

## TOWN OF WHITESTOWN

### LOCAL LAW #\_\_\_\_\_ OF THE YEAR 2012

#### **Section 1. Title**

This Local Law shall be referred to as the “Local Law Imposing Moratorium on the Activity Known as Hydraulic Fracturing and/or Hydrofracking in the Town of Whitestown.”

#### **Section 2. Purpose and Intent**

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

**Section 3. Legislative Findings**

- A. Pursuant to its legislative powers the Town of Whitestown, the Town Board proposes to enact a “Local Law imposing moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Whitestown.
- 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 Whitestown 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 the 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 particularly in light of the recent report (December, 2011) on the study conducted by the U. S. Environmental Protection Agency in Wyoming. 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 could affect many water wells throughout Whitestown. There may also be further impact to local roads during the construction and use of any potential well. Recent storms have already compromised a number of roads and bridges located within the Town, repairs to which have and will cause financial hardship for the Town. Lastly, the Town is concerned with the potentially negative impacts on water quality, agricultural land uses and wetlands.
- 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 Whitestown.
- 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 Whitestown.
- D. The term “Person” when used in this Local Law shall include an individual, 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 Whitestown 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 Whitestown.

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 Whitestown.
  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 Whitestown.
  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 Whitestown.
- B. The Town Board of the Town of Whitestown 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 application 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. Hardship Use Variance**

The Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship.

In order to prove such unnecessary hardship the applicant is required to demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied:

- (1) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence;
- (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return.

In evaluation whether the applicant can realize a reasonable rate of return, the Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site o the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

C. Unique Hardship.

No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood.

In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will use a style

of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

E. Self-Created Hardship.

Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's current (as of the effective date of this Local Law) land use laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeal deems necessary and adequate to address the unnecessary hardship proven by the applicant,

and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**Section 8. Term**

The moratorium imposed by this Local Law shall be in effect 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.

**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. This will incur any and all Town costs and reasonable attorney fees.

**Section 10. 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 such penalties.

**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 affect 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.