

Town of Bethel
Proposed Local Law No. 1 of the Year 2012

A local law to amend the Town of Bethel Code Chapter 345 - Zoning
(as heretofore amended), by:

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

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

Article I. General Provisions

Section 1.1. Authority for Adoption

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

Section 1.2. Findings of Fact

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

Section 1.3. Purpose & Intent

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

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

As used in this Local Law, the term "Existing Zoning Law" shall mean and be the Zoning Law of the Town of Bethel dated June 24, 2009 (Local Law No. 1 of 2009), as amended by: (i) Local Law No. 1 of 2010, adopted February 10, 2010; (ii) Local Law No. 2 of 2010, adopted April 14, 2010, and (iii) Local Law No. 1 of 2011, adopted March 24, 2011, as any of the foregoing may have heretofore been amended or supplemented.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 1 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.

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 of §345-1 of the Existing Zoning Law

§345-1 of the Existing Zoning Law is hereby amended so as to change the Title of such §345-1 from "**Scope.**" To "**Scope; Severability.**", and to add the following text as a new second paragraph:

"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 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 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. Amendments of §345-5 of the Existing Zoning Law

§345-5 of the Existing Zoning Law is hereby amended so as to delete the text of the present definition of "COMPREHENSIVE PLAN" in its entirety, and to replace the same with the following text:

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

§345-5 of the Existing Zoning Law is hereby further amended so as to add the following definition of “Enclosed Structure,” as follows:

Enclosed Structure – a building with a floor, walls and a roof all made of impervious materials, providing structural support and designed to prevent the release of Contamination resulting from any of the activities conducted or materials stored within.

§345-5 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of “Gambling” in its entirety.

§345-5 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of “Light Industrial Use” in its entirety, and to replace the same with the following text:

LIGHT INDUSTRIAL USE OR LIGHT INDUSTRY --- A business premises engaged in the fabrication of finished products or parts, predominantly from previously prepared materials, including processing, assembly, treatment, packaging, and incidental storage, sales, and distribution of such products, but excluding Manufacturing Use as defined in this §345-5, and excluding any Explicitly Prohibited Use, as defined at §345-38.

§345-5 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of “Manufacturing” in its entirety, and to replace the same with the following text:

MANUFACTURING or MANUFACTURING USE --- A business premises engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, and the creation of products, but excluding any Explicitly Prohibited Use, as defined at §345-38.

§345-5 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of “MINING,” said text to be inserted immediately following the end of the sentence that begins “Mining shall not include...”:

“In no event shall ‘mining’ be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities or Natural Gas And/Or

Petroleum Extraction Activities (as those terms are defined at §345-38 of this Chapter).”

§345-5 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of “SPECIAL USE” in its entirety, and to replace the same with the following text:

“A use which because of its unique characteristics requires individual consideration through a procedure of review by the Planning Board applying the standards and criteria of §345-30 of this Chapter, in order to determine whether a special use permit should be granted, conditionally granted, or denied.”

§345-5 of the Existing Zoning Law is hereby further amended so as to add the following definitions of “Variance,” “Variance, Area,” and “Variance, Use,” as follows:

“VARIANCE

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

VARIANCE, AREA

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

VARIANCE, USE

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

§345-5 of the Existing Zoning Law is hereby further amended so as to add the following definition of “Contamination,” as follows:

“Contamination” means any hazardous substance, toxic material, or other substance, chemical or waste, emission, discharge or pollutant or comparable material (hereafter, a “pollutant”) listed, identified or regulated pursuant to any applicable federal, state or local laws, statutes, ordinances rules or regulations and other requirements of governmental authorities relating to the environment, natural resources, or human health and safety, which has been released into the environment. Contamination includes the release of any substance for which any governmental authority has provided a waiver or exemption to any potential discharger or class of dischargers, and but for that waiver or exemption the substance would be a pollutant because of its (i) hazardous characteristics including, but not limited to, ignitability, toxicity, corrosivity, and/or reactivity or (ii) potentially significant negative impact on public health and safety and/or the environment.

