

**TOWN OF KIRKLAND
COUNTY OF ONEIDA, STATE OF NEW YORK**

Local Law No. 1 of 2011

Moratorium on Construction, Exploration, Erection, Processing,
Development (Including Drilling)
And/or Installation of Hydrofracking Facilities

Be it enacted by the Town Board of the Town of Kirkland
twelve(12)calendar months as follows:

Section 1. Title.

This Local law shall be known as *A*Moratorium on Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities*@* of the Town of Kirkland, New York. This Local Law may be cited in short form as the *A*Hydrofracking Moratorium Law*@* of the Town of Kirkland, New York.

Section 2. Statement of Authority.

This Local Law is adopted pursuant to authority vested in the Town Board by New York State Constitution Article IX, Section 2; Sections 10, 11 and 22 of the New York Municipal Home Rule Law; relevant portions of the New York Town Law; the Code of the Town of Kirkland; and the general police power of the Town of Kirkland to promote health, safety, and welfare of all residents and property owners in the Town.

Section 3. Statement of Purpose.

It is the purpose of this act to declare a Town of Kirkland policy to temporarily prevent the construction, exploration, 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 Local Law, pending the completion and possible adoption of permanent comprehensive regulations.

Section 4. Statement of Legislative Findings and Declaration.

The Town of Kirkland (Athe Town@) hereby finds and declares as follows:

- A. The Town faces significant growth and developmental pressures. Novel development of all types increasingly infringes on the landscape and associated natural features of the Town including the groundwater supply. These important natural resources provide ecological benefits, recreation and scenic beauty which help define the Town and are valuable for the Town=s economy and quality of life. The Town=s natural features and framework of land use and development control typically constrain such growth.
- B. The Town Board of the Town of Kirkland has, however, identified a land use which, if advanced under the Town=s present zoning framework, would on the basis of scale, location or character frustrate achievement of the future vision for the Town. Specifically, this land use has been identified to be Hydrofracking.
- C. The Town Board finds that existing laws do not sufficiently address the issues raised by recent interest in construction, exploration, erection, processing, development (including drilling) and/or installation of hydrofracking facilities in the Town. 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 Town 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 Town 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 Hydrofracture to be such concern that they are proposing to adopt and/or extend a moratorium on hydrofracture. Review of the Town=s Comprehensive Zoning Plan and associated zoning ordinances is warranted in light of the burgeoning interest in exploring hydrofracking in the Town because of the Town=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 Town of Kirkland to lose these resources forever, the Town Board finds it necessary to review and address a number specific issues related to the intensity and impacts of development and growth on the Town.
- 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 Town, The Town Board determines to review the foregoing factors, conditions and information, to update the Town=s Comprehensive Zoning Plan and associated zoning ordinances:
 - (1) Promotion and regulation of agricultural growth in the Town; 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 Town of Kirkland; 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 Town of Kirkland; and

- (10) Federal, state, and local tax implications for the Town of Kirkland, 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 (ASEQRA); and consideration of additional Type I and/or Type II actions, in accordance with 6 NYCRR Part 617.14; and
 - (14) Protection of the Town=s 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 (ANYSERDA), New York State Department of Environmental Conservation (ANYSDEC), and other knowledgeable and regulatory bodies; and
- G. The Town Board 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 at least several months and is reasonably expected to 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.
- H. To fulfill the Town=s constitutional, statutory, and legal obligations to protect the public health, welfare and safety of the residents of the Town of Kirkland; and to protect the value, use, and enjoyment of property in the Town, the Board intends to hereby adopt a Local Law establishing a moratorium on hydrofracking for a reasonable time during which the Town Board of Kirkland 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 Local Law is included herein to balance interests between the public need to safeguard the

resources and character of the Town; 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 Local Law 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 Town of Kirkland Code, and that failing, the Town of Kirkland Zoning Board of Appeals under its power of interpretation by appeal.
- B. As used in this Local Law, 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 Town Board hereby declares for a period of twelve (12) calendar months from the effective date of this Local Law a moratorium on the Construction, Exploration, Erection, Processing, Development (Including Drilling) and/or Installation of Hydrofracking Facilities unless earlier terminated by other local law, duly adopted.

