

Local Law No. 1 of 2014

A local law extending the existing moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing” in the Town of Westerlo for an additional twelve (12) months.

Local Law No. 1 of 2014, entitled “Extension of the Gas Drilling Moratorium” to extend Local Law No. 2 of 2012 of the Town of Westerlo, the moratorium on applications, approvals or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing” in the Town of Westerlo, which was extended for twelve (12) months by Local Law No. 1 of 2013, for an additional twelve (12) months.

Section 1. Title

This law shall be known as the Extension of the Gas Drilling Moratorium.

Section 2. Purpose and Intent

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”), enacted Local Law No. 2 of 2012, which created a Moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing” (hereinafter referred to as “hydrofracking”), acknowledged the controversy surrounding the process of hydrofracking. In enacting the initial moratorium, the Board recognized that the hydrofracking process and its related activities have generated significant controversy: some constituents question the impact to the town’s water supply and roads as well as the safety of residents due to the increased truck traffic, the affect on property values, local economy and community character, and the implications to the residents’ quality of life, while others who own large tracts of land ripe for hydrofracking, express a desire to be able to contract with companies that perform hydrofracking.

In recognizing that there was significant potential impact from hydrofracking, if the same was to be authorized by the State of New York, the Board enacted Local Law #2 of 2012 of the Town of Westerlo – which created a moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process of hydrofracking, to provide the Board the time necessary to evaluate whether, and under what circumstances, the process of hydrofracking should be permitted in the Town of Westerlo. During the initial moratorium period, the Town formed a hydrofracking committee to assemble factual and scientific information regarding the hydrofracking process, and to report to the Board with a recommendation regarding how to regulate land use with respect to gas drilling and, in particular, hydrofracking. The committee, which consisted of five members, met at least once per month, and as tasked, gathered

information regarding the hydrofracking process and its effects on communities where these activities had been permitted. The Committee issued a lengthy (148 pages) report regarding hydrofracking, its impact on the environment and its impact on the infrastructure and economy of the localities in which it was located.

The initial one-year moratorium was intended to temporarily suspend administrative review, approval process and/or drilling activities associated with the production of natural gas on lands located in the Town of Westerlo in order to provide the Town adequate time to investigate and evaluate the issues involved with hydrofracking, and, depending on the State's final action, determine how any State regulation will affect the Town of Westerlo. That period was used by the Committee to conduct the initial evaluation of the hydrofracking process and produce its report. The report, which was submitted in May 2013, was deemed incomplete by the Board. The Board requested that the Committee continue its evaluation in order to provide more information from which the Board could make a determination as to whether modifications to the existing Zoning Law in the Town of Westerlo were necessary. As a result of the need for continued evaluation of how the Town of Westerlo should best address, if at all, hydrofracking activities within its borders, the Board extended the initial moratorium for an additional twelve months. The effective date of the extension was August 1, 2013.

The Committee continued to meet to conduct additional evaluation in order to provide adequate information for the Board to determine if the Town's current zoning law provides sufficient guidance regarding possible applications for natural gas drilling within its geographical borders and/or whether the current zoning law should be amended to add a new Article to specifically address natural gas drilling, and particularly, hydrofracking, similar to the Board's passage of Article 17 of the zoning law to address Wireless Communication facilities. The extension of the initial moratorium expires on August 1, 2014. While the Committee generated a revised report, and the Board has held numerous public hearings on the issue of hydrofracking and sought the public's input on such activities in the Town of Westerlo, the Board has not determined what, if any, amendments are necessary to the current Zoning Law to address land use controls relating to potential applications for natural gas drilling activities within the Town, and will be unable to do so before the expiration of the current extension period.

Consequently, in order to provide the necessary time to review the current zoning law, determine if the current law adequately addresses the Board's position with respect to hydrofracking activities, and, if the law needs modification, provide adequate time to craft the modifications, hold the necessary public hearings, submit the proposed changes to the Albany County Planning Board for review and enact the same, it is necessary to extend the existing moratorium for an additional 12 months.

The extension of the moratorium applies to new and pending proposals or activities regarding gas drilling. The moratorium is enacted pursuant to the statutory powers vested in the Town of Westerlo to regulate and control land use and to protect the health, safety and welfare of its residents.

Section 3. Enactment

The Town of Westerlo hereby extends the current moratorium on the application for, approval of or actual drilling for or extraction of natural gas within any shale deposit located in the Town of Westerlo by the process commonly known as hydrofracking, for an additional twelve (12) months.

Section 4. Authority

The extension of the current moratorium is enacted by the Board pursuant to its authority to adopt local laws under the New York State Constitution, the New York State Town Law, and the Municipal Home Rule Law.

Section 5. Moratorium Imposed

For the period of twelve (12) months immediately following the effective date of this local law, there continues a moratorium on all applications or activities on or under land that would have as the result the drilling for or extraction of natural gas within the Town of Westerlo from any shale deposit in the Town by the process known as hydrofracking.

This moratorium also applies to any activities with the Town, whether directly or indirectly associated with, that helps to and/or support, exploration, drilling for or extraction of natural gas and its associated support activities.

During the periods in which the moratorium is in effect, no approvals, permits, actions or decisions shall be made or issued by any Board or official of the Town of Westerlo with respect to any such applications for gas drilling. This moratorium shall apply to all such applications, whether pending or received prior to the effective date of this law. No such applications seeking approvals or permits for any such activities shall be accepted by any Board or official of the Town of Westerlo and no person, company, entity of any kind shall engage in such drilling activities for natural gas while this law remains in effect. Further, no person, corporation or other entity shall undertake any site preparation, including but not limited to clearing, grading, and filling, or construction activities, with respect to any application, proposed land use, subdivision, or development that is subject to this moratorium.

Section 6. Enforcement

This local law shall be enforced by the Code Enforcement Officer of the Town of Westerlo or such other individual(s) as designated by the Board. It shall be the duty of the enforcement individual to advise the Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to such enforcement.

Section 7. Violations

Any person, firm, entity or corporation violating any of the provisions of this local law shall be guilty of an offense and upon conviction thereof, shall be subject to civil penalties in the amount of fifty thousand dollars (\$50,000.00) per day plus actual damage for each day such violation exists and/or an action for injunctive or equitable relief.

Section 8. Supersession

To the extent that this local law is inconsistent with any state statute or regulation, it is the intent of this law to supersede such statutes or regulations.

Section 9. Severability of Provisions

Should any section or provision of this local law be declared null, void voidable or invalid; such finding shall not affect the validity of the remaining portions of this local law.

Section 10. Effective date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State's Office.