

**DRAFT 2/1/2012**

Town of Jerusalem  
Local Law No. \_\_\_\_\_ of the Year 2012

A local law to amend and supplement the  
'Town of Jerusalem Zoning Ordinance' adopted on  
October 14, 1974 as it has been heretofore amended,  
by:

Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Area and Use Variances  
Generally, and Use Variances Respecting Explicitly Prohibited Uses Specifically.

***Be it enacted by the Town Board of the Town of Jerusalem as follows:***

**Article I. General Provisions**

**Section 1.1. Authority for Adoption**

The Town Board hereby adopts this Local Law pursuant to the authority described at Section 1. of **Appendix A** attached hereto, which **Appendix A** is hereby incorporated and made a part of this Local Law for all purposes by this reference.

**Section 1.2. Findings of Fact**

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law, and a copy of the text of such findings, determinations, and declarations is set forth at Section 2. of **Appendix A** attached hereto.

**Section 1.3. Purpose & Intent**

The Purposes and Legislative Intent underlying the Town Board's passage of this Local Law are set forth at Section 3. of **Appendix A** attached hereto.

**Section 1.4. Definition of "Existing Zoning Law," this "Local Law," and "this "Law"**

As used in this Local Law, the term "Existing Zoning Law" shall mean and be the Zoning Ordinance of the Town of Jerusalem adopted October 14, 1974 and all amendments thereto, which have been codified as the "Code of the Town of Jerusalem".

As used herein, the term this “Local Law” shall mean and be this Local Law No. \_\_\_ of 2011.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” and “herein” shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

### **Section 1.5. Interpretation**

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

## **Article II. Amendments of Existing Zoning Law**

### **2.1. Amendments of Article I of the Existing Zoning Law**

Article I of the Existing Zoning Law is hereby amended so as to add the following new § 160-3A thereto, said new § 160-3A to be inserted immediately after the text of present § 160-3 thereof (entitled ‘Purpose’) and immediately prior to the words “Article II Definitions”:

“§ 160-3A. **Severability.** If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.”

### **2.2. Amendments of Article II of the Existing Zoning Law**

**A.** § 160-5 of the Existing Zoning Law is hereby amended so as to delete the first sentence thereof (beginning “As used in this chapter...”) in its entirety, and to replace the same with the following text:

“Except where specifically defined herein, all words used in this Law shall carry their customary dictionary meanings. For purposes hereof, the following terms shall have the meanings respectively indicated below. Additionally, see Article XXIII of this Law which prohibits the therein defined Explicitly Prohibited Uses in each and every zoning district within the Town.”

**B.** § 160-5 of the Existing Zoning Law is further hereby amended so as to insert the following definition of “Comprehensive Plan” therein, said definition to be inserted immediately after the present definition of “COMMERCIAL USE,” and immediately before the present definition of “COURT”:

“COMPREHENSIVE PLAN -- The Comprehensive Plan adopted by the Town Board of the Town of Jerusalem for the future preservation and development of the Town pursuant to § 272-a of the New York State Town Law, as the same may from time to time be amended, updated, and supplemented, including without limitation by planning policy statements, goals, and standards adopted by the Town Board.”

**C.** § 160-5 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of “ESSENTIAL SERVICES,” said text to be inserted at the present end of such definition, immediately following the words “...but not including buildings”:

“; provided, however, that “essential services” shall not mean or include natural gas compression facilities or natural gas processing facilities (as those terms are defined at § 160-141 of this Law).”

**D.** § 160-5 of the Existing Zoning Law is further hereby amended so as to insert the following definition of “Explicitly Prohibited Uses” therein, said definition to be inserted immediately after the present definition of “ESSENTIAL SERVICES” and immediately before the present definition of “FAMILY”:

“EXPLICITLY PROHIBITED USES” – Shall mean and be the Explicitly Prohibited Uses defined and described in § 160-141 of this Law.”

