

OFFICIAL**Town of Schoharie****Local Law No. 3 of the Year 2012**

A local law to amend and supplement Local Law No. 2 of 2005,
(as heretofore amended).

by:

Adding a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Adding Certain New Definitions, and Changing Certain Existing Definitions.

Be it enacted by the Town Board of the Town of Schoharie 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

Be it enacted by the Town Board of the Town of Schoharie as follows:

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. August 15,

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 Law of the Town of Schoharie adopted August 15, 2005, as heretofore amended.

As used herein, the term of this "Local Law" shall mean and be this Local Law No. 3 of 2012.

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.

OFFICIAL**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. Amendments of Existing Zoning Law**2.1. Amendments to Article 1 of the Existing Zoning Law**

A. Clause E. of Section 1.4 of the Existing Zoning Law (beginning "Private resource extraction...") is hereby amended so as to add the following text as the (new) final sentence of said Clause, said added text to be inserted immediately following the text "... continuous twelve (12)-month period]":

"In no event shall 'Private resource extraction' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof)."

B. Article I of the Existing Zoning Law is hereby further amended so as to add the following new Section 1.8 thereto, said new Section 1.8 to be inserted immediately after the text of present Section 1.7 thereof, and immediately prior to the text of the title of Article 2 thereof (entitled 'Administration and Enforcement'):

Section 1.8 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. Amendment to Article 2 of the Existing Zoning Law

Clause D. of Section 2.3 of the Existing Zoning Law is hereby amended so as to delete the present

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existing text thereof (beginning "Uses that are not ...") in the entirety, and to substitute the following text therefore:

"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."

2.3. Amendments to Article 3 of the Existing Zoning Law

A. Section 3.1 of the Existing Zoning Law is hereby amended so as to delete the words "three (3) main" from the second sentence thereof (beginning "The Town is divided ..."), and to substitute the words "four (4)" therefore.

B. Article 3 of the Existing Zoning Law is hereby further amended so as to delete the present final sentence of Section 3.1 thereof (beginning "Uses that are not ...") in the entirety, and to substitute the following text therefore:

"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."

C. Article 3 of the Existing Zoning Law is hereby further amended so as to add the following text as the new subsection 3.1-7 thereof (which subsection 3.1-7 is erroneously numbered in the Existing Zoning Law as "3.1-5"), said added text to be inserted immediately following the text "See PDD Regulations Article 12.":

"In no event shall, industrial use be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof)."

D. The text of Section 3.4 of the Existing Zoning Law is hereby amended, so as to delete therefrom the words "whether or not on the same lot."

2.4. Amendments to Article 4 of the Existing Zoning Law

A. The text of the title caption of Section 4.2 of the Existing Zoning Law is hereby deleted in its entirety, and the following text is substituted therefore: "Section 4.2 Performance Standards for Non-Residential Uses and Multi-Family Developments".

"In no event shall industrial use be construed to mean, be, or include Land Application

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B. Clause D.(1) of Section 4.2-2 of the Existing Zoning Law is hereby further amended so as to delete the words "Town roads" from the first sentence thereof (beginning "The Town of Schoharie ..."), and to substitute the words "roads within the Town" therefore.

C. Article 4 of the Existing Zoning Law is hereby further amended so as to add the following text as the (new) final sentence of clause A. of subsection 4.6-3 thereof, said added text to be inserted immediately following the text "... in Section 5.7 of this law.":

"In no event shall 'excavation' or 'mining activities' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof)."

2.5. Amendment to Article 5 of the Existing Zoning Law

Article 5 of the Existing Zoning Law is hereby amended so as to insert the following (new) subsection 5.7-4 therein, said new Section 5.7-4 to be inserted immediately following the text of existing subsection 5.7-3, and immediately preceding Section 5.8:

"5.7-4 Mining and Resource Extraction Do Not Include Natural Gas, Etc. Activities In no event shall 'resource extraction,' 'extractive resource industry,' 'mining,' 'mining industry,' 'mines,' or similar words be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof)."

