

Town of Newport
Local Law “2” 2012

Section 1. Title

This Local Law shall be referred to as the “Local Law imposing moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Newport 2012”

Section 2. Purpose and Intent

The Town of Newport has legitimate goals and aims to protect the community as well as the Town’s cultural, historical, recreational, and environmental resources. Therefore, the Town Board believes that an extended period study of hydrofracking is necessary. The period of study will allow the Town Board to consider hydrofracking regulations meant to protect the environment as well as the town’s residential and agricultural land uses.

Pursuant to the statutory powers vested in the Town of Newport to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Newport declares a twelve month 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 Newport.

Section 3. Legislative Findings

- A. Pursuant to its legislative powers the Town of Newport, the Town Board proposes to enact a “Local Law imposing moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Newport.”
- B. The issues which led to the decision have not abated, and the issues have also not ripened to the point that the Town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue. The board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of Newport and also the State of New York is an ongoing matter of great concern and controversy throughout the state.
- C. It is not yet clear as to what safeguards are anticipated to be put in place by the NYDEC and/or NY Legislature to protect New York waters, air, soil, flora, fauna, properties and people, nor exactly how long such regulations may take to enact. Accordingly, it is difficult for the Town to determine the type of legislation that would be necessary, required or permitted, until well after the State clarifies its position.
- D. This Board is desirous of utilizing this extended moratorium period to continue to monitor and review state legislation, legislations of other towns and municipalities

relating to this subject and gathering the continuing mass of information that is becoming available on this subject; and including possible legislative language for the town as suggested by experts in the field. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.

- E. However, the Town is also concerned with the potential for damage to groundwater quality and quantity, the potential for sedimentation and erosion and the method of disposal of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water, including the use of surface water (streams, wetlands), 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 which would affect many water wells throughout Newport. There may also be further impact to local roads during the construction and use of any potential well. Lastly, the Town is concerned with the potentially negative impacts on water quality, agricultural land uses and wetlands.
- F. At this point it is important to note that there are no hydrofracking activities pending in the Town. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on hydrofracking is appropriate and necessary in order to preserve the status quo until new regulations can be adopted.

Section 4. Definitions

- A. The terms Hydraulic fracturing and/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 the breaking and/or fracturing of shale and/or natural structures under the ground intending to release natural gas from the ground.
- B. The term “Town” when used in this Local Law shall mean the Town of Newport.
- C. The terms “Town Board”, “Planning Board” and “Zoning Board of Appeals” when used in this Local Law shall refer to the appropriate boards established in the Town of Newport.

- D. The term “Person” when used in this Local Law shall include an individual, society, club, firm, partnership, joint venture, corporation, or the association of persons, and the singular shall includes the plural number.

Section 5. Scope of Controls

A. During the effective period of this Local Law:

1. The Town Board of the Town of Newport shall not grant any approvals that would have as the results 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 Newport.
2. The Town Planning Board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result 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 Newport.
3. The Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result 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 Newport.
4. The Codes Enforcement Officer shall not issue any permit that would have as a result 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 Newport.

- B. The Town Board of the Town of Newport reserves the right to direct the Codes Enforcement Officer to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 6. No Consideration of New Applications

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

Section 7. Term

The moratorium imposed by this Local Law shall be in effect for a period of 365 days from the date of this Local Law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

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 \$1000.00 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. They will incur any and all Town costs and reasonable attorney fees.

Section 9. Penalties

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 associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to such penalties.

Section 10. Validity

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

Section 11. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.