**E.** § 160-5 of the Existing Zoning Law is further hereby amended so as to insert the following definition of “Light Industry” therein, said definition to be inserted immediately after the present definition of “LAUNDERETTE” and immediately before the present definition of “LINE, STREET”:

“LIGHT INDUSTRY” – Shall mean and be the manufacture or assembly of finished products or parts predominately from previously processed or prepared materials (including fabrication, treatment, packaging, and incidental storage, and sale and distribution of such products or parts); provided, that all operations are conducted entirely within an enclosed building, and provided, further, that such use: (a) does not produce or generate or otherwise involve on-site use or storage of natural gas and/or petroleum extraction, exploration or production wastes (as that term is defined in § 160-141 of this Law ; and (b) does not involve high frequency, high-impact truck traffic, or any other explicitly prohibited use set forth in § 160-141 of this Law.”

**F.** § 160-5 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of “QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING,” said text to be inserted immediately following the end of the sentence that begins “A lot of land or part thereof...”:

“In no event shall ‘quarry, sand pit, gravel pit, topsoil stripping’ be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities (as those terms are defined at § 160-141 of this Law).”

**G.** § 160-5 of the Existing Zoning Law is further hereby amended so as to insert the following definition of “Public Utility” therein, said definition to be inserted immediately after the present definition of “PREEXISTING LOT” and immediately before the present definition of “QUADPLEX”:

“PUBLIC UTILITY” – Shall mean and be a facility that provides electricity, gas, steam, telephone service, water or sewerage directly to the general public. For purposes hereof, a public utility is an entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission.”

**H.** § 160-5 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of “SPECIAL USE” in its entirety, and to replace the same with the following text:

“A use which because of its unique characteristics requires individual consideration through a procedure of review by the Board of Zoning Appeals, in order to determine whether a special use permit should be granted, conditionally granted, or denied.”

**I.** § 160-5 of the Existing Zoning Law is hereby further amended so as to delete the present

definition of "VARIANCE" therefrom, and to substitute therefor the following definitions of "Variance," "Variance, Area," and "Variance, Use," said replacement definitions to be inserted after the present definition of "USE, SPECIAL" and immediately prior to the definition of "WAY":

"VARIANCE -- An area variance or a use variance, as the context may admit.

VARIANCE, AREA -- The authorization by the Zoning Board of Appeals for the use of land in a manner that is not otherwise allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE -- The authorization by the Board of Zoning Appeals for the use of land for a purpose that is otherwise not otherwise allowed or is prohibited by the applicable zoning regulations."

### **2.3. Amendments of Article IV of the Existing Zoning Law**

**A.** § 160-11 of the Existing Zoning Law is hereby amended: (i) so as to delete the word "**applicability**" from the title of such Section, and to substitute the words "**Any Use Not Specifically Permitted is Prohibited**" therefor; and (ii) so as to delete present Clause A. thereof in its entirety, and to replace the same with the following text:

"A. It is the purpose of this Law to allow flexibility of land use, subject always to the restrictions, prohibitions, and requirements contained herein. Any use not specifically set forth as a permitted use in any district is hereby expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Except as otherwise provided herein: (i) no land shall be cleared, excavated, or graded, no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located. "

**B.** § 160-11 of the Existing Zoning Law is further hereby amended so as to add a (new) Clause C. thereto, said new clause to be inserted immediately following present Clause B. of § 160-11, and immediately prior to present § 160-12 of the Existing Zoning Law. The text of said new Clause C. is as follows:

"C. Refer to Article XXIII of this Law for definitions and descriptions of

specified Explicitly Prohibited Uses that are prohibited in each and every zoning district within the Town. “

C. § 160-13 of the Existing Zoning Law is hereby amended so as to delete the first sentence of Clause J. thereof (beginning “ The provisions of this chapter...” ) in its entirety, and to replace such sentence with the following text:

“The provisions of this chapter shall not apply to customary local distribution or collection lines for water, sewer, telephone, or electric service. Further, nothing in this chapter shall prohibit the transmission of natural gas through otherwise legal utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town. “

#### **2.4. Amendments of Article V of the Existing Zoning Law**

§ 160-23 of the Existing Zoning Law is hereby amended so as to add the following text to such Section, said text to be inserted as the (new) first sentence of such Section, immediately following the Section title ‘**Excavation operations**’ and immediately prior to the sentence that begins “Excavation operations, including the extraction of...”:

“For all purposes of this Law, ‘excavation operations’ shall in no event be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities (as those terms are defined at § 160-141 of this Law).”

