

(152.) Sponsored by: Councilmembers Vescera, Testa, Giruzzi, Marino, McKinsey, Colosimo-Testa, Zecca, Meola, Bucciero

HYDROFRACKING - MORATORIUM

BE IT ORDAINED, That the Common Council of the City of Utica does hereby declare a moratorium on the construction, exploration, erection, processing, development, (Including Drilling) and/or installation of Hydrofracking Facilities in the City of Utica as set forth herein until December 31, 2013.

Section 1. Title.

This ORDINANCE shall be known as "Moratorium on Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of "Hydrofracking Facilities" of the City of Utica. This ORDINANCE may be cited in short form as the "Hydrofracking Moratorium Ordinance" of the City of Utica.

Section 2. Statement of Authority.

This ORDINANCE is adopted pursuant to authority vested in the City of Utica by New York , and the general police power of the City of Utica to promote health, safety, and welfare of all residents and property owners in the City.

Section 3. Statement of Purpose.

It is the purpose of this ORDINANCE declare a City of Utica policy to temporarily prevent the construction, explanation, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities and defer review of permit applications for drilling and exploration begun prior to enactment of this Ordinance, pending the completion and possible adoption of permanent comprehensive regulations.

Section. 4. Statement of Legislative Findings and Declaration.

The City of Utica hereby finds and declares as follows:

- A. The City faces significant growth and developmental pressures. Novel development of all types increasingly infringes on the landscape and associated natural features of the City including the groundwater supply. These important natural resources provide ecological benefits, recreation and scenic beauty which help define the City and valuable for the City's economy and quality of life. The City's natural features and framework of land use and development control typically constrain such growth.
- B. The Common Council of the City of Utica has, however, identified a land use which, if advanced under the City's present zoning framework, would on the basis of scale, location or character frustrate achievement of the future vision for the City. Specifically, this land use has been identified to be hydrofracking.
- C. The Common Council finds that existing laws do not sufficiently address the issues raise by recent interest in construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities in the City of the Zoning code lacks a framework which complicates the Planning Board's ability to impose controls needed to address long-range community planning and zoning objectives. For example the City has no rules, regulations, or guidelines regarding hydrofracking or gas/oil exploration and lacks contemporary standards for the groundwater supply or evaluating the utilization of hydrofracking. These inadequacies may result in the loss of potential growth opportunities for the City by damaging the Planning Board's ability to make resource assessments, and regulate the impacts of new residential, commercial, and industrial projects in a manner which directs change according to a larger community vision.
- D. In addition to developmental pressures, rapidly emerging technologies, information and initiatives arising in rural areas of the Northern United States within the last few years, particularly those in Central and Upstate New York, have been receiving increased attention from proponents of new land use. The state of New York has declared hydrofraction to be such concern that they are proposing to adopt and/or extend a moratorium on hydrofraction. Review of the City's Comprehensive Zoning Plan and associated zoning ordinances is warranted in light of the burgeoning interest in exploring hydrofracking in the City, because of the City's geographic location and plentiful natural resources; the high costs of electrical, thermal, mechanical, and chemical energy in the region; the legislative mandates of the State of New York, and federal tax incentives.
- E. In order to ensure that Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities does not cause the City of Utica to lose these resources forever, the Common

Council finds it necessary to review and address a number specific issues related to the intensity and impacts of development and growth on the City.

F. After careful consideration of relevant information received, assembled and reviewed in relation to the Construction, Exploration, Erection, Processing, Development (Including Drilling) and/ or Installation of Hydrofracking Facilities in the City. The Common Council determines to review the foregoing factors, conditions and information, to update the City's Comprehensive, Zoning Plan and associated zoning ordinances:

