

Town of Kirkland  
County of Oneida, State of New York  
Local Law No. 7 of the Year 2013

A local law to amend the Code of the Town of Kirkland, Chapter 118 thereof (entitled 'Zoning')  
(as heretofore amended),  
by:

Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Use Variances.

***BE IT ENACTED by the Town Board of the Town of Kirkland 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 Chapter 118 of the Code of the Town of Kirkland (NY), being the Zoning Ordinance of the Town of Kirkland adopted August 13, 2007 (Local Law No. 1 of 2007), as heretofore amended.

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

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

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

### **2.1. Amendment to add new § 118-1A to the Existing Zoning Law**

The Existing Zoning Law is hereby amended so as to add the following new § 118-1A thereto, said new § 118-1A to be inserted immediately after the text of present § 118-1 thereof (entitled 'Purpose') and immediately prior to the text of present § 118-2 thereof (entitled 'Definitions and word usage'):

#### **"§ 118-1A. Severability.**

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

## **2.2. Amendments to clause B. of § 118-2 of the Existing Zoning Law**

**A.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of “Accessory Building” and “Accessory Use” therein, said definitions to be inserted immediately after the present definition of “ABOVEGROUND TANK” and immediately before the present definition of “AGRICULTURE”:

“ACCESSORY BUILDING -- a structure detached from and subordinate to a principal building on the same lot, having less than one-half of the habitable floor area of the principal building and which is used for purposes customarily incidental to those of the principal building or use, such as a private garage.

ACCESSORY USE -- a use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use which dominates the principal use in area, extent or purpose is not eligible to qualify as an accessory use.”

**B.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Below-regulatory Concern” therein, said definition to be inserted immediately after the present definition of “BED-AND-BREAKFAST” and immediately before the present definition of “BUILDING”:

“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.”

**C.** Clause B. of § 118-2 of the Existing Zoning Law is hereby amended so as to add the following text to the present definition of “EARTH REMOVAL/EXCAVATION,” said text to be inserted immediately following the end of the sentence that begins “The removal of earth products which is incidental...”:

“In no event shall ‘Earth removal/Excavation’ (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.”

**D.** Clause B. of § 118-2 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 “EROSION CONTROL MANUAL” and immediately before the present definition of “FAMILY”:

“EXPLICITLY PROHIBITED USE(S)” --- Shall mean and be the Explicitly Prohibited Uses defined and described in § 118-14.5 of this chapter.”

**E.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms “Industrial; Industrial Uses” therein, said text to be inserted immediately after the definition of “INFILTRATION” and immediately before the present definition of “JUNKYARD, AUTOMOBILE”:

“INDUSTRIAL; INDUSTRIAL USES --- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industrial uses,” or any variation thereof contained in this Law be construed to mean, be, include, or authorize Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facilities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dumps, Natural Gas Compression Facilities, Natural Gas Processing Facilities, or any other Explicitly Prohibited Uses.”

**F.** Clause B. of § 118-2 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 inserted) text regarding the words “INDUSTRIAL; INDUSTRIAL USES” and immediately before the present definition of “JUNKYARD, AUTOMOBILE”:

“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 (90) percent of such fluids return to the surface within a period of ninety (90) days.”

**G.** Clause B. of § 118-2 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 present definition of “KENNEL” and immediately before the present definition of “LAND DEVELOPMENT ACTIVITY”:

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

**H.** Clause B. of § 118-2 of the Existing Zoning Law is hereby amended so as to add the following text to the present definition of “MANUFACTURING,” said text to be inserted immediately following the (present) words “...because of potential fire, explosion or radiation.”:

“In no event shall ‘Manufacturing’ be construed to mean, be, or include any Explicitly Prohibited Uses.”

I. Clause B. of § 118-2 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 "MUNICIPAL WELL" and immediately before the present definition of "NATURAL VEGETATION":

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

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES - Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES - The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES --- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) 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 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."

J. Clause B. of § 118-2 of the Existing Zoning Law is further hereby amended so as to delete the

term "PUBLIC UTILITIES" and its corresponding definition (beginning "Facilities for ...") in the entirety, and to substitute the following text therefor:

"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 electricity, 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 a Natural Gas Compression Facility or Natural Gas Processing Facility, or any other Explicitly Prohibited Use."

**K.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of "RADIOACTIVE MATERIAL" in the entirety, and to replace the same with the following text:

"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. For purposes of the definition of "Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes," any material that emits radiation shall be "radioactive material" 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."

**L.** Clause B. of § 118-2 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 present definition of "STRUCTURE" and immediately before the present definition of "SURFACE WATERS OF THE STATE OF NEW YORK":

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

**M.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of "Underground Injection" and "Underground Natural Gas Storage" therein, said definitions to be inserted immediately after the present definition of "TRUCK TERMINAL" and immediately before the present definition of "UNDERGROUND TANK":

"UNDERGROUND INJECTION --- Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

UNDERGROUND NATURAL GAS STORAGE --- Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities."