Section 7. Prohibited Actions and Reservation of Right.

- A. Prohibited Actions. During effective period of this Local Law, 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 Local Law submitted, received or filed prior to the effective date of this Local Law shall be considered by any board or agency of the Town of Kirkland while this Local Law 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 Local Law and submitted, received or filed after the effective date of this Local Law shall be considered by any board or agency of the Town of Kirkland while this Local Law is in effect.
 - (3) The Town Board shall not grant any approvals which would have as the result the establishment, placement, construction, enlargement or the erection of hydrofracking facilities.
 - (4) The Town of Kirkland 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 applications 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.
- (6) The Zoning Enforcement Officer shall not issue any permit which would result in the construction, exploration, erection, processing, development (including drilling) and/or installation of hydrofracking facilities.
- (7) No issuance of a findings statement, conditioned negative declaration, or negative declaration, or acceptance, filing or publication of any Final Environmental Impact Statement under the State Environmental quality Review Act in connection with any prohibited action described in this section.

- B. Reservation of Right. The Town Board reserves the right to direct the Zoning Enforcement Officer or Building Code Inspector to revoke or rescind any Zoning permits, Building Permits, or Certificates of Occupancy issued in violation of this Local Law.

Section 8. Waiver.

Any party considering itself extraordinarily aggrieved by the above prohibitions may apply to the Town Board for an exception from this Local Law as provided herein. The Planning Board and Zoning Board of Appeals may continue to consider and review any proposal application begun prior to enactment of this Local Law, but otherwise prohibited hereunder subject to the following terms and conditions.

- A. Substantive requirements. A valid application for an exception based on extraordinary hardship shall be filed with the Town of Kirkland Clerk as of the effective date of this local law pertaining to a proposal, including a fee of Two Thousand and 00/100 Dollars (\$2,000.00) to cover processing and advertising costs, by the property owner, or the applicant with the written consent of the property owner. The application shall recite all of the specific facts which are alleged to support the claim of extraordinary hardship, and shall contain such other information and/or documentation as the Town Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- B. Risk of loss. The applicant assumes the sole risk of pecuniary or other loss, including without limitation the costs of technical and legal consultation and the costs of preparation of any submissions, reports, or information required by the Planning Board or Zoning Board of Appeals pursuant to the Code of the Town of Kirkland, the State Environmental Review Act or other applicable federal and state laws or regulations, arising out of such continued consideration and review during the pendency of this Local Law.
- C. Public Hearing. Such application shall be the subject of public hearing before the Town Board. A public hearing on any application for an exception for extraordinary hardship shall be held by the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship exception has been filed with the Town Clerk and upon five (5) days public notification in the official newspaper of the Town. At said public hearing, the property owner and other parties wishing to present evidence on the proposed waiver shall have the opportunity to be heard. The Town Board shall determine by motion duly adopted when an application is complete.

