

Town of New Hartford, NY
Local Law No. Ten of 2012

A Local Law to amend the Code of the Town of New Hartford by creating a new Chapter 83 entitled “Natural Gas Exploration and Extraction”.

Be It Enacted by the Town Board of the Town of New Hartford as follows:

SECTION 1. Title.

This chapter shall be known and cited as the “Natural Gas Exploration and Extraction” law.

SECTION 2. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Natural Gas” shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified 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” shall mean 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, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

“Natural Gas and/or Petroleum Exploration and Production Materials” shall mean any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of natural gas.

“Natural Gas Exploration and/or Petroleum Wastes” shall mean any garbage, refuse, cuttings, sludge, flow-back fluids, produced waters or other discarded materials, including solid, liquid, semi-solid or contained gaseous material that

results from or is associated with the exploration, drilling or extraction of natural gas and/or petroleum.

"Natural Gas and/or Petroleum Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

"Natural Gas and/or Petroleum Support Activities" shall mean the construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas or petroleum storage facility, or a natural gas or petroleum gathering line, venting station, or compressor associated with the exploration or extraction of natural gas or petroleum.

Section 3. Prohibited Uses.

- (1) Prohibition against the Exploration for an Extraction of Natural Gas and/or Petroleum.

No land in the Town shall be used: to conduct any exploration for natural gas and/or petroleum, to drill any well for natural gas and/or petroleum; to transfer, store, process or treat natural gas and/or petroleum; or to dispose of natural gas and/or petroleum exploration or production wastes; or to erect any derrick, building, or other structure; or to place any machinery or equipment for any such purposes.

- (2) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.

- (3) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Wastes.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

(4) Prohibition against Natural Gas and/or Petroleum Support Activities.

No land in the Town shall be used for natural gas and/or petroleum support activities.

Section 4. Severability.

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

Section 5. Effective date:

This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule 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 New Hartford
Town
~~Village~~

Local Law No. Five of the year 20 11

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

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

~~County~~
~~City~~ of New Hartford, as follows:
Town
~~Village~~

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

Section 1. Title

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

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of New Hartford to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of New Hartford declares a six-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 New Hartford.

Section 3. Legislative Findings

Pursuant to its legislative powers and the Comprehensive Plan for the Town, the Town of New Hartford 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 New Hartford".

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

As of this date, there is an Executive Order put in place by the former Governor of the State of New York which has suspended permits for hydrofracking in the State of New York. It is currently unknown as to the exact date that Order may be lifted. And, 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, properties and people, nor exactly how long such regulation may take to enact. Accordingly, it is difficult for the Town to determine the type or extent of legislation that would be necessary, required or permitted, until well after the State clarifies its position. Without preliminary legislation in place by the State, the drafting of comprehensive legislation in the Town at this time would be unnecessarily time consuming with the possibility of some or all of it being rendered moot.

Although there are various sections of the Town of New Hartford Code which regulate some issues relating to energy production as well the export of energy off site, these regulations may not be sufficient to cover some hydrofracking issues. This Board is desirous of utilizing this 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, 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.

At this point it is important to note that there are no applications for hydrofracking 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 hydrofracking process and its potentially permanent and irreversible consequences, a moratorium is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

Section 4. Scope of Controls

A. During the effective period of this Local Law:

1. The Town Board of the Town of New Hartford shall not grant any approvals that would have as the 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 New Hartford.
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 New Hartford.
3. The Town 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 New Hartford.
4. The Codes Department 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 New Hartford.

B. The Town Board of the Town of New Hartford reserves the right to direct the Codes Officer to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 5. No consideration of New Application

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 6. Term

This moratorium imposed by this Local Law shall be in effect for a period of 180 days from the effective date of this local law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

Section 7. Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process 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 law, ordinances, rules or 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 or reconstruction that may have taken place in violation of this Local Law.

Section 8. 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 9. 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 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, specific 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 10. 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 other 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 New Hartford.

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 New Hartford.

D. The term "Development and Operations" when used in this Local Law shall refer to the Department of Development and Operations of the Town of New Hartford as established by Local Law No. 1 of the year 1983 of the Town of New Hartford and set forth in Chapter 15 of the Code of the Town of New Hartford.

11. 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.