

LOCAL LAW NUMBER 5 OF 2011 OF THE TOWN OF NILES

Section 1. Title

This Local Law shall be referred to as the "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of Niles.

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of Niles to regulate and control land use and to protect the health, welfare, and safety of its residents, the Town Board of the Town of Niles 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 Niles.

Section 3. Legislative Findings

The Town Board of the Town of Niles 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 ongoing. At this point, it is not yet clear as to what, if any, regulatory regimen may be put in place by 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, its impact on the physical and human environment in the Town and the possible need for local legislation.

Section 4. Scope of Moratorium

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 know 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 Niles.

Section 5. Term

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

Section 6. Penalties and Enforcement

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 this Local Law.

Section 7. 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 8. Hardship

A. In the event that any owner of real property affected by this Local Law shall suffer an unnecessary hardship because of the 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 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 shall be in writing and shall set forth or have attached thereto evidence of the claimed hardship. 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 9. 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 horizontally 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 ground and intending to release natural gas from the ground.

B. The term "Town" shall mean the Town of Niles.

C. The terms "Town Board", "Planning Board" and "Zoning Board of Appeals" shall refer to the appropriate boards established in the Town of Niles pursuant to the Town Law. The term "Codes Enforcement Officer" shall mean the duly appointed officer in the Town of Niles charged with the enforcement of the Town's zoning and related codes.

10. 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.

11. 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 §27 of the Municipal Home Rule Law.