

LOCAL LAW # 3, 2011

A LOCAL LAW
IMPOSING A MORATORIUM
ON HEAVY INDUSTRY WITHIN
THE TOWN OF ANDES
COUNTY OF DELAWARE

WHEREAS, the Town of Andes has received requests from its citizens concerning the need to address and possibly regulate heavy industry in the Town: and

WHEREAS, the Town Board has discussed several recommendations for proposed actions, surveys and statutory changes to accomplishment such regulation within the Town; and

WHEREAS, the Town of Andes is also considering local laws to preserve roadways in the Town, as well as other related statutes that may effect the quality of life for all Town residents, and these local laws, if implemented, would have a significant impact on the overall development and regulation of land and road use within the Town;

NOW THEREFORE, BE IT ENACTED by the Town Board of the Town of Andes as follows:

Section 1. PURPOSE

The current local laws of the Town of Andes as currently written may be inadequate to address certain uses of property within the Town. The anticipation of possible heavy industry, including but not limited to, hydrofracturing activity in the Town, as become a matter of public concern. Any decision the Town Board makes in this matter within the Town could have a dramatic and long-term impact on the public health and safety, quality of life, environment, natural resources, public infrastructure, and revenue base of the Town. In addition, heavy industrial activity within the Town may have other significant consequences including a broad effect on the economic value of adjoining lands. Each of these impacts, as well as others, requires evaluation to determine the extent to which such matters can and should be regulated.

The Town Board has been addressed by many citizens requesting that the Town Board review the Town's land resources, current laws and existing land use regulations, and that the desires of the residents of the Town regarding the long term impact this activity be considered.

In order to provide an opportunity to perform this task, there shall be a moratorium on any activity related to the development, implementation or commencement of site preparation for any heavy industry, or heavy industrial activity, including gas well drilling of any kind, within the Town of Andes for a period of six (6) months, (or extension thereof), from the date of the implementation of this statute.

For the purpose of this moratorium, heavy industry, or heavy industrial activity shall be defined as 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; and 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; 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.

Section 2. AUTHORITY

This moratorium is enacted by the Town Board of the Town of Andes pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law §10.

Section 3. ENACTMENT OF TEMPORARY MORATORIUM

For a period of six (6) months following enactment of this Local Law, all heavy industrial activity, including any activity related to hydrofracturing or gas drilling within the Town is prohibited. There shall be no acceptance of any plan for, or review by the Town Board or the Planning Board related to any heavy industrial project, nor shall there be authorized the issuance of any permit, variance, or other authorization of any kind by any Board, Officer or employee of the Town of Andes for such activity.

Section 4. DEFINITION

For the purposes of this Local Law "HEAVY INDUSTRY" shall be defined as:

Any use or activity which generates significant volumes of smoke, odors, noise, or other polluting wastes and is not compatible with other uses in the Town. Examples of "heavy industry" which are 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; and 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.

Section 5. EARLY TERMINATION OR EXTENSION OF THIS LOCAL LAW

In the event that any new Local Law which addresses the substantive issues set forth herein, should be enacted and adopted by the Town Board prior to the date that the moratorium imposed by this Local Law expires, then in that event, the moratorium imposed by this Local Law shall expire on the date such new Local Law takes effect in accordance with §27 of the Municipal Home Rule Law.

In like manner, if more than four (4) months have passed since the implementation of this Local Law, and it shall be determined by a finding of the Town Board that an extension of this moratorium is required, then the Board, by Resolution, may extend this moratorium for such a period of time as it deems necessary in order to fulfill the findings heretofore made by the Common Council, up to and including six (6) additional months from the date of the original intended expiration of this Local Law.

Section 6. CONFLICTS WITH STATE STATUTES AND AUTHORITY TO SUPERSEDE

To the extent any provisions of this Local Law are in conflict with or are construed as inconsistent with the provisions of New York State Law, this Local Law shall control.

Section 7. SEVERABILITY

If any part of this Local Law is deemed by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Local Law.

Section 8. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.