

**TOWN OF MORAVIA  
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 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 Moravia to regulate and control land use and to protect the health, welfare, and safety of its residents, the Town Board of the Town of Moravia declares a one 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 Moravia.

Appendix A attached hereto is hereby incorporated and made a part of this Local Law for all purposes by this reference.

**Section 3. Legislative Findings**

The Town Board of the Town of Moravia 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 in 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.

#### 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 Zoning 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 Moravia.
- B. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, 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 and/or petroleum exploration activities; (ii) any natural gas and/or petroleum extraction activities; or (iii) any 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 natural gas and/or petroleum exploration activities; (ii) any natural gas and/or petroleum extraction activities; or (iii) any natural gas and/or petroleum support activities.
- D. The moratorium and prohibition set forth above in Sections B. and C. of this Section 4. are not intended and shall not be construed to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal agriculture, residential, business, commercial, and other uses within the Town, so long as such uses do not involve any natural gas and/or petroleum exploration activities, natural gas and/or petroleum extraction activities, or natural gas and/or petroleum support activities.
- E. 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 one year 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.
- F. This moratorium and prohibition shall apply to all real property within the Town.

G. Under no circumstances shall the failure of the Town Board, the Town Planning Board, the Zoning Board of Appeals, or the Code Enforcement Officer for the Town to take any action upon any application 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. Term**

This moratorium shall be in effect for a period of one year from the effective date.

## **Section 6. 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 process in violation of the provisions of this Local Law shall be subject to such penalties as may be provided by any 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 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 may 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 of 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.

C. 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 petroleum extraction activities extending beyond whatever well bore is authorized in any 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.

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 on 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" shall mean the process of recovering and/or developing natural gas trapped behind 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 Moravia.

C. The terms "Town Board" and "Zoning Board of Appeals" shall refer to the appropriate Boards established in the Town of Moravia pursuant to the Town Law. The term "Codes Enforcement Officer" shall mean the duly appointed officer in the Town of Moravia charged 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 617 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 State Secretary of State as provided for in Section 27 of the Municipal Home Rule Law.

APPENDIX A  
ATTACHED TO AND FORMING A PART OF  
TOWN OF MORAVIA LOCAL LAW NO. 1 - 2012

**Section 1. Findings of Fact.**

1. Moravia is a community in Cayuga County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources.
2. Many residents are dependent upon aquifer and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town's irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place - whether or not businesses will want to locate, or people will want to live in and visit a place.
5. Allowing the activities prohibited by Section 4. of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.
6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby could be hazardous to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires, and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that

accompany many of the activities prohibited by Section 4. of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels and decreases the quality of life and property values for those living nearby.

7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a know hazard to the public health.

8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

10. The creation, generation, keeping, storage or disposal of natural gas and/or petroleum extraction, exploration or production wastes within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

11. The high costs associated with the disposal of natural gas and/or petroleum extraction, exploration or production wastes have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs be depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety and welfare of the inhabitants of the Town.

12. The explicit proscription of the activities prohibited by Section 4. of the Local law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws.

**Section 2. Purposes.** The purpose of the Local Law is to enable the Town of Moravia to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the



Town's zoning laws to address the same. The Town Board finds that a moratorium of one (1) year duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Moravia and the health, safety and general welfare of its residents, and (on the other hand) the rights of individual property owners or businesses desiring to conduct such activities during such period.