

LOCAL LAW # 1 of 2011
MORATORIUM LAW ON HYDRAULIC FRACTURING
AND/OR HYDROFRACKING OF THE VILLAGE OF WHITESBORO

Section 1. TITLE

This law will be known as the Moratorium Law on Hydraulic Fracturing and/or Hydrofracking of the Village of Whitesboro.

Section 2. LEGISLATIVE INTENT

The Village Board of the Village of Whitesboro, Oneida County, State of New York, is vested by the State of New York to regulate and control land use within the Village of Whitesboro and to protect the health, safety and welfare of its residents. The issue of hydrofracking has generated much concern about the safety and reliability of this method to recover and develop natural gas. The Village Board believes that based on these concerns, additional study and examination of necessary land use regulations relating to hydrofracking is warranted. Therefore, the Village Board, through this local law, declares a six month moratorium on any activity or processes associated with hydrofracking or in furtherance of hydrofracking, including the establishment, implementation, place and construction of hydrofracking processes or activities in the Village of Whitesboro.

The Village Board is well aware of the current review of hydrofracking by the New York State Department of Environmental Conservation (DEC), including an assessment of the various potential environmental impacts of hydrofracking, state regulations currently in place and the potential for additional regulations of hydrofracking at the state level. This moratorium period will allow for the review and determination of the need for additional state regulations which will necessarily impact the role of the Village in making further regulation on a local level.

This moratorium is also intended to allow necessary time for the Village Board to examine whether additional local regulation is necessary, the extent of such regulation, and if such local regulation is necessary, the Village Board may determine the appropriate rules and regulations to ensure comprehensive uniformity, fairness and consistency in such regulations. Further, the Village Board will utilize the moratorium period to further examine the significant environmental issues relating to hydrofracking.

The Village Board recognizes the importance of finding and developing other sources of natural gas for energy resources and believes that natural gas may be a cleaner and more beneficial source of energy than other oil and gas consumption. Natural gas development has existed in New York State since approximately 1821. There are vast amounts of natural gas in reserves of shale deposits and new technology has made it more economical to produce natural gas from shale deposits. There have been studies indicating that natural gas production using the hydrofracking method could be a significant benefit to economic activity.

However, the Village is also concerned with the potential for damage to groundwater

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quality and quantity, potential for sediment and erosion and the use of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water, including the use of surface water (rivers, basins, lakes), 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. There may also be further impacts to local roads during the construction and use of any potential well. Lastly, the Village is concerned with the potential environmental impacts on water quality, agricultural land uses, and wetlands.

The Village of Whitesboro has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources with the Village and the Village Board believes that studying this issue is necessary so that hydrofracking operations are regulated to protect the Village's land uses and to protect the environment from potential negative impacts.

The Village of Whitesboro does hereby find a moratorium of six months duration is necessary and reasonable in order to afford the Village Board an opportunity to refer this issue to the Code Enforcement Officer, Village Planning Board, Village Zoning Board of Appeals for consideration and study and to afford such boards an opportunity to make recommendations to the Village Board regarding appropriate amendments to the Village Code. A moratorium of six months will prevent the establishment of hydrofracking facilities and operations that may be contrary to any land use regulations ultimately adopted thus making the new regulations a nullity. The health, safety and general welfare of the residents will be protected by the adoption of the moratorium pending the issuance of final regulations by the Village of Whitesboro.

Section 3. DEFINITIONS

HYDRAULIC FRACTURING OR HYDROFRACKING-For purposes of this Local Law, the term "hydraulic fracturing" 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 of shale and/or other natural structures under the ground intending to release natural gas from the ground.

PERSON-For the purposes of this local law, the term "person" 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 4. SCOPE AND CONTROL

A. For the period of six months following the effective date of this local law, no new hydrofracking facilities or operations, as defined by this local law, or expansions beyond existing operations or facilities shall be permitted by any person in the Village of Whitesboro.

B. During the effective period of this Local Law:

PERSON- For the purposes of this local law, the term "person" shall include an individual

The Village Planning Board shall not consider and/or approve any site plan, approve any special use permit or other permit which would have as a result of the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Village.

The Village Zoning Board of Appeals shall not consider and/or grant any variance, special use permit or other permit for any use which would result in the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Village.

The Codes Enforcement Officer of the Village shall not consider and for issue any building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Village.

- C. If, within six months, the Village Board adopts a local law relating to hydrofracking, then, in that event the moratorium imposed by this local law shall expire immediately on the date the Village local law relating to hydrofracking takes effect in accordance with Section 27 of the Municipal Home Rule Law.
- D. This moratorium may be extended for an additional period of not more than 180 days upon a resolution of the Village Board which determines that it is in the best interest of the Village to extend the subject moratorium.

Section 5. EXCEPTIONS

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Village of Whitesboro or other appropriate state or federal agency may be continued, provided that such use shall not be enlarged or extended beyond the existing location and operation.

Section 6. VARIANCES

The Village 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.

- D. This moratorium may be extended for an additional period of not more than 180 days upon a resolution of the Village Board which determines that it is in the best interest of the Village to extend the subject moratorium.

An application for a variance plus 7 copies thereof shall be filed with the Village 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, incurred by the Village shall be paid by the Applicant immediately upon request or the application may be denied.

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

The Village Board shall conduct a public hearing on any request for a variance within forty-five (45) days of receipt of a completed application which shall be deemed to include all expert reports requested or ordered; and shall issue its final decision on requests for a variance within thirty (30) days from the public hearing.

Section 7. ENFORCEMENT

This local law shall be enforced by the Code Enforcement Officer of the Village of Whitesboro, or such other individual(s) as designated by the Village Board, it shall be the duty of the enforcement individual(s) to advise the Village 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 Village Clerk.

Section 8. 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.

Section 9. CONFLICT WITH OTHER LAWS

This Local Law is enacted pursuant to the provisions of the Village Law and the Municipal Home Rule Law of the State of New York. During the duration of times that this Law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Village Law

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related to zoning and subdivisions.

Section 10. 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 11. EFFECTIVE DATE

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

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