

## **ARTICLE XIV — EXPLICITLY PROHIBITED USES**

### **14.1 Findings**

The Town Board of the Town of Tusten has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Article XIV, and a copy of the text of such findings, determinations, and declarations are set forth in Appendix A attached to this law.

### **14.2 Purposes**

Article XIV of this Law is enacted so as to take proactive steps to protect and preserve the Town's rural residential character, the quality of the Town's air and water and scenic and other natural resources, and other assets, to encourage the tourism industry, and to further the Purposes described at Section 1.3 of this Law. Without limiting the generality of the foregoing, this Article XIV 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, storm water detention facilities, 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 any one or more of the explicitly prohibited uses defined in this Article XVI 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 any one or more of the explicitly prohibited uses defined in this Article XVI were allowed to be conducted within the Town; and
- (4) protect the Town's irreplaceable historic, recreation, tourism sites, 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 any one or more of the explicitly prohibited uses described in Article XIV of this Law were allowed to be conducted within the Town.

### **14.3 Declaration of Intent**

(1) Exercise of Police Power and Zoning Authority. This Law in general and Article XIV of this Law in particular 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 underground drinking water supplies, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts that could result from the land use activities defined as explicitly prohibited uses within the Town in Section 14.5 of this Law.

(2) Consistency with the Town’s Comprehensive Plan. Without limiting the generality of the foregoing, Article XIV of this Law is made in specific consideration for: (i) the preservation of the quality of life associated with the unique rural and historic character of the Town; (ii) the unsuitability of the Town’s public facilities and services (including police, fire, and emergency medical services) in containing or mitigating possible dangerous spillover effects of high impact industrial use activities.

(3) Prohibition Against Specified Solid Wastes. Article XIV of this Law 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 within the Town.

(4) Protection of Private Drinking Water Supplies. Article XIV of this Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge on the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(5) Matters of Local Concern. Article XIV of this 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.

(6) Negative Externalities. Article XIV of this 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 Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(7) Land Use Control. Article XIV of this Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and police power that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the proper location for varying land use activities within the Town and 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 operation and processes of permitted businesses. Article XIV of this Law is a law of general applicability and is intended to promote the interests of the community as a whole.

#### **14.4 Authority**

This Article XIV is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board 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(x)(ii)(6), 10; Municipal Home Law § 10(1)(ii)(a); Statute of Local Governments §10, Environmental Conservation Law §17-1101 and §27-0711, and Public Health Law §§228(2), (3).

### **14.5 Prohibited Uses**

The following uses and activities are expressly and explicitly prohibited in any zoning district within the Town, and no building or structure shall be created, altered or erected, and no land or building thereon shall be used, for any of such uses or activities:

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

Any condition caused or permitted to exist in violation of this Section 14.5 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.”

### **14.6 Prohibition Against Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes**

The Town of Tusten 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 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, or released, anywhere within the Town, any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes.