

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 Fabius

Local Law No. One (1) of the year 2011

A local law imposing a nine (9) month moratorium on certain activities related to practice(s) commonly known (and as defined herein), as hydraulic fracturing and/or "hydrofracking" in the Town of Fabius pursuant to New York State Constitution Article IX, Municipal Home Rule Law §§10, 20 and 22 and Town Law §§Article 16.

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

Section One (1). Title.

This local law shall be known as Local Law No. 1 of 2011, the "Temporary Moratorium on certain Practices Related to Hydraulic Fracturing (also commonly known as "Hydrofracking") and Related Activities in the Town of Fabius".

Section Two (2). Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Fabius to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Fabius declares a nine (9) month moratorium on certain practices related to the practice, processes and methods known as hydraulic fracturing and/or hydrofracking, which terms ("Hydraulic Fracturing" or "Hydrofracking") and the moratorium imposed hereby shall be in effect in relation to, and shall cover and include any substantially similar or alternative practice(s), process(es) and method(s), and/or variants thereof, to the extent such similar or alternative practices, processes, methods and/or variants thereof involve actions from which the same concerns and issues may arise as described herein in support of the moratorium. Accordingly, for purposes hereof the terms "Hydraulic Fracturing" or "Hydrofracking" shall be broadly interpreted such as to also include any such similar or alternative practices, methods and/or processes or variants thereof (the "Processes"), as well as any activity(ies) associated therewith or in support of such Processes including the establishment, implementation, placement, installation or construction and operation in the Town of Fabius. The foregoing provisions notwithstanding, it is the intent of this local law, in recognition of the Article 23, Title 27 of the New York Environmental Conservation Law and the intent of the (New York) State Legislature to, in adopting same, pre-empt the authority of local government to directly regulate same, to by this moratorium prohibit only those practices and activities related to Hydrofracking/Hydraulic Fracturing and which practices and activities and the regulation thereof are with the legal authority of local government to regulate. By way of example, a proposed

Hydrofracking operation which will be located on a site served by Town Highways shall be subject to this moratorium insofar as the use of Town Highways for such purposes is concerned. As such, pending the adoption of legislation governing Town Highways and enacted to address the potential adverse affects on Town Roads resulting from same. In such case, this moratorium shall apply to any such proposal to the extent the use of Town Highways for access/egress is a requirement of the project.

Section Three (3). Legislative Findings.

The Town Board has been advised that the State of New York Department of Environmental Conservation (DEC) and possibly federal authorities have been and likely intend to further undertake the study of the environmental impacts of Hydrofracking and possibly, with the State of New York and/or federal authorities considering the regulation or further regulation of same. This is due, at least in part, to the vast inquiries and expressions of concern from residents of the Town, and individuals throughout the State of New York and other jurisdictions where such practices and operations have already taken place or are intended in the near future. Such concerns include (without limitation) relative to the potential risk of contamination of ground water, destruction of subcutaneous rock formations, drainage and erosion control, degradation of air quality and roadways, and the scarring of natural landscapes. This Board is desirous of utilizing this moratorium period to review the findings of any such study(ies) and any legislation or proposed legislation based thereon, and to determine the extent to which such legislation may play a role in the regulation and/or determination of the scope of the authority to regulate Hydrofracking by the Town. Thus, and notwithstanding the requirements of Article 23, Title 27 of the New York State Environmental Conservation Law, because of the differences between the practices, methods and processes of Hydrofracking from more traditional mining operations, and the established authority of the Town of TullyFabius to legally review, consider and regulate certain related and incidental actions and practices, which the Town can and should properly and legally regulate (such as, without limitation, the use of its highways in relation to such operations) the Town Board desires ample time to undertake consideration of same. Accordingly, this moratorium is intended to provide ample time for study of these issues so that comprehensive, reasonable and fair legislation can be crafted to address same. The Town Board also determines that while the review of these regulations is being undertaken, 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 any such new federal, state or local legislation or regulations promulgated thereunder can be considered, and as appropriate adopted.

The foregoing provisions notwithstanding, it is the intent of the local law, and the moratorium imposed hereunder, to not apply to a proposed project that will not impact those subject matter areas which the Town does have the legal authority to regulate.

This Local Law has been referred pursuant to General Municipal Law §239 to the Onondaga County Planning Agency, and by Resolution under Case No. {OCPB-Z-11-39}

{The subject matter of this Local Law has been determined to be an Unlisted or Type II Action pursuant to the State Environmental Quality Review Act; accordingly, and assuming arguendo the former may be the case, the Town Board has elected to act as Lead Agency, conducted an Uncoordinated Review and by resolution duly adopted has issued a Negative Declaration of Significance.}

Section Four (3). Definitions.

In this Local Law:

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 for the purpose of breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground. For purposes hereof, such terms shall also mean and include any similar or alternative actions, practice(s), process(es) and method(s), and/or variants thereof, to the extent such alternatives or variants involve practices, methods and/or processes out of which the same concerns or issues may arise as legal, described herein in support of the moratorium.

Accordingly, for purposes hereof the terms "Hydraulic Fracturing" and "Hydrofracking" shall include any such practices, methods and/or processes as aforementioned, as well as any activity associated therewith or intending to support such process including the establishment, implementation, placement, and the installation and/or construction of such process or activity in the Town of Fabius.

