

Town of Highland, NY
Saturday, January 2, 2016

Chapter 190. Zoning

§ 190-11. Prohibited uses in all districts.

- A. Any use which is noxious, offensive, or objectionable by reasons of the emission of smoke, dust, dirt, gases, odor, or other form of air pollution or by reason of the deposit, discharge, or disposal of liquids or solid wastes in any form in a manner or amount as to cause damage to the soil and streams or to adversely affect the surrounding areas, or by reason of the creation of noise, vibration, or other disturbance or by reason of illumination on or from which such light, glare or light reflection emanates, or which involves any dangerous fire, explosive, radioactive, or any other hazards, or electrical, disturbances, electromagnetic disturbances, heat, which causes injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants, and any other process or use which is unwholesome and may be dangerous or prejudicial to health, safety or general welfare. However vegetative spraying and dusting in compliance with industry and DEC standards is permitted.
- B. Flea markets are prohibited in all districts, except those which are Town sanctioned or sponsored by tax exempt or nonprofit organizations.
- C. Junkyard or landfills, unless established as an official Town landfill, and duly licensed as a landfill by the Town Board, state, or other governmental agency having jurisdiction. Any property which does not comply with the above and shall be deemed by the Town Board as detrimental to the health, safety or welfare of the Town shall be removed or cleaned up to the satisfaction of the Town Board within a period of time designated by the Town Board. Failure to do so may result in a fine being levied as set by the Town Board. Junkyards and/or landfills are specifically prohibited in the URDC.

§ 190-20. Stripping or clear-cutting of land.

- A. Permits.
 - (1) Five acres or more of land may not be stripped or clear-cut without first having obtained a permit. Failure to have such a permit shall constitute a violation of this chapter. This provision shall not be applicable to sand, gravel, shale, topsoil, or other aggregate mining operations that are active as of the date of this chapter was adopted and are permitted by the New York State Department of Environmental Conservation.
 - (2) Stripping or clear-cutting of five acres or more of land shall be authorized only by the Planning Board and any governmental agency having jurisdiction.
 - (3) Applications for stripping of land or clear-cutting shall be filed with the Planning Board for approval. Upon authorization of the Planning Board, and payment of the appropriate fee if any as set by the Town Board, the Code Enforcement Officer shall, within 10 days, issue a permit.
 - (4) The permit shall be valid for a period to be determined by the Planning Board, and shall be subject to any such conditions and performance bond(s) the Planning Board deems necessary.

- (5) Any deviation from the originally approved application, no matter how small, shall require a new application before the Planning Board.
 - (6) All applications for permits for stripping of land and/or clear-cutting shall be in writing, signed and notarized by applicant, and shall state:
 - (a) The name and address of applicant(s) and, if a corporation, the name and address of each officer, shareholder (if less than 10) and directors;
 - (b) The interest of the applicant in the property if not the owner of record; and
 - (c) The name and address of the property owner.
 - (7) Each application shall be accompanied by a site plan indicating the following information:
 - (a) Location of the area to be stripped or clear-cut showing the boundaries and measurements of the lot and the extent and depth of the area to be worked;
 - (b) Names and owners of adjoining properties;
 - (c) Quantity of material(s) to be removed;
 - (d) Destination of stripped material, including stockpile areas and ultimate disposition;
 - (e) Means of egress and ingress for trucks and equipment;
 - (f) Watercourses and drainage ditches;
 - (g) Measures to control erosion, noise, dust, and loss of material during transportation,
 - (h) Duration of proposed stripping and clear-cutting of land;
 - (i) Restoration of area proposed to be stripped or clear-cut during temporary interruptions in activities and after completion, including road maintenance and repairs;
 - (j) A plan for the disposition of woody vegetation growing in the area to be stripped or clear-cut; and
 - (k) A site location map at a scale of one to 24,000.
- B. Requirements and standards.
- (1) Any area that has been stripped or clear-cut or covered with fill shall be restored to a suitable grade so as to provide good drainage and no disturbance to adjacent properties. Final grade shall form a smooth transition to surrounding undisturbed land. Final slopes shall not be less than 0.5%. Slopes greater than 25% shall be terraced, the vertical steps to be not greater than five feet and stabilized with noneroding material. Ponding areas shall be provided as required to remove silt from runoff below flowing from the property.
 - (2) Any area that has been stripped or clear-cut or covered with fill shall be seeded to provide an effective cover crop within the first growing season following the start of such stripping, clear-cutting or covering.
 - (3) To ensure the compliance of the permittee to the standards of this section, a performance bond in a suitable amount shall be required in an amount to be determined by the Planning Board.

§ 190-27. Explicitly prohibited uses; natural gas and/or petroleum extraction, exploration or production wastes

prohibited.

[Added 7-10-2012 by L.L. No. 3-2012]

- A. Explicitly prohibited uses. The following uses and activities (being respectively defined in Subsection **D** below of this § **190-27**) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:
- (1) High-impact industrial uses, including but not limited to any of the following:
 - (a) Natural gas and/or petroleum exploration activities;
 - (b) Natural gas and/or petroleum extraction activities;
 - (c) Natural gas and/or petroleum extraction, exploration or production wastes disposal/storage facility;
 - (d) Injection well;
 - (e) Land application facility;
 - (f) Natural gas and/or petroleum extraction, exploration or production wastes dump;
 - (g) Natural gas compression facility;
 - (h) Natural gas processing facility;
 - (i) Nonregulated pipelines;
 - (j) Underground injection; and
 - (k) Underground natural gas storage.
 - (2) Any condition caused or permitted to exist in violation of this Subsection **A** is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this chapter as "explicitly prohibited uses"; any one of the above expressly prohibited uses may be referred to in this chapter as an "explicitly prohibited use"; and any combination of more than one such use may also be referred to as "explicitly prohibited uses."
- B. Prohibition against natural gas and/or petroleum extraction, exploration or production wastes.
- (1) The Town of Highland hereby exercises its authority and right under New York Environmental Conservation Law § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this section complies "with at least the minimum applicable requirements" set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.
 - (2) It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any waste from natural gas and/or petroleum extraction, exploration or production.
- C. No application to customary local distribution lines, etc. The prohibitions set forth above in this § **190-27** are not intended, and shall not be construed, to:
- (1) Prevent or prohibit the right to use roadways in commerce or otherwise for travel;