- (1) Promotion and regulation of agricultural growth in the City and
- (2) Controlled Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities such that it is compatible with other residential uses and commercial enterprises; and
- (3) Potential impacts on public health and wildlife species of hydrofracking as currently designed compared to the public health, pollution and ecosystem impacts of traditional fossil fuel generation, and
- (4) Monetary costs and/or benefits of hydrofracking; and
- (5) Engineering, environmental and architectural standards for integration of Hydrofracking Facilities with local review processes; and
- (6) Design, siting and collocation of Hydrofracking Facility proposals to minimize any potential impacts upon the reasonable use and enjoyment of properties contiguous to such development and safeguard local persons, fauna, and flora, and
- (7) Mitigation of possible adverse visual impacts by calculated minimum setback requirements and reasonable preservation of the aesthetics of the City of Utica, and
- (8) Possible regulation of use-related nuisance, e.g., noise pollution, and groundwater contamination, and
- (9) Participation of informed local residents focused on specific and real proposals in an open and meaningful process; and consideration of the needs residents and property owners of the City of Utica and,
- (10) Federal, state, and local tax implications for the City of Utica, and its residents and property owners; and
- (11) Regulatory measures that ensure appropriate levels of insurance are obtained, public improvement bonds are in place to protect local infrastructure, and removal of surety bonds and decommissioning plans are established to protect local residents, and
- (12) Clarification and review of the existing codes relating to use districts, overlay zones, the protection of environmentally sensitive features, documentation, dimensional, standards, filing fees, special use permits and standards, visibility, security measures to prevent unauthorized entry, review of permit approval, and assignment and transfer, and
- (13) Evaluation of proposals pursuant to the State Environmental Quality Review Act ("SEQRA") and consideration of additional Type I and/or Type II actions, in accordance with 6 NYCRR Part 617.14; and
- (14) Protection of the City of Utica historic, geographic and scenic resources; and
- (15) Open space preservation; and
- (16) Compliance with state and federal laws, and other regulatory agencies having jurisdiction, and
- (17) Consult New York State Energy Research Development Authority ("NYSERDA"). New York State Department of Environmental Conservation ("NYSDEC"), and other knowledgeable and regulatory bodies, and

G. The Common Council is concerned that applicants may respond to the commencement of the aforementioned study by attempting to pursue permit applications and approvals for hydrofracking before relevant codes and plans are revised or adopted. Completion of these studies and compliance with revision procedures will require twelve (12) calendar months. Thus, unless reasonable measures are taken during this interim period to preserve existing resources pending completion of the contemplated studies and revisions, increased development under the existing

Comprehensive Zoning Plan and associated codes may materially damage the objectives of the study and revision process.

- II. To fulfill the City's constitutional, statutory, and legal obligations to protect the public health, welfare, and safety of the residents of the City of Utica; and to protect the value, use, and enjoyment of property in the City, the Council intends to hereby adopt an Ordinance establishing a moratorium on hydrofracking for a reasonable time during which the Common Council of the City of Utica will conduct a formal study of the issues involved herein, devise a uniform regulatory scheme for construction and operation of new enterprises which is based on neutral criteria, and develop procedural controls for the rigorous review of subject land use petitions.
- I. A waiver procedure excepting sufficiently aggrieved applicants from the requirements of this Ordinance is included herein to balance interests between the public need to safeguard the resources and character of the City; and protect the health, safety and general welfare of its residents as well as the rights of individuals who may seek to construct and operate Hydrofracking Facilities on their property.

Section 5. Word Usage and Definitions

- A. Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Doubt as to the precise meaning of any word used in this chapter shall be clarified by reference to Article 1 of the City of Utica Code, and that failing, the City of Utica Zoning Board of Appeals under its power of interpretation by appeal.
- B. As used in this Ordinance, the following terms shall have the meaning indicated:

HYDROFRACKING - The process of initiating, and subsequently propagating a fracture in a rock layer, employing the pressure of a fluid as the source of energy. The fracturing is done from a wellbore drilled into reservoir rock formations, in order to increase the extraction and ultimate recovery rates of oil and natural gas.

Section 6. Term of Moratorium Declared.

To carry out the above purposes, the Common Council hereby declares for a period of twelve (12) calendar months from the effective date of this Ordinance a moratorium on the Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities unless earlier terminated by other Ordinance, duly adopted

Section 7. Prohibited Actions and Reservation of Right.

- A. Prohibited Actions. During effective period of this Ordinance, each of the following actions shall be prohibited unless permitted under Sections 7 and 8 hereunder:
 - (1) No applications for the construction, exploration, erection, processing, development (Including Drilling) and/or installation of Hydrofracking Facilities or for approval of other plans affected by this Ordinance submitted, received or filed prior to the effective date of this Ordinance shall be considered by any board or agency of the City of Utica while this Ordinance is in effect unless the waiver provision of Section 6 hereunder is applicable.
 - (2) No applications for the construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities or for approvals of other plans affected by this Ordinance and submitted, received or filed after the effective date of this Ordinance shall be considered by any board or agency of the City of Utica while this Ordinance is in effect.
 - (3) The Common Council shall not grant any approvals which would have as the result the establishment, placement, construction, enlargement or the erection of hydrofracking facilities.
 - (4) The City of Utica Planning Board shall not grant any preliminary or final approval for a subdivision plat, site plan, special use permit or wetlands permit, including but not limited to pending application which would have as a result the construction, erection or installation of Hydrofracking Facilities.
 - (5) The Zoning Board of Appeals shall not grant any variance for any use which would result in the construction, exploration, erection, processing, development (including drilling) and/or installation of Hydrofracking Facilities.