

**TOWN OF OTISCO
LOCAL LAW NO. 1 of 2013**

**AMENDMENT #1 TO LOCAL LAW # 1 OF 2012 EXTENDING THE
MORATORIUM ON OIL AND GAS EXPLORATION AND EXTRACTION
ACTIVITIES IN THE TOWN OF OTISCO**

Be it enacted by the Town Board of the Town of Otisco, County of Onondaga, State of New York as follows:

Section 1. TITLE

This law shall be known as Town of Otisco Amendment # 1 to Local Law #1 of 2012 Extending the Moratorium Law on Oil and Gas Exploration and Extraction Activities.

Section 2. LEGISLATIVE INTENT

- A. The Town Board of the Town of Otisco is vested by the State of New York with authority to regulate certain activity within the Town of Otisco to protect the health, safety, and welfare of its residents and the environment. The Town of Otisco has legitimate goals and aims to protect the community, and the cultural, historical, recreational and environmental resources within the Town. The Town Board believes that studying certain activity is necessary so that certain activity is regulated to protect the Town's predominant residential and agricultural uses and to protect the environment from potential negative impacts.
- B. The Town Board recognizes the importance of finding and developing sources of oil and natural gas energy resources.
- C. However, the Town Board is also concerned with the potential for damage to the environment resulting from oil and gas exploration and extraction. Oil and gas exploration and extraction activities may involve the use of large amounts of land and water, including the use of surface water (rivers, streams, ponds, basins, lakes), groundwater, municipal water, and other water sources. Further, these uses may also create more demand for water and may create wastewater, resulting in the need for commercial wastewater treatment facilities to dispose of byproducts. The Town Board is concerned with the potential for surface and groundwater pollution, possibly adversely affecting the water quality of many water wells and water sources in the Town, wetlands, and the Otisco Lake watershed, which is the primary source of water from Otisco Lake for use by portions of the Town of Otisco and other local municipalities.

- D. There may also be further impacts to local land and roads during the construction and use of oil and gas exploration and extraction facilities and apparatus, including the potential for sediment and soil erosion, the release of naturally occurring radioactive materials, ground and air pollution, among other potential impacts, which may adversely affect the primarily residential and agricultural uses in the Town of Otisco.
- E. A moratorium would allow necessary time for the Town Board to further examine other potentially significant issues relative to oil and gas exploration and extraction, and to examine whether local laws or regulations relating to oil and gas exploration and extraction activities are necessary, and if so, the extent of such regulations. If the Town Board deems that such local laws or regulations are necessary, the Town Board may enact appropriate laws, rules and regulations to ensure the health, safety, and welfare of its residents and the environment consistent with other laws, rules and regulations.
- F. The Town of Otisco does hereby find that a moratorium of six (6) months duration is necessary and reasonable in order to afford the Town Board an opportunity to review the potential impacts of oil and gas exploration and extraction activities and to consider recommendations to the Town Board relating to such activities. A moratorium of six (6) months will prevent the establishment or continuation of such uses that may be contrary to any regulations that may be ultimately adopted. The health, safety and general welfare of the residents of the Town and its environment will be protected by the enactment of this moratorium pending the issuance of final laws, rules or regulations by the Town of Otisco or by other governmental agencies.

Section 3. ENACTMENT OF LOCAL LAW.

The Town Board hereby extends Local Law # 1 of 2012 by declaring an additional six-month moratorium on any new activities or processes involving or associated with oil and gas exploration and extraction activities within the Town of Otisco including the establishment, implementation, placement, or construction of new or expanded facilities or apparatus associated with or related to oil and gas exploration and extraction activities in the Town of Otisco after the effective date, and during the duration of this Local Law, and any extension hereof.

Section 4. DEFINITIONS

- A. PERSON - For the purposes of this Local Law, the term "person" shall include any individual, proprietorship, society, club, firm, general or limited partnership, joint venture, public or private corporation, not-for-profit corporation, limited liability company, unincorporated association, estate, trust, government or governmental instrumentality, or any other entity, or any association of persons as defined herein, and the singular shall include the plural number.

- B. TOWN/TOWN BOARD. - For purposes of this Local Law, the term "Town" shall mean the Town of Otisco located in the County of Onondaga, State of New York and "Town Board" shall refer to the Town of Otisco Town Board.

Section 5. SCOPE AND CONTROL

- A. For a period of six (6) months following the effective date of this Local Law, no new oil or gas exploration and extraction activities, or any expansions beyond existing operations or facilities, shall be permitted by any Person within the Town of Otisco.
- B. During the effective period of this Local Law, the Codes Enforcement Officer of the Town shall not consider and/or issue any building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new oil or gas exploration or extraction activity, facility, or operation, including any activity associated therewith or in furtherance thereof, or the enlargement or expansion of any existing oil or gas facility or operation or the use of any real property within the Town for new, or the expansion of, existing natural gas or oil exploration or extraction activities within the Town of Otisco.
- C. If, within six (6) months, the Town Board adopts a local law, rules or regulations relating to oil and gas exploration and extraction, then, in that event, the moratorium imposed by this Local Law shall expire immediately on the date any such Town of Otisco local law, rules or regulations relating to oil and gas exploration and extraction activities takes effect in accordance with Section 27 of the Municipal Home Rule Law.
- D. The Town Board of the Town of Otisco may amend, modify, terminate, or extend this Local Law in accordance with applicable law.
- E. The Town Board reserves to itself the power, in its sole discretion, to vary or adapt the strict application of the requirements of this Local Law or any portion hereof, in the case of unusual hardship or circumstances that would deprive a property owner of the reasonable use of the lands involved, provided the application is consistent with the intent of this Local Law. An application for relief plus 5 copies thereof shall be filed with the Town Clerk, together with a filing fee of \$250.00. The application shall identify the land involved, recite the nature of the proposed use of the land, provide a narrative description of the project, identify the circumstances pursuant to which the relief is sought, and set forth the reasons why the relief is sought. Any costs, including expert consulting fees, and the Town's reasonable attorney's fees, costs and expenses, incurred by the Town shall be paid by the applicant immediately upon request or the application may be denied. The Town Board may refer any application for relief to its consultants for their advice and recommendations. The Town Board may conduct a Public Hearing on any request for relief. All decisions on granting or denying such relief shall be made solely by the Town Board.

Section 6. PROHIBITED ACTIVITIES AND USES

Subject to the provisions of Section 7 of this Local Law below, except for any such use validly existing on the effective date of this Local Law, it shall be prohibited and unlawful for any Person to 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 purposes:

- 1) To conduct exploration for, or to extract natural gas and/or petroleum, including, but not limited to:
 - 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 for any such purpose; or
 - To place any machinery or equipment for any such purposes.
- 2) To store, transfer, treat, and/or dispose of natural gas and/or petroleum exploration and production equipment or materials.
- 3) To store, transfer, treat and/or dispose of natural gas and/or petroleum exploration and production wastes.
- 4) To conduct natural gas and/or petroleum support activities.

Section 7. EXCEPTIONS.

a. The lawful use of any premises, facilities or apparatus on, or after the effective date of this Local Law pursuant to a permit issued by the Town of Otisco or other appropriate State or federal agency, may be continued, provided that such use is in accordance with applicable law, and conforms to applicable permits and state or federal laws, rules and regulations, and shall not be modified, or enlarged or extended beyond the permitted use, location and operation existing on the effective date of this Local Law.

b. The prohibitions set forth in this Local Law, are not intended, and shall not be construed, to: (i) prevent or prohibit the transmission of natural gas or oil through utility pipes, lines, or related appurtenances that exist prior to the effective date of this Local Law or are for the limited purpose of supplying natural gas or oil utility services to residents of, or buildings located in the Town; or (ii) prevent or prohibit the incidental or normal sale, 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 and activities do not involve any exploration for or extraction of natural gas and/or petroleum, nor the storage, transfer, treatment, and/or disposal of natural gas and/or petroleum exploration and production equipment or material, and/or natural gas and/or petroleum exploration and production waste activities, and/or natural gas and/or petroleum support activities; or (iii) prevent or prohibit the extraction of oil or gas to be consumed entirely on the property from which the oil and gas is extracted.

Section 8. ENFORCEMENT.

This Local Law shall be enforced by the Codes Enforcement Officer of the Town of Otisco, or such other individual(s) or agencies as may be designated by the Town Board, and it shall be the duty of the enforcement individual(s) or agencies to advise the Town Board of all matters pertaining to the enforcement of this Local Law and to keep all records necessary and appropriate and to timely file the same in the Office of the Town Clerk.

Section 9. VIOLATIONS AND PENALTIES.

- A. Failure to comply with any of the provisions of this Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this subparagraph A, each day that a violation of this Law exists shall constitute a separate and distinct offense.
- B. In the event the Town is required to take legal action to enforce this Law, the violator shall be responsible for any and all necessary costs incurred by the Town relative thereto, including the Town's reasonable attorney's fees, costs, including Court costs and expenses, and such amount shall be determined and assessed by the Court. If such costs and expenses are not paid in full within thirty (30) days from the date they are determined and assessed by a Court, such costs and expenses shall be charged to the property(ies) within the Town on which the violation(s) occurred, by including such costs and expenses in the next annual Town tax levy against such property(ies), and such costs and expenses shall be a lien upon such property(ies) until paid.
- C. In addition to the foregoing, compliance with this 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.

Section 10. OTHER LOCAL LAW, RULE OR REGULATION ON OIL AND GAS.

If the Town Board enacts any other local law, rules or regulations relating to any oil or gas exploration or extraction activities within the Town of Otisco, or otherwise affecting natural gas and petroleum exploration and extraction, the underground storage of natural gas or petroleum and/or the disposal of natural gas or petroleum extraction, exploration or production wastes, then, in the event that such other Local Law may affect the moratorium imposed by this Local Law, then this Local Law shall expire only to the extent that it is affected by subsequent

Town of Otisco local law, rules or regulations relating to any oil or gas exploration or extraction activities within the Town of Otisco, and if affected, it shall take effect in accordance with Section 27 of the Municipal Home Rule Law.

Section 11. AMENDMENT, MODIFICATION, TERMINATION, OR EXTENSION.

The Town Board of the Town of Otisco may amend, modify, terminate, or extend this Local Law in accordance with applicable law.

Section 12. CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York. During the duration of times that this Local Law is in effect, to the extent permitted by law, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law. Specifically, this Law is intended to supersede Town Law Sections 130, 261, 262, 263, 264, 265, 267, 267-1, 267-b, 268, 269, 274-1, 274-b, 276, 277, 278 and 279.

Section 13. SEVERABILITY.

If any clause, sentence, paragraph, section, article, subdivision, provision, or part of this Local Law shall be adjudged by any Court of competent jurisdiction to be void, invalid or unenforceable, such adjudication or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations and only apply to the clause, sentence, paragraph, section, article, subdivision, provision, or part thereof directly involved in the controversy in which such adjudication or judgment shall have been rendered or so adjudged, and the remainder of this Local Law shall remain valid and in full force and effect.

Section 14. EFFECTIVE DATE.

This Local Law shall become effective 20 days after filing with the Secretary of State.

Town Board of the Town of Otisco

January 14, 2013

Be it so Ordered by the Town Board of the Town of Otisco.

Wayne S. Amato, Town Supervisor

Tammy M. Ayers, Town Clerk

**TOWN OF OTISCO
PROPOSED LOCAL LAW NO. 1 of 2010**

**A LOCAL LAW IMPOSING A MORATORIUM
ON HYDRAULIC FRACTURING AND/OR HYDROFRACKING
IN THE TOWN OF OTISCO**

Be it enacted by the Town Board of the Town of Otisco, County of Onondaga, State of New York as follows:

Section 1. TITLE

This law shall be known as Town of Otisco 2010 Moratorium Law on Hydraulic Fracturing and/or Hydrofracking.

Section 2. LEGISLATIVE INTENT

- A. The Town Board of the Town of Otisco is vested by the State of New York with authority to regulate certain activity within the Town of Otisco to protect the health, safety, and welfare of its residents and the environment. The Town of Otisco has legitimate goals and aims to protect the community, and the cultural, historical, recreational and environmental resources within the Town and the Town Board believes that studying certain activity is necessary so that certain activity is regulated to protect the Town's predominant residential and agricultural land uses and to protect the environment from potential negative impacts.
- B. The Town Board recognizes the importance of finding and developing sources of natural gas energy resource and believes that natural gas may be a cleaner and more beneficial source of energy than certain other energy sources. Natural gas development has existed in New York State. There are vast amounts of natural gas in reserves in shale deposits and new technology has made it more economical to produce natural gas from shale deposits. There have been studies indicating that natural gas production using the hydraulic fracturing method, commonly referred to as "hydrofracking," may be a significant benefit to economic activity.
- C. However, the Town Board is also concerned with the potential for damage to the environment, particularly groundwater quality and quantity, the potential for sediment and soil erosion and the release of naturally occurring radioactive materials, among other potential impacts. Hydrofracking requires the use of large amounts of water, including the use of surface water (rivers, streams, ponds, basins, lakes), groundwater, municipal water, wastewater, and other water sources. Further, the use of hydrofracking will create more demand for commercial wastewater treatment facilities to dispose of water byproduct. The Town Board is concerned with the potential for groundwater pollution, affecting many water wells and water sources in the Town. There may also be further impacts to local roads during the construction and use of hydrofracking apparatus. The Town Board is also concerned with the potential environmental impacts on water quality,

agricultural land uses, wetlands, and Otisco Lake, which is the primary source of water for portions of the Town of Otisco and other local municipalities, and the Otisco Lake watershed.

- D. The use of hydrofracking has generated significant concern about the safety and reliability of this method to extract natural gas. The Town Board believes that based on these concerns, additional study and examination of necessary regulations relating to hydrofracking is warranted.
- E. The Town Board is well aware of the current review of hydrofracking by the New York State Department of Environmental Conservation ("NYS DEC") and other governmental agencies and by private sources, including an assessment of the various potential environmental impacts from hydrofracking, analysis of the state laws, rules and regulations currently in place and the potential for additional regulations at the state or federal levels relating to hydrofracking. The Town Board has considered imposing a moratorium period to allow the Town Board time to review any further findings and any additional state or federal laws, rules or regulations, which would necessarily impact the role of the Town in the regulation of hydrofracking activity at the local level.
- F. A moratorium would also allow necessary time for the Town Board to further examine potentially significant issues to hydrofracking, and to examine whether local regulations relating to hydrofracking are necessary, and if so, the extent of such regulations. If the Town Board deems such local regulations are necessary, the Town Board may enact appropriate laws, rules and regulations to ensure the health, safety, and welfare of its residents and the environment consistent with other laws, rules and regulations.
- G. The Town of Otisco does hereby find a moratorium of six (6) months duration is necessary and reasonable in order to afford the Town Board an opportunity to review the potential impacts of hydrofracking and to consider recommendations to the Town Board relating to hydrofracking. A moratorium of six (6) months will prevent the establishment or continuation of hydrofracking processes that may be contrary to any regulations that may be ultimately adopted. The health, safety and general welfare of the residents of the Town and its environment will be protected by the adoption of this moratorium pending the issuance of final regulations by the Town of Otisco or by other governmental agencies.

Section 3. ENACTMENT OF LOCAL LAW.

The Town Board declares a six-month moratorium on any activity or processes involving or associated with hydraulic fracturing or hydrofracking, including the continued use of hydraulic fracturing or hydrofracking within the Town of Otisco and the establishment, implementation, placement, or construction of new hydraulic fracturing or hydrofracking facilities or apparatus in the Town of Otisco after the effective date, and during the duration of this Local Law, and any extension hereof.

Section 4. DEFINITIONS

- A. **HYDRAULIC FRACTURING OR HYDROFRACKING** - For purposes of this Local Law, the term “hydraulic fracturing” or “hydrofracking” shall mean the process of recovering and/or developing natural gas trapped behind or within 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 for the breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.
- B. **PERSON** - For the purposes of this Local Law, the term “person” shall include an individual, or the association of individuals, partnership, joint venture, corporation, limited liability company, or any other entity, and the singular shall include the plural number.

Section 5. SCOPE AND CONTROL

- A. For the period of six (6) months following the effective date of this Local Law, no new hydraulic fracturing or hydrofracking facilities or operations, as defined by this Local Law, or expansions beyond existing operations or facilities, shall be permitted by any person within the Town of Otisco.
- B. During the effective period of this Local Law, the Codes Enforcement Officer of the Town shall not consider and/or issue any building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new hydraulic fracturing or hydrofracking facility or operation, including any activity associated therewith or in furtherance thereof, or the enlargement of any existing hydraulic fracturing or hydrofracking facility or operation within the Town.
- C. If, within six (6) months, the Town Board adopts a local law, rules or regulations relating to hydrofracking, then, in that event the moratorium imposed by this Local Law shall expire immediately on the date any such Town of Otisco local law, rules or regulations relating to hydraulic fracturing or hydrofracking takes effect in accordance with Section 27 of the Municipal Home Rule Law.
- D. The Town Board of the Town of Otisco may amend, modify, terminate, or extend this Local Law in accordance with applicable law.

Section 6. EXCEPTIONS.

The lawful use of any premises or apparatus on, or after the effective date of this Local Law under a permit issued by the Town of Otisco or other appropriate state or federal agency may be continued, provided that such use conforms to applicable permits and state or federal laws, rules and regulations and shall not be enlarged or extended beyond the existing location and operation.

Section 7. ENFORCEMENT.

This Local Law shall be enforced by the Code Enforcement Officer of the Town of Otisco, or such other individual(s) as may be designated by the Town Board, and it shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this Local Law and to keep all records necessary and appropriate and to file the same in the Office of the Town Clerk.

Section 8. VIOLATIONS.

Any person violating any of the provisions of this Local Law shall be guilty of an offense and upon a conviction thereof, shall be subject to a civil penalty of not less than \$500.00 and no more than \$1,000.00 per day for each violation. Each day's violation for any separate and individual 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.

Section 9. CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York. During the duration of times that this Local Law is in effect, to the extent permitted by law, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law. Specifically, this Law is intended to supersede Town Law Sections 130, 261, 262, 263, 264, 265, 267, 267-1, 267-b, 268, 269, 274-1, 274-b, 276, 277, 278 and 279.

Section 10. SEVERABILITY.

If any clause, sentence, paragraph, section, article, subdivision, provision, or part of this Local Law shall be adjudged by any Court of competent jurisdiction in the State of New York to be void, invalid or unenforceable, such adjudication or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations and only apply to the clause, sentence, paragraph, section, article, subdivision, provision, or part thereof directly involved in the controversy in which such adjudication or judgment shall have been rendered or so adjudged, and the remainder of this Local Law shall remain valid and in full force and effect.

Section 11. EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Secretary of State.

Town Board of the Town of Otisco