

Prohibition of Heavy
Industrial Uses
Local Law of the
Town of Meredith

October 31, 2013

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Town of Meredith Local Law No. 1 of 2013

Prohibition of Heavy Industrial Uses Local Law of the Town of Meredith

Be it enacted by the Town Board of the Town of Meredith, Delaware County, New York, as follows:

I. Title

This Local Law shall be known as the "Prohibition of Heavy Industrial Uses Local Law of the Town of Meredith", adopted as Town of Meredith Local Law No. 1 of 2013

II. Enactment

This Local Law is adopted and enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Articles 2 and 3, and pursuant to Article 2 of the New York State Statute of Local Governments.

III. Purpose

The purposes of this Local Law, which prohibits heavy industrial uses within the Town, are as follows.

1. It is the purpose of this Local Law to promote the protection, safety, health, and well-being of the residents of Meredith and the lands which lie within the Town's borders.
2. It is the purpose of this Local Law to protect and enhance the Town's physical and visual environment.
3. It is the purpose of this Local Law to respond to the present, legitimate concerns of the citizens of the Town about the potential for a large expansion of heavy industrial uses, including high volume hydraulic fracturing ("hydrofracking") for natural gas in the Town, and about the potential for major portions of the Town and its citizens to be adversely impacted by heavy industrial uses, including high volume hydrofracking for natural gas, the operation of natural gas wells, and by the activities associated with their operation. The Town remains concerned because:

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- A. Under the Federal Energy Policy Act of 2005, the oil and gas industries are exempt from federal Clean Air, Clean Water, and Safe Drinking Water Acts, and thus the Town cannot rely on those regulations to safeguard air and water resources.
- B. Further, direct local regulation of certain industrial activities is prohibited by State law. For example, oil, gas and solution mining activities are regulated at the State level pursuant to Article 23 of the State Environmental Conservation Law (ECL). Section 23-0303(2) contains a supersession provision which prohibits direct local regulation of oil, gas and solution mining activities; that is, a town may not dictate the practices of gas and oil exploration or drilling with water, air, or any other regulations. However, as of the date of the adoption of this local law, the courts of this State have held that the supersession provision does not prohibit local regulation of the use of land for oil, gas and solution mining activities.
- C. High volume hydrofracking may be prohibited from lands located within the New York City watershed under proposed New York State regulations. Thus it is possible that about 40% of Meredith's lands may be protected. However, 60% of land in Meredith lies outside the watershed and therefore is not proposed to be similarly protected by New York State.

Hence, a further purpose of this local law is to exercise the Town's right under the State Municipal Home Rule Law to regulate the use of land in the Town so as to protect the health, safety and well-being of persons and property within the Town and to protect and enhance the Town's physical and visual environment.¹

4. It is the purpose of this Local Law to protect the citizens of the Town of Meredith from potential human health hazards and adverse environmental impacts presented by heavy industrial uses, including high volume hydrofracking for natural gas exploration, extraction, operation, or processing. These potential health hazards and adverse environmental impacts are evidenced by statements included in the Revised Draft SGEIS on High Volume Hydrofracking for Natural Gas, 2011, as well as other documents from NYS Department of Environmental Conservation, NYS Department of Agriculture and Markets, Cornell Cooperative Extension, and other agencies. The following quotes, excerpted from the NYS DEC Revised Draft SGEIS (2011), summarize the heightened risks identified by NYS DEC itself and about which Meredith remains concerned:

¹ NYS Municipal Home Rule Law Sections 10(1)(ii)(a)(11) and (12).