2.3. Amendments of §345-11 of the Existing Zoning Law

§345-11 of the Existing Zoning Law is hereby amended so as to delete present Clauses A. and B. thereof in their entirety, and to replace the same with the following text:

“A. Any Use Not Specifically Permitted is Prohibited. It is the purpose of this Chapter to allow flexibility of land use, subject always to the restrictions, prohibitions, and design and performance requirements contained herein. Any use not specifically set forth as a permitted use in any 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. Except as otherwise provided herein: (a) no land shall be cleared, excavated, or graded in connection with a commercial use, no building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building is located. “

B. If there is a question as to whether a proposed use is one of the defined uses set forth in this Chapter, or if a proposed use may be reasonably described by more than one of the defined uses set forth in this Chapter, the Planning Board, upon written application, shall render a formal determination as to the proper definition of the proposed use in question. Once the Planning Board has determined the proper definition of the proposed use, the requirements of this Chapter will determine if the proposed use is a permitted use, a permitted accessory use, a special permit use, or a prohibited use. The authority granted to the Planning Board under this subsection 345-11.B shall not permit the Planning Board to allow, by special permit or otherwise, any use prohibited by subsection 345-11.C or by §345-38.

Present Clause C. of §345-11 of the Existing Zoning Law is hereby amended to read in its entirety as follows:

C. General Use Restriction. Any use not designated as a principal permitted use, a permitted accessory use or a special permit use is specifically prohibited within the Town of Bethel.

2.4. Amendment of §345-21 of the Existing Zoning Law

§345-21 of the Existing Zoning Law is hereby further amended so as to add a new Clause L, as follows:

L. Whenever a new Manufacturing Use or Light Industrial Use is proposed, or such use is proposed as an expansion of an existing non-conforming use, the following additional performance standards shall apply:

- (1) All Manufacturing Use or Light Industrial Use processes shall be performed within an Enclosed Structure.
- (2) All storage of raw materials used in any Manufacturing Use or Light Industrial Use process and any waste generated from any Manufacturing Use or Light Industrial Use process shall be stored in an Enclosed Structure or a container made from impervious materials which prevents exposure of its contents to the ambient elements.
 - a. Upon application, the Planning Board may waive the requirement that raw materials be stored in an Enclosed Structure or impervious container if the applicant is able to show to the satisfaction of the Planning Board that (i) the storage of the raw materials will not cause Contamination and (ii) the storage of such raw materials in an Enclosed Structure or impervious container is not practicable.

2.5. Amendment of §345-38 of the Existing Zoning Law

§345-38 of the Existing Zoning Law is hereby amended so as to delete the parenthetical “(Reserved)” therefrom, and to replace the same with the following text:

§345-38. Explicitly Prohibited Uses; Prohibition Against Hazardous or Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes; Prohibition Against Certain Waste Storage Facilities, Landfills and Dumps.

A. Explicitly Prohibited Uses. The following uses and activities (*being respectively defined in Subsection C. below of this § 345-38*) 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:

1. Injection Well;
2. Land Application Facility;
3. Natural Gas And/Or Petroleum Exploration Activities;
4. Natural Gas And/Or Petroleum Extraction Activities;

5. Natural Gas And/Or Petroleum Extraction, Exploration Or Production Waste Disposal/Storage Facility;
6. Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump
7. Natural Gas Compression Facility;
8. Natural Gas Processing Facility;
9. Non-regulated Pipelines;
10. Underground Injection;
11. Underground Natural Gas Storage;
12. High-Impact Uses;
13. Hazardous Waste Landfill (subject to the requirements of NY ECL § 27-1107); and
14. Gambling.

Any condition caused or permitted to exist in violation of this Clause A. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this Chapter as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this Chapter 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 Hazardous Waste Landfills, Dumps, Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dumps and Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/ Storage Facilities . The Town of Bethel hereby exercises its authority and right under NY ECL §27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to operate a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/ Storage Facility, Hazardous Waste Landfill, or Dump. The foregoing prohibition regarding the operation of a Hazardous Waste Landfill shall be subject to the requirements of NY ECL §27-1107. 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 or Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

C. Defined terms applicable to this §345-38. For purposes of this §345-38, 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).

