

# Local Law Filing

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County

City of LIVINGSTON

Town

Village

Local Law No. 1 of the year 2014

A local law shall be known as the "Moratorium on and Prohibition of  
(Insert Title)  
Gas and Petroleum Exploration and Extraction Activities,  
Underground Storage of Natural Gas, and Disposal or  
Treatment of Natural Gas or Petroleum Extraction, Exploration  
and Production Wastes"

Be it enacted by the York Town Board of the

(Name of Legislative Body)

County

City of York as follows:

Town

Village

"See attached documentation"

(If additional space is needed, attach pages the same size as this sheet, and number each.)

## TOWN OF YORK LOCAL LAW NO. 1 OF 2014

A local law to institute a Moratorium and Prohibition within the Town of York, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal or Treatment of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

BE IT ENACTED by the Town Board of the Town of York, Livingston County, New York, as follows:

### **Section 1. Title**

This Local Law shall be known as the "Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal or Treatment of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."

### **Section 2. Authority and Intent; Findings; Purpose**

- A. Authority and Intent – 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 York 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).

This Law is a land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use 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 potential negative impacts on roadways and traffic congestion and other potential deleterious impacts on a community.

- B. Findings of Fact - The Town makes the following Findings of Fact relating to this Local Law:

1. York is a community in the northern part of Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources.
2. Many residents and agricultural operations within the Town are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, its agricultural resources, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town's irreplaceable recreational and scenic 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 people who visit here.
4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, 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. As a result of varied and diverse information and publically stated opinions and concerns expressed by residents about various aspects of the natural gas industry, the Town Board hereby finds and determines that it requires additional time during which to have an opportunity to determine what the needs and goals of the community are and to develop appropriate legislation and amendments to the Town of York Zoning Ordinance to adequately address potential issues and impacts associated with the natural gas industry, based on those identified needs and goals.
6. Allowing the activities prohibited by Section 4. of the Local Law without first ascertaining the needs and goals of the community and subsequently creating and adopting appropriate legislation and amendments or revisions to the Town of York Zoning Ordinance may impair the existing character of the Town, because by their nature, such activities may have the potential to produce a combination of unanticipated impacts upon the environment and people living in or in proximity to the communities in which they are located. Such impacts may include, without limitation, changes in 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.

7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town without appropriate legislation to create mandatory road use agreements, traffic generated thereby may be hazardous or inconvenient to the inhabitants of the Town. Roads are a critical public resource and constitute a major investment of the public's money. The Town cannot afford potential high costs associated with the possible road use impacts, including degradation of road infrastructure that accompany many of the activities prohibited by Section 4. of the Local Law.
8. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town without proper legislation and Zoning Ordinance revisions, potential air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) may create hazards or inconvenience the inhabitants of the Town. Air pollution can be a hazard to public health.
9. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town without proper legislation and Zoning Ordinance revisions may negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health and remediation to a contaminated source may be time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.
10. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town without proper legislation and Zoning Ordinance revisions, noise, vibrations, and light pollution often caused by such Activities may cause hazard or inconvenience to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibration may have negative effects on human health and negatively impact wildlife.
11. The creation, generation, keeping, storage, treatment or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town, without proper legislation and Zoning Ordinance revisions, may have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

The explicit proscription of the activities prohibited by Section 4. of the Local Law is a legitimate goal of land use laws.

- C. Purpose - The purpose of this Local Law is to enable the Town of York to temporarily stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special use permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals relating to the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to determine what the needs and goals of the community are and to determine and effectuate appropriate legislative action, including revisions or amendments to the Town's zoning laws to appropriately address the same within the proper confines of New York State law.

The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of York and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

### **Section 3. Definitions**

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

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

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

**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).

**High Volume Hydraulic Fracturing** – The stimulation of a vertical or horizontal well using 300,000 gallons or more of water as the primary carrier fluid in the Hydraulic Fracturing Fluid used in the process of Hydraulic Fracturing.

**Horizontal Drilling** – The process of drilling a well from the surface to a subsurface location just above the target gas or oil reservoir, then deviating the well bore from the vertical plane around a curve to intersect the reservoir at the an entry point with a near-horizontal inclination, and remaining within the reservoir until the desired bottom hole location is reached.

**Hydraulic Fracturing** – The process of pumping Hydraulic Fracturing Fluid down a wellbore (either vertical or horizontal) under high pressure, causing fractures in the gas bearing rock formation. Components of the Hydraulic Fracturing Fluid prop or hold open the fractures newly created, allowing the gas or oil to be extracted

**Hydraulic Fracturing Fluid** – The fluid used to perform hydraulic fracturing and includes the primary carrier fluid and any applicable additives.