#### **2.5. Amendments of Article IX of the Existing Zoning Law**

A. Clause E. of § 160-38 of the Existing Zoning Law is hereby amended so as to add the following text to the present end of subsection (6) thereof, to be inserted immediately following the words “pipe lines”: “other than non-regulated pipelines, as that term is defined at § 160-141 of this Law.”

B. Clause E. of § 160-38 of the Existing Zoning Law is hereby amended so as to add the following text to the present end of subsection (9) thereof, to be inserted immediately following the words “or other earth products”: “provided, however, that in no event shall the foregoing provisions of this subsection (9) be construed to mean, be, include, or authorize any Explicitly Prohibited Uses.”

C. Clause E. of § 160-38 of the Existing Zoning Law is hereby amended so as to delete the text of subsection (12) thereof (“Other uses of a similar nature as may be determined by the Zoning Board of Appeals.”) in its entirety.

#### **2.6. Amendment of Article X of the Existing Zoning Law**

A. § 160-43 of the Existing Zoning Law is hereby amended by adding a clause to the end of Clause C so that it reads in its entirety:

“C. In order to grant any special use, the Zoning Board of Appeals shall find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town or impair the intent or purpose of this Law or of the Comprehensive Plan.”

## **2.7. Amendments of Article XV of the Existing Zoning Law**

A. § 160-70 of the Existing Zoning Law is hereby amended so as to delete the text of Clause C. thereof in its entirety, and to replace the same with the following text:

“C. Variances. The Zoning Board of Appeals shall have the power, after public notice and hearing and in accordance with the requirements of law and this Law, to grant use variances and area variances as those terms are defined herein. A majority vote of the members of the Zoning Board of Appeals shall be necessary to grant a variance. Where an action is the subject of a referral to the Yates County Planning Board, the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.”

B. Article XV of the Existing Zoning Law is further hereby amended so as to add the following new § 160-70A thereto, said new § 160-70A to be inserted immediately after the text of present Clause B. of § 160-70 of the Existing Zoning Law (headed ‘Special use permits’) and immediately prior to present § 160-71 of the Existing Zoning Law:

“§ 160-70A. **Variances, Procedure.**

A. Use variances.

1. If a use variance is granted, the applicant shall obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.

2. No use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that otherwise 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) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved; (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that 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 shall 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 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 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 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 (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed 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: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) 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 Board 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.

3. In addition to the application requirements from time to time established pursuant to law and this Law, an application for any use variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for a use variance, including:

(a) **Competent Financial Evidence.** Competent financial evidence containing reasonable specification of the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed project is a part): (i) date of acquisition; (ii) the purchase price; (iii) present value of the property; (iv) the amount of real estate taxes; (v) the amount of mortgages or liens and other expenses; (vi) the asking price for the property when it had been offered for sale; (vii) the costs of demolishing any existing structures on the property; (viii) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit); (ix) efforts to market the property; and (x) a schedule of all other property in common ownership at either the date of the enactment of this law or thereafter.

(b) Competent financial evidence must include "dollars and cents proof" such as appraisals, economic studies, and any other evidence supporting the applicant's contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes hereof, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

(c) **Unique Nature of the Property.** The applicant must provide evidence demonstrating the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are

old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.