DUMP --- The use of real property operated without a permit or other governmental authorization for the disposal of any type of waste, including solid waste, garbage, or trash in which such unwanted materials are deposited, disposed, discharged, injected, placed, buried or discarded without intention of further use.

GAMBLING – A use devoted to the wagering of money or something of material value on a contest of chance or a future contingent event not under the control or influence of those making wagers, upon an agreement or understanding that those making wagers will receive something of value in the event of a certain outcome. Notwithstanding the forgoing definition, gambling shall not include (i) any lottery operated by the State of New York and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the Legislature or (ii) any use as may be authorized in accordance with Chapter 97 of the Code entitled “Bingo” or Chapter 186 of the Code entitled “Games of Chance”.

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).

HAZARDOUS WASTE LANDFILL --- The use of real property pursuant to a permit issued by the governmental authority with jurisdiction over its operation as a site for the disposal of Hazardous Waste through burial or where such wastes are applied to the soil surface or injected into the upper layer of the soil.

HAZARDOUS WASTE --- Shall have the meaning set forth at NY ECL §27-0901(3).

HIGH-IMPACT USES --- 1. The following uses and activities are specifically declared and defined to be “High-Impact Uses”:

(a) Waste-to-Energy Facilities;

(b) Dumps;

(c) Industrial or manufacturing processes engaged in the production of any products classified under the following North American Industry Classification (NAIC) 2007 system code numbers: Veneer, Plywood & Engineered Wood Product Manufacturing (3212), except for Truss Manufacturing (321214), which shall not be included as a High Impact Use; Pulp, Paper and Paperboard Manufacturing (3221); Petroleum & Coal Manufacturing (3241); Basic Chemical Manufacturing (3251); Pesticide, Fertilizer & Other Agricultural Chemical Manufacturing (3253); Other Chemical Products & Preparation Manufacturing (3259); Clay Product & Refractory Manufacturing (3271); Glass & Glass Product Manufacturing (3272); Cement & Concrete Manufacturing (3273); Lime & Gypsum Manufacturing (3274); Other Nonmetallic Mineral Product Manufacturing (3279); Iron Steel Mills & Ferroalloy Manufacturing (3311); Steel Product Manufacturing from Purchased Steel (3312); Alumina & Aluminum Production & Processing (3313); Nonferrous Metal (Not Alum) Production & Processing (3314); Foundries (3315); Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing (3252); Rubber Products Manufacturing (3262); and Leather and Allied Product Manufacturing (3161); provided, however, that notwithstanding the foregoing, manufacturing or industrial processes classified under NAIC system code numbers Pottery, Ceramics, and Plumbing Fixture Manufacturing (32711); Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing (327112); Other Pressed and Blown Glass and Glassware Manufacturing (327212); Glass Product Manufacturing Made of Purchase Glass (327215); and Leather and Hide Tanning and Finishing (316110) shall not be considered a High-Impact Use if (i) the total number of full and/or part time employees does not exceed five persons engaged in the manufacturing or industrial process in question and (ii) the use is not otherwise a High-Impact Use as defined in subparagraph (d) below; and

(d) Any other use likely to have a significant negative impact upon the environment; or cause or significantly contribute to an increase in mortality; or an increase in serious irreversible, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health due to the nature of its operation, materials used and/or wastes generated. Any use requiring a permit from a state or federal governmental agency, which permit would allow for the discharge, storage, transport, disposal, or release of Contamination, shall be evidence of a High-Impact Use, as determined by the type and volume of Contamination. High-Impact Uses include those uses which have associated therewith any detrimental or obnoxious noise, vibration, smoke, odors, dust, heavy truck traffic, toxic or hazardous raw materials or Hazardous Wastes, and/or Contamination.

2. For purposes of this Chapter, any use, other than a Manufacturing Use, that is defined as a “High-Impact Use” by operation of subsection (1)(d), above, shall not be deemed a High-Impact Use if it is any of the following: (i) Agriculture Use, (ii) any use that is specifically articulated in this Chapter as allowed by right (within an appropriate zoning district) as a principal permitted or accessory use, (iii) any use that is specifically articulated in this Chapter as allowed (within an appropriate district) as a principal permitted or accessory use by special use permit or (iv) any use that is specifically articulated in the Town Code as a permissible use pursuant to a permit issued by the Town and that said use is conducted within an appropriate zoning district.

INJECTION WELL --- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the Subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Wells does not include: (a) any On-site Wastewater Treatment System, as that term is defined at §257-46 of the Town Code, (b) drainage wells, swales, or ditches 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, (d) any Agriculture Use, or (e) bore holes drilled to produce potable water to be used as such.

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

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) Radioactive Material Spoils (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. §261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-recognizable food wastes, (ii) waste generated by Agriculture Use, or (iii) waste generated by a Public Utility Facility.

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

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

NATURAL GAS COMPRESSION FACILITY --- Those facilities or combination of facilities that move natural gas or oil from production

fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

NATURAL GAS PROCESSING FACILITY --- Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of 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. Notwithstanding the foregoing, Non-Regulated Pipelines are not intended, and shall not be construed, to: (i) prevent or prohibit 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 (ii) 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 any legal residential, business, commercial, or other uses within the Town, including any Agriculture Use, so long as such uses do not involve any Natural Gas And/Or Petroleum Exploration Activities, or Natural Gas And/Or Petroleum Extraction Activities.

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

PUBLIC UTILITY --- An enterprise that provides electric, gas, steam, telephone service, water or sewerage directly to the general public. For purposes hereof, a public utility is an entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission.

PUBLIC UTILITY FACILITY --- Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes, regulated pipelines, pumping stations, repeaters, antennas, transmitters and receivers, valves, owned and operated by a Public Utility and relating to the furnishing of utility services to the public by that Public Utility.

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.

RADIOACTIVE MATERIAL SPOILS --- Radioactive material consisting of drill spoils or soil produced through the excavation or drilling of land and related 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.

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 Hazardous Wastes or 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.

WASTE-TO-ENERGY FACILITY --- A plant or facility that creates energy in the form of electricity or heat from the incineration of solid waste or recycled material.

WATER; WATER RESOURCES --- All streams, ditches, lakes, ponds, reservoirs, marshes, vernal pools, watercourses, waterways, wells,

springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

2.6. Amendments of Clause E. of §345-50 of the Existing Zoning Law

Clause E. of §345-50 of the Existing Zoning Law is hereby amended so as to delete the text of clause (1) thereof in its entirety, and to replace the same with the following text:

“The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Codes Enforcement Officer or other administrative official or body charged with the enforcement of this Zoning Law, including the Planning Board, after public notice and hearing and in accordance with the requirements of law and this Chapter, to grant area variances and use variances as those terms are defined herein. For the purposes of this §345-50, any person taking an appeal or making application for review by the Zoning Board of Appeals shall be referred to as the “applicant”.”

Clause E. of §345-50 of the Existing Zoning Law is hereby further amended so as to delete the text of clause (2) thereof in its entirety, and to replace the same with the following text:

“(2) Use Variances.

- (A) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Codes Enforcement Officer or other administrative official or body charged with the enforcement of this Zoning Law, including the Planning Board, after public notice and hearing and in accordance with the requirements of law and this Chapter, to grant use variances as defined herein.
- (B) If a use variance is granted, the applicant must obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.
- (C) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

1. 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:

- a. 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;
 - b. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved;
 - c. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. that the alleged hardship has not been self-created.
2. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals shall examine whether the entire original or expanded real 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 Chapter, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed development project) and for each and every permitted use in the district (including those uses permitted by Special Use Permit).
3. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Chapter, the Zoning Board of Appeals finds that the entire parcel of which the development project is a part possesses unique characteristics that distinguish it from other properties in the area.
4. Essential Character of the Neighborhood. In making its 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, agricultural and historic character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property that 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 (viii) whether the applicant will use a style of

development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed 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 development project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

5. 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 real property as a whole results from having paid too much for it or from a poor investment decision; (ii) the applicant previously subdivided the real property and is left with only a portion which suffers from some unique condition which did not apply to the parcel prior to its subdivision, and from which relief is sought; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions from which relief is sought.

