from the shale resources underlying the towns surrounding Hinckley Reservoir and any other sources in our watershed.

STATE OF NEW YORK, CITY OF UTICA

City Clerk’s Office

I hereby certify that I have compared the foregoing copy of a resolution of the Common Council with the record of proceedings of the Common Council of said City of Utica, duly made and on file in this office, and that the same is a correct transcript therefrom and of the whole of said resolution.

IN TESTIMONY WHEREOF, I have hereunto affixed the Corporate Seal of said City, and subscribed my name, this 26th day of SEPTEMBER 2011.

Joan M. Brenn
City Clerk.