

LOCAL LAW FILING

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVE., ALBANY, NY 12231

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

Town of HIGHLAND

Village of

Local Law No. 4 of the year 2011

A local law "Establishing a Moratorium on High-Impact Industrial Uses and Certain Other Uses Having High Potential for Degradation of Community Character or Natural Resources".

Be it enacted by the TOWN BOARD of the

County

City

Town of Highland

Village of _____, as follows:

Section 1. TITLE:

This Local Law shall be known as the "Moratorium on High-Impact Industrial Uses and Certain Other Uses Having High Potential for Degradation of Community Character or Natural Resources".

Section 2. STATEMENT OF LEGISLATIVE INTENT:

It is the purpose of this local law to enable the Town of Highland to have sufficient time to complete the town's revision of its comprehensive plan and related zoning regulations in relation to high impact industrial uses. It is the further purpose of this local law to prevent serious detrimental health and environmental effects posed by natural gas drilling and hydraulic fracturing, also known as hydro-fracking, and related activities and processes, which could threaten the Town of Highland through the following: potential contamination of aquifers and fresh water supply, massive water use, the transport and disposal of the fracking fluids, the release of chemicals used in the processes and the impact upon local landscapes; the construction of compressor stations, power generating stations, landfills, impoundments, transportation hubs and equipment depots; the conducting of seismic surveys, and operations conducted at all hours of the day and night; and any other land use or activity which could result in the degradation of the Town of Highland's significant environmental, natural, aesthetic and agricultural resources, local tourism, and infrastructure, or present a threat to residents' health, safety, and quiet enjoyment of their property or the conservation of the town's natural resources.

Section 3. DEFINITIONS

- A. VERTICAL, HORIZONTAL OR DIRECTIONAL DRILLING – The practice of digging a well vertically to the target gas bearing rock formation, or first, down vertically to a depth above the target gas-bearing rock formation, then, on a curve so that the hole is drilled horizontally or at an angle within the gas-bearing rock.
- B. HYDRAULIC FRACTURING OR HYDRO-FRACKING – The practice of pumping a fluid and a propping material, typically composed of sand or other chemicals, down a well under high pressure to create fractures in gas-bearing rock.
- C. TOWN: Town of Highland, Sullivan County, New York
- D. TOWN BOARD: Town of Highland Town Board
- E. PLANNING BOARD: Town of Highland Planning Board
- F. BUILDING INSPECTOR: Town of Highland Code Enforcement Officer

Section 4. MORATORIUM.

A. The Town Board hereby enacts a moratorium which shall prohibit the review, approval or creation of any new wells, projects or businesses involving or related to the practices of vertical, horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town. This moratorium is not intended to prohibit drilling of wells for usual and customary domestic households and non-industrial business use.

B. This moratorium shall be in effect for a period of six (6) months from the effective date of this Local Law and shall expire on the earlier of (i) the date six (6) months from said effective date, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.

C. This moratorium shall apply to all real property within the Town.

D. Pursuant to this moratorium, the Planning Board shall not review any applications for any new wells, projects or businesses involving or related to the practices of vertical, horizontal or directional drilling or hydraulic fracturing (hydro-fracking) and shall not grant any preliminary or final site plan approval to any property on which is intended to have on it any well, project or business involving or related to the practices of vertical, horizontal or directional drilling or hydraulic fracturing (hydro-fracking) within the Town.

E. Pursuant to this moratorium, the Code Enforcement Officer shall not issue Building Permits for the construction of any well involving the practices of vertical or horizontal or directional drilling or hydraulic fracturing (hydro-fracking) or a related business anywhere within the Town.

F. Pursuant to this moratorium, the Code Enforcement Officer shall not issue a permit for seismic exploration, seismic testing, seismic surveys or the operation of a geophone, thumper truck, or vibroseis truck on any town highway within the Town of Highland.

G. Pursuant to this moratorium, no applications for variances, special use permits or other approvals involving any new wells, projects or businesses involving the practices of vertical or horizontal or directional drilling or hydraulic fracturing (hydro-fracking) shall be processed or granted.

Section 5. PENALTIES.

Any person, firm, entity or corporation which shall violate the provisions of this Local Law, shall be subject to:

1. A penalty in the amount of a minimum of \$100.00 and a maximum of \$250.00 for each day that such violation shall exist; and
2. 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 improvements which may have been built in violation of this Local Law.

It shall be the duty of the Building Inspector to enforce the provisions of this Local Law.

Section 6. HARSHIP

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 of Highland in writing for a variation from 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 the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, 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 fifteen (15) days of the close 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 to this Local Law to the minimum extent necessary.

Section 7. VALIDITY.

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

Section 8. SUPERSEDING EFFECT.

Pursuant to New York Municipal Home Rule Law, Section 22, the provisions of this law are to supersede any inconsistent provision of state or local law.

Section 9. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State and shall remain in force and effect for a period of six (6) months from the date of such filing.