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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 14, 2014

Hon. Scott Kroll, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Local Law No. 1-2014
A Local Law Providing for the banning of Hydraulic Fracturing
Our File No. 22-20130010

Dear Hon. Kroll:

Enclosed please find an original of the above-referenced Local Law for filing in your office.

Thank you.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Gregory P. Kammer
Assistant County Attorney

GPK/dkw
Enclosure

95 FRANKLIN STREET – ROOM 1634, BUFFALO, NEW YORK 14202 – PHONE (716) 858-2200 – FAX (716)858-2281 (NOT FOR SERVICE)
WWW.ERIE.GOV

A Public Hearing was held on the foregoing Local Law Intro. No. 4-2013 on December 30, 2013, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 10th day of January, 2014.

Mark C. Poloncarz

Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 4-2013 on December 30, 2013, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of _____, 20___.

_____

Mark C. Poloncarz

Local Law Filing

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
www.dos.state.ny.us/corps

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one:)

of Erie

Local Law No. 1 **of the year 20**14

A local law providing for the banning of Hydraulic Fracturing on land owned by Erie County, prohibiting the storage, disposal, or treatment of natural gas waste and fracturing fluids or solids by any wastewater treatment facility owned or operated by Erie County, prohibiting the purchase or acquisition of such materials by Erie County and prohibiting the application of
(Insert Title)

Be it enacted by the Erie County Legisature **of the**
(Name of Legislative Body)

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one:)

of Erie **as follows:**

SECTION 1. FINDINGS

The Erie County Legislature recognizes that:

A. Hydraulic fracturing, commonly known as "fracking" is not a new technique. But, high-volume horizontal fracking into hard rock deposits much deeper in the earth than earlier conventional vertical fracking is new. The new high-volume horizontal fracking is a highly controversial form of natural gas extraction. High volume fracking involves carving 'horizontal' wells into the rock formation to increase the extraction of gas from each well. Drillers inject a mixture of water, sand and chemicals, commonly called "slickwater" fracking fluid to suspend the sand and prop open the fractures, as well as lubricants to speed the fluid into the well. Fracking fluid is injected into the wells in stages that apply high pressure to crack the length of the horizontal well. Some of the fracking fluids remain in the well and some is discharged back up the well, creating fracking waste, known within the industry by various names, including, but not limited to, "flow-back", "produced water", "fracking brine", or "fracking fluid" that is a natural gas waste as a result of extraction activities. These, and other natural gas waste products, need to be handled and disposed of safely.

B. The Legislature finds that the fracking waste contains high levels of salinity.

C. The Legislature further finds and determines that fracking waste contains toxic substances and many of the chemicals found in fracking waste have been linked to health problems associated with the respiratory system and

(If additional space is needed, attach pages the same size as this sheet, and number each.)

A Local Law Continued:

any of these products to construct or maintain any road owned or maintained by Erie County.

other organs and when applied to roadways, fracking waste has the potential to pollute surface and groundwater.

D. The Legislature understands that some chemicals found in fracking wastes are not treated by wastewater treatment facilities and introduction of fracking waste into such facilities may result in a release into the environment and pose a health risk to County residents.

E. It is in the best interests of the residents of Erie County to protect the health and safety of Erie County residents and local drinking water by prohibiting fracking on County owned land, prohibiting the use of natural gas waste on roadways owned or maintained by Erie County and properties and prohibiting the introduction of natural gas waste into waste water treatment plants owned or operated by Erie County.

SECTION 3. DEFINITIONS.

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

A. "Fracturing" or "Fracking" shall mean the fracturing of rock formations by man-made fluid-driven techniques for the purpose of stimulating natural gas or other subsurface hydrocarbon production. The term includes high-volume fracking into hard rock depositions.

B. "Natural Gas Waste" shall mean any sludge, or other discarded material, including solid, liquid, semisolid or contained gaseous material that is generated as a result of natural gas extraction activities, some of which may consist of water, chemical additives, or naturally occurring radioactive materials ("NORMs") and heavy metals. Natural gas waste includes, but is not limited to, leachate from solid wastes associated with natural gas extraction activities and flow back, produced water, fracking brine and fracking fluid.

C. "Application" shall mean the physical act of placing or spreading natural gas waste on any road or real property owned or maintained by Erie County.

SECTION 4. PROHIBITIONS

A. No person shall offer for transport to or delivery to and no person shall deliver, transport or provide natural gas waste to any wastewater treatment facility owned or operated by Erie County (hereinafter "County"). No person, with knowledge that a solid, liquid, semisolid or gaseous material is natural gas waste, shall introduce such natural gas waste into any wastewater treatment facility owned or operated by the County.

B. The County shall not buy, purchase, acquire or receive natural gas waste for application on any County owned or maintained road or real property or for treatment in any County owned or operated waste treatment facility.

C. No person, with knowledge that a solid, liquid, semisolid or gaseous material is natural gas waste, shall apply such natural gas waste on any road or real property owned or maintained by the County.

D. No person shall engage in fracturing or fracking on or under land owned by the County.

E. No person shall store, dispose of, or treat any natural gas waste on, in or under any County owned land or in any County owned or operated waste treatment facility.

SECTION 5. BID AND CONTRACT PROVISIONS RELATED TO THE CONSTRUCTION AND MAINTENANCE OF COUNTY ROADS.

A. All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain a County road shall include a provision stating that no materials containing natural gas waste shall be provided to the County.

B. All bids and contracts related to the retention of services to construct or maintain a County road shall include a provision stating that no materials containing natural gas waste shall be utilized in providing such a service.

SECTION 6. DUTY OF EMPLOYEES.

A. All Erie County Sewer Districts shall develop policies to carry out the requirements of this Local Law regarding wastewater treatment facilities.

B. The Erie County Department of Public Works and all Erie County Sewer Districts shall develop policies to ensure that the County employees under their respective supervision are familiar with the provisions of this Local Law and shall take all necessary action to ensure that materials supplied to the County or used on roads or other real property owned or operated by the County comply with this Local Law. This subsection shall not excuse non-compliance by a contractor or vendor of the County.

SECTION 7. PENALTIES

Any person who intentionally violates Section 4 of this Local Law shall be guilty of an unclassified misdemeanor punishable by a fine not to exceed $25,000 per violation and/or up to thirty days' imprisonment. Each sale and/or application of natural gas waste shall constitute a separate and distinct violation.

SECTION 8. SEVERABILITY

If any clause, sentence, paragraph, section, subdivision or other part of this Local Law or its applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Local Law which shall remain in full force and effect except as limited by such order or judgment.

SECTION 9. EFFECTIVE DATE AND APPLICABILITY

This Local Law shall be effective one hundred twenty (120) days subsequent to filing in the Office of the Secretary of State and shall apply to all transactions occurring on or after the effective date of this local law.

SPONSORED BY:

Legislator Betty Jean Grant
Legislator Thomas J. Mazur
Legislator Timothy R. Hogues

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)
I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 14 of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on December 12 20 13, and was (approved)(not approved)(repassed after disapproval) by the Erie County Executive and was deemed duly adopted on January 10 20 1 4, in accordance w ith the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

3. (Final adoption by referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20_____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20_____, became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20_____ of the County of _____State of New York, having been submitted to the electors at the General Election of November _____ 20_____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: January 14, 2014