



Oneida County Department of Planning
Boehlert Center at Union Station, 321 Main Street, Utica, NY 13501

GENERAL MUNICIPAL LAW, SECTIONS 239-l, -m, or -n
NOTICE OF COUNTY RECOMMENDATION

Oneida County Referral Number: OC 239-11-217

Local Project Identification Number (if applicable): _____

Applicant: Town of Forestport Location: Town-wide, Forestport (T)

Subject Action: Proposed Moratorium on hydraulic fracturing and/or hydrofracking in the Town of Forestport.

RECOMMENDATION:

- Approval (see attached for comments)
- Disapproval
- Recommended Modifications

Date: December 20, 2011

John R. Kent, Jr.
John R. Kent, Jr.
Commissioner of Planning

NOTE: Section 239-m of the General Municipal Law of the State of New York requires that the municipal body having jurisdiction over this matter shall not act contrary to any disapproval or recommended modification contained herein, except by a vote of a majority plus one of the total voting power of the municipal body and only after the adoption of a resolution fully setting forth the reasons for such contrary action; and,

Section 239-m further requires that the municipal agency having jurisdiction on this matter, shall, within thirty (30) days after its final action, file with this Department, a report describing the final action.

This recommendation only addresses those significant County-wide or intermunicipal impacts that have been identified. There may be significant local impacts or controversy. This statement does not address the proposed action's compliance with all applicable local regulations; or with any other county, state, or federal requirements, including the provisions of the New York State Environmental Quality Review Act (SEQRA).

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COMMENTS:

The town may want to add a variance or hardship provision that would allow property owners a means of relief from the strict application of the local law.

Local Law Filing



(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~~ of Forestport
~~Town~~
~~Village~~

Local Law No. _____ of the year 20____

A local law imposing a prohibition of a moratorium on the
(Insert Title)
activity known as hydraulic fracturing and/or
hydrofracking in the Town of Forestport 2011

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

~~County~~
~~City~~ of Forestport as follows:
~~Town~~
~~Village~~

See attached sheets

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

(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 11 of the ~~(County)(City)~~ (Town)(Village) of Forestport was duly passed by the Town Board 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. _____ 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.
(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 _____, above.

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

(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 Oneida

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.

Signature

Town Attorney

Title

~~COUNTY~~

~~CITY~~

~~Town~~

~~Village~~

Forestport

Date: _____

TOWN OF FORESTPORT
LOCAL LAW _____ 2011

SECTION 1. Title

This Local Law shall be referred to as the "Local Law imposing a prohibition of a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Forestport 2011".

SECTION 2. Purpose and Intent

The Town of Forestport has legitimate goals and aims to protect the community as well as the Town's cultural, historical, recreational and environmental resources. Therefore, the Town Board believes that an extended period study of hydrofracking is necessary. The period of study will allow the Town Board to consider hydrofracking regulations meant to protect the environment as well as the town's residential and agricultural land uses.

Pursuant to the statutory powers vested in the Town of Forestport to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Forestport declares a 12 month moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process including the establishment, implementation, placement or construction of such process or activity in the Town of Forestport.

SECTION 3. Legislative Findings

- A. Pursuant to its legislative powers the Town of Forestport, the Town Board proposes to enact a "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Forestport."
- B. The issues which led to the decision have not abated, and the issues have also not ripened to the point that the Town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue. The board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town

of Forestport and also the State of New York is an ongoing matter of great concern and controversy throughout the state.

- C. It is not yet clear as to what safeguards are anticipated to be put in place by the NYDEC and/or NY Legislature to protect New York waters, air, soil, flora, fauna, properties and people, nor exactly how long such regulations may take to enact. Accordingly, it is difficult for the Town to determine the type of legislation that would be necessary, required or permitted, until well after the State clarifies its position.
- D. This Board is desirous of utilizing this extended moratorium period to continue to monitor and review state legislation, legislations of other towns and municipalities relating to this subject and gathering the continuing mass of information that is becoming available on this subject; and including possible legislative language for the town as suggested by experts in the field. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.
- E. However, the Town is also concerned with the potential for damage to groundwater quality and quantity, the potential for sedimentation and erosion and the method of disposal of naturally occurring radioactive materials and toxic sedimentation. Hydrofracking requires the use of large amounts of water, including the use of surface water (streams, wetlands), private ponds, groundwater, municipal water, waste water and produced water. Further, the use of hydrofracking will create more demand for commercial waste, water treatment facilities to dispose of produced water. The Town Board is concerned with the potential for groundwater pollution which would affect many water wells throughout Forestport. There may also be further impact to local roads during the construction and use of any potential well. Lastly, the Town is concerned with the potential negative impacts on water quality, agricultural land uses, wetlands and air quality.
- F. At this point it is important to note that there are no hydrofracking activities pending in the Town. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues

surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on hydrofracking is appropriate and necessary in order to preserve the status quo until new regulations can be adopted.

SECTION 4. Definitions

- A. The terms hydraulic fracturing and/or hydrofracking shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well the breaking and/or fracturing of shale and/or natural structures under the ground intending to release natural gas from the ground.
- B. The term "Town" when used in this Local Law shall mean the Town of Foerstport.
- C. The terms "Town Board", "Planning Board" and "Zoning Board of Appeals" when used in this Local Law shall refer to the appropriate boards established in the Town of Forestport.
- D. The term "Person" when used in this Local Law shall include an individuals, society, club, firm, partnership, joint venture, corporation or the association of persons, and the singular shall include the plural number.

SECTION 5. Scope of Controls

- A. During the effective period of this Local Law:
 1. The Town Board of the Town of Forestport, or any Town agency, shall not grant any approvals that would have as the results the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of Forestport.
 2. The Town Planning Board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result the establishment, implementation, placement, or construction of

the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of Forestport.

3. The Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of Forestport.
 4. The Codes Enforcement Officer shall not issue any permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of Forestport.
- B. The Town Board of the Town of Forestport reserves the right to direct the Codes Enforcement Officer to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

SECTION 6. No Consideration of New Applications

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

SECTION 7. Moratorium and Prohibition

1. From and after the date of this Local law, no person shall use, cause, or permit to be used any land, body of water, building or other structure located within the Town for any of the following: (i) any natural gas and/or petroleum exploration activities; (ii) any natural gas and/or petroleum extraction activities, or (iii) any natural gas and/or

petroleum support activities or any other type of hydraulic and/or hydrofracking.

2. The prohibitions set forth above in clause 1 of this Section 7 are not intended, and shall not be construed, to: (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town, or (z) prevent or prohibit the incidental or normal storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene or propane in connection with legal agriculture, residential, business, commercial and other uses within the Town, so long as such uses do not involve any natural gas and/or petroleum exploration activities, natural gas and/or petroleum extraction activities or natural gas and/or petroleum support activities.

SECTION 8. Term

The moratorium imposed by this Local Law shall be in effect beginning on the effective date of this Local Law and shall continue for a period of 365 days from the date of this Local Law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board. This Local Law shall apply to all real property in the Town.

Under no circumstances shall the failure of the Town Board of the Town, the Board of Appeals of the Town, the Planning Board of the Town, or the Building Inspector for the Town to take any action upon any application for a permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

SECTION 9. Violations

Any person violating any of the provisions of this Local Law shall be guilty of an offense and upon a conviction thereof, be given a civil penalty of no less than \$500.00 and no more than \$1,000.00 per day for this violation. Each day's violation shall constitute a separate and additional violation. An action may be commenced in a court of competent jurisdiction to recover such penalty. In addition thereto, violations of this Local Law shall be subject to being restrained by injunctive

relief. They will incur any and all Town costs and reasonable attorney fees.

SECTION 10. Civil Penalties

Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction in an action brought on behalf of the Town by the Town Board. Upon the failure or refusal of the Town Board of the Town to institute any such action or proceeding under this Clause 10 for a period of twenty days or more after written request so to proceed signed by no less than ten residents of the Town, then any three or more residents of the Town, who are jointly or severally aggrieved by such non-compliance and/or violation, may institute such appropriate action or proceeding in like manner as the Town Board is authorized to do.

In the event the Town is required to take legal action to enforce this chapter, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

SECTION 11. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 12. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.