2.6. Amendment to Article 12 of the Existing Zoning Law

Clause (4) of Section 12.1 of the Existing Zoning Law ("Conditional Approval") is hereby amended: (i) so as to delete the abbreviation "PPD" from the first sentence thereof, and to substitute the abbreviation "PDD" therefore; and (ii) so as to add the following text as the (new) final sentence of said Clause, said added text to be inserted immediately following the text "... a majority plus one (1) vote)":

"In reaching a determination to recommend approval of or approve or conditionally approve a proposed PDD, the applicable Board(s) shall consider the general criteria set forth in this Law, the statement of intent and purposes applicable to this Law, and the most current Comprehensive Plan for the Town."

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A. Article 13 of the Existing Zoning Law is hereby amended so as to add the following text as the (new) final sentence of the definition of "Commercial Use", said added text to be inserted immediately following the text "... or multi-family dwelling units.":

"In no event shall 'commercial use' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in this Article 13)."

B. Article 13 of the Existing Zoning Law is hereby further amended so as to add the following text as the (new) final sentence of the definition of "Development", said added text to be inserted immediately following the text "... or drilling operations.":

"In no event shall 'development, mining, excavations, or drilling operations' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in this Article 13)."

C. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms "Industrial, Industry, Industrial Uses" therein, said text to be inserted immediately after the definition of "Indoor Recreation" and immediately before the present definition of "Impermeable Surface":

"Industrial; Industry; Industrial Uses: Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms "industrial," "industry," "industrial uses," or any variation thereof, be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in this Article 13)."

D. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Injection Well" therein, said definition to be inserted immediately after the definition of "Impermeable Surface" and immediately before the present definition of "Intensive Agricultural Operation":

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"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."

E. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Land Application Facility" therein, said definition to be inserted immediately after the definition of "Kennel, Stable, Animal Hospital, Veterinarian Office" and immediately before the present definition of "Light Trespass":

"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."

F. Article 13 of the Existing Zoning Law is hereby further amended so as to add the following text as the (new) final sentence of the definition of "Mineral", said added text to be inserted immediately following the text "... shall be considered minerals.":

"In no event shall 'mineral(s)' be construed to mean, be, or include oil, petroleum, or Natural Gas (as that term is defined in this Article 13)."

G. Article 13 of the Existing Zoning Law is hereby further amended so as to add the following text as the (new) final sentence of the definition of "Mining/Resource Extraction", said added text to be inserted immediately following the text "... in aid of agricultural activities.":

"In no event shall 'mining,' or 'resource extraction' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in this Article 13)."

H. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Natural Gas," (ii) "Natural Gas and/or Petroleum Extraction Activities," (iii) "Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes," (iv) "Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility," (v) "Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump," (vi) "Natural Gas Compression Facility," and (vii) "Natural Gas Processing Facility" therein, said definitions to be respectively inserted immediately after the definition of "Multiple Use" and immediately before the present definition of "Non-Conforming Lot":

"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.

Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in this Article

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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 Exploration, Extraction 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 agricultural use.

Natural Gas And/Or Petroleum Exploration, Extraction 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 Exploration, Extraction 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.

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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."

I. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following new definition of "Person," said text to be inserted immediately after the present definition of "Permitted Use" and immediately before the present definition of "Personal Service":

"Person: Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, or estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties."

J. Article 13 of the Existing Zoning Law is hereby further amended so as to add the following text as the (new) final two sentences of the definition of "Public Utilities/Facilities", said added text to be inserted immediately following the text "... not utility facilities.":

"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. In no event shall 'public utility facility' be construed to mean, be, or include a Natural Gas Compression Facility or a Natural Gas Processing Facility (as those terms are defined in this Article 13).

K. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following new definition of "Subsurface," said text to be inserted immediately after the present definition of "Substantially Commenced" and immediately before the present definition of "Temporary Sign":

"Subsurface: Below the surface of the earth, or of a body of water, as the context may require."

L. Article 13 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of "Underground Injection" and "Underground Natural Gas Storage" therein, said definitions to be respectively inserted immediately after the definition of "Truck Terminal" and immediately before the present definition of "Use":

"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."

