

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

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 Rush

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED  
SEP 05 2013

Local Law No. 3 of the year 2013

A local law To amend and supplement the Zoning Law of the Town of Rush adopted June 12, 1973

(Insert Title)

by establishing and clarifying that any uses not expressly permitted are prohibited;

articulating certain new definitions, and changing certain existing definitions; and modifying,

clarifying, and adding to the provisions regarding variances.

MISCELLANEOUS  
& STATE RECORDS

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

County  City  Town  Village  
(Select one.)

of Rush as follows:

Attached Local Law and Appendix A

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

**(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. \_\_\_\_\_ 3 \_\_\_\_\_ of 20<sup>13</sup> of the (County)(City)(Town)(Village) of \_\_\_\_\_ Rush \_\_\_\_\_ was duly passed by the \_\_\_\_\_ Town Board \_\_\_\_\_ on August 28, 20<sup>13</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 \_\_\_\_\_<sup>1</sup> above.

*Annunzio Buccia*

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

Date: August 28, 2013

(Seal)

**RESOLUTION OF THE TOWN BOARD  
OF THE TOWN OF RUSH ADOPTING  
LOCAL LAW NO. 3 OF 2013**

**WHEREAS**, the Town Board for the Town of Rush has determined that it is in the interests of the Town of Rush that the current Zoning Law be amended to articulate certain expressly prohibited uses and to confirm and clarify that any uses not expressly permitted are prohibited; and

**WHEREAS**, a public hearing on the proposed local law was conducted by the Town Board of the Town of Rush on August 28, 2013, wherein the public was provided an opportunity to submit comments on the proposed legislation; and

**WHEREAS**, a Long Environment Assessment Form has been prepared by the Town in compliance with Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA") and sent to all interested and involved agencies for review and comment and/or objection; and

**WHEREAS**, no comments or objections to the Long Environmental Assessment Form have been interposed by the aforementioned agencies; and

**WHEREAS**, on July 25, 2013, the Board referred the proposed local law to the Monroe County Department of Planning and Development pursuant to section 239-m of the New York General Municipal Law; and

**WHEREAS**, on August 26, 2013, the Monroe County Department of Planning and Development responded that it had no comments on the proposed local law; and

**NOW, THEREFORE BE IT RESOLVED** that this Board declare itself Lead Agency for purposes of conducting an coordinated review of the proposed local law and making any necessary determinations of environmental significance under SEQRA; and

**BE IT FURTHER RESOLVED** that this Board classifies the action as a Type 1 action subject to a coordinated review under 6 N.Y.C.R.R. § 617.6; and

**BE IT FURTHER RESOLVED** that the Town Board finds that the action will not include a significant potential environmental impact, and thus issues a negative declaration under SEQRA; and

**BE IT FURTHER RESOLVED** that Local Law No. 3 of the year 2013, a copy of which is attached and incorporated hereto, is hereby enacted to amend and supplement the Zoning Law of the Town of Rush;

**BE IT FURTHER RESOLVED** that said resolution and local law shall take effect immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the New York Municipal Home Rule Law; and

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**BE IT FURTHER RESOLVED** that notice of this Resolution shall be filed and circulated to the extent required by any applicable provision of the Code of the Town of Rush and/or any relevant statute or regulation.

The adoption of the foregoing Resolution was moved by Councilwoman Steiner, seconded by Supervisor Richard Anderson, and duly put to vote, which resulted as follows:

	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Supervisor Richard Anderson	[ ✓ ]	[ ]	[ ]	[ ]
Councilman William Riepe	[ ✓ ]	[ ]	[ ]	[ ]
Councilwoman Kathryn Steiner	[ ✓ ]	[ ]	[ ]	[ ]
Councilman Daniel Woolaver	[ ✓ ]	[ ]	[ ]	[ ]
Councilwoman Cathleen Frank	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

Town of Rush  
**Local Law No. 3 of the Year 2013**

A local law to amend and supplement  
the Zoning Law of the Town of Rush adopted June 12, 1973  
(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; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

***Be it enacted by the Town Board of the Town of Rush 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 Town of Rush Zoning Law adopted June 12, 1973, as amended by July 13, 1982, July 10, 1984, April 8, 1992, and August 11, 1993 amendments, and by: Local Law No. 1 of 1997, Local Law No. 2 of 1997, Local Law No. 1 of 1998, Local Law No. 2 of 1998, Local Law No. 1 of 1999, Local Law No. 1 of 2001, Local Law No. 3 of 2003, Local Law No. 4 of 2003, Local Law No. 3 of 2004, Local Law No. 2 of 2005, Local Law No. 1 of 2010, and Local Law No. 4 of 2010.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 3 of 2013.

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. Amendment to § 120-3 of the Existing Zoning Law**

§ 120-3 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("Official Zoning Map.") with the words "Official Zoning Map; Interpretation of District Boundaries."; and (ii) so as to delete the (present) text of said Section (beginning "The location and boundaries ...") in the entirety, and to substitute the following text therefor:

"A. The boundaries of the zoning districts are shown on the map entitled "Official Zoning Map of the Town of Rush," which is hereby declared to be a part of this Law. The official Zoning Map shall be kept on file in the office of the Town Clerk. Unofficial reductions of this map shall be for reference purposes only. Changes may be made in district boundaries only by a zoning amendment adopted by the Town Board. Any such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the Town Board adopts such an amendment. In the event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the controlling authority as to the current zoning status of lands, structures and uses in the Town.

B. Where uncertainty exists as to the boundaries of districts shown on the Zoning Map, the following rules apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or railroad tracks shall be construed to follow such center lines.
2. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
3. Boundaries indicated as following shorelines of ponds and lakes shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.

4. Boundaries indicated as following centerlines of streams shall be construed to follow such centerlines and, in the event of change in the centerline, shall be construed as moving with the actual centerline.

5. Boundaries indicated as parallel to or extensions of features indicated in Subsections B.1. through B.4. above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

6. Where overlay district boundaries are based upon natural features such as topographic contour lines or aquifer and aquifer recharge areas, such boundaries may be more precisely established through field investigation by a qualified professional.

7. Where a question arises as to exact boundaries of a district, the Town Board shall by resolution determine the location of the boundary, giving due consideration, among other factors, to the indicated location of the boundary on the Zoning Map, the scale of the Zoning Map, and the expressed intent and purposes of this chapter."

## **2.2. Amendment to § 120-4 of the Existing Zoning Law**

§ 120-4 of the Existing Zoning Law is hereby amended so as to so as to delete the (present) text of subsection A. thereof (beginning "If any section, paragraph...") in the entirety, and to substitute the following text therefor:

"A. 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."

## **2.3. Amendments to § 120-5 of the Existing Zoning Law**

**A.** Section A. of § 120-5 of the Existing Zoning Law is hereby amended so as to delete the text of clause (4) thereof (beginning "The word "person" includes...") in the entirety, and to substitute the text "[Intentionally omitted.]" therefor.

**B.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to delete the term "ACCESSORY STRUCTURE" and its corresponding definition (beginning "A structure the use of which ...") in the entirety, and to substitute the following text therefor:

"ACCESSORY BUILDING; ACCESSORY STRUCTURE – A structure detached from and subordinate to a principal building on the same lot, the use of which is customarily incidental to that of the principal building or use."

**C.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to delete the present definition of the term "ACCESSORY USE" (beginning "An occupation customarily ...") in the entirety, and to substitute the following definition therefor: "

"ACCESSORY USE – A use, not otherwise contrary to the provisions of this Law, that is customarily incidental and subordinate to the principal use and located on the same lot therewith, and which does not dominate in area, extent, or purpose the principal, lawful use of said lot."

**D.** Section B. of § 120-5 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 "Building":

by any the "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.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of "COMMERCIAL or BUSINESS," said text to be inserted immediately following the end of the sentence that begins "The purchase, sale, or transaction..." :

"In no event shall 'Commercial' or 'Business' (or either of them) be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use."

**F.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of "DISTRIBUTION CENTER," said text to be inserted immediately following the end of the sentence that begins "Building used for the transfer..." :

"In no event shall 'Distribution Center' be construed to mean, be, or include

Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use."

**G.** Section B. of § 120-5 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 present definition of "DWELLING UNIT" and immediately before the present definition of "FAMILY":

"EXPLICITLY PROHIBITED USE(S)" – Shall mean and be the Explicitly Prohibited Uses defined and described in § 120-62 of this chapter."

**H.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Gravel Mining" therein, said definition to be inserted immediately after the definition of "GRADE LEVEL" and immediately before the present definition of "GROSS FLOOR AREA":

"GRAVEL MINING – any of the following activities: (a) the extraction of overburden and minerals from the earth; (b) the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, sorting, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use (exclusive of any manufacturing processes at the mine location); (c) the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; (d) the disposition of overburden, tailings and waste at the mine location; or (e) any combination of the above activities. In no event shall "gravel mining" be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use," nor shall "gravel mining" include (i) the excavation, removal or disposition of minerals from the site of, and incidental to, a construction project as to which all required permits are in force and, or (ii) excavations incidental to bona fide Agricultural Use activities, For the purpose of this definition:

(A) Minerals - mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. "Minerals" include, but are not limited to, peat, topsoil, gravel, and stone. For purposes hereof, Natural Gas and other subsurface hydrocarbons shall not be considered "minerals."

(B) Overburden - means all of the earth, vegetation and other materials that lie above or alongside a mineral deposit.

(C) Spoil and Tailings - have the meanings given to them by Article 23 of the NYS Environmental Conservation Law or any similar or successor statute."

**I.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to delete

the term "INDUSTRY or INDUSTRIAL" and its corresponding definition (beginning "Storage, manufacture, preparation ...") in the entirety, and to substitute the following text therefor:

"INDUSTRIAL or INDUSTRY or INDUSTRIAL USES – Storage, manufacture, preparation, assembly, processing, or repair of any article, substance or commodity, and the conduct of any industrial trade, but not including such preparation, assembly, processing, or repair as is customarily done on-site at retail sales or services establishments. Notwithstanding any provision hereof to the contrary, in no event shall the terms "industrial," "industry," "industrial uses," or any variation thereof, be construed to mean, be, or include 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."

J. Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Injection Well" therein, said definition to be inserted immediately after the (newly added) definition of "INDUSTRIAL or INDUSTRY or INDUSTRIAL USES" and immediately before the present definition of "LODGING HOUSE":

than  
ninety (90)  
(90) days." "INJECTION WELL -- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety percent of such fluids return to the surface within a period of ninety (90) days."

K. Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Land Application Facility" therein, said definition to be inserted immediately after the (newly added) definition of "INJECTION WELL" and immediately before the present definition of "LODGING HOUSE":

"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(s) of the soil."

L. Section B. of § 120-5 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 And/Or Petroleum Support Activities," (viii) "Natural Gas Compression Facility," and (ix) "Natural Gas Processing Facility" therein, said definitions to be respectively inserted immediately after the definition of "MOVING" and immediately before the present definition of "NONCONFORMING USE":

or  
which  
or derived from

"NATURAL GAS -- Methane and any gaseous substance, either combustible non-combustible, which is produced in a natural state from the earth and maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in 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 any statutory or regulatory definition(s) of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, and in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or

Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Farm use.

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

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

NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES --- Any one of more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Underground Injection; or (g) Underground Natural Gas Storage.

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."

**M.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Person" and (ii) "Public Utility " therein, said definitions to be respectively inserted immediately after the definition of "OPEN SPACE" and immediately before the definition of "SETBACK, FRONT":

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

PUBLIC UTILITY --- An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility facility is a facility 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' or 'Public Utility facility' be construed to mean, be, or include Natural Gas Compression Facility or Natural Gas Processing Facility or any other Explicitly Prohibited Use."

**N.** Section B. of § 120-5 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 (newly added) definition of "PUBLIC UTILITY" and immediately before the definition of "SETBACK, FRONT":

"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 radiation), but only if such naturally occurring material has been moved from its naturally occurring location through an industrial 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."

**O.** Section B. of § 120-5 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Subsurface" therein, said definition to be inserted immediately after the (newly added) definition of "STRUCTURE" 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.

**P.** Section B. of § 120-5 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 "TOWNHOUSE OR ROWHOUSE DEVELOPMENT" 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.

balancing  
facilities,                      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 the production of natural gas. Includes compression and dehydration and pipelines."

**Q.** Section B. of § 120-5 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" and immediately before the heading and title of § 120-6 of the Existing Zoning Law:

"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 otherwise 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 otherwise allowed or is prohibited by the applicable zoning regulations."

#### **2.4. Amendment to § 120-6 of the Existing Zoning Law**

§ 120-6 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("Uses of structures and lands.") with the words "Uses of structures and lands; Any use not specifically permitted is prohibited."; and (ii) so as to add the following text to said Section, immediately following the sentence which begins "All structures hereafter erected ..." and immediately prior to present ARTICLE II of the Existing Zoning Law:

"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. "

#### **2.5. Amendments to § 120-7 of the Existing Zoning Law**

**A.** Clause 10. of Subsection B. of § 120-7 of the Existing Zoning Law is hereby amended so as to delete the present text thereof (beginning "Extractive operations such ...") in its entirety, and so as to substitute the following text therefor: "Gravel Mining."

**B.** § 120-7 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section C. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A. or B. of this 120-7 shall be prohibited in R-20 Residential Districts."

**2.6. Amendment to § 120-8 of the Existing Zoning Law**

§ 120-8 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section C. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A. or B. of this 120-8 shall be prohibited in R-30 and RR-5 Residential Districts."

**2.7. Amendment to § 120-9 of the Existing Zoning Law**

§ 120-9 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section C. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A. or B. of this 120-9 shall be prohibited in R-MD Residential Districts."

**2.8. Amendment to § 120-10 of the Existing Zoning Law**

§ 120-10 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section C. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A. or B. of this 120-10 shall be prohibited in R-MH Residential Districts."

**2.9. Amendment to § 120-11 of the Existing Zoning Law**

§ 120-11 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section E. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A., B., C., or D. of this 120-11 shall be prohibited in R-TH Residential Districts."

**2.10. Amendment to § 120-12 of the Existing Zoning Law**

§ 120-12 of the Existing Zoning Law is hereby further amended so as to delete the present text of Section C. thereof (beginning "All uses not mentioned ...") in its entirety, and so as to substitute the following text therefor: "All uses not specifically permitted by virtue of Sections A. or B. of this 120-12 shall be prohibited in C Commercial Districts."

**2.11. Amendments to § 120-13 of the Existing Zoning Law**

**A.** Clause 1. of Subsection C. of § 120-13 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 " Essential Services and structures ..."):

Natural Gas  
Natural  
Dump, a  
any other

"provided, however, that for purposes hereof, "Essential services and structures" shall in no event be construed to mean, be, or include And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Natural Gas Compression Facility, a Natural Gas Processing Facility, or Explicitly Prohibited Uses."

**B.** Clause 1. of Subsection D. of § 120-13 of the Existing Zoning Law is hereby further amended so as to delete the present first line of text thereof ( "All uses of a type not expressly mentioned in Subsection A, B, or C above shall be") in its entirety, and so as to substitute the following text therefor:

any

"The following uses shall be prohibited in RB Restricted Business Districts: power plants; maintenance yards; storage yards; retail sales and services; warehouses; commercial parking lots and garages; fuel oil and motor fuel storage, dispensing, and/or sale facilities; facilities for the rental, leasing, sale, servicing and/or exchange of motorized vehicles of any type or character; type of drive-through facilities (except drive-through bank teller facilities and ATM facilities; and any and all uses not specifically permitted by virtue of Sections A., B., or C. of this § 120-13."

## **2.12. Amendments to § 120-14 of the Existing Zoning Law**

**A.** Clause 1. of Subsection A. of § 120-14 of the Existing Zoning Law is hereby amended so as to amend the present first sentence thereof (beginning " The following uses are permitted ...") by deleting the text "Subsection A(2) below", and substituting the following text therefor: "Subsections A.(2) and A.(3) below".

**B.** Subsection A. of § 120-14 of the Existing Zoning Law is hereby further amended so as to add the following text thereto, said new text to be inserted immediately following the text of present Clause 2 of said Subsection A., and immediately prior to Subsection B. of § 120-14:

"(3) No Explicitly Prohibited Uses. In no event shall any Explicitly Prohibited Uses be allowed within the Town, whether in any I (Industrial) District, or otherwise."

## **2.13. Amendments to § 120-15 of the Existing Zoning Law**

**A.** Subsection B. of § 120-15 of the Existing Zoning Law is hereby amended so as to delete the heading thereof (being "Conditional uses.") and to substitute the following text therefor: "Special permit uses".

**B.** Clause 1 of Subsection B. of § 120-15 of the Existing Zoning Law is hereby further

amended so as to add the following text thereto, said new text to be inserted immediately following the words "Limited Industrial District":

"; provided, however, that in no event shall any Explicitly Prohibited Use be allowed within the Town, whether in any LI (Limited Industrial) District, or otherwise."

#### **2.14. Amendment to § 120-57 of the Existing Zoning Law**

Subsection A. of § 120-57 of the Existing Zoning Law is hereby amended so as to delete the heading and accompanying text of the final item thereof (being "Other uses") and to substitute the following heading and accompanying text therefor:

"Other Legal Uses For any other lawful use not otherwise specified above, the required number of spaces shall be determined by the Planning Board"

#### **2.15. Amendments to § 120-62 of the Existing Zoning Law**

**A.** § 120-62 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("Uses prohibited in all districts:") with the words "Uses prohibited in all districts: Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes."; and (ii) so as to add the following text to said Section, said text to be inserted immediately following the (newly added) title of said Section:

"A. Explicitly Prohibited Uses. The following uses and 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:"

**B.** § 120-62 of the Existing Zoning Law is hereby further amended: (i) so as to re-label present Subsection A. of such Section as "Clause 1." thereof; (ii) so as to re-label present Subsection B. of such Section as "Clause 2." thereof; (iii) so as to re-label present Subsection C. of such Section as "Clause 3." thereof; (iv) so as to re-label present Subsection D. of such Section as "Clause 4." thereof; (v) so as to re-label present Subsection E. of such Section as "Clause 5." thereof; and (i) so as to re-label present Subsection F. of such Section as "Clause 6." thereof.

**C.** Present Section E. of § 120-62 of the Existing Zoning Law (now labeled as 'Clause 5.' by virtue of the preceding Section 2.15 B. of this Local Law) is hereby further amended so as to delete the text "'Soil stripping' and the sale or disposition of topsoil is prohibited." in the entirety, and to substitute the following text therefor: "'Soil stripping' and the sale or disposition of topsoil so stripped from within the Town are prohibited."

**D.** § 120-62 of the Existing Zoning Law is hereby further amended so as to add the following text thereto, said additional text to be inserted immediately after the text of present

Section F. of § 120-62 of the Existing Zoning Law (now labeled as 'Clause 6.' by virtue of the above Section 2.15 B. of this Local Law), and immediately prior to the heading and title of § 120-63 of the Existing Zoning Law:

- "7. Land Application Facility;
- 8. Natural Gas And/Or Petroleum Exploration Activities;
- 9. Natural Gas And/Or Petroleum Extraction Activities;
- 10. Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- 11. Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- 12. Natural Gas Compression Facility;
- 13. Natural Gas Processing Facility;
- 14. Underground Injection; and
- 15. Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of Section A. of this § 120-62 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "Explicitly Prohibited Uses," any one of the above expressly prohibited uses may be referred to in this law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

B. Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Rush 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 Extraction, Exploration Or Production Wastes.

C. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this § 120-62 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 Agriculture, residential, business, commercial, and other uses within the Town."

**2.16. Amendment to add new § 120-63.A. to the Existing Zoning Law**

The Existing Zoning Law is hereby amended so as to add a new Section thereto (to be numbered '§ 120-63.A.')., said new Section to be inserted immediately after the text of present § 120-63 of the Existing Zoning Law, and immediately prior to § 120-64 of the Existing Zoning Law:

**"§ 120-63.A. Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities**

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

a.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation 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 shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses b. and c. of this § 120-63.A.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause a. 1. of this § 120-63.A. shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses), and shall in all respects be prohibited as contemplated by § 120-62 hereof.

b. 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 a. 1. of this § 120-63A., 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, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by § 120-62 hereof.

non- c. Notwithstanding any provision hereof to the contrary, the pre-existing, 63.A. is conforming status conferred and recognized by Clause a. 1. of this § 120- any not intended, and shall not be construed, to authorize or grandfather the Natural Gas And/Or Petroleum Extraction Activities extending beyond purported whatever well bore is authorized in any DEC permit in existence as of horizon(s) or effective date of this Local Law. Any expansion or attempted or § 120-63.A., and expansion of such well, whether as to its production, depth, 120-62 otherwise, shall not be grandfathered under Clause a. 1. of this instead shall in all respects be prohibited as contemplated by § hereof."

**2.17. Amendments to § 120-68 of the Existing Zoning Law**

Subsection E. of § 120-68 of the Existing Zoning Law ("Appeals for variance.") is hereby amended so as to delete the heading and accompanying text thereof in the entirety, and to substitute the following heading and accompanying text therefor:

"E. Variances.  
a. Use Variances

1. If a use variance is granted, the applicant shall obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.

2. 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 otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

that

(i) 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: (w) 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; (x) 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; (y) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (z) that the

alleged hardship has not been self-created.

- (ii) 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).
- (iii) 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.
- (iv) 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: (a) the rural residential, agricultural and historic character of the Town, (b) its irreplaceable recreation and tourism sites, (c) the extent of hazard to life, limb or property that may result from the proposed project, (d) health impacts, (e) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (f) the impact on property values, and (g) 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.
- (v) 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 (x) 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; (y) 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 (z) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

3. 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.
4. 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 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.

3. In addition to the application requirements from time to time established pursuant to law and this Law, applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for an area variance.

4. The 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 Law, 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 requirements and conditions, the area variance shall be denied."

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## **2.18.**

## **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.

## **2.19. 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 Rush Town Board on August 28, 2013

## APPENDIX A

ATTACHED TO AND FORMING A PART OF  
TOWN OF RUSH (NY) LOCAL LAW NO. 3 of the YEAR 2013,  
known as:

A local law to amend and supplement  
the Zoning Law of the Town of Rush adopted June 12, 1973  
(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; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

The Town Of Rush (NY) Local Law No. 3 Of The Year 2013 to which this Appendix A is attached is herein sometimes referred to as "this Local Law" or "this Law."

This Appendix A is a part of the Local Law to which it is attached for all purposes.

**Section 1. Authority and Intent.** This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Rush 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.

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 2. Findings of Fact.**

1. Rush is a community in Monroe 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. With very limited exceptions within the Town, all 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 3. Purposes.** 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.

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