

**TOWN OF ONONDAGA
LOCAL LAW 8-2012**

A local law to amend Chapter 285, “Zoning” of the Code of the Town of Onondaga, as heretofore amended by Adding Certain New Definitions, and Changing Certain Existing Definitions; and Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Establishing a Severability Clause;

Be it enacted by the Town Board of the Town of Onondaga 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 Chapter 285 of the Code of the Town of Onondaga (NY), which was enacted by Local Law No. 2 of 2011, passed May 2, 2011, as said Chapter may have heretofore been amended or supplemented.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” and “herein” shall mean, be, and refer to Chapter 285 of the Town of Onondaga Code 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.

Article II. Chapter 285 of the Code of the Town of Onondaga is Amended, as follows:

2.1. Chapter 285 of the Code is hereby amended to add a new § 285-3.1

Chapter 285 of the Code is hereby amended so as to add the following new § 285-3.1 thereto, said new § 285-3.1 to be inserted immediately after the text of present § 285-3 thereof (entitled ‘Title.’) and immediately prior to the text of present § 285-4 thereof (entitled ‘Definitions.’):

“§ 285-3.1 Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, 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 Chapter 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 Chapter 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 Chapter, 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. Section 285-4 of the Code of the Town of Onondaga is amended, as follows:

A. § 285-4 of the Town of Onondaga Code is hereby amended so as to insert the following definition of “Accessory Structure” therein, said definition to be inserted immediately before the present definition of “ACCESSORY USE”:

“ACCESSORY STRUCTURE – A structure detached from and subordinate to a principal building on the same lot, with less than one-half of the floor space of the principal building, and which is used for purposes subordinate and customarily incidental to those of the principal building or use, including parking, storage, and recreation. Structures used for agriculture, whether or not used for housing animals, shall not be subject to the aforesaid ‘one-half of the floor space of the principal building’ limitation.”

B. § 285-4 of the Town of Onondaga Code is hereby further amended so as to delete the present definition of the term “ACCESSORY USE” in its entirety, and substituting the following text therefor:

“Accessory Use - A use customarily incidental and subordinate to the principal use, located on the same lot with such principal use. A use shall not qualify for treatment as an accessory use if it dominates the ‘principal’ use in area, extent, or purpose.”

C. § 285-4 of the Town of Onondaga Code is hereby further amended so as to insert the following definition of “Explicitly Prohibited Uses” therein, said definition to be inserted immediately after the present definition of “EQUIPMENT STORAGE” and immediately before the present definition of “EXTRACTIVE INDUSTRY”:

“EXPLICITLY PROHIBITED USE(S)” – Shall mean and be the Explicitly Prohibited Uses defined and described in § 285-43.1 of this Law.”

D. § 285-4 of the Town of Onondaga Code is hereby further amended so as to delete the present definition of “EXTRACTIVE INDUSTRY,” and so as to substitute the following text therefor:

“The removal from the ground of sand, gravel, rock or stone, soil or earth, topsoil, sod, or minerals. (‘Minerals’ does not include petroleum or ‘Natural Gas,’ as that term is defined in § 245-43.1 of this chapter.) Removal of such earth products which is incidental to and in connection with (i) excavation and/or grading of a site for a building or a structure and/or its appurtenant sidewalks, walls, driveways or parking facilities for which all required building and other permits have issued (ii) excavation and/or grading of a site for a public works project (such as sewers, waterlines, roads and bridges) or for a Public Utility Facility, (iii) excavation and/or grading of a site approved for subdivision development, or (iv) construction of a farm pond or other farm conservation process, are expressly excluded from the definition of “Extractive Industry.” Furthermore, in no event shall “Extractive Industry” be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities (as those terms are respectively defined at § 245-43.1 of this chapter), or any other Explicitly Prohibited Use.”

E. § 285-4 of the Town of Onondaga Code is hereby further amended so as to add the following text to the present definition of "INDUSTRY, HEAVY," said text to be inserted immediately following the end of the (present) sentence within such definition that begins "The term "industrial" shall not include..." :

"Furthermore, in no event shall 'INDUSTRY, HEAVY' be construed to mean, be, or include any Explicitly Prohibited Uses."

F. § 285-4 of the Town of Onondaga Code is hereby further amended so as to add the following text to the present definition of "JUNKYARD," said text to be inserted immediately following the end of the (present) sentence that begins "An area of land, with or without..." :

"In no event shall 'JUNKYARD' be construed to mean, be, or include any Explicitly Prohibited Uses."

G. § 285-4 of the Town of Onondaga Code is hereby further amended so as to insert the following definition of "SPECIAL PERMIT USE" therein, said definition to be inserted immediately prior to the (present) definition of "STABLE, PRIVATE," and immediately after the (present) definition of "SOUND PRESSURE LEVEL":

"SPECIAL PERMIT USE - A use which because of its unique characteristics requires individual consideration through a procedure of review by the Zoning Board of Appeals, in order to determine whether a use should be allowed, conditionally allowed, or denied."

H. § 285-4 of the Town of Onondaga Code is hereby further amended so as to add the following text to the present definition of "SOLID WASTE," said text to be inserted immediately following the end of the (present) sentence that begins "Such wastes shall include ...":

"In no event shall 'SOLID WASTE' be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 245-43.1 of this chapter)."

I. § 285-4 of the Town of Onondaga Code is hereby further amended so as to add the following text to the present definition of "SOLID WASTE MANAGEMENT FACILITY," said text to be inserted immediately following the end of the (present) sentence that begins "Any facility employed ...":

"In no event shall 'SOLID WASTE MANAGEMENT FACILITY' be construed to mean, be, or include 'Land Application Facility,' 'Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility,' or 'Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump' (as those terms are respectively defined at § 245-43.1 of this Chapter), or any other Explicitly Prohibited Use."

2.3. Section 285-7 of the Town of Onondaga Code

§ 285-7 of the Town of Onondaga Code is hereby amended: (i) so as to replace the present title of such Section ("Application of regulations.") with the words "Application of regulations; Any use not specifically permitted is prohibited."; and (ii) so as to delete the entirety of the (present) text of Clause C. thereof (beginning "All uses not specifically permitted..."), and replace the deleted text with the following:

"§285-7 Application of regulations; any use not specifically permitted is prohibited.

Any use not specifically set forth as a permitted use in any zoning district shall be 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. "

2.4. § 285-8 of the Town of Onondaga Code

§ 285-8 C.(4) of the Town of Onondaga Code is hereby amended so that it reads, in its entirety, as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.5. § 285-9 of the Town of Onondaga Code

§ 285-9 C(4) of the Town of Onondaga Code is hereby amended so that it reads, in its entirety, as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.6. § 285-10 of the Town of Onondaga Code

§ 285-10 C.(4) of the Town of Onondaga Code is hereby amended so that it reads, in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.7. § 285-11 of the Town of Onondaga Code

§ 285-11 C.(4) of the Town of Onondaga Code is hereby amended so that it reads, in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.8. § 285-12 of the Town of Onondaga Code

§ 285-12 C.(8) of the Town of Onondaga Code is hereby amended so that it reads, in its entirety, as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.9. § 285-13 of the Town of Onondaga Code

§ 285-13 C. (10) of the Town of Onondaga Code is hereby amended so that it reads in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not

include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.10. § 285-14 of the Town of Onondaga Code

§ 285-14 C. (6) of the Town of Onondaga Code is hereby amended so that it reads in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.11. § 285-15 of the Town of Onondaga Code

§ 285-15 C. (5) of the Town of Onondaga Code is hereby amended so that it reads in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.12. § 285-16 of the Town of Onondaga Code

§ 285-16 A.(4) of the Town of Onondaga Code is hereby amended so that it reads in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community, except storage or heavy equipment yards. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.13. § 285-20 of the Town of Onondaga Code

§ 285-20 B. (15) of the Town of Onondaga Code is hereby amended so that it reads in its entirety as follows:

“Facilities for the delivery of natural gas service, other than containerized natural gas, to the local community. Such facilities shall not include those designed for exploration for natural gas deposits, extraction of same from the earth or activities related thereto.”

2.14. § 285-33 of the Town of Onondaga Code

§ 285-33 of the Town of Onondaga Code is hereby amended: so as to delete the text of (present) clause A.(5) (which begins “An unspecified use...”) in its entirety, and to substitute the following text therefor:

“When a particular use is specifically set forth in this Chapter as a permitted use, but such permitted use is not specified in clause C. of this Section, then the Board of Appeals shall determine the number of off-street parking spaces required for such unspecified use, in line with the overall purposes and intent of this Chapter.”

2.15. Amendment to Delete the text and Title of a Section 285.43 of the Town of Onondaga Code, and to replace the same with a New Section 285-43.1

A. The Town of Onondaga Code is hereby amended so as to delete the text and Title of (present) § 285-43 thereof in its entirety, and so as to replace the deleted text and Title with the words:

“[Intentionally omitted.]”

B. Chapter 285 of the Town of Onondaga Code is hereby amended so as to add the following new § 285-43.1 thereto, said new § 285-43.1 to be inserted immediately after the text of § 285-43 thereof, and immediately prior to the text of present § 285-44 thereof (titled ‘Methane gas recovery...at closed landfills’):

“§ 285-43.1. 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 subsection D. below of this § 285-43.1)* 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) Land Application Facility;
- (b) Natural Gas And/Or Petroleum Exploration Activities;
- (c) Natural Gas And/Or Petroleum Extraction Activities;
- (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- (e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (f) Natural Gas Compression Facility;
- (g) Natural Gas Processing Facility;
- (h) Non-regulated pipelines;
- (i) Underground Injection; and
- (j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Section 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 Onondaga hereby exercises its authority and right under NY ECL § 27-0711 to adopt local legislation that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Section 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. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this Section are not intended, and shall not be construed, to (a) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (b) prevent or prohibit transmission lines or the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (c) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

D. Defined terms. For purposes hereof, and in addition to the terms defined in § 285-4 of this Chapter, the following terms shall have the meanings respectively set forth below:

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.

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).

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 less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

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.

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.

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, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids;

(c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum 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 natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. 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) 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 petroleum 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 CO₂ 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, gas, 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 includes, without limitation, gathering lines, production lines, and transmission lines.

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.

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."

E. Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities. Notwithstanding any provision of this Law to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

1.a. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies for such activities, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of clauses 2. and 3. of this Clause E.

b. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding clause 1.a. of this Clause E. shall not be grandfathered, and shall in all respects be prohibited as contemplated by Clause A. of this § 285-43.1.

2. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1.a. of this Clause E., or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of clause 1.a. of this Clause E.) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Clause A. of this § 285-43.1.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by clause 1.a. of this Clause E. is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under clause 1.a. of this Clause E., and instead shall in all respects be prohibited as contemplated by Clause A. of this § 285-43.1."

2.16. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Local 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 Local 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 Local 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 of the Town hereby declares that it would have enacted this Local 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.

2.17. 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.

This Local Law shall take effect upon its filing with the New York Secretary of State.

APPENDIX A

ATTACHED TO AND FORMING A PART OF TOWN OF ONONDAGA LOCAL LAW NO. 8 of the YEAR 2012, being:

A local law to amend Chapter 285, "Zoning" of the Code of the Town of Onondaga, as heretofore amended by Adding Certain New Definitions, and Changing Certain Existing Definitions; and Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Establishing a Severability Clause;

Town of Onondaga Local Law No. 8 of 2012, 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 Onondaga 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 New York State Law, Public Health Law § 228 (2), and (3).

Section 2. Findings of Fact.

1. Onondaga is a community in Onondaga County that takes great pride in and assigns great value to the rural residential character, small-town atmosphere, and scenic and other natural resources that contribute

to the high quality of life the Town is known for.

2. 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, especially in those areas of the Town that are not serviced by public water.

3. 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 tourists who visit here.

4. 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 businesses will want to locate, or people will want to live in and visit a place.

5. Allowing one or more of the Explicitly Prohibited Uses described in § 285-43.1 of the Local Law to be conducted within the Town could 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.

6. If one or more of the Explicitly Prohibited Uses described in § 285-43.1 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 § 285-43.1 of the Local Law. Accidents involving heavy trucks have greater potential for death and serious injury 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.

7. Allowing one or more of the Explicitly Prohibited Uses described in § 285-43.1 of the Local Law to be conducted within the Town could negatively impact the agricultural and tourism industries within the Town.

8. If one or more of the Explicitly Prohibited Uses described in § 285-43.1 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.

9. Allowing one or more of the Explicitly Prohibited Uses described in § 285-43.1 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. Considerable areas of the Town are dependent upon ground water for their potable water source.

10. If one or more of the Explicitly Prohibited Uses described in § 285-43.1 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.

11. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 285-43.1 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.

12. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 285-43.1 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.

13. The explicit proscription of the Explicitly Prohibited Uses described in § 285-43.1 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 § 285-43.1 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 § 285-43.1 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 § 285-43.1 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 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 § 285-43.1 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 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.

(6) Land Use Control. This Local Law is intended to act as and is hereby declared to be an exercise of 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.