(d) Alteration of the Essential Character of the Neighborhood. The applicant must demonstrate that the proposed project will not change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential character of the neighborhood include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

(e) Hardship Not Self-Created. In order to show that the hardship is not self-created, the applicant must demonstrate that either (i) when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the applicant's purchase which makes the use non-conforming, as long as the change was not caused by the applicant.

4. The Zoning Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

5. The Zoning Board of Appeals, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

6. In addition to all other application requirements from time to time established pursuant to law and this Law, the following reports shall be required to be submitted in connection with any appeal or application for a use variance concerning what is otherwise an Explicitly Prohibited Use (as defined in § 160-141). The purpose of these reports in the context of otherwise Explicitly Prohibited Uses is to assist the Zoning Board of Appeals in its determination as to the impact of a proposed project on the Town and/or the “essential character of the neighborhood” and/or to determine whether the proposed project complies with the requirements of this Law:

(a) Environmental Assessment Form. A completed draft of an Environmental Assessment Form, Part I.

(b) Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, park, recreational, and agricultural areas, as well as all county-designated Unique Natural Areas and locally designated open space, environmental, scenic, and historic areas, and Critical Environmental Areas (if any) within a two (2) mile radius of the perimeter of the site of the proposed use.

(c) Traffic Impact Report. A traffic impact report containing: (i) the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels; (ii) existing and proposed daily and peak traffic hour levels as road capacity levels; (iii) a determination of the area of impact of traffic to and from the proposed project; (iv) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles; (v) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed project; (vi) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (vii) a traffic impact analysis of the effects of the proposed project on the transportation network in the Town using passenger car equivalents; (viii) articulation of the effects and impacts of the proposed project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system; (ix) evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions; and (x) determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic.

(d) Road Impact Report. An evaluation of (i) appropriate roadway geometry

including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes; (ii) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any high-impact trucks likely to be used in connection with the proposed project; and (iii) impacts to the rural or scenic character of any roads along the proposed traffic route.

(e) Transportation Plan. A description of ingress and egress through the proposed project site through which equipment and supplies will be delivered and which will provide access during and after construction, and identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging access/traffic routes and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.

(f) Noise Impact Report. A report on the following topics: (i) the existing audible conditions at the project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation; (ii) a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site, including noise impacts from truck traffic travelling within the Town to and from the proposed project; (iii) for the noise generated by construction and use of the proposed project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for the expectation; (iv) a description and map of the existing land uses and structures including any sensitive sound receptors (*i.e.*, residences, hospitals, libraries, schools and places of worship, parks, areas with outdoor workers) within one (1) mile of the project parcel boundaries. (Said description shall include the location of the structure/land use, distances from the proposed project, and expected decibel readings for each receptor.); (v) the report shall cover low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise; and (vi) the report shall describe the project's proposed noise-control features, including specific measures proposed to protect workers and mitigate noise impacts for sensitive receptors.

(g) Visual Assessment. A visual presentation of how the site of the proposed project will relate to and be compatible with the adjacent and neighboring areas, within a two (2) miles radius of the perimeter of the site of the proposed project. This presentation shall include computerized photographic simulation showing the site during construction and fully developed and demonstrating any visual impacts from strategic vantage points. Color photographs of the

proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

(h) Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Wastes. A report of (i) a description of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 160-141) and other solid wastes, industrial wastes, hazardous wastes and pollutants expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site; (ii) a description of controls and practices to eliminate or minimize release all such materials into the environment; and (iii) a plan for ultimate disposal of such materials whether on or off-site.

(i) Sustainability Analysis. A discussion of (i) the extent of the use of nonrenewable resources during the initial and continued phases of the proposed project; (ii) the expected duration of the initial and continued phases of the proposed project; and (iii) the extent to which the proposed project may contribute to an irreversible commitment to the continuation of this proposed use by future generations.

(j) Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the Town's and/or the neighborhood's suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses.

(k) Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed project.

