

LOCAL LAW #1 OF 2014

AMENDMENTS TO TOWN OF VIENNA, ONEIDA COUNTY NEW YORK ZONING LAW A LOCAL LAW AMENDING AND CLARIFYING THE TOWN OF VIENNA, ZONING ORDINANCE TO PROHIBIT GAS AND PETROLEUM MINING AND RELATED ACTIVITIES BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF VIENNA AS FOLLOWS

SECTION 1: TITLE AND APPLICABILITY. The Town of Vienna hereby adopts this local law, to be known as the Town of Vienna Local Law Number 1 of 2014 Ban of Hydrofracking for Gas, Petroleum Mining and Related Activities.

SECTION 2: PURPOSE. The purpose of this Local Law is to clarify, update, and amend the Town of Vienna Zoning Ordinance by, among other things: clarifying allowed uses relative to Mining uses and operations; clarifying allowed uses relative to gas and oil mining and hydraulic (and other) fracturing; and to ensure that Town of Vienna zoning laws comport with the Town of Vienna Comprehensive Plan.

SECTION 3: DEFINITIONS. The following definitional terms are added to Appendix I, entitled "Definitions," of the Town of Vienna Zoning Ordinance, and these terms shall have the meanings shown:

A. 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 rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

B. NATURAL GAS AND/OR PETROLEUM EXPLORATION—Geologic or geophysical activities related to the search for Natural Gas, petroleum, or other subsurface hydrocarbons, including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search for and evaluation of Natural Gas, petroleum, or other subsurface hydrocarbon deposits.

C. NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS—Any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of Natural Gas.

D. NATURAL GAS AND/OR PETROLEUM EXTRACTION—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.

E. NATURAL GAS EXPLORATION AND/OR PETROLEUM PRODUCTION WASTES—Any garbage, refuse, cuttings, sludge, flow-back fluids, brine, 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 and any related hydrocarbons, and any natural or non-natural radioactive, carcinogenic, or toxic chemicals or compounds (herein, "Deleterious Substances") used in or for, occurring or arising from, relating to, or produced by any process or operation relating to the exploration for or the extraction or production of, or the processing, treatment, or transportation of, Natural Gas, petroleum, or any related hydrocarbons, regardless of whether such Deleterious Substances 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 regardless of whether considered or classified as "waste" or of a below-regulatory concern level. 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). "Deleterious Substances" shall also include, but not be limited to, crude oil and Natural Gas drilling fluids and their exploration, drilling, production, and processing wastes, such as, but not limited to fracturing fluids, brine, produced water, flowback water, waste oils, waste emulsified oils, mud and drilling or lubricating mud, contaminated soils, drill cuttings, fracture fluid holding pit or tank contents, sediments or residues, or any of the foregoing whenever transformed into any other liquid, solid or gaseous state by any process.

F. NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES—The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a Natural Gas or petroleum storage facility, a brine or fracturing/flowback water pit or other enclosed or semi-enclosed container or construct, or a Natural Gas or petroleum gathering line, venting station, compressor, dehydrator, or other appurtenance associated with the exploration or extraction of Natural Gas, petroleum, or any related hydrocarbons.

G. BIOFUEL – Flammable hydrocarbons derived from plant material or animal waste and used as fuel.

SECTION 4: AMENDMENTS TO EXISTING DEFINITIONS. The definitions contained in Section 220 of the Town of Vienna Zoning Ordinance are hereby amended by amending the following definition, as follows:

A. The current definition of "Mining" shall be amended by replacing the same with the following:

"Mining — Shall mean the extraction for commercial purposes of solid minerals, such as gravel, sand and ores.

SECTION 5: GENERAL AND SPECIFIC ZONING ORDINANCE AMENDMENTS. The following amendments are hereby made to the Town of Vienna Zoning Ordinance:

A. A new Article 14 and subordinate sections are inserted. Existing Article 14 is renumbered as "Article 15" and subsequent subsections and articles are renumbered respectively. Article 14 shall then read as follows:

“Article 14—PROHIBITION AGAINST THE EXPLORATION FOR OR EXTRACTION OF NATURAL GAS AND/OR PETROLEUM.

Article 14 - Section 1410 – Prohibitions No use or operation on any land, parcel, lot, or other area located within the Town of Vienna, including but not limited to within any Planned Development Zone, shall be proposed, allowed, or permitted where such use or operation involves: (i) any Natural Gas and/or Petroleum Exploration activities; (ii) storage or staging, for any length of time and whether above or below ground, any Natural Gas and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes; or (iii) any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities; or (iv) any drilling, construction, or excavating of any well to find or produce any Natural Gas or other hydrocarbons, or (v) any storage, staging, processing, or treatment areas, structures, or improvements relating to Natural Gas, petroleum, or any related hydrocarbons, Natural Gas and/or Petroleum Exploration and Production Materials, or Natural Gas Exploration and/or Petroleum Production Wastes, or (vi) any disposal of Natural Gas Exploration and/or Petroleum Production Wastes, or (vii) the erection or construction of any derrick, building, or other structure, or placement or use of any machinery or equipment, for any such purposes.

