

DRAFT DATE: June 23, 2014

LOCAL LAW FILING

New York State Department of State
41 State Street, Albany, NY 12231

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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 Burns

Village

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

**A local law “to effect a Prohibition Within The Town of Burns 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 Burns, as follows:

Village

Section 1. TITLE.

This Local Law shall be known as the
**“Prohibition within the Town of Burns 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 Burns 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 Burns Local Law No. ___ 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 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).

Appellate Board --- The board or body designated by the Town Board to consider applications for a Hardship Exemption from the provisions of Section 5 (or any other provision or requirement) of this Law. (Unless and until such time, if any, as the Town Board shall create, designate, and authorize a different board or body to consider such applications for a Hardship Exemption from the provisions of Section 5 (or any other provision or requirement) of this Law, the Town Board is hereby designated as and authorized to function as the Appellate Board contemplated by this 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 raise the pressure of natural gas in connection with its extraction, processing, or storage, or its delivery into or out of 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 CO₂ 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 Burns, Allegany 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 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 Appellate Board for a Hardship Exemption from the provisions of said Section 5 (or any other provision or requirement of this Local Law). The Appellate Board shall have the power and is hereby authorized 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 Appellate Board of an application for a Hardship Exemption.

B. No such Hardship Exemption shall be granted by the Appellate 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 Appellate 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 Appellate 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 Appellate 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 Appellate 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 Appellate 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 Appellate 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 project 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 Appellate 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. HARSHIP EXEMPTION APPLICATION AND REVIEW PROCEDURES.

A. Unless and until such time (if any) as the Town Board shall create, designate, and authorize a different board or body to consider applications for a Hardship Exemption from the provisions of Section 5 (or any other provision or requirement) of this Law, the Town Board is hereby designated as and authorized to function as the Appellate Board contemplated by this Law.

B. Every application for a Hardship Exemption shall be submitted in writing, upon forms from time to time established, approved, or prescribed by the Appellate 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, 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 Appellate Board, accompanied by a fee in the amount set from time to time by resolution of the Town Board. The Appellate 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.

C. In evaluating an application for a Hardship Exemption, the Appellate 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.

D. The Appellate 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 Appellate 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 Appellate 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 Appellate Board prior to the hearing. At least five days before any hearing upon an application, the Appellate Board shall mail all notices that the legal counsel to 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).

E. 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 Appellate 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.

F. Decisions by the Appellate 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 Appellate Board must render its decision may, however, be extended by mutual consent of the applicant and the Appellate 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 if the Appellate Board is the Town Board, and by the Chairperson of the Appellate Board if that Board is a body other than the Town Board. Such decision shall state the findings of fact that were the basis for the Appellate Board's determination. The Appellate 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.

G. The Appellate 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.

H. The Appellate 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.

I. Any person aggrieved by a decision of the Appellate 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 Appellate Board's decision in the Town Clerk's office.

J. Any grant by the Appellate 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.

K. Whenever the Appellate Board denies an application for a Hardship Exemption, the Appellate 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 Appellate 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 Burns.

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.

I hereby certify that the local law annexed hereto, designated as Local Law No. ___ of 2014 of the Town of Burns, was duly passed by the Town Board on _____, 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.

Mary Duthoy, Town Clerk
Date: _____

(Seal)

STATE OF NEW YORK
COUNTY OF ALLEGANY

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.

_____, Esq.,

Attorney for the Town of Burns

Date: _____

DRAFT