

**TOWN OF KIRKLAND
COUNTY OF ONEIDA, STATE OF NEW YORK**

Local Law No. 6 of 2012

A Local Law to Amend Local Law No. 1 of 2011 of the Town of Kirkland by
modifying provisions therein.

Be it enacted by the Town Board of the Town of Kirkland as follows:

Section 1. Local Law No. 1 of 2011 is hereby amended as follows:

Section 1. Title.

This Local law shall be known as "Moratorium on Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas and Disposal of Natural Gas or Petroleum Extraction, Exploration and Petroleum Wastes. This local law shall be known in short form as the Hydrofracking Moratorium Law of the Town of Kirkland, New York.

Section 3. State of Purpose is hereby amended as follows:

It is the purpose of this act to declare a Town of Kirkland policy to temporarily prevent Petroleum and Natural gas exploration and extraction activities, underground storage of natural gas and disposal of natural gas or petroleum extraction, exploration and production wastes and defer review of permit applications for exploration begun prior to enactment of this Local Law pending the completion and possible adoption of permanent and comprehensive regulations.

Section 4. Statement of Legislative Findings is hereby amended as follows:

The Town of Kirkland ("The Town") hereby finds and declares as follows:

- A. The Town faces significant growth and developmental pressures. Novel development of all types increasingly infringes on the landscape and associated natural features of the Town including the groundwater supply. These important natural resources provide ecological benefits, recreation and scenic beauty which help define the Town and are valuable for the Town's economy and quality of life. The Town's natural features and framework of land use and development control typically constrain such growth.
- B. The Town Board of the Town of Kirkland has, however, identified a land use which, if advanced under the Town's present zoning framework, would on the basis of scale, location or character

frustrate achievement of the future vision for the Town. Specifically, this land use has been identified to be Petroleum and Natural Gas Exploration and Extraction, Underground Storage of Natural Gas and the disposal of Natural Gas or Petroleum extraction wastes.

- C. The Town Board finds that existing laws do not sufficiently address the issues raised by recent interest in construction, exploration, erection, processing, development (including drilling) and/or installation of petroleum or natural gas facilities in the Town. The zoning code lacks a framework which complicates the Planning Board's ability to impose controls needed to address long-range community planning and zoning objectives. For example, the Town has no rules, regulations or guidelines regarding gas/oil exploration and lacks contemporary standards for the groundwater supply or evaluating the utilization of Natural Gas or Petroleum Exploration and Disposal. These inadequacies may result in the loss of potential growth opportunities for the Town by damaging the Planning Board's ability to make resource assessments, and regulate the impacts of new residential, commercial, and industrial projects in a manner which directs change according to a larger community vision.
- D. In addition to developmental pressures, rapidly emerging technologies, information and initiatives arising in rural areas of the Northern United States within the last few years, particularly those in Central and Upstate New York, have been receiving increased attention from proponents of new land use. The State of New York has declared Hydrofracture to be such concern that they are proposing to adopt and/or extend a moratorium on hydrofracture. Review of the Town's Comprehensive Zoning Plan and associated zoning ordinances is warranted in light of the burgeoning interest in exploring hydrofracking in the Town because of the Town's geographic location and plentiful natural resources; the high costs of electrical, thermal, mechanical, and chemical energy in the region; the legislative mandates of the State of New York; and federal tax incentives.
- E. In order to ensure that Construction, establishment, or use or operation of any land, body of water, building or other structures located within the Town for any Natural Gas and/or Petroleum exploration activities or Natural Gas and/or extraction activities or Natural Gas and/or Petroleum Support activities does not cause the Town of Kirkland to lose these resources forever, the Town Board finds it necessary to review and address a number specific issues related to the intensity and impacts of development and growth on the Town.
- F. After careful consideration of relevant information received, assembled and reviewed in relation to the Construction, establishment, or use or operation of any land, body of water, building or other structures located within the Town for any Natural Gas and/or Petroleum exploration activities or Natural

Gas and/or extraction activities or Natural Gas and/or Petroleum Support activities in the Town, The Town Board determines to review the foregoing factors, conditions and information, to update the Town's Comprehensive Zoning Plan and associated zoning ordinances:

- (1) Promotion and regulation of agricultural growth in the Town; and
- (2) Controlled Construction, Exploration, Development, Exploration and Disposal such that it is compatible with other residential uses and commercial enterprises; and
- (3) Potential impacts on public health and wildlife species of Petroleum and/or Natural Gas Exploration, Extraction and Disposal as currently designed, compared to the public health, pollution and ecosystem impacts of traditional fossil fuel generation; and
- (4) Monetary costs and/or benefits of Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal; and
- (5) Engineering, environmental and architectural standards for integration of Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal facilities with local review processes; and
- (6) Design, siting and collocation of Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal facility proposals to minimize any potential impacts upon the reasonable use and enjoyment of properties contiguous to such development, and safeguard local persons, fauna, and flora; and
- (7) Mitigation of possible adverse visual impacts by calculated minimum setback requirements; and reasonable preservation of the aesthetics of the Town of Kirkland; and
- (8) Possible regulation of use-related nuisance, e.g., noise pollution, and groundwater contamination; and
- (9) Participation of informed local residents focused on specific and real proposals in an open and meaningful process ; and consideration of the needs residents and property owners of the Town of Kirkland; and
- (10) Federal, state, and local tax implications for the Town of Kirkland, and its residents and property