(D) In addition to the application and procedural requirements from time to time established pursuant to §345-49, an application for any use variance shall contain a written narrative explaining what the application is for, and how the development project meets or exceeds all of the criteria for a use variance, including:

1. Competent Financial Evidence. Competent financial evidence containing reasonable specification of the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed development project is a part): (a) date of acquisition; (b) the purchase price; (c) present value of the property; (d) the amount of real estate taxes; (e) the amount of mortgages or liens and other expenses; (f) the asking price for the property when it had been offered for sale; (g) the costs of demolishing any existing structures on the property; (h) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit); (i) efforts to market the property; and (j) a schedule of all other property in common ownership at either the date of the enactment of this Chapter or thereafter.
2. Competent financial evidence must include "dollars and cents proof" such as appraisals, economic studies, and any other evidence supporting the applicant's contention that the desired relief is

appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of the real property. For the purposes of §345-50.E(2)(D)(1)(j), the term “common ownership” means all other interests in real property either located within the Town or contiguous to the Town held by the applicant or any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

3. Unique Nature of the Property. The applicant must provide evidence demonstrating the unique nature of the parcel as a whole. The fact that improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.
4. Alteration of the Essential Character of the Neighborhood. The applicant must demonstrate that the proposed development project will not change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential character of the neighborhood, where such impacts are deemed significant by the Zoning Board of Appeals, include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, increased noise, dust, and/or odor, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.
5. Hardship Not Self-Created. In order to show that the hardship is not self-created, the applicant must demonstrate that either (a) when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (b) some other change has occurred since the applicant’s purchase which makes the use non-conforming, as long as the change was not caused by the applicant.

(E) The Zoning Board of Appeals, in the granting of use variances, shall grant

only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

(F) The Zoning Board of Appeals shall, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed development project. Such conditions shall be consistent with the spirit and intent of this Chapter, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Chapter. If the applicant refuses to accept such conditions and restrictions, the use variance shall be denied. The Planning Board shall incorporate into the approved site plan any such conditions and restrictions established by the Zoning Board of Appeals under this subsection F when it conducts site plan review as required by §345-50.E(2)(B).

(G) In addition to the application requirements from time to time established pursuant to §345-49 and those requirements set forth above at §345-50.E(2)(D) , the following written reports and documents shall be required to be submitted in connection with any appeal or application for a use variance concerning what is otherwise an Explicitly Prohibited Use (as defined in §345-38). The purpose of these reports in the context of otherwise Explicitly Prohibited Uses is to assist the Zoning Board of Appeals in its determination as to the impact of a proposed development project on the Town and/or the “essential character of the neighborhood” and/or to determine whether the proposed development project complies with the requirements of this Chapter:

1. Environmental Assessment Form. A completed draft of an Environmental Assessment Form, Part I.

2. Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, park/recreational, cultural/tourism, and/or agricultural areas, as well as any appropriately designated Unique Areas, environmentally sensitive lands (as designated in accordance with 6 NYCRR Part 190), and Critical Environmental Areas (as designated in accordance with 6 NYCRR 617.14[g]) within a two (2) mile radius of the perimeter of the site of the proposed use. For the purposes of this §345-50.E(2)(G), the site of the proposed use shall be referred to as the “project site”.

3. Traffic Impact Report. A traffic impact report containing:

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

4. Road Impact Report. An evaluation of (i) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes in the vicinity of the project site; (ii) the adequacy of existing pavement structures along the proposed traffic routes in the vicinity of the project site to accommodate the full weight load of any trucks likely to be used in connection with the proposed development project; and (iii) impacts to the rural or scenic character of any roads along the proposed traffic route in the vicinity of the project site.

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

6. Noise Impact Report. A report on the following topics:

i. the existing audible conditions at the project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation;

ii. a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the project site, including noise impacts from truck traffic travelling within the Town to and from the project site;

iii. for the noise generated by construction and use of the project site, the range of noise levels and the tonal and frequency characteristics expected, and the basis for the expectation;

iv. a description and map of the existing land uses and structures including any sound receptors (e.g., residences, hospitals, libraries, schools and places of worship, parks, cultural/tourism venues, areas with outdoor workers) within one (1) mile of the project site boundaries. Said description shall include the location of the structure/land use, distances from the project site and expected decibel readings for each receptor;

v. the report shall cover low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise; and

vi. the report shall describe the project site's proposed noise-control features, including specific measures proposed to protect workers and mitigate noise impacts for sensitive receptors.