(l) Fire Prevention, Equipment Failure and Emergency Response Report. A report containing: (i) description of the potential fire, equipment failures and emergency scenarios associated the proposed project that may require a response from fire, emergency medial services, police or other emergency responders; (ii) an analysis of the worst case disaster associated with the proposed project and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property; (iii) designation of the specific agencies that would response to potential fires, equipment failures, accidents or other emergencies; (iv) description of all emergency response training and equipment needed to response to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and (v) the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the site of the proposed use; and a detailed fire control and pollution prevention and emergency response plan.

(m) Public Facilities and Services Assessment. An assessment describing: (i) whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed project (taking into account all other uses that have been permitted or are currently operating in the Town); (ii) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed project (in determining the effect and impact of the proposed project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations); and (iii) a review of the impact of the proposed project on the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks, elevated sidewalks, green space buffers for pedestrians/bikes where established walking/biking route overlap/run along intended truck routes so as to prevent accidents.

(n) Property Value Assessment. A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the project on the value of properties adjoining the project site.

(o) Health Impact Assessment. A human health impact assessment that identifies ways in which the proposed project could adversely affect the health of Town residents and a priority list of recommendations to minimize the potential health impacts of the proposed project. The health impact assessment shall include (i) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the project site; (ii) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; (iii) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, a perceived loss of shared community ideals and cohesion, declining property values, impacts to the education system and sudden changes in population numbers, demographics and customs, and (iv) proposed remedies to address principal findings.

## B. Area Variances.

1. In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and

balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the Board shall consider each of the following factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Zoning Appeals, but which consideration shall not necessarily preclude the granting of the area variance.

2. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum area variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. In addition to the application requirements from time to time established pursuant to law and this Law, applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for an area variance.

4. The Zoning Board of Appeals shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community. If the applicant refuses to accept such requirements and conditions, the area variance shall be denied.”

## **2.8. Amendment to Add a New Article to the Existing Zoning Law**

The Existing Zoning Law is hereby amended so as to add the following new Article XXIII thereto, said new Article to be inserted immediately after the text of present § 160-140 of the Existing Zoning Law:

### **“ARTICLE XXIII Explicitly Prohibited Uses; Etc.**

#### **§ 160-141. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.**

A. Explicitly Prohibited Uses. The following uses and activities (***being respectively defined in Clause C. below of this § 160-141***) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (a) Disposal of Radioactive Material.
- (b) Injection well.
- (b) Land Application Facility.
- (c) Large Scale Water Use.
- (d) Natural Gas And/Or Petroleum Exploration Activities.
- (e) Natural Gas And/Or Petroleum Extraction Activities.
- (f) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility.
- (g) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump.
- (h) Natural Gas Compression Facility.
- (i) Natural Gas Processing Facility.
- (j) Non-regulated pipelines.
- (k) Underground Injection.
- (m) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Clause A. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "Explicitly Prohibited Uses," any one of the above expressly prohibited uses may be referred to in this law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

B. Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Jerusalem hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies "with at least the minimum applicable requirements" set forth in such



statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

C. Defined terms. For purposes of this Law, the following terms shall have the meanings respectively set forth below:

AGRICULTURE USE--- Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law).

BELOW-REGULATORY CONCERN --- Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

EXEMPTED VEHICLES --- Any of the following: (a) vehicles for agricultural use, (b) school buses or other mass transit buses, (c) emergency vehicles, (d) military vehicles driven by active duty military personnel, or (e) trucks used in the construction, repair or maintenance of state, county, or Town roads or other public structures or property.

EXPLOSIVE MATERIALS --- Substances capable of undergoing decomposition or combustion with great rapidity, involving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling. Examples include TNT, dynamite, nitroglycerin, and ammonium nitrate.

FLAMMABLE --- A solid, liquid or gas that will ignite easily and burn rapidly.

GATHERING LINE, or PRODUCTION LINE --- Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

GROSS VEHICLE WEIGHT RATING --- The weight specified by the manufacturer

as the maximum load weight (truck plus cargo) of a vehicle.

