

Town of Westmoreland  
Local Law No. 3 of the year 2013

**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. PURPOSE AND LEGISLATIVE INTENT**

The Town of Westmoreland has legitimate goals and aims to protect the community as well as the Town’s cultural, historical, recreational, and environmental resources. Therefore, the Town Board believes that an extended period study of hydrofracking is necessary. The period of study will allow the Town Board to consider hydrofracking regulations meant to protect the environment as well as the town’s residential and agricultural land use.

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.

**Section 3. LEGISLATIVE FINDINGS**

Pursuant to its legislative powers of the Town of Westmoreland, the Town Board proposes to enact a Local Law to Prohibit the Extraction of Natural Gas Through Hydraulic Fracturing.

The issues which led to the decision have not abated, and the issues have also not ripened to the point that the Town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue. The board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue of hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of Westmoreland and also the State of New York is an ongoing matter of great concern and controversy throughout the State of New York.

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. Therefore, it is not yet clear as to what safeguards are anticipated to be put in place by the DEC and/or NY Legislature to protect New York waters, air, soil, flora, fauna, properties and people, nor exactly how long such regulations may take to enact. Accordingly it is difficult for the Town to determine the type of legislation that would be necessary, required or permitted, until well after the State clarifies its position.

This Board is desirous of utilizing this moratorium period to continue to review proposed New York State legislation, legislation of other towns and municipalities relating to this subject, gathering the continuing mass of information that is becoming available on this subject, and considering any and all possible legislative language for the town which is suggested by experts in this field. Furthermore, the Board desires 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. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.

The Town is also concerned with the potential for damage to groundwater quality and quantity, the potential for sedimentation and erosion and the method of disposal of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water including the use of surface water, private ponds, groundwater, municipal water, waste water and procured water. Further, the use of hydrofracking will create more demand for commercial waste water treatment facilities to dispose of produced water. The Town Board is concerned with the potential for groundwater pollution which could affect many water wells throughout Westmoreland. There may also be further impact to local roads during the construction and use of any potential well. Lastly, the Town is concerned with the potentially negative impacts on water quality, agricultural land uses and wetlands.

It is also important to note that there are no hydrofracking activities pending in the Town. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on hydrofracking is appropriate and necessary in order to preserve the status quo until new 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. The Zoning Board of Appeals can, however, grant a hardship variance if consistent with all provisions of Section 9 of this Law.
  - 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 not more than 180 days by the Town Board.

**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**

The Zoning Board of Appeals is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship:

In order to prove such unnecessary hardship the applicant is required to demonstrate to the Zoning Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return:

In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

C. Unique Hardship:

No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood:

In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the

town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (i) pose a threat to the public safety, including public health, water quality or air quality, (ii) cause an extraordinary public expense, or (iii) create a nuisance.

E. Self-Created Hardship:

The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Zoning Board of Appeals finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

F. 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 \$100.00, 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 Zoning Board of Appeals 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 Zoning Board of Appeals may consult with the Town Board, Planning Board, Codes Enforcement Office or any other relevant expert/consultant, in making its determination. If deemed permissible, then the Zoning Board of Appeals, with the assistance of the Town Board and the Town Clerk, 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 Zoning Board of Appeals 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.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's current (as of the effective date of this Local Law) land use laws and

other laws and regulations, together with any amendments to law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Zoning Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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 the 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.