

**A LOCAL LAW IMPOSING A MORATORIUM ON THE  
ACTIVITY KNOWN AS HYDRAULIC FRACTURING AND/OR HYDROFRACKING  
IN THE OF FLOYD, ONEIDA COUNTY, NEW YORK**

**Local Law No. 3 of 2011**

Be it enacted by the Town Board of the Town of Floyd, in the County of Oneida, as follows:

**Section 1. Title.**

This Local Law shall be referred to as the "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Floyd, Oneida County, New York".

**Section 2. Purpose and Intent.**

The Town of Floyd 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 of 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 Floyd to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Floyd declares a one (1) year moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process, including the establishment, implementation, placement or construction of such process or activity in the Town of Floyd.

**Section 3. Legislative Findings.**

A. Pursuant to its legislative powers, the Town Board proposes to enact a "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Floyd".

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 of hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of Floyd and also the State of New York is an on-going 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 NYSDEC 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 should 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, legislation of other Towns and municipalities relating to this subject and to gather the continuing mass of information that is becoming available on this subject, including 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. 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 would affect many water wells throughout Floyd. There may also be further impact to local roads during the construction and use of any potential well. 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 has determined that during its review and monitoring of the issues identified above, 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 legislation 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 breaking and/or fracturing the 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 Floyd.

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 Floyd.

D. The term "Person" when used in this Local Law shall include an individual, society, club, firm, partnership, joint venture, limited liability company and/or partnership, corporation or the association of persons, and the singular shall include the plural.

## **Section 5. Scope and Control**

A. During the effective period of this Local Law:

1. The Town Board of the Town of Floyd shall not grant any approvals that would have as the 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 Floyd.

2. The Town Planning Board shall not grant any preliminary or final approval to a site plan, special 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 Floyd.

3. The Town Zoning Board of Appeals shall not grant any variances, special 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 Floyd.

4. The Town 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 Floyd.

B. The Town Board of the Town of Floyd 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 applications for construction affected by this Local Law or for approvals for a site plan, variance, 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. Term.**

The moratorium imposed by this Local Law shall be in effect for a period of one (1) year from the date of this Local Law. The Town Board reserves the right to extend the moratorium for an additional 180 days if the Town determines that the initial one (1) year moratorium is not sufficient time to complete its investigation and analysis and/or enact appropriate legislation.

## **Section 8. Variances.**

1. The Town Board reserves to itself the power and sole discretion to vary or adapt the strict application of the requirements of this Local Law in the case of unusual hardship or circumstances that would deprive the owner of the reasonable use of the lands involved, provided the application is consistent with the intent of this Local Law.

2. An application for a variance plus 7 copies thereof shall be filed with the Town Clerk, together with a filing fee of \$250.00. The application shall specifically identify the land involved, recite the nature of the proposed use of the land, provide a narrative description of the project and identify the circumstances pursuant to which the variance is sought and the reasons why the variance is claimed. Any costs, including expert consulting fees to and including, but not limited to, engineering and attorneys' fees, incurred by the Town shall be paid by the Applicant immediately upon request or the application may be denied.

3. The Town Board may refer any application for a variance herein to the Planning Board, the Zoning Board of Appeals and/or its retained consultant for their advice and recommendations, but all decisions on granting or denying such variances shall be made by the Town Board solely, after determining whether or not the requested variance is compatible with the Comprehensive Plan of the Town, the Town Zoning Ordinance and any contemplated amendments to the Zoning Ordinance. Unless completely satisfied that the proposed variance is compatible, the Town Board shall deny the application.

4. The Town Board shall conduct a public hearing on any request for a variance within forty-five (45) days of receipt of a completed application, and shall issue its final decision on requests for a variance within thirty (30) days from the public hearing.

### **Section 9. Enforcement.**

This Local Law shall be enforced by the Code Enforcement Officer of the Town of Floyd, or such other individual(s) as designated by the Town Board. 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 to the office and to file the same in the office of the Town Clerk.

### **Section 10. 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. Any person violating any of the provisions of this Local Law shall be responsible for any and all Town costs including, but not limited to, reasonable attorneys' fees.

### **Section 11. 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 time that this Law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances, rules, regulations and provisions including, but not limited to, the statutes set forth in the New York Town Law related to zoning and subdivisions. 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 12. Severability.**

If any clause, sentence, paragraph, section, article 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 operations to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

### **Section 13. Effective Date.**

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