

Local Law No 3 of the year 2013

**Town of Andes - County of Delaware
A Local Law to regulate heavy industry in the Town of Andes**

Be it Enacted by the Town Board of the Town of Andes, Delaware County, New York, as follows:

SECTION 1. PURPOSE AND INTENT

It is the purpose of this Local Law to promote the protection, order, conduct, safety, health, safety and well-being of the residents of Andes and the lands which lie within the Town's borders.

It is the purpose of this Local Law is to protect and enhance the Town's physical, residential and visual environment.

It is the purpose of this law to respond to the legitimate concerns of the citizens of the Town about the potential for heavy industrial use which is inconsistent with the rural character, topography and the water sources in the Town.

It is the purpose of this Local Law to uphold and implement the Town of Andes Comprehensive Plan. The Town Board of the Town of Andes, in adopting a comprehensive plan in September 2003, established town policy guiding future growth and development.

Further, the Town Board, in adopting its comprehensive plan specifically established the following key principles:

- Maintain the character of rural roads
- Protect aquifers from being polluted
- Protect public water supplies.
- Protect streams and streamside vegetation.
- Reduce traffic impacts.
- Assess and protect historic resources and landscapes.
- Ensure that economic development programs and new development efforts are not at cross-purposes with agriculture and farmland protection efforts, and to protect critical farming areas the Town.
- Ensure that new development is consistent in maintaining rural character.
- Ensure that the environmental resources of Andes are protected.

Further, it is the purpose of this Local Law to control those activities related heavy industry, as defined herein, which may impact wetlands, lakes, streams, groundwater resources, public drinking supplies, public roads, scenic landscapes, agriculture, small town character, and the area's tourism and recreational-based economy. Impacts related to heavy industry that Andes seeks to avoid include, but are not limited to contaminated water supplies, air pollution, traffic congestion, deterioration of roads and bridges, noise, introduction of industrial uses into non-industrial areas, human and animal illness, and incompatible changes to the rural character of Town.

SECTION 2. AMENDMENTS

The Hamlet of Andes Zoning Law as adopted by Town of Andes in 2004 is hereby amended by the addition of the following:

Section 2.2 Specific Terms

"Agriculture" means the use of the land for the raising of crops, horticulture, gardening and the necessary accessory uses for packing, treating and storing the produce and making reasonable use of land and water for agricultural purposes and harvesting natural products.

“Aquifer” means a geologic formation, group of formations, or part of a formation capable of storing or transmitting and yielding ground water to wells or springs.

“Comprehensive Plan” means a long-range plan intended to guide the growth and development of the Town of Andes which includes inventory and analysis leading to recommendations for the Town’s land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities, and community design, all related to the Town’s goals and objectives for these elements and adopted pursuant to New York Town Law 272-a.

“Environment” means all external conditions and influences in an area including geology, water resources, air quality, plants and animals, agricultural resources, aesthetic resources, historic resources, open space resources, recreational, cultural, and municipal resources, road and transportation systems, visual character and community character.

“Natural Gas Exploration, Extraction, or Processing” means the exploration for natural gas, the extraction of natural gas from the ground regardless of the extraction method used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity or use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new gas well, regardless of well type;
- Development of a well operations site and associated structures and infrastructure;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Installation and/or use of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with, the exploration for or extraction of natural gas

It is expressly stated that the foregoing examples are not intended to be exhaustive shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

“Generic Environmental Impact Statement on the Capacities of the NYC Watershed Region” means an environmental impacts statement prepared pursuant to 6 NYCRR Part 617 of the New York State Environmental Conservation Law to examine current conditions of the New York City Watershed area and that identifies locations within the Town of Andes that have environmental sensitivities and limitations for land use and analyzes the area’s capacity for future development.

“Heavy Industry” means any use or activity which generates significant volumes of smoke, odors, noise, or other polluting wastes, which requires truck traffic of more than three semi-trailers a day on local roads and which uses natural water sources in excess of 1000 gallons per day and requires site configuration and intensive monitoring which would impact local traffic that are not compatible with other uses in the municipality. Examples of “heavy industry” which are intended to be included in this definition are:

- chemical manufacturing; exploration for natural gas;
- extraction of natural gas; natural gas processing facilities (as defined elsewhere in this law) and/or compressor stations;
- exploration for crude oil;
- extraction of crude oil;
- oil refineries;
- coal mining;
- coal processing;
- steel manufacturing.

