

# Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one:)

of Lima

**FILED  
STATE RECORDS**

**APR 28 2014**

**DEPARTMENT OF STATE**

Local Law No. 2 of the year 2014

**A local law** amending the zoning code, establishing a Severability Clause; Confirming any Uses not  
(Insert Title)  
Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Adding  
and Changing Certain Definitions; and Modifying, Clarifying, and Adding to the Provisions  
Regarding Variances.

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one:)

of Lima

as follows:

## Article I. General Provisions

### Section 1.1. Authority for Adoption

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 Lima 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 police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern. It is further 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 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 herein-identified land uses, such as negative impacts on roadways, traffic congestion, and other deleterious impacts upon a community. This Law is not intended to regulate the operational processes of any business. This Local Law is a law of general applicability and is intended to promote the interests of the community as a whole.

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

As is consistent with law (including, without limitation NY ECL § 27-0711) this Local Law intends to, and hereby does, regulate certain land uses so as to promote the health and welfare of the citizens of the Town by, among other things, prohibiting the dumping, discharging, injection and disposal of materials herein defined as “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes” on lands and in bodies of water within the Town. Further, this Local Law is intended and declared to protect drinking water supplies, and is intended and declared to supplement and enhance, but not limit or impinge upon, the Safe Drinking Water Act or the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions that are directly related and incidental to certain uses of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from certain uses of property that could pose a unique risk of adverse impacts to, and effects upon, the comfort, peace, enjoyment, health and safety of residents and their property.

### **Section 1.2. Findings of Fact**

1. Lima is a community in Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, high-quality agricultural and forestry land, and scenic and other natural resources.
2. Many residents 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, the general health and welfare of Town residents, and the local economy. Certain of the Explicitly Prohibited Uses defined and described in this Local Law have the potential to damage surface and ground water resources, in the event of (by way of example) human error, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.
3. Preservation of the Town’s irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the agricultural, 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 also deeply affect the way people feel about a place, and affect whether businesses will want to locate within, or people will want to live in, attend school in, and visit, a place.
5. Allowing certain of the Explicitly Prohibited Uses defined and described in the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the areas or communities in which such activities are located. Such negative

impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas and scenic views, the fragmentation of natural communities and valuable wildlife and flora corridors, decreased recreational opportunities, and damage to tourism industries.

6. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Certain of the Explicitly Prohibited Uses defined and described in this Local Law typically involve a large volume of heavy vehicles and accidents involving heavy vehicles have greater potential for death or serious injuries and property damages than those involving smaller vehicles. Further, such accidents are more likely to occur on roads (such as many roads in the Town) that have sharp corners, narrow lanes, short sight lines, and overall limited roadway geometries. Thus, an increased volume of heavy vehicular traffic may cause, contribute to, or create unsafe conditions for the traveling public and thus place a strain on emergency responders. Increased heavy vehicular traffic also tends to increase air pollution and noise levels, and decrease the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public's money. Many Town roads are generally "highways by use" (as contemplated by Section 189 of the NY Highway Law) and, as such, many such roadways are not engineered or able to carry repeated heavy vehicular traffic, even if within legal limit loads. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the Explicitly Prohibited Uses defined and described in this Local Law.
7. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, the air pollution, dust, noise, vibrations, and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.
8. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, noise, vibrations, seismic, subterranean, lateral and subjacent support impacts, and light pollution typically caused by such activities, could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, vibrations, and seismic and other impacts to subterranean surface support, can have negative effects on human health and wildlife.
9. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined in the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
10. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined in the Local Law) have in other

localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

11. Evaluation and determination of whether the Explicitly Prohibited Uses defined and described in this Local Law are appropriate for the Town is a legitimate goal of land use policy and laws; indeed, the exclusion of specified industrial uses is a legitimate and judicially recognized and supported goal of such laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

*the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*

416 U.S. at 6. See also, *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, held as follows:

*A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.*

*87 N.Y. 2d at 683, 684.*

### **Section 1.3. Purpose & Intent**

This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air, water, historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and declared by the Town Board to:

- a. promote the purposes of planning and land use regulation by, among other things, preserving the roads and protecting limited and related fire, police, and other emergency response services in the Town;
- b. promote the health, safety and welfare of the Town, its present and future inhabitants, by preventing adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town;
- c. protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town; and

d. protect the Town's irreplaceable historic, scenic, and natural resources, and the Town's water and air quality, by protecting each and all of the same from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town.