**N.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of "USE, ACCESSORY" in the entirety, and to replace the same with the following text:

"USE, ACCESSORY --- See Accessory Use."

**O.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to delete the text of the present definition of "USE, SPECIAL" in the entirety, and to replace the same with the following text:

"USE, SPECIAL - A use which because of its unique characteristics requires individual consideration through a procedure of review by the Zoning Board of Appeals, in order to determine whether a special use permit should be granted, conditionally granted, or denied."

**P.** Clause B. of § 118-2 of the Existing Zoning Law is hereby further amended so as to delete the term "VARIANCE" and its corresponding definition (beginning "Any relaxation of ...") in the entirety, and so as to add the following definitions of "Variance," "Variance, Area," and "Variance, Use," said definitions to be inserted after the definition of "USE, SPECIAL" and immediately prior to the definition of "VETERINARY":

"VARIANCE -- Relief from the terms of this Chapter as related to area dimensions or specific uses as defined and further described at Section 118 of this ordinance.

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."

### **2.3. Amendment to § 118-3 of the Existing Zoning Law**

§ 118-3 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("Interpretation of provisions.") with the words "Interpretation of provisions; Any use not specifically permitted is prohibited."; (ii) so as to delete in the entirety the (present) final sentence of said Section (beginning "In addition, any use not ..."); and (iii) so as

to add the following text to said Section, immediately following the sentence which begins “When this chapter imposes ...” and immediately prior to present § 118-4 of the Existing Zoning Law:

“Any use not specifically set forth as a permitted use 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. “

#### **2.4. Amendments to § 118-11 of the Existing Zoning Law**

**A.** The present final sentence of Clause A. of § 118-11 of the Existing Zoning Law (beginning “In each of the districts...” ) is hereby amended, so as to insert the following words at the (present) end of said sentence, immediately following the words “a building permit”: “and/or certificate of occupancy, as the context may admit.”

**B.** The present final sentence of Clause B. of § 118-11 of the Existing Zoning Law (beginning “The specific process...” ) is hereby amended, so as to delete the word “obtaining” therefrom, and so as to substitute the word “seeking” therefor.

#### **2.5. Amendment to § 118-14 of the Existing Zoning Law**

The first sentence of Clause A. of § 118-14 of the Existing Zoning Law (beginning “Uses shown as...” is hereby amended so as to delete the words “must be approved” therefrom, and so as to substitute the words “are subject to approval” therefor.

#### **2.6. Amendment to add new § 118-14.5 to the Existing Zoning Law**

The Existing Zoning Law is hereby amended so as to add a new Section thereto (to be numbered ‘§ 118-14.5’), said new Section to be inserted immediately after the text of present § 118-14 of the Existing Zoning Law, and immediately prior to § 118-15 of the Existing Zoning Law:

##### **“§ 118-14.5. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.**

A. Explicitly Prohibited Uses. The following uses and activities are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

(a) Land Application Facility;

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

- (c) Natural Gas And/Or Petroleum Extraction Activities;
- (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- (e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (f) Natural Gas Compression Facility;
- (g) Natural Gas Processing Facility;
- (h) Underground Injection; and
- (i) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Clause A. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this 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 Kirkland 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 § 118-14.5 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 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.

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## **2.7. Amendments to § 118-16.5 of the Existing Zoning Law**

**A.** Subsection (1) of Clause D. of § 118-16.5 of the Existing Zoning Law (which begins “Prohibited uses and activities. Within all of the Wellhead Protection [... ]”) is hereby amended, so as (y) to delete the period after the words “radioactive material” in clause (h) thereof, and substitute the words “; and” therefor; and (z) to insert the following new clause (i), said new clause to be inserted immediately following clause (h), and immediately prior to present subsection (2) of said Clause D.: “(i) any Explicitly Prohibited Use.”

**B.** Subsection (4) of Clause E. of § 118-16.5 of the Existing Zoning Law (entitled “Petroleum storage”) is hereby amended, so as to re-title said subsection: “Incidental petroleum storage.”

**C.** Subsection (5) of Clause E. of § 118-16.5 of the Existing Zoning Law (entitled “Hazardous substance storage”) is hereby amended, so as to re-title said subsection: “Hazardous substance storage (which term shall not extend to or include any Explicitly Prohibited Use).”

**D.** Subsection (10) of Clause E. of § 118-16.5 of the Existing Zoning Law (entitled “Hazardous waste storage and disposal”) is hereby amended, so as to re-title said subsection: “Hazardous waste storage and disposal (which term shall not extend to or include any Explicitly Prohibited Use).”

## **2.8. Amendment to § 118-38 of the Existing Zoning Law**

Clause A. of § 118-38 of the Existing Zoning Law is hereby amended so as to delete the words “For uses not specified above” therefrom, and so as to substitute the words “For uses permitted under this chapter but not otherwise specified above” therefor.