owners; and

- (11) Regulatory measures that ensure appropriate levels of insurance are obtained, public improvement bonds are in place to protect local infrastructure, and removal of surety bonds and decommissioning plans are established to protect local residents; and
 - (12) Clarification and review of the existing codes relating to use districts; overlay zones; the protection of environmentally sensitive features; documentation; dimensional standards; filing fees; special use permits and standards; visibility; security measures to prevent unauthorized entry; review of permit approval; and assignment and transfer; and
 - (13) Evaluation of proposals pursuant to the State Environmental Quality Review Act ("SEQRA"); and consideration of additional Type I and/or Type II actions, in accordance with 6 NYCRR Part 617.14; and
 - (14) Protection of the Town's historic, geographic and scenic resources; and
 - (15) Open space preservation; and
 - (16) Compliance with state and federal laws, and other regulatory agencies having jurisdiction; and
 - (17) Consult New York State Energy Research Development Authority ("NYSERDA"), New York State Department of Environmental Conservation ("NYSDEC"), and other knowledgeable and regulatory bodies; and
- G. The Town Board is concerned that applicants may respond to the commencement of the aforementioned study by attempting to pursue permit applications and approvals for Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal before relevant codes and plans are revised or adopted. Completion of these studies and compliance with revision procedures will require at least several months and is reasonably expected to require twenty-four (24) calendar months. Thus, unless reasonable measures are taken during this interim period to preserve existing resources pending completion of the contemplated studies and revisions, increased development under the existing Comprehensive Zoning Plan and associated codes may materially damage the objectives of the study and revision process.
- H. To fulfill the Town's constitutional, statutory, and legal obligations to protect the public health, welfare and safety of the residents of the Town of Kirkland; and to protect the value, use, and enjoyment of property in the Town, the Board

intends to hereby adopt a Local Law establishing a moratorium on Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal for a reasonable time during which the Town Board of Kirkland will conduct a formal study of the issues involved herein, devise a uniform regulatory scheme for construction and operation of new enterprises which is based on neutral criteria, and develop procedural controls for the rigorous review of subject land use petitions.

- I. A waiver procedure excepting sufficiently aggrieved applicants from the requirements of this Local Law is included herein to balance interests between the public need to safeguard the resources and character of the Town; and protect the health, safety and general welfare of its residents as well as the rights of individuals who may seek to construct and operate Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or waste disposal facilities on their property.

Section 6. Term of Moratorium Declared, is hereby amended as follows:

To carry out the above purposes, the Town Board hereby declares for a period of twelve (12) calendar months from the effective date of this Local Law a moratorium on the Petroleum and/or Natural Gas Exploration, Extraction, Underground Storage and/or Waste Disposal Facilities unless earlier terminated by other local law, duly adopted.

Section 7. Prohibited Actions and Reservation of Right, is hereby amended as follows:

- A. Prohibited Actions. During effective period of this Local Law, each of the following actions shall be prohibited unless permitted under Sections 7 and 8 hereunder:
 - (1) From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (I) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.
 - (2) From and after the date of this Local Law, no Person shall 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: (I) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or

Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

- (3) The moratorium and prohibition set forth in Sections (1) and (2) of this Section 7 are not intended, and shall not be construed, to: (a) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (b) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (c) 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 do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum extraction Activities or Natural Gas and/or Petroleum Support Activities.
- (4) This moratorium and prohibition shall apply to all real property within the Town.
- (5) Under no circumstances shall the failure of the Town Board of the Town, the Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

B. Reservation of Right. The Town Board reserves the right to direct the Zoning Enforcement Officer or Building Code Inspector to revoke or rescind any Zoning permits, Building Permits, or Certificates of Occupancy issued in violation of this Local Law.

Section 2. Statement of Authority.

This Local Law is adopted pursuant to authority vested in the Town Board by New York State Constitution Article IX, Section 2; Sections 10, 11 and 22 of the New York Municipal Home Rule Law; relevant portions of the New York Town Law; the Code of the Town of Kirkland; and the general police power of the Town of Kirkland to promote health, safety, and welfare of all residents and property owners in the Town.

Section 3. All other provisions of Local Law No. 1 for 2011 of the Town of Kirkland, and amendments thereto, are hereby affirmed except to the extent that this Local Law shall modify or amend.

Section 4. This amendment to Local Law No. 1 for 2011 shall become effective upon filing in the Office of the Secretary of State of the State of New York as

provided in Section 27 of the Municipal Home Rule Law.