M. Article 13 of the Existing Zoning Law is hereby further amended so as to delete the present definition of "Variance" in the entirety, and so as to substitute the following text therefore:

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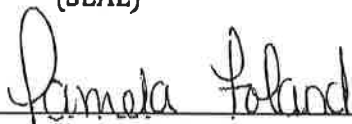
"Variance: An area variance or a use variance, as the context may admit."

Article III. Effective Date**3.1. 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 Schoharie Town Board on December 17, 2012

(SEAL)



Town Clerk

Article III. Effective Date

Adopted by the Schoharie Town Board on December 17, 2012

OFFICIAL**APPENDIX A**

ATTACHED TO AND FORMING A PART OF
TOWN OF SCHOHARIE (NY) LOCAL LAW NO. 3 of the YEAR 2012,
being:

A local law to amend and supplement Local Law No. 2 of 2005,
(as heretofore amended),
by:

Adding a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Adding Certain New Definitions, and Changing Certain Existing Definitions.

Schoharie Local Law No. 3 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 Schoharie 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. Schoharie is a community in Schoharie County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources.
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.
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

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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.

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;
- (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; and
- (4) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources.

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.

(2) 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.

(3) 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.

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(4) **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.

(5) **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.

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.

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.

OFFICIAL**APPENDIX A****Procedures for
Amendment of Zoning Law**

Based on Town Law, MHRL, GML and SEQRA Procedures

*Existing Town Land Use Laws should be reviewed for additional requirements.

| Date Completed | Task to be Completed |
|-----------------------|---|
| | Check for provision within existing zoning law that would require referral to a Zoning Commission, established by appointment (Town Law §266), or the Town Planning Board prior to amendment of the law. Check the existing zoning law for any public hearing requirements prior to adoption of the Zoning Commission/Planning Board's Preliminary Report to the Town Board, if applicable. <i>(If existing Zoning Law does not include such provisions, this step/box may be skipped.)</i> |
| *Existing Town | Draft changes to the Zoning Law shall be introduced to the Town Board only by a Member of the Board; Proposed Amended Law should be on the desks/table of the Town Board Members at least 7 days prior to vote for passage if personally served, 10 days if sent by mail – both exclusive of Sundays, date of service and date of vote. MHRL §20. See also General Construction Law §20; London v. Wagner, 195 N.Y.S.2d 550. |
| | SEQRA |
| | Classification of the action by the Town Board as Type I, Type II or Unlisted Action |
| | Preparation of a full EAF |
| | Pass resolution to be lead agency, notify any involved or interested agencies |
| | Review EAF, and create record of discussion of hard look taken |
| | Develop Negative/Positive Declaration |
| | Develop Negative/Positive Declaration Resolution with facts and analysis in support |
| | Board to vote to adopt Negative/Positive Declaration Resolution |
| | Negative/Positive Declaration filing form, if applicable, filled out and signed (check DEC website) |
| | Negative/Positive Declaration Form sent to DEC, Regional Office, Environmental Notice Bulletin (ENB), and filed with Town Supervisor's office (filing with regional office is NOT required for a Type I, Negative Declaration; still must publish in ENB) |
| | If Positive Declaration, may elect to hold Scoping Session for DEIS, may also elect to hold a public hearing regarding the Positive Declaration; otherwise, proceed with DEIS & adoption of Final EIS. |

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Develop Negative/Positive Declaration

Develop Negative/Positive Declaration Resolution

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| | Schedule a public hearing to have 10 day notice minimum, exclusive of Sundays, date of service and date of vote, between the publication of the notice and the actual hearing. Town Law §264. |
| | Develop legal notice for hearing (must state time, place, purpose, general character and scope of proposed amendments and advise as to the location where the text of the proposed amendments as well as related SEQRA documents may be obtained (typically clerk's office)), have notice reviewed by Town Attorney, submit final notice to newspaper(s) of general circulation within Town and County, and post notice at Town Office/Hall more than 10 days in advance of hearing exclusive of Sundays, date of service and date of hearing. Town Law §264. Request Affidavit of Publication from Newspaper. |
| | At least ten days prior to the date of the public hearing (exclusive of Sundays, date of service and date of hearing), written notice of the public hearing and any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the town upon each person or persons listed below (Town Law §264): |
| | <p>(a) The property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto.</p> <p>(b) The boundary of a city, village or town; upon the clerk thereof.</p> <p>(c) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties.</p> <p>(d) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.</p> |
| | Check existing local law/ordinance to see if requires notice of proposed amendment to neighboring property owners |
| | Even if existing law does not require written notice sent directly to neighboring property owners, if a written protest against the proposed local law is received from: |
| | <p>(a) the owners of the 20% or more of the area of land included in the proposed change in zoning; or</p> <p>(b) from the owners of 20% or more of the area of land immediately adjacent to that land included in the</p> |

