

TOWN OF WALES, NEW YORK

INTRO. NO. 2-2011

LOCAL LAW NO. 3 -2011

A LOCAL LAW, TO AMEND LOCAL LAW 1-1993 KNOWN AS “ADOPTION OF CODE”, ADOPTED BY THE TOWN BOARD OF THE TOWN OF WALES ON MAY 11, 1993, BY ADDING A NEW CHAPTER 162 KNOWN AS THE PROTECTION OF NATURAL RESOURCES.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WALES AS FOLLOWS:

SECTION 1. SECTION 162-1, PREAMBLE

Whereas, this local law is enacted pursuant to the inherent right of the residents of the Town of Wales to govern and protect their own community, including, without limitation, the Declaration of Independence’s declaration that governments are instituted to secure the rights of people, and the New York Constitution’s recognition that “all power is inherent in the people”;

Whereas, this local law, among other things, confirms and reaffirms a Bill of Rights which recognizes and secures certain civil and political rights of the residents of the Town of Wales to govern themselves and protect themselves from harm to their persons, property and environment;

Whereas the Town of Wales relies exclusively on the existence and usage of natural well water as its sole source of water in the Town;

Whereas, new technologies have emerged, and are being deployed in other states, and are likely to be attempted to be used within the Town of Wales to extract natural gas and oil through processes known as hydraulic fracturing and horizontal drilling;

Whereas, this local law then bans the commercial extraction of natural gas and oil, using the process commonly known as hydraulic fracturing, and further bans horizontal gas well drilling within the Town of Wales, because those forms of extraction violate the civil rights of Town of Wales’ residents by posing a direct and immediate threat to the health, safety, and welfare of residents within the Town of Wales; and

Whereas, this Local law shall be known and may be cited as “Town of Wales Community Protection of Natural Resources”.

SECTION 2. SECTION 162-2. FINDINGS AND INTENT

The Town Board of the Town of Wales finds that the commercial extraction of natural gas and oil by hydraulic fracturing or horizontal gas well drilling in the rural environment of the Town of Wales violates the rights of residents, and poses a significant threat to their health, safety, and welfare. Moreover, widespread environmental and human health impacts have resulted from commercial gas and oil extraction utilizing either hydraulic fracturing or horizontal gas or oil well drilling in other areas. Permitting the activity of commercial gas or oil extraction utilizing hydraulic fracturing and/or horizontal gas well drilling violates the rights of residents and endangers their health, safety, and welfare by allowing the intentional deposit of toxins into the air, soil, water, environment, and the bodies of residents within our Town. The activity poses a threat to some if not all of the natural water supply upon which the Town of Wales relies as its sole source of water. Contamination of ground water, risks to air quality, the migration of gases and hydraulic fracturing chemicals to the surface, the inability to recover injected fluids and chemicals, and the potential mishandling of waste, are all potentially adverse impacts that may occur. The potential costs associated with possible environmental clean-up processes, loss of land value and human and animal health concerns are undetermined. Fracturing fluid used far below the earth's surface can pollute fresh water zones, contaminate surface or near-surface water supplies, impact the rock shelf causing seismic events or lead to surface subsidence. Also, water-related pollution events that occur from hydraulic fracturing are on, or relatively-near, the surface. With the transport, handling, storage and use of chemicals, and chemical-laden water, on sites, accidents that release materials into the environment may occur.

Meaningful regulatory limitations and prohibitions concerning natural gas extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations. The Town Board recognizes that environmental and economic sustainability cannot be achieved, and the health, safety and welfare of the residents of the Town of Wales adequately protected, if the rights of local majorities are routinely overridden by corporate minorities claiming certain legal rights and powers, including the authority to enforce state preemptive mandates authored, in many cases, by the corporations that those mandates ostensibly regulate.. The Town Board also recognizes that sustainability and the adequate protection of our residents cannot be achieved within a system of local preemption which enables those corporations to use state governments to override local self-government, and which restricts localities to only that lawmaking specifically authorized by state government.

The Town Board believes that the protection of residents and the natural environment constitutes the highest and best use of the police powers that this Town possesses. The Town Board also believes that local legislation that embodies the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government. Thus, the Town Board hereby adopts this local law, which recognizes a Bill of Rights for the residents of the Town of Wales and bans commercial extraction of natural gas and oil utilizing hydraulic fracturing and horizontal

gas well drilling within the Town of Wales because those methods of extraction cannot be achieved without violating the rights of residents as recognized and secured by this local law.

