

FILING LOCAL LAW

New York State Department of State
41 State Street, Albany, NY 12231

(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 of Benton
Village

Local Law No. 2 of the year **2012**.

A local law **"Establishing a Second Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing"**
(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County
City
Town of Benton as follows:
Village

Section 1. STATEMENT OF LEGISLATIVE INTENT:

It is the purpose of this local law to prevent serious detrimental health and environmental effects posed by the practices of horizontal or directional gas drilling and hydraulic fracturing, also known as hydro-fracking, which could threaten the Town of Benton through potential contamination of aquifers and fresh water supply, the use of massive quantities of water, the disposal of the fracking fluids, the release of chemicals used in the processes and the impact upon local landscapes which could result in the degradation of the Town of Benton's significant environmental, natural, aesthetic and agricultural resources as well as to the Town of Benton's infrastructure. It is the further purpose of this local law to enable the Town of Benton to have sufficient time to draft and enact a local law establishing regulations pertaining to the practices of horizontal or directional gas drilling and hydraulic fracturing within the Town of Benton.

The Town of Benton established a one-year moratorium on the review, approval or creation of any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) effective September 22, 2011 with the filing of Local Law No. 2 of 2011 with the New York State Department of State. After consideration of the scope of the review and possible revisions to the Town Code, the Town Board deems it necessary to adopt a second one-year moratorium on these specified operations.

Section 3. DEFINITIONS

- A. HORIZONTAL OR DIRECTIONAL DRILLING – The practice of digging a well, first, down vertically to a depth above the target gas-bearing rock formation, then, on a curve so that the hole is drilled horizontally or at an angle within the gas-bearing rock.
- B. HYDRAULIC FRACTURING OR HYDRO-FRACKING – The practice of pumping a fluid and a propping material, typically composed of sand or other chemicals, down a well under high pressure to create fractures in gas-bearing rock.
- C. TOWN: Town of Benton, Yates County, New York
- D. TOWN BOARD: Town of Benton Town Board
- E. PLANNING BOARD: Town of Benton Planning Board
- F. BUILDING INSPECTOR: Town of Benton Building Inspector

Section 4. MORATORIUM.

A. The Town Board hereby enacts a second moratorium which shall prohibit the review, approval or creation anywhere within the Town of any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking).

B. This moratorium shall be in effect for a period of one (1) year beginning September 22, 2012 and shall expire on the earlier of (i) the date one (1) year from September 22, 2012, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.

C. This moratorium shall apply to all real property within the Town.

D. Pursuant to this moratorium, the Planning Board shall not review any applications for any new wells, projects or businesses within the Town involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) and shall not grant any preliminary or final site plan approval to any property on which is intended to have on it any well, project or business involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking).

E. Pursuant to this moratorium, the Building Inspector shall not issue Building Permits for the construction of any well involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or facilities for the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town.

F. Pursuant to this moratorium, no applications for variances, special use permits or other approvals involving any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or facilities for the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town shall be processed or granted.

Section 5. PENALTIES.

Any person, firm, entity or corporation which shall violate the provisions of this Local Law, shall be subject to:

1. A penalty in the amount of a minimum of \$100.00 and a maximum of \$250.00 for each day that such violation shall exist; and
2. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or improvements which may have been built in violation of this Local Law.

It shall be the duty of the Building Inspector to enforce the provisions of this Local Law.

Section 6. VALIDITY.

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 7. SUPERSEDING EFFECT.

Pursuant to New York Municipal Home Rule Law, Section 22, the provisions of this law are to supersede any inconsistent provision of state or local law.

Section 8. EFFECTIVE DATE.

This Local Law shall take effect on September 22, 2012 and shall remain in force and effect for a period of one (1) year from September 22, 2012.

(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 2012 of the **Town of Benton** was duly passed by the Benton Town Board on _____, 2012, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)

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 _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

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__. 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.

¹ 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 2009 of the City of _____ 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 1, above.

Clerk of the Town

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Attorney to the Town
Town of Benton

Date: _____

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County
City
Town of Benton
Village

Local Law No. ____ of the year **2011**.

A local law **"Establishing a Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing"**

(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County
City
Town of Benton
Village

as follows:

Section 1. TITLE:

This Local Law shall be known as the "Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing".

Section 2. STATEMENT OF LEGISLATIVE INTENT:

It is the purpose of this local law to prevent serious detrimental health and environmental effects posed by the practices of horizontal or directional gas drilling and hydraulic fracturing, also known as hydro-fracking, which could threaten the Town of Benton through potential contamination of aquifers and fresh water supply, the use of massive quantities of water, the disposal of the fracking fluids, the release of chemicals used in the processes and the impact upon local landscapes which could result in the degradation of the Town of Benton's significant environmental, natural, aesthetic and agricultural resources as well as to the Town of Benton's infrastructure. It is the further purpose of this local law to enable the Town of Benton to have sufficient time to draft and enact a local law establishing regulations pertaining to the practices of horizontal or directional gas drilling and hydraulic fracturing within the Town of Benton.

Section 3. DEFINITIONS

- A. HORIZONTAL OR DIRECTIONAL DRILLING – The practice of digging a well, first, down vertically to a depth above the target gas-bearing rock formation, then, on a curve so that the hole is drilled horizontally or at an angle within the gas-bearing rock.
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- C. TOWN: Town of Benton, Yates County, New York
- D. TOWN BOARD: Town of Benton Town Board
- E. PLANNING BOARD: Town of Benton Planning Board
- F. BUILDING INSPECTOR: Town of Benton Building Inspector

Section 4. MORATORIUM.

A. The Town Board hereby enacts a moratorium which shall prohibit the review, approval or creation anywhere within the Town of any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking).

B. This moratorium shall be in effect for a period of one (1) year from the effective date of this Local Law and shall expire on the earlier of (i) the date one (1) year from said effective date, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.

C. This moratorium shall apply to all real property within the Town.

D. Pursuant to this moratorium, the Planning Board shall not review any applications for any new wells, projects or businesses within the Town involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) and shall not grant any preliminary or final site plan approval to any property on which is intended to have on it any well, project or business involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking).

E. Pursuant to this moratorium, the Building Inspector shall not issue Building Permits for the construction of any well involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or facilities for the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town.

F. Pursuant to this moratorium, no applications for variances, special use permits or other approvals involving any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking), or facilities for the disposal, storage, or dumping of waste, contaminated or otherwise, or other waste by-products created by the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town shall be processed or granted.

Section 5. PENALTIES.

Any person, firm, entity or corporation which shall violate the provisions of this Local Law, shall be subject to:

1. A penalty in the amount of a minimum of \$100.00 and a maximum of \$250.00 for each day that such violation shall exist; and
2. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or improvements which may have been built in violation of this Local Law.

It shall be the duty of the Building Inspector to enforce the provisions of this Local Law.

Section 6. VALIDITY.

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 7. SUPERSEDING EFFECT.

Pursuant to New York Municipal Home Rule Law, Section 22, the provisions of this law are to supersede any inconsistent provision of state or local law.

Section 8. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State and shall remain in force and effect for a period of one (1) year from the date of such filing.

(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 2011 of the **Town of Benton** was duly passed by the Benton Town Board on _____, 2011, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)

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 _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

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__. 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.

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(Seal)

Clerk of the Town

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Attorney to the Town
Town of Benton

Date: _____