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| | <p>proposed change in zoning, extending 100 feet therefrom; or</p> <p>(c) from the owners of 20% or more of the area of land directly opposite thereto, extending 100 feet from the street frontage of the opposite land;</p> <p>then, the Town Board can only adopt the proposed local law/amendment by a three-fourths (3/4) vote. Town Law §265.</p> |
| | Referral to County Planning Board/Dept. "full statement of action," including SEQRA forms, original law, draft amended law plus any additional documents required by County Planning for review per County regulations and NYS GML 239-m. See also Town Law §264. Check for County Planning filing form. County Planning has 30 days from receipt of the submittal in which to act. |
| | Hold public hearing. If the public hearing does not result in any changes to the proposed zoning law, then the Town Board may proceed to adoption. (New material changes or changes that "vary substantially" require additional public hearing, related notices and re-submittal to County Planning.) Town Law §264. |
| | Develop resolution to adopt amended zoning law. The resolution should incorporate by reference the zoning law and have a copy of the amended zoning law attached; date reflected is date of adoption of resolution and local law. |
| | Final form of law must be to the Board for 7 calendar days (exclusive of Sunday; date of service and date of vote) before adoption. MHRL §20. |
| | Before adoption, either 30 days must have elapsed without any County Planning Board/Dept. recommendation or the Town Board will have received the County Planning report. (Note: If the County Planning report is late and received beyond the 30-days, but still comes to the Town prior to the adoption vote, the Town Board will still need a super-majority vote in the event that the County Planning report is negative or recommends modification.) |
| | Adoption shall occur by resolution with at least a majority affirmative vote of the total voting power of the Town Board. The vote must be conducted by roll call of the Town Board members and each member's vote (in favor or against) must be entered into the minutes. MHRL §20. If, prior to the vote, the Town Board has received the report of the County Planning Board and its recommendation is negative or calls for modification, then a super-majority vote of the total voting power of the Town Board will be required to adopt the law. The adopted resolution should incorporate the adopted local law by reference and have a full copy of the law attached to the resolution with all maps. |
| | Certify copies of the law (The exact form of this certification is by the Secretary of State as per (19 NYCRR, Section 130.7)). |
| | File in the Office of the Town Clerk within 20 days of adoption. As |

County Planning report is late and received beyond the 30 days, but still comes to the Town prior to the adoption vote, the Town

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| | required by the MHRL. The Town Clerk shall record the local law in her/his office in a separate book, which shall be indexed by her/him and in the minutes of the town board meeting with reference to and description of any zoning. (Town Law §264). |
| | Publish in a newspaper of general circulation a copy, summary or abstract of the amendments to the Zoning Law, not including Zoning Map. Obtain affidavit of publication from newspaper. Town Law §265. Zoning Law shall take effect 10 days after such publication (see below additional requirement for filing with DOS). Town Law §264. |
| | Notify County Planning within 30 Days of final action or sooner if so prescribed by the Town Zoning Law. GML §239-m. |
| | File three certified copies with the Department of State (DOS) within 20 days of adoption using the forms prescribed by the DOS. The DOS will need the local law filing cover sheet filled out and signed by Town Counsel. An extra copy of the law should be submitted with the filing and the DOS requested to time/date stamp the extra copy and return it to the Town Clerk for inclusion in the town record book of local laws. A local law becomes effective twenty days after adoption provided that the law has been filed with the Secretary of State. MHRL §27. |

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| | so prescribed by the Town Zoning Law. GML §239-m. |
| | File three certified copies with the Department of State. |
| | been filed with the Secretary of State. MHRL §27. |