

# ***FILING LOCAL LAW***

New York State Department of State  
41 State Street, Albany, NY 12231

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(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  
City  
**Town of Phelps**  
Village

FILED  
STATE RECORDS  
OCT 18 2011

Local Law No. 3 of the year 2011.

DEPARTMENT OF STATE

A local law    **"Establishing a Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing"**

(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County  
City  
**Town of Phelps**  
Village

as follows:

Section 1.     TITLE:

This Local Law shall be known as the "Moratorium on Horizontal and Directional Gas Drilling and Hydraulic Fracturing".

Section 2.     STATEMENT OF LEGISLATIVE INTENT:

It is the purpose of this local law to prevent serious detrimental health and environmental effects posed by the practices of horizontal or directional gas drilling and hydraulic fracturing, also known as hydro-fracking, which could threaten the Town of Phelps through potential contamination of aquifers and fresh water supply, the use of massive quantities of water, the disposal of the fracking fluids, the release of chemicals used in the processes and the impact upon local landscapes which could result in the degradation of the Town of Phelps's significant environmental, natural, aesthetic and agricultural resources as well as to the Town of Phelps's infrastructure. It is the further purpose of this local law to enable the Town of Phelps to have sufficient time to draft and enact a local law establishing regulations pertaining to the practices of horizontal or directional gas drilling and hydraulic fracturing within the Town of Phelps.

### Section 3.      DEFINITIONS

- A. HORIZONTAL OR DIRECTIONAL DRILLING – The practice of digging a well, first, down vertically to a depth above the target gas-bearing rock formation, then, on a curve so that the hole is drilled horizontally or at an angle within the gas-bearing rock.
- B. HYDRAULIC FRACTURING OR HYDRO-FRACKING – The practice of pumping a fluid and a propping material, typically composed of sand or other chemicals, down a well under high pressure to create fractures in gas-bearing rock.
- C. TOWN: Town of Phelps, Ontario County, New York
- D. TOWN BOARD: Town of Phelps Town Board
- E. PLANNING BOARD: Town of Phelps Planning Board
- F. BUILDING INSPECTOR: Town of Phelps Building Inspector

## Section 4. MORATORIUM.

- A. The Town Board hereby enacts a moratorium which shall prohibit the review, approval or creation of any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town.
- B. This moratorium shall be in effect for a period of one (1) year from the effective date of this Local Law and shall expire on the earlier of (i) the date one (1) year from said effective date, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.
- C. This moratorium shall apply to all real property within the Town.
- D. Pursuant to this moratorium, the Planning Board shall not review any applications for any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) and shall not grant any preliminary or final site plan approval to any property on which is intended to have on it any well, project or business involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) within the Town.
- E. Pursuant to this moratorium, the Building Inspector shall not issue Building Permits for the construction of any well involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) anywhere within the Town.

F. Pursuant to this moratorium, no applications for variances, special use permits or other approvals involving any new wells, projects or businesses involving the practices of horizontal or directional drilling or hydraulic fracturing (hydro-fracking) shall be processed or granted.

Section 5. PENALTIES.

Any person, firm, entity or corporation which shall violate the provisions of this Local Law, shall be subject to:

1. A penalty in the amount of a minimum of \$100.00 and a maximum of \$250.00 for each day that such violation shall exist; and
2. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or improvements which may have been built in violation of this Local Law.

It shall be the duty of the Building Inspector to enforce the provisions of this Local Law.

Section 6. VALIDITY.

If any clause, sentence, paragraph, section 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 operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 7. SUPERSEDING EFFECT.

Pursuant to New York Municipal Home Rule Law, Section 22, the provisions of this law are to supersede any inconsistent provision of state or local law.

Section 8. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State and shall remain in force and effect for a period of one (1) year from the date of such filing.