## **2.9. Amendment to add new § 118-54.A. to the Existing Zoning Law**

The Existing Zoning Law is hereby amended so as to add a new Section thereto (to be numbered ‘§ 118-54.A.’), said new Section to be inserted immediately after the text of present § 118-54 of the Existing Zoning Law, and immediately prior to Article VIII of the Existing Zoning Law:

### **“§ 118-54.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 by or on behalf of the holder of the permits(s) 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 § 118-54.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 § 118-54.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 § 118-14.5 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 § 118-54.A., 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 § 118-14.5 hereof.

c. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause a. 1. of this § 118-54.A. 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 § 118-54.A., and instead shall in all respects be prohibited as contemplated by § 118-14.5 hereof."

## **2.10. Amendment to § 118-65 of the Existing Zoning Law**

Clause D. of § 118-65 of the Existing Zoning Law ("Use variances.") is hereby amended, so as to delete the text of said clause D. (including subsections (1), (2), and (3) thereof) in the entirety, and to insert the following text in substitution thereof:

"D. 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 that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

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

(a) Competent Financial Evidence. Competent written financial evidence containing reasonable written specification of, and back-up (confirmation) for, the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum

(as to the entire parcel of which the proposed project is a part): (i) date of acquisition; (ii) the purchase price; (iii) present value of the property; (iv) the amount of real estate taxes; (v) the amount of mortgages or liens and other expenses; (vi) the asking price for the property when it had been offered for sale; (vii) the costs of demolishing any existing structures on the property; (viii) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by special use permit); (ix) efforts to market the property; and (x) a schedule of all other property in common ownership at either the date of the enactment of this law or thereafter.

- (b) Competent written financial evidence must include written “dollars and cents proof” such as appraisals, economic studies, and any other written evidence supporting the applicant’s contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes of this Law, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the 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.
- (c) Unique Nature of the Property. The applicant must provide evidence demonstrating the unique nature of the 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 to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.
- (d) Alteration of the Essential Character of the Neighborhood. The applicant must demonstrate that the proposed project will not adversely change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential

character of the neighborhood include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, 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 the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

(e) Hardship Not Self-Created. In order to show that the hardship is not self-created, the applicant must demonstrate that either (i) when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the applicant's purchase which makes the use non-conforming, as long as that change was not caused by the applicant.

4. 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.
5. 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. "

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### **2.11. Remainder of Existing Zoning Law Unaffected**

Except as amended by this Local Law, the Existing Zoning Law shall remain in full force and effect.

### **2.12. 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.

### **2.13. 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 Kirkland Town Board on \_\_\_\_\_

I hereby certify that the local law annexed hereto, designated as Local Law No. 7 of 2013 of the Town of Kirkland, was duly passed by the Town Board on \_\_\_\_\_ 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.

\_\_\_\_\_  
Caryl Galinski, Town Clerk

(Seal)

Date: \_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF ONEIDA

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

\_\_\_\_\_  
Anthony G. Hallak Esq.,  
Felt Evans, LLP.  
Town Attorney for the Town of Kirkland  
Date: \_\_\_\_\_

**APPENDIX A**  
ATTACHED TO AND FORMING A PART OF  
TOWN OF KIRKLAND (NY) LOCAL LAW NO. 7 of the YEAR 2013,  
being:

A local law to amend the Code of the Town of Kirkland, Chapter 118 thereof (entitled 'Zoning')  
(as heretofore amended),  
by:

Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions Regarding Use Variances.

Kirkland Local Law No. \_\_ of 2013, the Local Law to which this Appendix A is attached, is herein sometimes referred to as "the Local Law," "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.** 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 Kirkland 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).

**Section 2. Findings of Fact.**

1. Kirkland is a community in Oneida County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, high quality agricultural lands and open space, and scenic and other natural resources. The Town has been referred to as "one of the gems of central New York." The community desires to protect its environmentally and aesthetically sensitive resources from incompatible development, and ensure that land uses do not degrade air or water quality, wetlands, sensitive habitats, visual character of the Town, or any other critical natural resources. The Town is home to Hamilton College. The College generously shares its considerable educational, cultural, and recreational assets with the larger community. At the same time, the Town faces financial challenges, because it bears the responsibility of providing a high level of services to a property base that includes many

(property) tax-exempt educational, religious, and government organizations.

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.

3. Preservation of the Town's irreplaceable historic and recreation sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.

### **Section 3. Purposes and Intent.**

The Purposes and Legislative Intent respecting this Local Law are as follows:

A. Purposes. This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air and water and 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 is declared by the Town Board to:

(1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(2) promote the health, safety, and welfare of the Town;

(3) 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; and

(4) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources.

B. Declaration of Intent.

(1) Exercise of Police Power. This Local Law is a police power, public nuisance and land use regulation, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and

agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts.

(2) Protection of Private Drinking Water Supplies. This Local Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(3) Matters of Local Concern. This Local Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(4) Negative Externalities. This Local Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health, and safety of the surrounding land.

(5) Land Use Control. This Local Law is intended to act as and is hereby declared to be an exercise of the permissive "incidental control" of a police power law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on 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.

-- END --