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

conditions shall be included. The study shall also indicate the color treatment of any of the improvements that will be constructed at the project site and any visual screening incorporated into the project site that is intended to lessen visual impacts. Lighting impacts shall also be assessed.

8. Report of Hazardous Wastes, Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Solid Wastes. A report of (i) a description of Hazardous Wastes, Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and other solid wastes, industrial wastes, and potential for Contamination expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site; (ii) a description of controls and practices to eliminate or minimize release of all such wastes into the environment; and (iii) a plan for ultimate disposal of such wastes whether on or off-site.

9. Energy Use Analysis. A written (i) description of the type(s) of energy to be used at the project site upon completion of the project improvements; (ii) projection of the quantity of energy use over the projected life of the improvement and the source of that energy; (iii) description of the impact of that energy use on current energy users in the Town; and (iv) description of energy savings steps to be taken in the construction and use of the project site improvements.

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

11. Fiscal Impact Assessment. A written assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed development project.

12. Fire Prevention, Equipment Failure and Emergency Response Report. A written report containing:

i. Description of the potential fire, equipment failures and emergency scenarios associated the proposed development project that may require a response from fire, emergency medical services, police or other emergency responders;

ii. An analysis of the worst case disaster associated with the proposed development project and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property.

- iii. Designation of the specific agencies that would respond to potential fires, equipment failures, accidents or other emergencies;
- iv. Description of all emergency response training and equipment needed to respond to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and
- v. the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the project site; and a detailed fire control and pollution prevention and emergency response plan.

13. Public Facilities and Services Assessment. A written assessment describing:

(i) whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed development project (taking into account all other uses that have been permitted or are currently operating in the Town);

(ii) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed development project (in determining the effect and impact of the proposed development project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations); and

(iii) a review of the impact of the proposed development project on the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks, elevated sidewalks, green space buffers for pedestrians/bikes where established walking/biking route overlap/run along intended truck routes so as to prevent accidents.

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

15. Health Impact Assessment. A written human health impact assessment that identifies ways in which the proposed development project could adversely affect the health of Town residents and a priority list of recommendations to minimize the potential health impacts of the

proposed development project. The health impact assessment shall include (i) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the development project site; (ii) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; (iii) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, a perceived loss of shared community ideals and cohesion, declining property values, impacts to the education system and sudden changes in population numbers, demographics and customs, and (iv) proposed remedies to address principal findings.

Clause E. of §345-50 of the Existing Zoning Law is hereby further amended so as to delete the text of clause (3) thereof in its entirety, and to replace the same with the following text:

“(3) Area Variances.

- (a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Codes Enforcement Officer or other administrative official or body charged with the enforcement of this Zoning Law, including the Planning Board, after public notice and hearing and in accordance with the requirements of law and this Chapter, to grant area variances as defined herein.
- (b) In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the board shall consider each of the following factors:
 - i. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - ii. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - iii. whether the requested area variance is substantial;
 - iv. whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the

- neighborhood or district; and
 - v. whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Zoning Appeals, but which consideration shall not necessarily preclude the granting of the area variance.
- (c) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum area variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (d) In addition to the application requirements from time to time established pursuant to §345-49, applications for an area variance shall contain a written narrative explaining what the application is for, and how the development project meets or exceeds all of the criteria for an area variance.
- (e) The Zoning Board of Appeals shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Chapter, and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community. If the applicant refuses to accept such conditions and restrictions, the area variance shall be denied. If the Zoning Board of Appeals imposes any such conditions and restrictions as provided herein, the applicant must apply to the Planning Board for site plan review and the approved site plan will incorporate any such conditions and restrictions.
- (f) If an area variance is granted, the applicant is not relieved of any obligations to obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit

2.7 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.