- D. Relief. The Town Board is authorized to consider and, on good cause, grant an exception based upon a claim of extraordinary hardship. In reviewing an application and determining the suitability of an exception under this section the Town Board shall consider the following criteria, which the petitioner should demonstrate by clear and convincing evidence.
- (1) The extent to which the applicant has, prior to the effective date of this law, received any development approval for the proposed development.
 - (2) The extent to which the good faith construction, exploration, erection, processing, development (including drilling) and/or installation of hydrofracking facilities would cause significant environmental degradation, adversely impact adjacent natural resource areas, harm the public health or safety and/or have one or more of the possible negative impacts set forth in Section 4(F) of this Local Law.
 - (3) Whether the Moratorium will expose the applicant to substantial monetary liability to a third person; or would leave the applicant completely unable, after thorough review of alternative solutions, to earn a reasonable return on the property belonging to the person.
 - (4) The extent to which the applicant establishes that the proposed construction, exploration, erection, processing, development (including drilling) and/or installation of hydrofracking facilities would not lead to significant environmental degradation.
 - (5) Adverse effect on the goals or objectives of the Town in revising the comprehensive zoning plan and associated zoning codes hereunder; and
 - (6) The project=s harmony, or lack thereof, with the existing character of the community as a whole and the area of the community in which the property is located; and the consistency with any interim data, recommendations, or conclusions which may be drawn from the studies in progress hereunder
- E. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall act upon the application. The Town Board shall, within forty-five (45) days of the close of the public hearing, render its decision in writing, either granting or denying the petition for waiver from the strict requirements of this Local Law.
- F. It shall be within the discretion of the Town Board to grant in whole or in part, or deny, the petition for relief from the terms of this Local Law. In the event that the Town Board grants the petition, the petitioner shall be permitted to submit the proposed project to the Planning Board and if necessary the Zoning Board of Appeals for a full review of the proposed project in accordance with all applicable code provisions. Any approval by the Planning Board or the Zoning Board of Appeals must comply with code provisions in effect at the time of such approval, including any applicable provisions which the Town Board may adopt pursuant to the studies undertaken hereunder.
- G. Applicants are hereby informed that the Town Board of the Town of Kirkland is considering changes to such comprehensive zoning plan which may address the issues raised by their applications, and which may alter the determinations made thereon by the Planning Board or Zoning Board of Appeals, as applicable, from those which might have occurred on the absence of such changes.
- H. The Planning Board and Zoning Board of Appeals shall not issue any preliminary or final approval on any application subject to this Local Law during its term.

- I. Applications processed under this section shall, unless otherwise stated herein, be determined by the provisions of the Code of the Town of Kirkland in effect at the time of such determination, and not as of the effective date of this Local Law.

Section 9. Penalties.

Any person, partnership, firm, or corporation that shall construct, explore, erect, process, develop (including drilling) and/or install hydrofracking facilities in violation of the provisions of this Local Law shall be subject to:

- A. A fine not to exceed Five Thousand(\$5,000.00) Dollars or imprisonment not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil penalties as may otherwise be provided by law, rule and regulation for such violations; and
- B. Injunctive relief in favor of the Town of Kirkland to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction which may have taken place in violation of this Local Law.

Section 10. Statement of Supersession.

- A. During the time that this law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances, and provisions. Without limitation, this Local Law hereby supersedes provisions of the following legal authorities to the extent to which such provisions are inconsistent with the same.
 - (1) Town Law of New York State Sections 130, 176, 261, 262, 263, 264, 265, 267, 268, and 269, 274, 276, to the extent inconsistent with the same and to the extent permitted by the Constitution of the State of New York, the Municipal Home Rule Law; especially those provisions relating to time limits
 - (2) Municipal Home Rule Law Sections 20, 21, 22,23,24,25,26 and 27.
 - (3) Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the Constitution of the State of New York, and the Municipal Home Rule Law
 - (4) Code of the Town of Kirkland to the extent that such provisions require that the Planning Board and/or Building Inspector of the Town of Kirkland receive, review and decide, subdivision and commercial site plans related to the otherwise prohibited herein within specified time frames.
 - (5) Article 8, Section 8-0109, subsection (4) and (5) of the NYS Environmental Conservation Law and regulations thereunder (6 NYCRR Part 617) to the extent that such provisions require that the Planning Board or any lead agency determine the environmental significance of an application for a subdivision and/or site plan approval otherwise prohibited herein within certain specified time frames.
- B. To the extent that any other statute not expressly enumerated heretofore is determined to be in conflict with the provisions hereof, this Local Law shall supersede the provisions thereof to the extent authorized by law.

Section 11. Severability.

Should any section, sub-section, paragraph, sub-paragraph, sentence, clause phrase, or other portion of this Local Law be declared invalid by a court of competent jurisdiction such action shall not be construed to invalidate the remaining portion if this Local Law.

Section 12. Effective Date.

This Local Law shall take effect immediately upon filing by the Town with the Secretary of State of the State of New York as provided in section 27 of the Municipal Home Rule Law.