

TOWN OF WESTMORELAND
LOCAL LAW NO. 1 of the year 2011

**A LOCAL LAW TO PROHIBIT THE
EXTRACTION OF NATURAL GAS
THROUGH HYDRAULIC FRACTURING**

Section 1. TITLE

This local law shall be known as the "Moratorium on Gas Extraction through Hydraulic Fracturing in the Town of Westmoreland."

Section 2. LEGISLATIVE INTENT

Pursuant to the statutory powers vested in the Town of Westmoreland to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Westmoreland hereby declares a twelve (12) month moratorium on the process known as hydraulic fracturing, or "hydrofracking," as well as 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 Westmoreland. See, Municipal Home Rule Law §§10, 20, and 22; Town Law Article 16.

Section 3. LEGISLATIVE FINDINGS

The New York State Department of Environmental Conservation (DEC) is in the process of actively studying the environmental impacts of natural gas extraction through hydrofracking and possibly, with the State of New York, regulating same. Such studies and analysis have not yet resulted in definite and final legislation and this Board is desirous of utilizing this moratorium period to review proposed legislation and to determine the extent to which such legislation will play a role in the regulation of natural gas extraction at the local level and to determine whether permanent prohibition of such industry by the Town will become necessary.

This moratorium is intended to provide the time for study of this issue so that comprehensive and fair legislation can be drafted to address these issues. The Town Board also determines that while the review of these regulations is being undertaken, and in consideration of the significant environmental issues surrounding natural gas extraction and the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium is appropriate and necessary in order to preserve the status quo until the new laws and regulations can be adopted.

Section 4. DEFINITIONS

- A. Hydraulic Fracturing or "Hydrofracking" shall mean the process of recovering and/or developing natural gas trapped behind shall 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 chemicals are injected into the well at high pressure, breaking and or fracturing the shale and/or natural underground composition, to release the natural gas from the ground and extract same to the surface through pipes.

- B. Town, when used in this Local Law, shall mean the Town of Westmoreland.
- C. Town Board, Planning Board and Zoning Board of Appeals, when used in this Local Law shall refer to the appropriate boards as established in the Town of Westmoreland.
- D. Department of Codes Enforcement, when used in this Local Law shall refer to the Codes Enforcement Department and Officers as established by the Town of Westmoreland.
- E. 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 include 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 Westmoreland shall not grant or approve any action that would directly or indirectly result in the establishment, implementation, placement or construction associated with natural gas extraction or the process of hydrofracking, including any activity associated therewith or intending to support such process or activity in the Town of Westmoreland.
 - 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 directly or indirectly result in the establishment, implementation, placement or construction associated with natural gas extraction or the process of hydrofracking, including any activity associated therewith or intending to support such process or activity in the Town of Westmoreland.
 - 3. The Town Zoning Board of Appeals shall not grant any variances, special use permit, specific use permit or other permit that would directly or indirectly result in the establishment, implementation, placement or construction associated with natural gas extraction or the process of hydrofracking, including any activity associated therewith or intending to support such process or activity in the Town of Westmoreland.

4. The Town Department of Codes Enforcement shall not consider or issue any permit that would directly or indirectly result in the establishment, implementation, placement or construction associated with natural gas extraction or the process of hydrofracking, including any activity associated therewith or intending to support such process or activity in the Town of Westmoreland

- B. The Town Board of the Town of Westmoreland 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 the 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 the Local Law is in effect.

Section 7. TERM

The moratorium imposed by this Local Law shall be in effect for a period of three hundred and sixty-six (366) days from the effective date of this local law. This moratorium may be extended for an additional period of three-hundred and sixty-five (365) days upon review and consideration of the status of the New York State Department of Environmental Conservation research and inquiries and the position of New York State on the subject of hydraulic fracturing within New York State.

Section 8. ENFORCEMENT, VIOLATIONS & PENALTIES

A. Enforcement

This Local Law shall be enforced by the Codes Enforcement Officer of the Town of Westmoreland, or such other individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this Local Law and to keep all records necessary and appropriate and to file the same in the Office of the Town Clerk.

B. Violations & Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct a natural gas extraction station, or implement any process known to be utilized in the extraction of natural gas, such as hydraulic fracturing, 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:

1. A civil penalty of no less than \$500, but no less than \$1,000 per day of the violation. Each day of the violation shall constitute a separate and additional violation. An action to recover any such penalty may be filed in a court of competent jurisdiction; 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 reconstruction that may have taken place in violation of this Local Law.

Section 9. HARDSHIP

A. Hardship Defined:

Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board in writing for a variance from strict compliance with this Local Law upon submission of proof of such hardship. For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan, or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure:

Upon submission of a written application to the Town Clerk by the property owner seeking a variance, along with copies of same and the requisite filing fee of \$, which application shall specifically identify the land involved, the nature of the proposed use and the circumstances pursuant to which a variance is deemed warranted, the Town Board shall within thirty (30) days from receipt of said application, investigate, analyze and make an initial determination on the permissibility of such variance applied for. The Town Board may consult with the Zoning Board, Planning Board, Codes Enforcement Office or any other relevant expert/consultant, in making its determination. If deemed permissible, then the Board shall within forty-five (45) days of receipt of the original application, schedule a Public Hearing on said application upon five (5) days written notice to be posted at the Town Hall and in at least one local newspaper in accordance with Town Law. At the Public Hearing, the property owner and any other parties wishing to present evidence for or against the application shall have an opportunity to be heard. The Town Board shall thereafter have thirty (30) days from the date of said hearing to render a decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship in this Local Law is strictly applied to the applicant's particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law. The Applicant shall be responsible for all costs incurred by the Town in investigating and evaluating the

application, including expert and/or consultant fees. Failure of Applicant to immediately pay Town for same upon request shall result in immediate dismissal of the Application.

Section 10. SEVERABILITY & CONFLICT OF LAWS

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.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York. Throughout the duration of this Local Law, it shall take precedence over and shall be controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law related to zoning and subdivisions, specifically Town Law §§130, 261-269, 274-1, 274-b, and 276-279.

Section 11. EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing in the Office of the New York Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.