SECTION 3. SECTION 162-3, DEFINITIONS

(a) “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 or pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or natural gas.

(b) “Extraction” shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or oil or other hydrocarbons using a process commonly known as hydraulic fracturing and/or horizontal gas or oil well drilling.

(c) “Hydraulic fracturing”: An operation in which water, chemicals and a solid proppant are pumped into a wellbore at a rate sufficient to increase the pressure downhole to a value in excess of the fracture gradient of the formation rock, causing the formation to crack, thus allowing the fracturing fluid to enter and extend the crack farther into the formation, forming passages through which natural gas or oil can flow.

(d) Horizontal drilling: Intentional deviation of a wellbore from the vertical for the purpose of reaching subsurface areas laterally remote from the point where a well drilling bit or similar equipment enters the earth at the surface.

(e) “Corporations,” for purposes of this local law, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers.

SECTION 4. SECTION 162-4, STATEMENTS OF LAW – RIGHTS OF TOWN OF WALES’ RESIDENTS AND THE NATURAL ENVIRONMENT

(a) *Right to Water.* All residents, natural communities and ecosystems in the Town of Wales possess a fundamental and inalienable right to maintain the sustainable access, use, consumption, and preservation of water drawn from natural water systems, springs and wells that provide water necessary to sustain life within the Town.

(b) *Rights of Natural Communities.* Ecosystems and natural communities possess the right to exist and flourish within the Town. The residents of the Town of Wales have the inalienable right to enforce and defend those rights to protect all ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, within the Town of Wales.

(c) *Right to Self-Government.* All residents of Town of Wales possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.

(d) *People as Sovereign.* The Town of Wales shall be the governing authority responsible to, and governed by, the residents of the Town. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

(e) *Rights as Self-Executing.* All rights delineated and secured by this local law shall be self-executing and these rights shall be enforceable against individuals, corporations and governmental entities.

SECTION 5. SECTION 162-5, STATEMENTS OF LAW – PROHIBITIONS AND CORPORATE LEGAL PRIVILEGES

(a) It shall be unlawful for any individual or corporation to engage in the extraction of natural gas or oil utilizing in whole or in part the process commonly known as and herein defined as hydraulic fracturing within the Town of Wales, with the exception of gas wells installed and operating at the time of enactment of this Local law.

(b) It shall be unlawful for any individual or corporation to engage in the extraction of natural gas or oil utilizing in whole or in part the process commonly known as horizontal gas well drilling within the Town of Wales, with the exception of gas wells installed and operating at the time of enactment of this Local law.

(c) No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Local law or deprive any Town resident(s), of any rights, privileges, or immunities secured by this Local law, the New York Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Wales.

(d) Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction shall not have the rights of "persons" afforded by the United States and New York Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the New York Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the New York Constitution. "Corporations," for purposes of this local law, shall include any corporation, limited partnership, limited

liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers.

(e) Corporations or individuals engaged in the extraction of natural gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the Town of Wales, or to challenge or overturn municipal local laws adopted by the Town Council of the Town of Wales, when that enforcement or challenge interferes with the rights asserted by this local law or interferes with the authority of the municipality to protect the health, safety, and welfare of its residents.

SECTION 6. SECTION 162-6, LEGAL ENFORCEMENT

(a) Any person, corporation, or other entity that violates any prohibition of this Local law shall be guilty of a summary offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Local law found to be violated.

(b) The Town of Wales may also enforce this Local law through an action in equity brought in the New York State Supreme Court of Erie County. In such an action, the Town of Wales shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

SECTION 7. SECTION 162-7, PEOPLE'S RIGHT TO SELF-GOVERNMENT

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Local law, or parts of this Local law, shall require the Town Board to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Local law or other levels of government used to intimidate the people of the Town of Wales or their elected officials.

SECTION 8. SECTION 162-8, SEVERABILITY

The provisions of this Local law are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Local law 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 Local law. The Town Board of Wales hereby declares that in the event of such a decision, and the

determination that the court's ruling is legitimate, it would have enacted this Local law even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

SECTION 9. SECTION 162-9, REPEALER

All inconsistent provisions of prior Local laws adopted by the Town of Wales are hereby repealed, but only to the extent necessary to remedy the inconsistency.

SECTION 10. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the New York Secretary of State, at which point the Local Law shall apply to any and all extraction of natural gas and oil in Wales regardless of the date of any applicable State or Federal permits.