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

**Land Application Facility** – A site where any Natural Gas Exploration and/or Petroleum 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 (including but not limited to the use of High Volume Hydraulic Fracturing and/or Horizontal Drilling) 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 (including but not limited to the use of High Volume Hydraulic Fracturing and/or Horizontal Drilling) for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

**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, including, but not limited to Hydraulic Fracturing Fluid; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, fracturing fluids, produced water, brine, flow back, 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, Hydraulic Fracturing (including but not limited to High Volume Hydraulic Fracturing), transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from Hydraulic Fracturing, High Volume Hydraulic Fracturing and/or Horizontal Drilling for natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, productions 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 Treatment, Disposal or 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 treatment, purifying, neutralizing, reuse or recycling, (iii) are being held for treatment, purifying or neutralizing, 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 and/or Petroleum Support Activities** – Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Treatment, Disposal or Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

**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 CO<sub>2</sub> separated from natural gas streams.

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

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

**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.

**Town** – The Town of York, Livingston County, New York.

**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).

**Treatment** – The cleaning, neutralization, purification or other form of alteration of any wastes or by-product resulting from Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities or Natural Gas and/or Petroleum Support Activities, whether or not such wastes or by-product originate in the Town of York or elsewhere.

**Underground Injection** – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

**Underground Natural Gas and 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.

#### **Section 4. Moratorium and Prohibition.**

- A. Unless permitted pursuant to Section 6 or Section 8 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of York, for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town of York, for any of the following activities: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; (iii) any Natural Gas and/or Petroleum Support Activities; or (iv) any Treatment of any wastes or by-product resulting from Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities or Natural Gas and/or Petroleum Support Activities, whether or not such wastes or by-product originate in the Town of York or elsewhere.
- B. 1. Unless permitted pursuant to Section 6 or Section 8 hereafter, from and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town of York for any of the following activities: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities; or (iv) any Treatment of any wastes or by-product resulting from Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities or Natural Gas and/or Petroleum Support Activities, whether or not such wastes or by-product originate in the Town of York or elsewhere.

2. The prohibitions set forth above in Clause 1. of this Section 4.B. are not intended, and shall not be construed, to: (a) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (b) 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, *so long as* such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.
- C. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
  - D. This moratorium and prohibition shall apply to all real property within the Town of York.
  - E. Under no circumstances shall the failure of the Town Board of the Town of York, the Zoning Board of Appeals of the Town of York, the Planning Board of the Town of York, or the Code Enforcement Officer for the Town of York to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

**Section 5. Penalties.**

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

- B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

**Section 6. 'Grandfathering' of Legal, Pre-existing Non-Conforming Use**

- A.
  - 1. The prohibitions set forth above in Clause 1. of Section 4.B. above are not intended, and shall not be construed to prevent or prohibit: (a) production, extraction or transmission of natural gas and/or petroleum from any existing vertical well in production and existing within the Town of York prior to the adoption of this Local Law, so long as such activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies; and (b) exploration activities for natural gas and/or petroleum typically used for vertical wells as of the date of adoption of this Local Law and necessary to continue the production from such wells as described immediately above, so long as such exploration activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies. All such natural gas or petroleum extraction and exploration activities as identified immediately above shall be considered to be "grandfathered" as pre-existing, non-conforming uses and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.
  - 2. Natural gas and/or petroleum extraction that is being conducted from vertical wells within the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A.1. of this Section 6, shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

- B. 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 A.1. of this Section 6, or upon any other substantive cessation of natural gas and/or petroleum extraction activities (otherwise grandfathered by virtue of Clause A.1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status and grandfathering of such activity shall terminate, and thereafter such natural gas and/or petroleum extraction activities shall in all respects be prohibited as contemplated by Section 4 hereof.
  
- C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A.1. of this Section 6 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, other than what is contemplated in Clause A.1. of this Section 6, shall not be grandfathered and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

**Section 7. Invalidity of any Conflicting Approvals or Permits.**

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of York when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

**Section 8. Hardship Use Variance.**

The Zoning Board of Appeals of the Town of York is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by Persons aggrieved hereby.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

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

the rural area, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.

- B. **Reasonable Rate of Return.** In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Local Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed “dollars and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).
- C. **Unique Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
- D. **Essential Character of the Neighborhood.** In making the determination of whether the proposed development project will alter the essential character of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property, if any, may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will engage in a type of development that will result in degradation to the air quality, water quality, and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (a) pose a threat to the public safety, including public health, water quality or air quality, (b) cause an extraordinary public expense, or (c) create a nuisance.
- E. **Self-Created Hardship.** The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**Section 9. 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 here from, 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.

**Section 10. Superseding Intent and Effect.**

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Code of the Town of York; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of York.

**Section 11. Effective Date.**

This Local Law shall take effect immediately upon filing with the New York Department of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2014 of the (County)(City)(Town)(Village) of York was duly passed by the York Town Board on Dec. 30 2014, and was (approved) (not approved)(repassed after disapproval) by the Supervisor and was deemed duly adopted on Dec. 30 2014, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

Date: December 31, 2014

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK Livingston  
COUNTY OF \_\_\_\_\_

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title Attorney at Law

County  
City of York  
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date: December 31, 2014