#### **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 Town of Lima Zoning Ordinance adopted March 4, 2010, as amended to date.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 2 of 2014.

As used in Article II of this Local Law, the term "this Law," "this chapter," this "Chapter," "this Zoning 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.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

### **Article II. Amendments of Existing Zoning Law**

#### **2.1. Amendment to Article I of the Existing Zoning Law**

Article I of the Existing Zoning Law is hereby amended, so as to add a new Section thereto (to be numbered '§ 250-3-A'), said new Section to be inserted immediately after the text of present § 250-3 of the Existing Zoning Law, and immediately prior to Article II of the Existing Zoning Law:

##### **"§ 250-3-A. Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or

enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.”

## **2.2. Amendments to Article III of the Existing Zoning Law**

**A.** Article III of the of the Existing Zoning Law is hereby amended so as to delete the text of § 250-7 thereof (beginning “No building, structure ...”) in the entirety, and to substitute therefor the following text:

“This Law regulates the location, design, construction, alteration, occupancy, and use of buildings and other structures and the use of land in the Town of Lima, and divides the Town into land use districts. The provisions of this Law shall be considered the minimum requirements for the promotion of the public health, safety, convenience, comfort, and general welfare. It is not intended by this Law to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that when this Law imposes a greater restriction on the use of structures or land or on the heights of structures, or requires larger open spaces, or imposes any higher standards than are imposed or required by any easement, covenant, or agreement, the provisions of this Law shall control. Where the requirements of this Law differ from the requirements of another applicable statute, law, ordinance, rule, or regulation, the more restrictive standard shall govern, except and unless this Law specifically states otherwise.”

**B.** Article III of the of the Existing Zoning Law is hereby further amended, so as to delete the text of § 250-8 thereof (beginning “The present tense ...”) in the entirety, and to substitute therefor the following text:

“Except where specifically defined or otherwise specifically provided herein, all words used in this Law shall carry their customary dictionary meanings. For purposes hereof, certain terms and words shall be interpreted as follows: words used in the present tense shall include the future; the plural usage includes the singular, and the singular the plural; the word “shall” is mandatory; the word “may” is permissive; the word “building” includes the word “structure,” and both “building” and “structure” include any part thereof; the word “lot” includes the words “plot” and “parcel”; and the words “occupied” and “used” shall be interpreted as though followed by the words “or intended, arranged, or designed to be used or occupied.” Where the precise meaning of a word is in doubt by any board or official, the Zoning Board of Appeals shall make a determination in accordance with the purpose and intent of this Law and the Comprehensive Plan.”

**C.** Article III of the of the Existing Zoning Law is hereby further amended, so as to delete the first line of text of § 250-9 thereof (beginning “Certain words and terms ...”) in the entirety, and to substitute

therefor the following text:

“For purposes of this Law, unless otherwise specifically provided the following terms and words shall have the meanings set forth below:

**ACCESSORY STRUCTURE** -- a structure customarily incidental and subordinate to the principal building on the same lot, where the principal building is lawful and where there is unity of ownership between the principal building and accessory structure. A structure which dominates the principal building in area is not eligible to qualify as an accessory structure.

**ACCESSORY USE** -- a use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use that dominates the principal use in area, extent or purpose shall not be not eligible to qualify as an accessory use. Under no circumstances shall any Explicitly Prohibited Use qualify as an accessory use.”

**D.** § 250-9 of the Existing Zoning Law is hereby amended so as to insert the following definition of “Below-Regulatory Concern” therein, said definition to be inserted immediately after the definition of “Bed and Breakfast Inn” and immediately before the present definition of “Billboard”:

“**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.”

**E.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Business; Business, General Business” therein, said text to be inserted immediately after the definition of “Building Principal” and immediately before the definition of “Cabin, Hunting and Fishing”:

“**BUSINESS; BUSINESS USES; GENERAL BUSINESS** -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “business,” “business uses,” “general business” or any variation thereof, be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

**F.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Comprehensive Plan” therein, said definition to be inserted immediately after the definition of “Clubhouse” and immediately before the definition of “Construction, Fire-Resistant”:

“**COMPREHENSIVE PLAN** -- any document, styled comprehensive or master plan or otherwise, adopted by the Town Board for the protection, enhancement, growth, and development of the Town, immediate as well as long-range, specifically pursuant to § 272-a of the NYS Town Law, together with all other materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and

other descriptive material, adopted by the Town Board, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the protection, enhancement, growth and development of the Town.”

**G.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to add the following text as the (new) second sentence of the definition of “Dump”, to be inserted immediately prior to the definition of “Family”:

“Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “dump” or any variation thereof contained in this Law, be construed to mean, be, include, or authorize within the Town a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

**H.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Excavation” therein, said text to be inserted immediately after the definition of “Education Institution” and immediately before the definition of “Factory”:

“EXCAVATION; EXCAVATING -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “excavation,” “excavating” or any variation thereof be construed to mean, be, or include Natural Gas, or to authorize within the Town Natural Gas and/or Petroleum Extraction Activities or any other Explicitly Prohibited Use.”

**I.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Explicitly Prohibited Uses” therein, said definition to be inserted immediately after the definition of “Education Institution” and immediately before the present definition of “Factory”:

“EXPLICITLY PROHIBITED USE(S) -- Shall mean and be the Explicitly Prohibited Uses defined and described in § 250-9B. of this Law.”

**J.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Extractive Industry(ies)” therein, said text to be inserted immediately after the (newly inserted) definition of “Explicitly Prohibited Uses” and immediately before the definition of “Factory”:

“EXTRACTIVE INDUSTRY(IES); EXTRACTIVE USE -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “extractive industry,” “extractive industries,” “extractive use” or any variation thereof be construed to mean, be, include, or authorize within the Town Natural Gas and/or Petroleum Extraction Activities or any other Explicitly Prohibited Use.”

**K.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to add the following text as the (new) second sentence of the definition of “Industry”, to be inserted immediately prior to the definition of “Junkyard”:

“Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industrial uses,” “industry,” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

L. § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Injection Well” therein, said text to be inserted immediately after the definition of “Industry” and immediately before the definition of “Junkyard”:

“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 of the hole, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.”

M. § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Land Application Facility” therein, said text to be inserted immediately after the definition of “Kennel” and immediately before the definition of “Laundry, Coin-Operated, Dry Cleaner”:

“LAND APPLICATION FACILITY -- A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.”

N. § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Mining” therein, said text to be inserted immediately after the definition of “Major excavation, Grading or Filling” and immediately before the definition of “Mobile Home”:

“MINING -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “mining” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use.”

O. § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) “Natural Gas,” (ii) “Natural Gas and/or Petroleum Exploration Activities,” (iii) “Natural Gas and/or Petroleum Extraction Activities,” (iv) “Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes,” (v) “Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility,” (vi) “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump,” (vii) “Natural Gas Compression Facility,” and (viii) “Natural Gas Processing Facility” therein, said definitions to be respectively inserted immediately after the definition of “Motor Vehicles Service Station” and immediately before the

definition of “Nursery School”:

“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 EXPLORATION, EXTRACTION OR PRODUCTION WASTES -- Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production or processing wastes; (c) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (d) 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; (e) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (f) drill cuttings from natural gas or petroleum wells; or (g) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes *does not include* (i) recognizable and non-recognizable food wastes, or (ii) waste generated by use for agriculture.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY -- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or

treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

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

**NATURAL GAS COMPRESSION FACILITY** -- A facility constructed or operated to compress natural gas that originates from a gas well or collection of such wells, operating as a midstream facility for delivery of gas from a gas field for entry into the transmission pipeline system; the term shall not include the transmission pipeline itself; 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.

**P.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to add the following text as the (new) second sentence of the definition of “Open Storage”, to be inserted immediately prior to the definition of “Outdoor Recreation Facility”:

“Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “open storage” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town, a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

**Q.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Public Utility; Public Utility Station” therein, said text to be inserted immediately after the definition of “Poultry House, Cage-Type” and immediately before the definition of “Quarry, Sandpit, Gravel Pit, Topsoil Stripping”:

“**PUBLIC UTILITY; PUBLIC UTILITY STATION** -- An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility station, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV,

telephone or other communication service, water or sewerage directly to the general public. In no event shall 'Public Utility,' 'Public Utility Building,' 'Public Utility Facility,' or 'Utility' be construed to mean, be, include, or authorize within the Town a Natural Gas Compression Facility, Natural Gas Processing Facility, or any other Explicitly Prohibited Use." "

**R.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to add the following text as the (new) second sentence of the definition of "Quarry, Sandpit, Gravel Pit, Topsoil Stripping", to be inserted immediately prior to the definition of "Recreation, Commercial Indoor":

"Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term "Quarry, Sandpit, Gravel Pit, Topsoil Stripping" or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town, Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use."

**S.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) "Radiation", and (ii) "Radioactive Material" therein, said definitions to be respectively inserted immediately after the definition of "Quarry, Sandpit, Gravel Pit, Topsoil Stripping" and immediately before the present definition of "Recreation, Commercial Indoor":

"RADIATION -- The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

RADIOACTIVE MATERIAL\_-- Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made process. All 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."

**T.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of "Subsurface" therein, said text to be inserted immediately after the definition of "Structure, Nonconforming" and immediately before the present definition of "Swimming Pool":

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

**U.** § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following

definitions of (i) "Underground Injection," and (ii) "Underground Natural Gas Storage" therein, said definitions to be respectively inserted immediately after the definition of "Trailer, Cargo" and immediately before the definition of "Use":

"UNDERGROUND INJECTION -- Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, including emplacement 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, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities."

V. § 250-9 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) "Variance", (ii) "Variance, Area", and (iii) "Variance, Use" therein, said definitions to be respectively inserted immediately after the definition of "Use, Nonconforming" and immediately before the definition of "Vegetative Agricultural Products":

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

VARIANCE, AREA -- The authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional requirements of the applicable zoning regulations.

VARIANCE, USE -- The authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations."

### **2.3. Amendment to the Existing Zoning Law to Create New Article III-A**

The Existing Zoning Law is hereby further amended, so as to add a new Article III-A thereto as set forth below, said new Article III-A and the title thereof to be inserted immediately following the end of § 250-9 of the Existing Zoning Law, and immediately preceding the text and heading of Article VI ('Agricultural Use Districts A') of the Existing Zoning Law:

**"ARTICLE III-A  
Application of Zoning District Regulations;  
Any Use Not Specifically Articulated as Allowed is Prohibited.**

**§ 250-9A. Any Use Not Specifically Articulated as Allowed is Prohibited**

Any use not specifically set forth as a permitted use (as of right, accessory, or upon

special permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district.

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 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, and what is specified within this ordinance as to dimensional and similar area requirements is further limited and qualified by any restrictions imposed by any applicable additional requirements, standards, and/or regulations contained in this Law.”

#### **2.4. Amendments to the Existing Zoning Law to Create New Article III-B**

**A.** The Existing Zoning Law is hereby further amended, so as to add a new Article III-B thereto as set forth below, said new Article III-B and the title thereof to be inserted immediately following the end of (newly inserted) Article III-A of the Existing Zoning Law, and immediately preceding the text and heading of present Article VI (‘Agricultural Use Districts A’) of the Existing Zoning Law:

**“ARTICLE III-B  
Explicitly Prohibited Uses; Prohibition Against  
Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.”**

**B.** The Existing Zoning Law is hereby further amended, so as to insert the following (new) Sections § 250-9B, § 250-9C, and § 250-9D of (newly added) Article III-B, said new Sections to be inserted immediately after the heading of (newly added) Article III-A and immediately preceding the text and heading of Article VI (‘Agricultural Use Districts A’) of the Existing Zoning Law:

**“§ 250-9B. EXPLICITLY PROHIBITED USES.**

Without limiting the generality of the statements elsewhere in this Law that any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any particular zoning district shall be expressly prohibited in that district, the following uses and activities 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:

(i) Land Application Facility;

(ii) Natural Gas And/Or Petroleum Exploration Activities;

- (iii) Natural Gas And/Or Petroleum Extraction Activities;
- (iv) Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility;
- (v) Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump;
- (vi) Natural Gas Compression Facility;
- (vii) Natural Gas Processing Facility;
- (viii) Underground Injection; and
- (ix) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this § 250-9B. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this law as an “Explicitly Prohibited Use,” and any combination of more than one such use may also be referred to as “Explicitly Prohibited Uses.”

**§ 250-9C. PROHIBITION AGAINST NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES.**

The Town of Lima 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 produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes.

**§ 250-9D. NO APPLICATION TO CUSTOMARY LOCAL DISTRIBUTION LINES, ETC.**

The prohibitions set forth above in § 250-9B. of this Article III-B are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) 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 (z) 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 Farm, residential, business, commercial, and other uses within the Town.”

## **2.5. Amendments to Article IV of the Existing Zoning Law**

**A.** Article IV of the of the Existing Zoning Law is hereby amended so as to delete the text of clause O. 9 of § 250-11 thereof (beginning “Electric substation, ...”) in the entirety, and to substitute therefor the following text: “Electric substation, telephone exchange, or similar public utility structure or use.”

**B.** Article IV of the of the Existing Zoning Law is hereby further amended, so as to delete the text of § 250-12 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-11 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Agricultural Use Districts A.”

## **2.6. Amendments to Article V of the Existing Zoning Law**

**A.** Article V of the of the Existing Zoning Law is hereby amended so as to delete the text of clause D. 4 § 250-20 thereof (beginning “Electric substation, ...”) in the entirety, and to substitute therefor the following text: “Electric substation, telephone exchange, or similar public utility structure or use.”

**B.** Article V of the of the Existing Zoning Law is hereby further amended, so as to delete the text of § 250-21 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-20 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Residence Use Districts R.”

## **2.7. Amendments to Article VI of the Existing Zoning Law**

**A.** Clause 2. of Subsection CC. of § 250-26 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) sentence beginning “ The storage of alcohol ...”):

“; provided, however, that neither this clause 2. of Subsection CC. of § 250-26, nor anything in § 250-83 of this Law, shall be construed to authorize or allow within the Town Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

**B.** Article VI of the of the Existing Zoning Law is hereby further amended, so as to delete the text of § 250-27 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-26 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within General Business Use Districts B.”

## **2.8. Amendment to Article VII of the Existing Zoning Law**

Article VII of the of the Existing Zoning Law is hereby amended so as to delete the text of § 250-35 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-34 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Industrial Use Districts M.”

## **2.9. Amendment to Article VIII of the Existing Zoning Law**

Article VII of the of the Existing Zoning Law is hereby amended so as to delete the text of § 250-42 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-41 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Land Conservation Districts L-C.”

## **2.10. Amendments to Article IX of the Existing Zoning Law**

**A.** § 250-45 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) sentence beginning “In Planned Development Districts ...”):

“; provided, however, that notwithstanding any provision hereof to the contrary and in any event, under no circumstances shall any Explicitly Prohibited Uses be conducted on or from any Planned Development District.”

**B.** Section E. of § 250-48 of the Existing Zoning Law (‘Permitted uses’) is hereby amended so as to add a new clause thereto (to be designated ‘E. (7)’), said new clause to be inserted immediately after the text of present clause (6) of Section E. of § 250-48 of the Existing Zoning Law, and immediately prior to the text of Section F. of of the Existing Zoning Law:

“(7) Prohibited Uses. Explicitly Prohibited Uses, and any use not specifically set forth in Section E. of this § 250-48 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Senior Residential Districts PD-SR.”

## **2.11. Amendments to Article X of the Existing Zoning Law**

**A.** § 250-51 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) sentence beginning “The Mining, Quarrying and Land Excavation ...”):

“; provided, however, that nothing in Article X shall be construed to authorize or allow within the Town Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

**B.** § 250-52 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (beginning “Uses permitted include ...”) in the entirety, and to substitute the following text therefor:

“Sand, stone, and gravel mining, topsoil stripping, and all uses, buildings and structures permitted in Agricultural Use Districts and Land Conservation Districts L-C shall be permitted within the Mining, Quarrying and Land Excavation District Q; provided, however, that the foregoing is not intended and shall not be construed to authorize or allow within the Town Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

**C.** Article X of the of the Existing Zoning Law is hereby further amended, so as to delete the text of § 250-55 thereof (beginning “Any uses not ...”) in the entirety, and to substitute therefor the following text:

“Explicitly Prohibited Uses, and any use not specifically set forth in § 250-52 above as a permitted use (as of right, accessory, or upon special permit, as the context may admit), shall be prohibited within Mining, Quarrying and Land Excavation Districts Q.”

## **2.12. Amendment to Article XI (‘Environmental Protection Overlay Districts’) of the Existing Zoning Law**

Section A. of § 250-56 of the Existing Zoning Law (‘Purpose and intent.’) is hereby amended so as to add a new, one sentence paragraph thereto, said new paragraph to be inserted immediately after the text of the present second paragraph of text of said Section A. of § 250-56 (which begins “The regulations ...”), and immediately prior to the text of Section B. of said § 250-56:

“Notwithstanding any provision of this Law to the contrary, under no circumstances shall an EPOD development permit be issued for any Explicitly Prohibited Use.”

## **2.13. Amendments to Article XI (‘Special Use Permit Procedures and Criteria and Other Special Provisions’) of the Existing Zoning Law**

**A.** The heading of Article XI (sic) (‘Special Use Permit Procedures and Criteria and Other Special Provisions’) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE XI” therefrom and to substitute the words “ARTICLE XIII” therefor.

**B.** § 250-75 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section (“Non-Conforming Uses, Building and Structures”) with the words “Non-Conforming Uses, Structures; Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities”; (ii) so as to delete the text “Subsections B and C” from the first sentence of Section A. of § 250-75, and to substitute the text “Sections B, C, and K” therefor; and (iii) so as to insert the following new Section K., said new Section K. to be inserted immediately following the text of present Section J. of § 250-75, and immediately prior to § 250-76 of the Existing Zoning Law:

“K. Pre-existing, legal non-conforming Natural Gas And/Or Petroleum Extraction Activities.

Notwithstanding any provision of this chapter to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of Local Law 2 of 2014 shall be subject to the following:

1.a. If, as of the effective date of Local Law 2 of 2014 substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation the possession of valid, non-revoked permits for all matters for which permits are required, and including compliance with each, any, and all permit conditions, as are or may be required by the New York State Department of Environmental Conservation (“DEC”) and/or all other regulating local, state, and federal governments, bureaus, or agencies, then and only then such Activity by or on behalf of the holder of the permit(s) shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses 2. and 3. of this Section K .

b. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of Local Law 2 of 2014 and which do not qualify for treatment under the preceding clause 1.a. of this Section K. shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses).

2. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1.a. of this Section K., or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then and in either of such events the pre-existing and/or non-conforming use status (and any related ‘grandfathering rights’) of or relating to such Activity shall terminate.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause 1. a. of this Section K. 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 of such well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Clause 1.a. of this Section K. “

C. § 250-83 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) second sentence thereof (beginning “Any such storage ...”):

“; provided, however, that nothing in this § 250-83 shall be construed to authorize or allow within the Town Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

D. Section E. of § 250-88 the of the Existing Zoning Law (titled ‘Penalties for offenses.’) is hereby deleted in the entirety, and the text “[Intentionally omitted.]” is hereby substituted therefor.

#### **2.14. Amendments to Article XII (‘Administration and Enforcement’) of the Existing Zoning Law**

A. The heading of Article XII (sic) (‘Administration and Enforcement’) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE XII” therefrom and to substitute the words “ARTICLE XIV” therefor.

B. The text of clause (3) (‘Variance’) of Section C. of § 250-83 of the Existing Zoning Law is hereby deleted in the entirety, and the following text is substituted therefor:

“(3) Variances. The Board of Appeals shall have the authority, on appeal from the decision or determination of the Code Enforcement Officer, or otherwise as contemplated by this Law, to grant use variances and area variances, subject to and upon the terms and conditions set forth herein.

##### **a. Use Variances**

1. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

v. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to clearly demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each and every 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) 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; (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that the alleged hardship has not been self-created.

- w. **Reasonable Rate of Return.** In evaluating whether the applicant can realize a reasonable rate of return, the Board of Appeals shall 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 project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed, written “dollar 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).
- x. **Unique Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the 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.
- y. **Essential Character of the Neighborhood.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the 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 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 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 project does not alter the essential character of the neighborhood, the 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: (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.
- z. **Self-Created Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals

finds that the alleged hardship was not self-created. The 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.

2. The 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.

3. The Board of Appeals, 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 project. Such conditions shall be consistent with the spirit and intent of this Law, 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 Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

b. Area Variances.

1. In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the 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: (a) 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; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created. (In contrast to the context of a *use* variance, in the context of an *area* variance application whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)

2. 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.

3. The Zoning Board of Appeals, 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 project. Such conditions shall be consistent with the spirit and intent of this Law, 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 Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

c. Use Variances and Area Variances:

Compliance with GML 239-m; referral to Planning Board

The Zoning Board of Appeals, in the granting of variances, shall comply with General Municipal Law 239-m. Prior to granting, denying, or conditionally granting any application for a variance, the Board of Appeals shall refer the variance request to the Planning Board for the Planning Board's non-binding recommendation regarding such application. So long as the Planning Board's non-binding recommendation is received by the Zoning Board of Appeals no later than 30 days following initial referral of such matter to the Planning Board, a summary of said non-binding recommendation shall be read aloud at the meeting of the Zoning Board of Appeals where the ZBA votes to grant, deny, or conditionally grant the variance in question, and a copy of the entire recommendation report of the Planning Board shall be included within the minutes of the Board of Appeals' meeting."

C. Clause (2) of Section G. of § 250-100 the of the Existing Zoning Law (which begins "The Board of Appeals does not ...") is hereby deleted in the entirety, and the text "[Intentionally omitted.]" is hereby substituted therefor.

### **2.15. Amendment to Article XIII ('Site Plan Review') of the Existing Zoning Law**

The heading of Article XIII (sic) ('Site Plan Review') of the Existing Zoning Law is hereby amended so as to delete the words "ARTICLE XIII" therefrom and to substitute the words "ARTICLE XV" therefor.

### **2.16. Amendment to Article XIV ('Commercial Site Design') of the Existing Zoning Law**

The heading of Article XIV (sic) ('Commercial Site Design') of the Existing Zoning Law is hereby

amended so as to delete the words "ARTICLE XIV" therefrom and to substitute the words "ARTICLE XVI" therefor.

### **2.17. Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

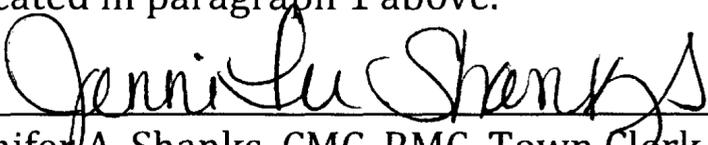
### **2.18. Effective Date of this Local Law**

This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.

Adopted by the Lima Town Board on April 3, 2014

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2014 of the Town of Lima, was duly passed by the Town Board on April 3, 2014 in accordance with the applicable provisions of law.

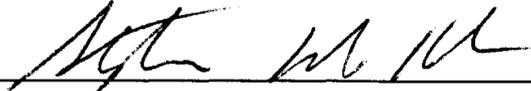
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

  
\_\_\_\_\_  
Jennifer A. Shanks, CMC, RMC, Town Clerk  
Date: April 21, 2014

(Seal)

STATE OF NEW YORK  
COUNTY OF LIVINGSTON

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.

  
\_\_\_\_\_  
Stephen M. Kruk, Esq.,  
Kruk & Campbell, P.C.  
Attorney for the Town of Lima

Date: 7/21/14

(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. 2 of 20<sup>14</sup> of the (County)(City)(Town)(Village) of Lima was duly passed by the Town Board on April 3 20<sup>14</sup>, 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. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20  , in accordance with the applicable provisions of law.

**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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

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.

**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) *(Name of Legislative Body)* (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.

\* 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.

*Jennifer Sharkey*

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: *April 21, 2014*

(Seal)