

**TOWN OF MARCELLUS
LOCAL LAW NO. 2 of 2011**

**A LOCAL LAW IMPOSING AMORATORIUM ON
HYDRAULIC FRACTURING AND/OR
HYDROFRACKING IN THE TOWN OF
MARCELLUS**

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

Section 1. TITLE

This law will be known as the 2011 Moratorium on Hydraulic Fracturing and/or Hydrofracking in the Town of Marcellus.

Section 2. LEGISLATIVE INTENT

- A. The Town Board of the Town of Marcellus, Onondaga County, State of New York, is vested by the State of New York to regulate and control land use within the Town of Marcellus 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 Town Board believes that based on these concerns, additional study and examination of necessary land use regulations relating to hydrofracking is warranted. Therefore, the Town 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 Town of Marcellus.
- B. The Town 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 Town in further regulation on a local level.
- C. This moratorium is also intended to allow necessary time for the Town Board to examine whether additional local regulation is necessary, the extent of such regulation, and if such local regulation is necessary, the Town Board may determine the appropriate rules and regulations to ensure comprehensive uniformity, fairness and consistency in such regulations, Further, the Town Board will utilize the moratorium period to further examine the significant environmental issues relating to hydrofracking.

- D. The Town 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.
- E. However, the Town is also concerned with the potential for damage to groundwater 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. The Town Board is concerned with the potential for groundwater pollution, affecting many water wells in the town. There may also be further impacts to local roads during the construction and use of any potential well. Lastly, the Town is concerned with the potential environmental impacts on water quality, agricultural land uses, wetlands, Otisco Lake, which is the primary source of water for the Town of Marcellus and other local municipalities, and the lake watershed.
- F. The Town of Marcellus has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources with the Town and the Town Board believes that studying this issue is necessary so that hydrofracking operations are regulated to protect the town's predominant residential and agricultural land uses and to protect the environment from potential negative impacts.
- G. The Town of Marcellus does hereby find a moratorium of six months duration is necessary and reasonable in order to afford the Town Board an opportunity to refer this issue to the Code Enforcement Officer, Town Planning Board, Town Zoning Board of Appeals and the Town Planning and Zoning Committee for consideration and study and to afford such boards an opportunity to make recommendations to the Town Board regarding appropriate amendments to Chapter 148 of the Town 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 Town of Marcellus.

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 Town of Marcellus.
- B. During the effective period of this Local Law:
 - 1. The Town 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 Town.
 - 2. The Town 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 Town.
 - 3. The Codes Enforcement Officer of the Town shall not consider and/or 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 Town.

- C. If, within six months, the Town 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 Town local law relating to hydrofracking takes effect in accordance with Section 27 of the Municipal Home Rule Law.

Section 5. EXCEPTIONS.

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Town of Marcellus 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.

- A. 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.
- B. 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, incurred by the Town shall be paid by the Applicant immediately upon request or the application may be denied.
- C. The Town 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 Town Board solely, after determining whether or not the requested variance is compatible with the Comprehensive Plan of the Town, the Town Code and any contemplated amendments to the Zoning Law. Unless completely satisfied that the proposed variance is compatible, the Town Board shall deny the application.
- D. 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 7. ENFORCEMENT.

This local law shall be enforced by the Code Enforcement Officer of the Town of Marcellus, 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 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 Town 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 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 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 immediately.