

TOWN OF LOCKE
LOCAL LAW NO. 1-2012

SECTION 1. Title

This Local Law shall be known as the “Local Law to Effect a Moratorium and Prohibition Within the Town of Horizontal Fracturing Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes.”

SECTION 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of Locke for Municipal Home Rule and to protect the health, welfare, and safety of its residents, the Town Board of the Town of Locke declares a two 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 Locke.

SECTION 3. Legislative Findings

The Town Board of the Town of Locke enacts this moratorium pursuant to its legislative powers and to preserve for the Town Board on behalf of the residents of the Town, the ability to deliberately review the issues and concerns related to the process known as hydraulic fracturing and/or hydrofracking, and to provide adequate time to determine if permanent comprehensive local legislation is necessary and in the best interests of the Town. As of this date, a state wide moratorium on hydrofracking remains in effect, the New York State Department of Environmental Conservation (DEC) has published a Preliminary Draft Generic Environmental Impact Statement and the DEC’s review is on-going. At this point, it is not yet clear as to what,

if any, regulatory regimen may be put into place by the DEC and/or the New York State Legislature. The Town Board is desirous of using the moratorium period to monitor and review the status of state action, and to study and give careful consideration to the subject of hydraulic fracturing and related activities, their impact on the physical and human environment in the Town and the possible need for local legislation, including but not limited to zoning legislation.

SECTION 4. Scope of Moratorium and Prohibition

A. During the effective period of this Local Law, the Town Board, the Town Planning Board, the Town Variance Board of Appeals, and the Codes Enforcement Officer shall not grant any special use permit, specific use permit, building permit, variance, or approval of any kind which would result in 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 Locke.

B. From and after the date of this Local Law, no application for a permit, special permit, building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any natural gas horizontal fracturing and/or petroleum exploration activities; (ii) any horizontal fracturing natural gas and/or petroleum extraction activities; or (iii) any horizontal fracturing natural gas and/or petroleum support activities.

C. From and after the date of this Local Law, no Person shall use, cause, or permit to be

used, any land, body of water, building, or other structure located with the Town for any of the following: (i) any horizontal fracturing natural gas and/or petroleum exploration activities; (ii) any horizontal fracturing natural gas and/or petroleum extraction activities; or (iii) any horizontal fracturing natural gas and/or petroleum support activities.

D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is two years after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

E. This moratorium and prohibition shall apply to all real property within the Town. Under no circumstances shall the failure of the Town Board, the Town Planning Board, the Variance Board of Appeals, or the Code Enforcement Officer for the Town to take any action upon any application inconsistent with this law for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

SECTION 5. Penalties and Enforcement

A. Any person, firm, corporation or other entity that shall take any action to establish, implement, place or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity or facility associated therewith or intended to support such construction of any activity or facility associated therewith or intended to support such process in violation of any of the provisions of this Local Law shall be subject to such penalties as may be provided by an applicable local law, ordinance, rules, or regulation of the Town for violations. The Town Board may seek injunctive

relief to cease any activity in violation of this Local Law or to remove any construction that may have taken place in violation of the Local Law. Each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for not more than 30 days, or both.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary legal and expert witness costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the Court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

SECTION 7. "Grandfathering" of Legal, Pre-Existing Non-Conforming Use.

Notwithstanding any provision hereof to the contrary, any natural gas and/or petroleum extraction activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A.1. If, as to the effective date of this Local Law, substantive natural gas and/or petroleum extraction activities are occurring in the Town, and those activities are in all respects

being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B and C of this Section 7.

2. Natural gas and/or petroleum extraction activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A.1. of this Section 7 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A.1. of this Section 7, or upon any other substantive cessation of natural gas and/or petroleum extraction activities (otherwise grandfathered by virtue of Clause A.1. of this Section 7) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such activity shall terminate, and thereafter, such natural gas and/or petroleum extraction activities shall in all respects be prohibited as contemplated by Section 4 hereof.

D. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A.1. of this Section 7 is not intended, and shall not be construed, to authorize or grandfather any natural gas and/or DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A.1. of this Section 7, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

SECTION 8. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provision which may be given effect without such invalid provision.

SECTION 9. Hardship

A. In the event that any owner of real property affected by this Local Law shall suffer an unnecessary hardship because of the implementation of the letter of this Local Law, then the owner of such property may make a written application to the Town Board for a variance from strict compliance with this Local Law. Unnecessary hardship shall not mean a mere delay in being able to pursue hydraulic fracturing or related activity or to be able to apply for and receive a decision upon any permit or approval of any kind related thereto. Unnecessary hardship is defined as a lack of reasonable return on the land owners financial basis in his or her own property.

B. Applications for a variance plus 7 copies thereof shall be in writing and shall set forth or have attached thereto evidence of the claimed hardship, and shall be filed with the Town Clerk together with a filing fee of \$250. The Town Board shall schedule a public hearing or any such application within thirty (30) days of its receipt upon at least five (5) days notice by publication in the Town's official newspaper and posting on the Town Clerk's board. At said public hearing, the property owner and other interested parties shall be heard and given the opportunity to present evidence in connection with the application. The Town Board shall render a decision in writing within thirty (30) days of the public hearing. If the Town Board determines that the property owner will suffer an unnecessary hardship by means of the strict application of this Local Law, then the Town Board will grant the minimum variance necessary to afford relief to the applicant.

SECTION 10. Definitions

A. The terms “hydraulic fracturing” and/or “hydrofracking” and/or “horizontal fracturing” shall mean the process of recovering and/or developing natural gas trapped within shale, rock, or other natural formations and which is generally accomplished by a well that is drilled into the ground and then proceeding in a horizontal direction from the well head, after which water, sand and/or chemicals are injected into the well, breaking or fracturing the shale or other natural structures under the drilled ground and intending to release natural gas from the ground.

B. The term “Town” shall mean the Town of Locke.

C. The terms “Town Board” and “Variance Board of Appeals” and “Planning Board” shall refer to the appropriate Boards established in the Town of Locke pursuant to the Town Law. The term “Codes Enforcement Officer” shall mean the duly appointed officer in the Town of Locke charge with the enforcement of the Town’s zoning and related codes.

SECTION 11. State Environmental Quality Review Act (SEQRA)

The Town Board has considered the provisions of Article 8 of the Environmental Conservation Law (SEQRA) and the regulations adopted thereunder at 6 NYCRR Part 17 and finds this Local Law to be a Type II Action as defined therein. Therefore, no further review is required under SEQRA.

SECTION 12. Effective Date

This Local Law shall take effect immediately upon filing in the Office of the New York Secretary of State as provided for in Section 27 of the Municipal Home Rule Law.