

## Local Law Filing

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

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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 MINDEN

Local Law No. \_\_\_\_ of the year 2012

#### A LOCAL LAW “ESTABLISHING A MORATORIUM ON HORIZONTAL AND DIRECTIONAL GAS DRILLING AND HYDRAULIC FRACTURING”

**Be it enacted by the Town Board of the Town of Minden as follows:**

**Section 1. TITLE:**

This Local Law shall be known as the “Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing in the Town of Minden”.

**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 Minden 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’s significant environmental, natural, aesthetic and agricultural resources as well as to the Town’s infrastructure. It is the further purpose of this Local Law to enable the Town to have sufficient time to draft and enact a local law regulating the practices of horizontal or directional gas drilling and hydraulic fracturing within the Town.

The Town Board is aware that a moratorium for an extended period is not generally advisable, however, not only is the issue of hydro-fracking unique, the issue as to the manner in which activity should be regulated in the Town of Minden, in the State of New York and throughout the northeastern United States is an ongoing matter of great concern and controversy.

The Town Board is desirous of utilizing an extended moratorium period to continue to monitor and review state legislation, legislation of other towns and municipalities relating to this

subject and gathering the continuing mass of information that is becoming available on this subject; including possible legislative language for towns as suggested by experts in the field. Particularly, not being aware what action may be taken by the State of New York, the Town Board wants to have sufficient additional time to put appropriate legislation in place.

It is noted that at this point there are no applications for hydro-fracking pending in the Town, nor do there appear to be any potential applicants. 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 hydro-fracking process and its potentially permanent and irreversible consequences, a moratorium on hydro-fracking is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

### **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 Minden, Montgomery County, New York

D. TOWN BOARD: Town of Minden Town Board

E. PLANNING BOARD: Town of Minden Planning Board

F. CODE ENFORCEMENT OFFICER: Town of Minden Code Enforcement Officer

### **Section 4. MORATORIUM:**

A. The Town Board hereby enacts a moratorium which shall prohibit 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) anywhere within the Town 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 practice in the Town.

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 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) within the Town.

E. Pursuant to this moratorium, the Code Enforcement Officer shall not issue Building Permits for the construction of any well involving 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) 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. Such penalties as may otherwise be provided for by resolution of the Town Board from time to time, not to be less than \$250.00 for each day that such violation exists; 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.

### **Section 6. HARSHIP:**

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 the 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 mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, site plan 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 thirty (30) days 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 of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

**Section 7. 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 8. SUPERSEDING EFFECT:**

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

**Section 9. EFFECTIVE DATE:**

This Local Law shall take effect immediately upon filing with the New York Department of State in accordance with Section 27 of the Municipal Home Rule Law.

**Section 10. NUMERICAL/LETTERING DESIGNATIONS:**

The chapter designations and numerical/lettering designations of the section and article(s) included in the Local Law shall be delegated to the discretion of General Code Publishers, which may renumber the chapter, sections and Article(s) included in this Local Law as necessary to accommodate incorporation of this Local Law in the Code of the Town of Minden.

(Complete the Certification in the paragraph that applies to the filing of this local law and strike 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 Minden was duly passed by the 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 Officer.)~~**

~~I hereby certify that the local law annexed hereto, designated as Local Law No. \_\_ of 20\_\_ of the Town of Minden was duly passed by the Town Board of the Town of Minden on \_\_\_\_\_, 200\_\_, and was (approved)(not approved)(repassed after disapproval) by the Supervisor of the Town of Minden 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. \_\_, 20\_\_ of the Town of Minden was duly passed by the Town of Minden 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 Town of Minden was duly passed by the Town of Minden Town Board on \_\_\_\_\_, 20\_\_, and was (approved)(not approved)(repassed after disapproval) by the Supervisor 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.~~

**\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide 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 County of \_\_\_\_\_, State of New York, 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. \_\_\_\_\_, 20\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_, 20\_\_, pursuant to subdivision 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 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 such original local law and was finally adopted in the manner indicated in paragraph 1 above.

\_\_\_\_\_  
JANET I. TRUMBULL, Minden Town Clerk

(Seal)

Dated: \_\_\_\_\_, 2012

**(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 MONTGOMERY

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.

\_\_\_\_\_  
JOHN L. KIRKPATRICK  
Town Attorney, Town of Minden  
Dated: \_\_\_\_\_, 2012