- (2) Prevent or prohibit the transmission of natural gas through utility pipes, lines, reduction stations, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or
 - (3) Prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal agriculture, residential, business, commercial, and other permitted uses within the Town.
- D. Defined terms. For purposes hereof, and in addition to the terms defined in § 190-2 of this chapter, the following terms shall have the meanings respectively set forth below:

BELOW REGULATORY CONCERN

Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

GATHERING LINE or PRODUCTION LINE

Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act,^[2] and which does not meet the definition of a major utility transmission facility under the Public Service Law of New York, Article 7, § 120(2)(b).

HIGH-IMPACT INDUSTRIAL USES

- (1) Land uses which by the very nature in which they are conducted have the potential to significantly impact the environment, pose a risk to human health and safety, or disturb or interfere with reasonable community expectations regarding odors, noise, light, traffic and water quality. High-impact industrial uses include but are not limited to what are traditionally considered to be "heavy industrial uses" and specifically include but are not limited to the following land uses:
 - (a) Natural gas and/or petroleum exploration activities;
 - (b) Natural gas and/or petroleum extraction activities;
 - (c) Natural gas exploration, extraction, or production wastes disposal or storage facility;
 - (d) Injection wells;
 - (e) Land application facility;
 - (f) Natural gas exploration, extraction, or production wastes dump;
 - (g) Natural gas compression facility;
 - (h) Natural gas processing facility;
 - (i) Nonregulated pipelines;
 - (j) Underground injection;
 - (k) Underground natural gas storage.
- (2) For purposes of this chapter, high impact industrial uses do not include:

- (a) Agriculture use;
- (b) Any use that is specifically articulated in this chapter as allowed by right within an appropriate district as a principal permitted or accessory use; or
- (c) Any use that is specifically articulated in this chapter as allowed within an appropriate district as a principal permitted or accessory use upon obtaining a special use permit.

INJECTION WELL

A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semisolids) are injected into the subsurface and less than 90% of such fluids return to the surface within a period of 90 days.

LAND APPLICATION FACILITY

A site where any natural gas and/or petroleum extraction, exploration or production wastes are applied to the soil surface or injected into the upper layer of the soil.

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

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES

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, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits. (Note: as used in this chapter, the term "natural gas and/or petroleum exploration activities" is not intended and shall not be construed to include the conduct of seismic surveys, which are separately defined at, and subject to, the provisions of Chapter 147 (Seismic Surveys) of the Code of the Town of Highland.)

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES

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 related to natural gas and/or petroleum extraction activities.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES

- (1) Any of the following in any form, and whether or not such items 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 whether or not such substances are generally characterized as waste:
 - (a) Below-regulatory-concern radioactive material, or any radioactive material which is not below regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons;

- (b) Natural gas or petroleum drilling fluids;
 - (c) Natural gas or petroleum exploration, drilling, production or processing wastes;
 - (d) Natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semiliquid material);
 - (e) Any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum;
 - (f) Soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum;
 - (g) Drill cuttings from natural gas or petroleum wells; or
 - (h) Any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum.
- (2) 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). The definition of natural gas and/or petroleum extraction, exploration or production wastes does not include recognizable and nonrecognizable food wastes, or waste generated by agriculture use.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY

Any of the following:

- (1) Tanks of any construction (metal, fiberglass, concrete, etc);
- (2) Impoundments;
- (3) Pits;
- (4) Evaporation ponds; or
- (5) Other facilities, in any case used for the storage or treatment of natural gas and/or petroleum extraction, exploration or production wastes that:
 - (a) Are being held for initial use;
 - (b) Have been used and are being held for subsequent reuse or recycling;
 - (c) Are being held for treatment; or
 - (d) Are being held for storage.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DUMP

Land upon which natural gas and/or petroleum extraction, exploration or production wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

NATURAL GAS COMPRESSION FACILITY

Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

NATURAL GAS PROCESSING FACILITY

Those facilities that separate and recover natural gas liquids (NGLs) and/or other nonmethane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

NONREGULATED PIPELINES

Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

PIPELINE

All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

RADIATION

The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

RADIOACTIVE MATERIAL

Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is radioactive material for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the New York State Department of Labor, the United States Nuclear Regulatory Commission, the United States Environmental Protection Agency, the United States Department of Energy, the United States Department of Transportation, or any other regulatory agency.

SUBSURFACE

Below the surface of the earth, or of a body of water, as the context may require.

TRANSMISSION LINE

A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by the Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act, or as a major utility transmission facility under the Public Service Law of New York, Article 7, § 120(2)(b).

UNDERGROUND INJECTION

Subsurface emplacement of natural gas and/or petroleum extraction, exploration or production wastes by or into an injection well.

UNDERGROUND NATURAL GAS STORAGE

Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

WATER; WATER RESOURCES

All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any

portion thereof.

[2] *Editor's Note: See 15 U.S.C. § 717 et seq.*

[1] *Editor's Note: Former § 190-27, titled "Garage sales," was repealed 7-14-2009 by L.L. No. 4-2009. The provisions of that section can be found in § **190-26B** above.*