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to the activities identified in the examples.

Generic examples of uses not intended to be included in the definition of "heavy industry" are:

- milk processing plants;
- dairy farms;
- office and communications uses;
- garment factories;
- woodworking and cabinet shops;
- metal fabrication facilities;
- automobile repair shops;
- wineries and breweries;
- warehouses;
- equipment repair and maintenance facilities; helipads;
- parking lots and parking garages;
- light manufacturing or light industrial facilities, as defined below;
- agriculture; and surface gravel and sand mining.

It is expressly stated that the foregoing examples are not intended to be exhaustive shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

"Light Manufacturing And Light Industrial Operations" means those industrial uses whose activities do not usually constitute a fire hazard or emit smoke, glare, noise, odor or dust which in otherways constitute a nuisance and/or are not detrimental to neighboring properties. It shall mean any facility or use which does not employ more than fifty (50) people, does not produce high volumes of polluting wastes, is compatible with other uses in its surrounding area or neighborhood, does not require heavy, noisy or otherwise objectionable machinery or transporting equipment, and in addition, meets one of the following descriptions:

- i. Light Manufacturing. A use involving the manufacture of a product, subject to compliance with the any other applicable ordinances, laws or regulations, in one of the following categories:
 - Food and beverage production, including but not limited to such uses as a dairy processing plant, bakery, and bottling plant.
 - Apparel and other textile products.
 - Furniture and fixtures.
 - Printing and publishing.
 - Electrical and electronic machinery and equipment.
 - Metal fabrication.
 - Mail order distribution center.
 - Warehousing ancillary to the authorized use.
- ii. Light Industrial. A facility which manufactures, designs, assembles, or processes a product for wholesale or retail sale

"Non-Conforming Use" means a use or activity that was lawful prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of the law.

"Pollution" means the presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or animal life or to property.

"Road" means a vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

“Waterbody” means any natural or artificial pond, lake, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

“Watercourse” means:

- i. Rivers, streams, brooks and waterways which are delineated on the most recent edition of the United States Geological Survey topographic maps of the town.
- ii. Any other streams, brooks and waterways containing running water for a total of at least three (3) months a year.
- iii. Lakes, ponds, marshes, swamps, bogs, natural springs and all other bodies of water, natural or artificial, which are fed by or have discharge to another wetland, waterbody or watercourse.

6.2 Non-Conforming Buildings and Uses

J. “Heavy Industry” uses, as defined elsewhere in this law, shall be prohibited in the Town of Andes beginning on the effective date of this Local Law. The definition of “Heavy Industry” in this law (Section IV) includes the exploration for natural gas; extraction of natural gas; natural gas processing facilities; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; and coal processing. For the purposes of this provision of the law (Section VII), and solely for the ease of drafting and reading, all those uses and activities shall be referred to collectively as “gas, oil and coal extraction”.

Any leases of property for the purpose of allowing gas, oil or coal extraction, or any gas, oil or coal extraction operations which are being presently conducted on land in the Town as of the effective date of this law, shall be subject to the following:

A. Existing Industries or Leases:

1. Where a lease which allows gas, oil or coal extraction has been executed and where no substantive gas, oil or coal extraction activity has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

B. Existing Heavy Industry or Gas, Oil and Coal Extraction Operations

1. Where a lease which allows gas, oil, or coal extraction has been executed, and where substantive gas, oil or coal mining extraction activity is occurring as of the effective date of this law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.
2. Upon the depletion of any gas or oil well or coal mine which is allowed to remain in operation pursuant to this provision, or upon any other termination of the gas, oil or coal extraction activity for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity may not be renewed.
3. Further, no gas, oil or coal extraction activity allowed to remain in operation pursuant to this provision shall be permitted to expand after the effective date of this Local Law.

SECTION 3. SEVERABILITY

If any specific part or provision or standard of this Local Law, or the application thereof to any person or circumstance, be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof,

SECTION 4. INTERPRETATION; CONFLICT WITH OTHER LAWS

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

SECTION 5. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.