"Town" when used in this Local Law shall mean the Town of Fabius.

"Town Board", "Planning Board" and "Zoning Board of Appeals" when used in this Local Law shall refer to the respective boards established in and for the Town of Fabius, and including any joint boards as may be established by and for the Village and Town of Fabius for such purpose(s).

Section Five (5). Scope of Controls.

A. During the effective period of this local law, and subject the provisions of §8C hereof:

1. The Town Board shall not accept, receive, nor process any applications for, conduct any review of, nor grant any approvals or permits whatsoever that, as the result the establishment, implementation, placement, installation or construction of improvements (including fixtures to land) and/or placement of equipment, operations or relative to the Processes and/or otherwise, relating to Hydraulic Fracturing and/or Hydrofracking.
2. The Town Planning board shall not or process any applications for, conduct any review of, nor permit or grant any preliminary or final approval to a site plan, special authorization permit, or any other permits or approvals that would have as a result the establishment, implementation, placement, installation or construction or operation of the Processes or Hydraulic Fracturing and/or Hydrofracking.
3. The Town Zoning Board of Appeals shall not accept, receive, nor process any applications for, conduct any review of, nor permit or grant any variances, interpretations, special authorization permits, or any other permits or approvals that would have as a result the establishment, implementation, placement, installation or construction of or operations of the Processes or Hydraulic Fracturing and/or Hydrofracking.

4. The Code Enforcement Officer shall not accept, receive, nor issue any permit that would have as a result the establishment, implementation, placement, installation or construction of or operations of the Processes known as Hydraulic Fracturing and/or Hydrofracking.
- B. The Town Board of the Town of Fabius reserves the right to direct the Code Enforcement Officer to revoke or rescind any building permits, certificates of occupancy or other permits, approvals or certificates issued in violation of this Local Law.
- C. Exemption. The foregoing provisions of this Local Law notwithstanding, upon the application of any individual or entity seeking to conduct Hydrofracking/Hydraulic Fracturing within the Town of Fabius, to the Town Board, and which application proposed project, as constructed and operated will not impact any of the subject matter areas the Town has legal authority to regulate, the Town Board shall issue an order upon its determination that the proposed project will not so impact any of the subject matter areas, that the proposal is exempt from the moratorium required hereunder. In connection with this the Town Board may require a hearing whereat witnesses shall be sworn and testimony provided. The Town Board shall require a hearing for such purposes unless the applicant provides conclusive, credible evidence at the time of and in support of its application.

Section Six (6). Term.

This moratorium imposed by this Local Law shall be in effect for a period of Two Hundred Seventy (270) days from the effective date of this local law. This moratorium may be extended for an additional period of not to exceed One Hundred Eighty (180) days by duly adopted resolution of the Town Board.

Section Seven (7). Penalties.

Any person, firm, corporation or other entity including those authorizing or directing or acting under or at the direction of same, and that shall take any action whatsoever to or toward establishment, implementation, placement, construction or installation of the processes, methods and/or practices defined herein as the Processes, Hydraulic Fracturing and/or Hydrofracking, in violation of the provisions of this Local Law shall be guilty of a misdemeanor offense; such person in violation hereof or who shall otherwise violate any of the provisions of the Fabius Town Code shall also be subject to:

- A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town of Fabius for violations.
- B. Injunctive relief in favor of the Town of Fabius to cease any and all such actions which violate with this Local Law and/or other provisions of the Town of Fabius Code and, if necessary, to restore and/or remove any installation, construction or reconstruction (including the restoration of excavated lands) that may have taken place in violation of this Local Law or Town Code and/or to otherwise effect the restoration of premises affected thereby to its condition prior to such actions.

Section Eight (8). Variation Based Upon Hardship.

- A. Procedure. Upon submission of an original and ten (10) copies of the written application (articulating the grounds in support of the request and with all applicable legal authority, supporting evidence and

documentation relied upon to be submitted with same) 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 not less than seven (7) days written notice in the official newspaper of the Town. At said public hearing, the applicant and/or 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 and any such variation shall be based upon evidence specific to that particular owner's plight, and as such shall not in and of itself establish precedent. As a general rule, supporting documentation, evidence or legal authority (verbal or in writing) may be submitted by the applicant or property owner at the public hearing that was not submitted with and at the time of application filing. Upon such occurrence, the Town Board may restrict or prohibit the introduction of same or continue the public hearing to permit the Town an opportunity to review the same.

Section Nine (9). Severability/Validity.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged or determined to be invalid or unconstitutional by any court or other governmental agency of competent jurisdiction, such determination, order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such determination, order or judgment shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court or governmental agency shall modify same to a provision which is legally binding and enforceable, and accordingly, not invalid or unconstitutional, and which best achieves the intent of the invalid or unconstitutional provision, or part thereof, as expressed or inferred herein.

Section Thirteen (13). Effective Date.

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out 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. 1 of 2011 of the ~~(County)~~(City)(Village)(Town) of Fabius was duly passed by the Town Board of the Town of Fabius on 2-28-11 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 19__ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed)