

**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 of Blenheim**  
Village

**FILED  
STATE RECORDS**

**APR 30 2014**

**DEPARTMENT OF STATE**

Local Law No. 3 of the year **2014**.

**A local law “to effect a Prohibition Within The Town of Blenheim Of  
Natural Gas And Petroleum Exploration And Extraction Activities,  
Underground Storage Of Natural Gas,  
And Disposal Of  
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”**

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

County  
City  
**Town of Blenheim**, as follows:  
Village

Section 1. TITLE.

This Local Law shall be known as the  
**“Prohibition within the Town of Blenheim of Natural  
Gas And Petroleum Exploration And Extraction Activities,  
Underground Storage Of Natural Gas, and  
Disposal Of  
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”**

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE; INTERPRETATION.

A. The Town Board of the Town of Blenheim 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.



B. The Town Board has found, determined, and made the declarations of findings set forth at Section 2 of Appendix A attached hereto.

C. The Purposes underlying the Town Board's passage of this Local Law, as articulated, found, and declared by the Town Board, are set forth at Section 3 of Appendix A attached hereto.

D. The statements of authority, intent, findings, and purpose are legislatively adopted along with the formal text of this Local Law. Such statements of authority, intent, findings, and purpose are intended and declared to be a material part of this Local Law, a legal guide to the administration and interpretation of this Local Law, and a part of the legislative history of this Local Law.

### Section 3. DEFINITION OF THIS "LOCAL LAW," "THIS LAW," ETC., AND CONSTRUCTION OF TERMS.

The term "this Local Law," "this Law," "this chapter," and "herein" shall mean and refer to Town of Blenheim Local Law No. 3 of 2014, as the same may be amended from time to time. The term "shall" is mandatory, and the term "may" is permissive. Any word that is gender-referenced shall be construed to include all genders and the neuter/neutral of such term. Capitalized words shall have the meanings ascribed to them whenever the context thereof so admits or requires. Defined words and phrases that are not capitalized shall be deemed to be capitalized, unless the context thereof admits or requires otherwise.

### Section 4. DEFINITIONS.

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

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

**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.

**Land Application Facility** --- A site where any Natural Gas Exploration And/Or Petroleum Production Wastes are applied to the soil surface or injected into the upper layers of the soil.

**Natural Gas** --- Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

**Natural Gas And/Or Petroleum Exploration Activities** --- Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise make any



penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

**Natural Gas And/Or Petroleum Extraction Activities** --- The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum, or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

**Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes** --- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," or "hazardous" or "toxic" substances, materials, or wastes, and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes *does not include* (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

**Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility** --- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

**Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump** --- Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**Natural Gas And/Or Petroleum Support Activities** --- Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes 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.

**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.

**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.

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

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

**Town** --- The Town of Blenheim, Schoharie County, New York.

**Town Board** --- The Town Board of the Town.

**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 for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities.

**Section 5. PROHIBITION WITHIN THE TOWN OF NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES, NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES, AND NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES.**



A. Subject to subsection B. of this Section 5, it shall be unlawful for any person to use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

B. The prohibitions set forth above in subsection A. of this Section 5 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 distribution 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.

#### Section 6. PENALTIES; ENFORCEMENT.

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

B. In addition, an action or proceeding may be instituted by the Town Board in the name of the Town in any court of competent jurisdiction to prevent, restrain, enjoin, correct, enforce, and/or abate any violation of, or non-conformance with, any provision or requirement of this Local Law. Additionally, an action may be instituted by the Town Board in the name of the Town to declare the rights of the Town relative to any justiciable controversy arising from, under, or in relation to this Local Law, whether pertaining to its interpretation, application, legality, or enforceability, or otherwise. In any event, no such action or proceeding shall be commenced without the appropriate authorization from the Town Board. If equitable relief is requested in the form of an temporary restraining order, a temporary injunction, or an injunction, or by any other form of prohibition or similar relief, the Town shall not be required to post any bond or undertaking as a condition or requirement for or of such relief, and the Town shall not be required to prove or show a lack of an adequate remedy at law. No right, remedy, or penalty specified in this Section 6 shall be the exclusive remedy of the Town, and each remedy or penalty specified in this Section 6 shall be in addition to, and not in substitution for or in limitation of, any other remedies or penalties specified in this Local Law or permitted by any applicable law, rule, order, or regulation. Any remedy or penalty specified in this Local Law may be pursued by the Town at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Section 6.

C. In addition, any enforcement officer (Building Inspector, or Code Enforcement Officer) may issue stop work orders or compliance notices relative to any violation of this Local Law. The failure of any Person to comply with any such notice or order shall be and be deemed a violation of any other applicable law or ordinance, including, without limitation, the New York Executive Law, § 382, and, in each case, such non-compliance or violation may also be enforced as such.



D. In the event the Town desires or is required to take legal action to enforce this Local Law the violator will be responsible for any and all necessary costs and expenses incurred by the Town relative thereto, including attorneys,' engineering, consulting, and experts' fees; provided, however, any responsibility or liability therefor, and the amount thereof, shall be determined by a court or other tribunal of competent jurisdiction, and this clause shall be interpreted, construed, and applied only to the maximum extent permitted by applicable law.

Section 7. 'GRANDFATHERING' OF LEGAL, PRE-EXISTING NON-CONFORMING USES.

Notwithstanding any provision hereof 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 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 subsections B. and C. of this Section 7.

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 Section 7 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 Section 5 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 Section 7, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 7) 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 such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 5 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 7 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 A. 1. of this Section 7, and instead shall in all respects be prohibited as contemplated by Section 5 hereof.



## Section 8. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

Except as contemplated by Section 9 of this Local Law, no permit or approval issued by any local agency, department, commission or board shall be deemed valid when or to the extent that such permit or approval purports to allow or permit any activity that would violate the moratorium and prohibition set forth at Section 5 of this Local Law.

## Section 9. HARDSHIP EXEMPTION.

A. There is hereby established a mechanism by which persons aggrieved by a decision or determination of the Town's Code Enforcement Officer (or other administrative official or body from time to time charged with the enforcement of this Law) regarding Section 5 (or otherwise) of this Law may make appeal to the Town Board for a Hardship Exemption from the provisions of said Section 5 (or any other provision or requirement of this Local Law). The Town Board shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer or other administrative official or body charged with the enforcement of this Law, after public notice and hearing and in accordance with the requirements of law and this Law, to consider applications for a Hardship Exemption from the provisions of Section 5 (or any other provision or requirement) of this Law. Applicants for a Hardship Exemption should consult the succeeding provisions of this Section 9, as well as Section 10 of this Law, for specification of application requirements and the procedural mechanism involved in consideration by the Town Board of an application for a Hardship Exemption.

B. No such Hardship Exemption shall be granted by the Town Board without a showing by the applicant that enforcement of Section 5 (or other provision) of this Law as to such applicant has caused "unnecessary hardship." In order to prove unnecessary hardship for purposes hereof, the applicant must demonstrate to the Town Board's satisfaction compliance with and/or proof of each of the following four standards or conditions: (i) that, unless the applicant is granted a Hardship Exemption from the provisions of Section 5 (or other provision) of this Law, the applicant cannot realize a reasonable rate of 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 neighborhood or other area in the vicinity of the applicant's property; (iii) that the alleged hardship has not been self-created; and (iv) that the requested Hardship Exemption, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property in an adverse manner. For purposes of interpreting and applying the above four standards and matters of proof, the following shall apply:

1. *Reasonable Rate of Return.* In evaluating whether the applicant can realize a reasonable rate of return for purposes hereof, the Town Board shall examine whether the entire original or expanded property holdings of the applicant (as opposed to only the site of the proposed project) are incapable of producing a reasonable rate of return. No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Law, the Town Board finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) unless the applicant is granted a Hardship Exemption from the provisions of Section 5 (or other provision) of this Law.



2. *Unique Hardship.* No Hardship Exemption shall be granted unless, in addition to satisfying all other applicable provisions of this Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the neighborhood or other area in the vicinity of the applicant's property. The applicant must demonstrate the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded, or in disrepair, or the fact that the property is then unimproved shall not be deemed sufficient to make the plight of the property unique or to contribute thereto. Exceptional topography is an example of a factor demonstrating the unique nature of the property.

3. *Self-Created Hardship.* The Town Board 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, applicant knew or should have known that the property was subject to this Law.

4. *Adverse Alteration of Essential Character of the Neighborhood or Other Area in Vicinity.* In making its determination of whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Town Board 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 and resources of the Town; (ii) the impacts to the Town's irreplaceable recreational and scenic sites; (iii) the extent and likelihood of the creation or exacerbation of any hazard to life, limb, or property that may result from the proposed project; (iv) public health impacts; (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation, and other nuisances; (vi) impacts upon property values; and (viii) whether the applicant will use a type or style of development that will result in degradation to the air quality, water quality, or to the historic, scenic, and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Town Board shall interpret the public interest in said essential character of the neighborhood or other area 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.

C. In addition to any other application requirements from time to time established pursuant to this Law, an application for any Hardship Exemption shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for a Hardship Exemption. Such submissions shall include the following:

1. With respect to a claim that the applicant cannot realize a reasonable rate of return, the applicant shall provide financial evidence containing reasonable specification of the nature and factual particulars of such claim, including, at a minimum (as to the entire parcel of which the proposed project is a part): (a) the date(s) of acquisition of the property; (b) the purchase price; (c) present value of the property; (d) the amount of real estate taxes; (e) the amount of mortgages or liens and other expenses; (f) the asking price for the property when it had been offered for



sale; (g) the costs of demolishing any existing structures on the property; (h) efforts to market the property; (i) a schedule of all other property in common ownership at either the date of the enactment of this Law or thereafter; and (j) “dollars and cents proof” such as appraisals, economic studies, and any other such evidence supporting the applicant’s contention that the grant of a Hardship Exemption is appropriate. For purposes hereof, “common ownership” means all other interests in property either located within the Town or contiguous to the Town that is held by any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

2. With respect to a claim that, if granted, the requested Hardship Exemption will not adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property, the applicant must demonstrate that the proposed project will not adversely affect such essential character with regard to the physical, economic, social or environmental elements of such neighborhood and/or area. Examples of adverse impacts to the essential character of the neighborhood or other area include (without limitation) decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality or roadway damages, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of viewsheds, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

#### Section 10.    HARDSHIP EXEMPTION APPLICATION AND REVIEW PROCEDURES.

A. Every application for a Hardship Exemption shall be submitted in writing, upon forms from time to time established, approved, or prescribed by the Town Board, and shall be signed by the applicant. If the applicant is not the owner of the property involved, the owner of the property shall nonetheless attest to the accuracy of the statements and representations made in the application, and both the applicant and the owner shall certify that he (or she or it) has undertaken due diligence with respect to the accuracy of the matters contained in the application. Ten copies of the application and supporting documentation shall be filed with the Town Board, accompanied by a fee in the amount set from time to time by resolution of the Town Board. The Town Board is hereby authorized to adopt rules and regulations for the conduct of hearings on applications for Hardship Exemptions, consistent with this Local Law and other applicable statutes and requirements.

B. In evaluating an application for a Hardship Exemption, the Town Board shall comply with any applicable provisions of Article 9 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 616 of the New York Codes Rules and Regulations, known as the State Environmental Quality Review Act (“SEQRA”), as the same may from time to time be amended.

C. The Town Board shall schedule a hearing on all applications for a Hardship Exemption within 62 days of the filing of a complete application therefor. Said 62 day period may be extended by mutual agreement of the Town Board and the applicant, or whenever required by law, including but not limited to the completion of any required SEQRA procedures. Public notice of the hearing shall be



given at least five days prior to the date thereof by publication in the Town's official newspaper. The Town Board may adjourn or continue such public hearing from time-to-time. The cost of sending or publishing any notices relating to any application shall be borne by the applicant, and shall be paid to the Town Board prior to the hearing. At least five days before any hearing upon an application, the Town Board shall mail all notices that the Attorney for the Town may advise are necessary or advisable (such as for example notices to abutters and notices that may be required by Sections 239-l, 239-m, and/or 239-n of the NYS General Municipal Law).

D. In addition to such other procedures as may be required by applicable law, the following shall apply with respect to the conduct of hearings regarding applications for Hardship Exemptions: (a) the burden of proof shall remain with the applicant to show that he (or she or it) has satisfied the conditions, requirements, and proofs necessary to qualify for a Hardship Exemption, and the burden shall never shift to the Town; (b) any party may appear in person or by agent or by attorney; (c) no decision or determination shall be made except upon consideration of the record as a whole and as supported by and in accordance with substantial evidence; (d) all evidence shall be made a part of the record; and (e) official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Town Board. When official notice is taken of a material fact not appearing in the evidence or in the record and it is one of which judicial notice could be taken, every party shall be given notice thereof and shall upon timely request be afforded an opportunity prior to decision to support or dispute the fact or its materiality.

E. Decisions by the Town Board on applications for a Hardship Exemption shall be made within 62 days from the close of the public hearing on such matter. The time within which the Town Board must render its decision may, however, be extended by mutual consent of the applicant and the Town Board, or whenever required by law, including but not limited to the completion of any required SEQRA procedures. The final decision on such matter shall be made by written order signed by the Town Supervisor. Such decision shall state the findings of fact that were the basis for the Town Board's determination. The Town Board's decision as to each application for a Hardship Exemption shall be filed in the office of the Town Clerk no later than five business days after the day such decision is rendered, and shall be made a public record.

F. The Town Board, in the granting of Hardship Exemptions, shall grant only the minimum level of exemption that it shall deem necessary and adequate to allow an economically beneficial use of the property, while at the same time preserving and protecting the essential character of the neighborhood and the health, safety, and welfare of the community.

G. The Town Board, in the granting of Hardship Exemptions, 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 Hardship Exemption may have on the neighborhood or other area in the vicinity of the applicant's property. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, location and layout of buildings, and 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 Hardship Exemption shall be denied.



H. Any person aggrieved by a decision of the Town Board with respect to an application for a Hardship Exemption may apply to the Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted no later than thirty (30) days after the filing of the Town Board's decision in the Town Clerk's office.

I. Any grant by the Town Board of a Hardship Exemption shall expire if a building permit for the proposed project is not obtained by the applicant within one hundred twenty (120) days from the date of the decision granting such Hardship Exemption.

J. Whenever the Town Board denies an application for a Hardship Exemption, the Town Board shall refuse to hold further hearings on such application, or a substantially similar application by the same property owner or his successors or assigns, for a period of one year following such denial, unless the Town Board shall find and determine from the information supplied that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that accordingly reconsideration is justified.

#### Section 11. 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.

#### Section 12. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board, to supersede any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Blenheim.

#### Section 13. GENERAL PROVISIONS.

A. The Code Enforcement Officer is hereby designated as the enforcement officer for purposes of administering and enforcing this Local Law. The Town Board shall have and reserves the right, by resolution to change or designate additional enforcement officers.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only, and shall not be used or construed to limit or define the scope or application of the



clauses and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

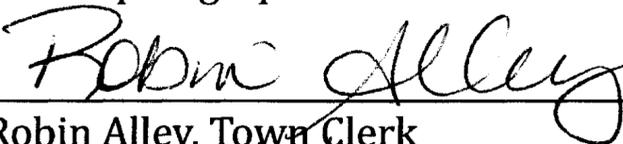
Section 14. EFFECTIVE DATE.

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

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I hereby certify that the local law annexed hereto, designated as Local Law No. \_3\_ of 2014 of the Town of Blenheim, was duly passed by the Town Board on April 7, 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.

  
\_\_\_\_\_  
Robin Alley, Town Clerk  
Date: 4/19/14

(Seal)

STATE OF NEW YORK  
COUNTY OF SCHOHARIE



**APPENDIX A**  
ATTACHED TO AND FORMING A PART OF  
TOWN OF BLENHEIM (NY) LOCAL LAW NO. \_\_ of the YEAR 2014,  
known as:

**“Prohibition Within The Town of Blenheim Of Natural  
Gas And Petroleum Exploration And Extraction Activities,  
Underground Storage Of Natural Gas,  
And Disposal Of  
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”**

The “Prohibition Within The Town Of Blenheim Of Natural Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes” 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 and declared to be consistent with and is adopted pursuant to the authority granted to the Town Board 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)(6), 10; Municipal Home Rule Law § 10; Statute of Local Governments §10; Environmental Conservation Law § 17-1101 and § 27-0711; and Public Health Law §§ 228(2), (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, regulating or 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 and the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions on certain uses of property that are directly related and incidental to the use of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from a certain uses of property that 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. Blenheim is a community in Schoharie County that takes great pride in and assigns great value to its unique quality of rural lifestyle, 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 activities described in subsection 5. A. of 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 and visit, a place.
5. Allowing the activities prohibited by subsection 5. A. of 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 activities prohibited by subsection 5. A. of 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 activities described in subsection 5. A. of 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 activities described in subsection 5. A. of this Local Law.

7. If one or more of the activities prohibited by subsection 5. A. of 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 activities prohibited by subsection 5. A. of 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 at Section 4 of 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 at Section 4 of 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 activities described in Section 6 of 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, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. **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. (emphasis added.)*

**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 activities prohibited by subsection 5. A. of 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 activities prohibited by subsection 5. A. of 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 activities prohibited by subsection 5. A. of this Local Law were allowed to be conducted within the Town.

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