HIGH-IMPACT TRUCK --- A truck or tractor, as defined in the Vehicle and Traffic Law, with three or more axles, or ten or more wheels, and capable of hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck ***does not include*** exempted vehicles.

HIGH-FREQUENCY, HIGH-IMPACT TRUCK TRAFFIC --- Any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact truck to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact truck to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.

INJECTION WELL --- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Wells does not include: (a) single family septic systems that receive solely residential waste, (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground, (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power, or (d) bore holes drilled to produce potable water to be used as such.

LAND APPLICATION FACILITY --- A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

LARGE SCALE WATER USE --- Any water withdrawal or sequestering water use of over 100,000 gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes and used within the Town.

NATURAL GAS - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES - geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits. [note: as drafted, does not pick up thumper trucks]

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES - the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES --- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-recognizable food wastes, or (ii) waste generated by agriculture use.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY --- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling,

(iii) are being held for treatment, or (iv) are being held for storage.

**NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DUMP** --- Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**NATURAL GAS COMPRESSION FACILITY** --- Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

**NATURAL GAS PROCESSING FACILITY** --- Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams.

**NON-REGULATED PIPELINES** --- Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

**PIPELINE** --- All parts of those physical facilities through which petroleum, natural gas, other gaseous substances, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) whether or not laid in public or private easement or private right of way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

**PRIVATE WATER SYSTEM** --- A system for the provision of water for human or animal consumption through pipes or other constructed conveyances, where such system has fewer than fifteen (15) service connections or regularly serves fewer than twenty-five (25) individuals.

**RADIOACTIVE MATERIAL** --- Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory

control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

**RADIATION** --- The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

**SEQUESTERING WATER USE** --- Water that by virtue of the use in question is sequestered from the natural hydrologic cycle. This term does not include water that has evaporated, transpired, been consumed by humans or livestock, used for irrigating crops, or otherwise returned to the atmosphere or incorporated into food products.

**SUBSURFACE** --- Below the surface of the earth, or of a body of water, as the context may require.

**TRANSMISSION LINE** --- A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

**UNDERGROUND INJECTION** --- Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an injection well.

**UNDERGROUND NATURAL GAS STORAGE** --- Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

**WATER; WATER RESOURCES** --- All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

**WATER WITHDRAWAL** --- Removal or capture of water from water resources within the Town.

**Article III. Effective Date of this Local Law**

This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.

Adopted by the Jerusalem Town Board on \_\_\_\_\_

**DRAFT 10/19/ 2011**

**APPENDIX A**

ATTACHED TO AND FORMING A PART OF  
TOWN OF JERUSALEM LOCAL LAW NO. \_\_ of the YEAR 2011,  
being:

**A local law to amend and supplement the  
'Town of Jerusalem Zoning Ordinance' adopted on  
October 14, 1974 as it has been heretofore amended,  
by:**

**Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Area and Use Variances  
Generally, and Use Variances Respecting Explicitly Prohibited Uses, Specifically.**

Jerusalem Local Law No. \_\_ of 2011, the Local Law to which this Appendix A is attached, is herein sometimes referred to as "the Local Law," "this Local Law" or "this Law."

This Appendix A is a part of the Local Law to which it is attached for all purposes.

**Section 1. Authority.** This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Jerusalem under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2);

Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and Public Health Law § 228 (2), and (3).

## **Section 2. Findings of Fact.**

1. “Jerusalem is a picturesque, rural town in central Yates County that enjoys a high quality of life and an abundance of open space, including woods, fields, and brushlots. It boasts some of the most scenic landscapes in all of the Finger Lakes region, featuring rolling hills, dramatic valleys, and beautiful Keuka Lake.” This unique topography is completely interwoven with the Town’s heritage, image, character, and overall sense of place. “The Town is rich in agriculture, and includes a significant presence of Mennonites or ‘plain’ communities. Tourism and recreation are also strong in Jerusalem, as the lakes, wineries, and stunning landscape attract thousands of people each year.” Jerusalem seeks to attract even more visitors, and that strategy has the potential to be a significant economic development driver, provided that Jerusalem protects its scenic and other natural resources and does not instead devote its open space to natural gas drilling and associated industrial activities. There is a collective desire among the Town’s residents to maintain and protect the community’s quality of life, lake and other water quality, beautiful natural environment, and quiet lifestyle. Jerusalem takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and historic, scenic and other natural resources, and desires to conserve these critical assets for future generations. (See generally The Comprehensive Plan of the Town of Jerusalem, April, 2006, adopted September 20, 2006, p. 5)