The above restrictions shall not be construed to:

(a) prevent or prohibit the transmission of Natural Gas or related hydrocarbons through utility pipes, lines, or related appurtenances for the limited purpose of supplying utility services to residents of the Town of Vienna;

(b) prevent or prohibit the location or permitting of a Gasoline Service Station or an Automotive and Other Motorized Vehicle Repair Facility where otherwise allowed under this Zoning Ordinance; or

(c) prevent or prohibit the incidental and normal storage or use of reasonable and customary amounts of Natural Gas and other hydrocarbons in relation to any other use that is lawful under this Zoning Ordinance, such as home heating storage facilities (e.g., propane tanks), gasoline pumps and storage tanks, and similar uses that are normally associated with allowed residential, business, commercial, and other uses permitted pursuant to and under this Zoning Ordinance.”

d) prevent the drilling or operation of a single vertically bored natural gas well, created without the use of hydraulic fracturing processes, chemicals, or wastes, where the gas is actually used in its entirety on the property, if the well will be located in Zone RR-1, RR-2 or RR-3, upon obtaining a Special Use Permit and subject to any other applicable restrictions of the zoning law.

e) prevent the production, use or sale of biofuels with on site storage not to exceed 250 gallons for liquid biofuels or 250 cubic feet for gaseous biofuels, subject to any other applicable restrictions of the zoning law.

f) prevent the production, use or sale of biofuels with on site storage not exceeding 1000 gallons for liquid biofuels or 500 cubic feet for gaseous biofuels, , providing the facilities for production and storage are located in Zone RR-1, RR-2 or RR-3, upon obtaining a Special Use Permit and subject to any other applicable restrictions of the Zoning Law. Setbacks for such facilities must meet the maximums for the respective zone. Facilities must adhere to the standards for Small Manufacturing Use, as defined elsewhere in the Zoning Law. Facilities in excess of these size limitations will be considered a Large Manufacturing Use and subject to those requirements and standards.

Article 14 - Section 1420 - INVALIDITY OF OTHER GOVERNMENTAL PERMITS.

No permit issued by any local, state or federal agency, commission or board shall be deemed valid within the Town of Vienna when such permit purports to allow or permit a land use or operation that would violate the prohibitions, terms, requirements, or conditions of this Zoning Ordinance.”

SECTION 6 - CONSTRUCTION AND SUPERSESSION. In their interpretation and application, the provisions and requirements of this Local Law (and of related provisions of the Zoning Ordinance) shall be held to be the minimum requirements so adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Local Law are inconsistent with the requirements of any other Town of Vienna laws, ordinances, rules, regulations or procedures, the more restrictive provision, or those imposing the higher standard, shall govern. The provisions of this Local Law shall supersede or repeal any prior inconsistent local law, ordinance, rule, regulation, or procedure of the Town of Vienna that purports to allow or permit any Natural Gas and/or Petroleum Exploration, the storage, whether above or below ground, of any Natural Gas and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes, the conduct of any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities, or any other activity or operation seeking to otherwise drill or excavate any well to find or produce any Natural Gas or other hydrocarbons, or any other activity or operation seeking to erect any derrick, building, or other structure, whether permanent or non-permanent, or to place any machinery or equipment for any such purposes. Further, the Town of Vienna hereby declares its intent to exercise its supersession authority under the Municipal Home Rule Law, to the greatest extent permitted by law, as regards the zoning power and the regulation and permitting of any Natural Gas and/or Petroleum Extraction activities and any Natural Gas and/or Petroleum Support Activities in the Town of Vienna.

SECTION 7: PARTIAL INVALIDITY AND SAVINGS. If any part, clause, requirement, standard, or other provision of this Local Law, or the application thereof to any person or entity, or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in each such event, such judgment or declaration shall be confined in its interpretation and operation only to the part, clause, requirement, standard, or other provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment, declaration, 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, entities, or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed and the Town Board of the Town of Vienna hereby declares that it would have enacted this Local Law and its Zoning Ordinance(s), or the remainders thereof, even if, as to such particular provisions, persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

SECTION 8: LIMITATION OF TOWN LIABILITY. The Town of Vienna, and its employees, officers, and agents shall not be liable to or responsible for any injuries to any persons or entities for injuries, losses, or damages arising from or related to persons, property, or property or other rights in property due, in whole or in any part, to the Town's actions or failures to act under or pursuant to this Local Law or the Zoning Ordinance, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town or its officers and agents. This Section 8, and its provisions, shall be construed and applied to the maximum extent permitted by law, and do not create any theory or claim of liability where none exists at law or in equity.

SECTION 9: EFFECTIVE DATE. This Local Law shall be and become effective immediately upon filing with the Secretary of State of the State of New York in accordance with the provisions of, inter alia, § 27 of the Municipal Home Rule Law.

Dated: April 2, 2014

Motion made by: Supervisor Keeney

Motion seconded by: Councilman Graham

Voting Record:

Supervisor Walter Keeney	<u>Aye</u>
Councilwoman Gail Whitham	<u>Aye</u>
Councilman	<u>_____</u>
Councilman Jason Lamb	<u>Aye</u>
Councilman William Graham	<u>Aye</u>

Motion Carried.
(SEAL)

Donna M Clark
Town Clerk