

TOWN BOARD  
TOWN OF MILO  
RESOLUTION # 22 - 11

At a regular meeting of the Town Board of the Town of Milo, Yates County, New York, held at Town of Milo Town offices, 137 Main Street, Penn Yan, New York on May 16, 2011, 2011 at 7:00 p.m. there were:

Members Present     John P. Socha  
                             Dale Hallings  
                             James Harris  
                             Arden Sorensen

ABSENT:     Leslie Church

being all the members of the town/village board.

Mr. Dale Hallings, offered the following Resolution and moved its adoption:

WHEREAS, the Town of Milo is currently considering various options concerning the drilling for , or extractions of, natural gas, in the Town of Milo, within the subterranean area known as the Marcellus Shale by the process commonly known as high-volume hydraulic fracturing, and

WHEREAS, the State of New York, through the Department of Environmental Conservation, has been directed to inquire into this matter and to issue a Report on this matter, which Report is still pending, and

WHEREAS, the Town Board is of the opinion that an additional period of time is needed in order to adequately review, study and plan for such land use regulations, and

WHEREAS, legislation in regard to a moratorium, on this subject, is now in final form, a draft of which is attached hereto, as a proposed Local Law,

NOW, THEREFORE BE IT

RESOLVED, that the proposed legislation to impose regulations regarding drilling for , or

extractions of, natural gas, in the Town of Milo, within the subterranean area known as the Marcellus Shale by the process commonly known as high-volume hydraulic fracturing, is in the best interests of the Town of Milo, and it is further

RESOLVED, that the proposed legislation, to impose a one (1) year moratorium from the time when the Supplemental Generic Environmental Impact Statement (SGEIS) relating to the extraction of natural gas by the process of high-volume hydraulic fracturing now under review by the New York State Department of Environmental Conservation is final and permits for such extraction may be issued so far as the New York State Environmental Conservation Law is concerned in the Town of Milo, shall be referred to the Town of Milo Planning Board and the Yates County Planning Board for their respective Reports and Recommendations thereon.

Seconded by Mr. Arden Sorensen, and duly put to a vote as follows:

AYES: Socha, Hallings, Harris, Sorensen

NOES: none

ABSTENTIONS: none

This Resolution was thereupon adopted.

DATED: May 16, 2011

Patricia L. Christensen

Patricia L. Christensen  
Town Clerk  
Town of Milo

S E A L

(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.

Town of     Milo    

Local Law No.          of the year 2011

A local law to enact a moratorium on the drilling for or extraction of natural gas within that subterranean area known as the Marcellus Shale by the process commonly known as high-volume hydraulic fracturing.

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Be it enacted by the         Town Board         of the

Town of     Milo     as follows:

See Schedule AA@, which is attached hereto and made a part hereof.

## SCHEDULE "A"

### Section 1. Purpose and Intent

Pursuant to the statutory powers vested in the Town of Milo (the "Town") to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town hereby declares a one year moratorium on the drilling for or extraction of natural gas within that subterranean area known as the Marcellus Shale by the process commonly known as high-volume hydraulic fracturing.

The Town Board is aware of the current controversy surrounding the process of high-volume hydraulic fracturing. It realizes that there are a number of reasons to support the use of that process, but that many questions have been raised by persons opposed to it. The opponents assert that use of that process could create permanent damage to the environment arising from the use of dangerous chemicals near the source of supply of drinking water supply, volume of water required and the proper disposal of that water, as well as vastly increased truck traffic on our country roads.

The Town Board is also aware that the State of New York is currently evaluating this process and its effect on the environment. The Governor issued Executive Order Number 41 on December 13, 2010 requiring the Department of Environmental Conservation to report to him subsequent to June 1, 2011 on the status of the Final SGEIS and the regulatory conditions that are necessary to include in oil and gas well permits to protect public health and the environment. The Board knows that a determination of the policy that should be in effect in Milo concerning this issue will involve reconciliation of scientific and engineering information not within the usual expertise of the Board. This policy may involve the effect of increased truck traffic on the roads in the Town of Milo and the question of whether the extraction of natural gas by the process of high-volume hydraulic fracturing within the Town is compatible with the Comprehensive Plan of the Town.

The Town Board of the Town desires to address, in a careful manner, the question of whether the process of hydraulic fracturing should be allowed at all in this Town and if so under what circumstances.

The Town Board is now in the process of considering various options relating to this issue. The Town Board finds and determines that it needs the period of time covered by the moratorium imposed hereby in order to carefully study the question, draft proposed amendments to the Town Code, make appropriate changes to the draft, schedule and hold the required public hearing on the Local Law, perform an appropriate environmental review of the Local Law, comply with applicable provisions of law, adopt the Local Law, and file a copy of the Local Law, as adopted, with the Secretary of State of the State of New York.

### Section 2. Scope of Controls

- A. During the effective period of this Local Law:

1. The Town Board of the Town shall not grant any approvals that would have as the result the drilling for or extraction of natural gas within the Town of Milo from that subterranean area known as the Marcellus Shale by the process known as hydraulic fracturing.

2. The Town Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special use permit or other permit that would have as a result the drilling for or extraction of natural gas within the Town of Milo from that subterranean area known as the Marcellus Shale by the process known as hydraulic fracturing.

3. The Town Zoning Board of Appeals shall not grant any variance or other permit for any use that would result in the drilling for or extraction of natural gas within the Town of Milo from that subterranean area known as the Marcellus Shale by the process known as hydraulic fracturing.

4. The Code Enforcement Officer of the Town shall not issue any permit that would result in the drilling for or extraction of natural gas within the Town of Milo from that subterranean area known as the Marcellus Shale by the process known as hydraulic fracturing.

B. Notwithstanding the foregoing, this local law does not affect the drilling for or extraction of natural gas within the Town of Milo from other subterranean areas using means that have previously used within the town; provided that if hydraulic fracturing has been previously used in Milo, it may not be used with the volume or intensity now proposed for use within the Marcellus Shale.

### Section 3. No Consideration of New Applications

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

### Section 4. Term

The moratorium imposed by this Local Law shall be in effect for a period of one year from the time when the Supplemental Generic Environmental Impact Statement (SGEIS) relating to the extraction of natural gas by the process of high-volume hydraulic fracturing now under review by the New York State Department of Environmental Conservation is final and permits for such extraction may be issued so far as the New York State Environmental Conservation Law is concerned.

### Section 5. Penalties

Any person, firm or corporation that shall establish, place, construct, enlarge or erect any structure within the Town for the purpose of engaging in the extraction of natural gas by the process of high-volume hydraulic fracturing in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by applicable local laws, ordinances, rules, regulations of the Town for violations; and

B. 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 that may have taken place in violation of this Local Law.

#### Section 6. Severability:

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

#### Section 7. Hardship

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

#### Section 8. Effective Date

This law shall be operative immediately and effective upon being filed with the New York State Secretary of State pursuant to Section 27 of the Municipal Home Rule Law of the State of New York.