2. In Jerusalem’s Comprehensive Plan, the Future Land Use Plan is described as follows (p.3): “The future land use pattern of the Town will build upon the unique natural features that define the rural landscape of the community, and respects the settlement patterns defined by citizens over the past several generations. It is intended to provide the Town with a predictable growth pattern, allowing for fiscal prudence and the long-term conservation of the features that define the community’s rural quality of life.”

3. The Town is primarily in the Finger Lakes – Lake Ontario watershed; within that watershed, most of the Town’s waterbodies flow into Keuka Lake. The southwestern corner of the Town drains south into the Cohocton River and eventually into the Susquehanna River, making it one of the northernmost reaches of the Chesapeake Bay watershed. Keuka Lake is a drinking water source for about [20,000] people. **[please confirm.]**

4. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.

5. Preservation of the Town’s irreplaceable historic and recreation sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the prospective tourists who visit here.

6. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not students will want to come here for school, businesses will want to locate, or people will want to live in and visit a place.

7. Allowing one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law to be conducted within the Town would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.

8. If one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. Weather conditions and budget constraints already make it a challenge for the Town Highway Department to perform all of the maintenance they would like. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by § 160-141 of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.

9. Allowing one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law to be conducted within the Town could negatively impact the educational and tourism industries within the Town, and could impair the Town's ability to attract additional tourism-related businesses.

10. If one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

11. Allowing one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water



resource to a quality acceptable for domestic use.

12. If one or more of the Explicitly Prohibited Uses described in § 160-141 of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

13. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 160-141 C. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

14. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 160-141 C. of the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

15. The explicit proscription of the Explicitly Prohibited Uses described in § 160-141 of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

*the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*

*416 U.S. at 6.*

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. **A municipality is not obliged to permit the exploitation of any and all natural***

**resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.** 87 N.Y. 2d at 683, 684. (emphasis added.)

### **Section 3. Purposes and Intent.**

The Purposes and Legislative Intent respecting this Local law are as follows:

A. Purposes. This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air and water and historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and is declared by the Town Board to:

(1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(2) promote the health, safety and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the Explicitly Prohibited Uses described in § 160-141 of this Local Law were allowed to be conducted within the Town;

(3) protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the Explicitly Prohibited Uses described in § 160-141 of this Local Law were allowed to be conducted within the Town; and

(4) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the Explicitly Prohibited Uses described in § 160-141 of this Local Law were allowed to be conducted within the Town.

#### B. Declaration of Intent.

(1) Exercise of Police Power. This Local Law is a police power, public nuisance and land use regulation, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts, resulting from the Explicitly Prohibited Uses described in § 160-141 of this Local Law.

(2) Prohibition Against Specified Solid Wastes. This Local Law also intends to regulate, in a manner consistent with law, including without limitation, NY ECL § 27-0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection and disposal of materials herein defined as “Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes” on lands and in bodies of water within the Town.

(3) Protection of Private Drinking Water Supplies. This Local Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(4) Matters of Local Concern. This Local Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(5) Negative Externalities. This Local Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the inhabitants of the Town that could result from an inappropriate use of property that could adversely affect the comfort, peace, enjoyment, health and safety of near-by persons if this law were not adopted.

(6) Land Use Control. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a police power law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Law is not intended to regulate the operational processes of any business. This Local Law is a law of general applicability and is intended to promote the interests of the community as a whole.

-- END --