Water Related Risks

- “Hydraulic fracturing requires chemical additives, some of which may pose hazards when highly concentrated.”
- “Extra water associated with such drilling may result in significant adverse impacts relating to water supplies, wastewater treatment and disposal and truck traffic.”
- “It is estimated that 2.4 million to 7.8 million gallons of water may be used for a multi-stage hydraulic fracturing procedure in a typical 4,000-foot lateral wellbore.”
- “The dSGEIS estimates flowback water volume to range from 216,000 gallons to 2.7 million gallons per well.”
- “Potential significant adverse impacts on water resources exist with regard to water withdrawals for hydraulic fracturing: stormwater runoff; surface spills, leaks and pit or surface impoundment failures; groundwater impacts associated with well drilling and construction; waste disposal and New York City’s subsurface water supply infrastructure....Without proper controls on the rate, timing and location of such water withdrawals, the cumulative impacts of such withdrawals could cause modifications to groundwater levels, surface water levels, and stream flow that could result in significant adverse impacts, including but not limited to impacts to the aquatic ecosystem, downstream river channel and riparian resources, wetlands, and aquifer supplies.”
- “All phases of natural gas well development, from initial land clearing for access roads, equipment staging areas and well pads, to drilling and fracturing operations, production and final reclamation, have the potential to cause water resource impacts during rain and snow melt events if stormwater is not properly managed.”
- “The dSGEIS concludes that spills or releases in connection with the high-volume hydraulic fracturing could have significant adverse impacts on water resources.”
- DEC indicates that “Those potential impacts [on groundwater] include impacts from turbidity, fluids pumped into or flowing from rock formations penetrated by the well, and contamination from natural gas present in the rock formations penetrated by the well.” But then due to studies conducted as part of the dSGEIS, DEC then concludes that “it is highly unlikely that groundwater contamination could occur by fluids escaping from the wellbore for hydraulic fracturing.” This is a risk that Meredith is unwilling to accept.
- “Another concern relates to potential spills as a result of trucking accidents.”
- “The disposal of flowback water could cause a significant adverse impact if the wastewater was not properly treated prior to disposal.”
- “Severe flooding is described as one of the few ways that bulk supplies such as additives “might accidentally enter the environment in large quantities.””

Wildlife and Habitat Related Risks:

- “The dSGEIS concludes that high volume hydraulic fracturing operations would have a significant impact on the environment because such operations have the potential to draw substantial development into New York, which would result in unavoidable impacts to habitats (fragmentation, loss of connectivity, degradation, etc.), species distribution and populations, and overall natural resource biodiversity. Habitat loss, conversion, and fragmentation (both short and long-term) would result from land grading and clearing, and the construction of well pads, roads, pipelines and other infrastructure associated with gas drilling.”

Economic, Housing, Public Service, Noise, Traffic Related Risks²:

- “Using a low and average rate of development based on industry estimates, high volume hydraulic fracturing will have a significant positive economic affect where the activity takes place.” “There will also be positive impacts on income levels in the State as a result of high volume hydraulic fracturing.”
- “While providing positive impacts in the areas of employment and income, high volume hydraulic fracturing could cause adverse impacts on the availability of housing, especially temporary housing such as hotels and motels.”
- “Increased activity will result in large increases in local tax revenues and increases in the receipt of production royalties but would also result in an increased demand for local services, including emergency response services.”
- “The construction of well pads and wells associated with high-volume hydraulic fracturing will result in temporary, but adverse impacts relating to noise. In certain areas the construction activity would also result in temporary visual impacts.”

² Since completion of the Revised Draft SGEIS of 2011, many reputable studies and reports have called into question the industry estimates of economic benefits to host communities; see, for example, "Marcellus Shale Drilling's Impact on the Dairy Industry in Pennsylvania: A Descriptive Report", New Solutions, Feb. 2013; from Penn State online, <http://extension.psu.edu/pubs/ee0020> a study of dairy herds and milk production by Penn State professor of agricultural economics Timothy W. Kelsey, et al; "Gas and Oil Leases Impact on Residential Lending" by Gregory May, VP Residential Mortgage Lending Tompkins Trust Company, March 24, 2011; see also May's testimony to the NYS Assembly on October 6, 2011. See also "Transportation Impacts of Potential Marcellus Shale Gas Development", NYS DOT Internal Study, 6/22/2011, and "Homeowners and Gas Drilling Leases: Boom or Bust?", Elizabeth Radow, NYS Bar Association Journal, Nov-Dec 2011.

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- “The cumulative impact of well construction activity and related truck traffic would cause impacts on the character of the rural communities where much of this activity would take place.”
- “The introduction of high-volume hydraulic fracturing has the potential to generate significant truck traffic during the construction and development phases of the well. These impacts would be temporary, but the cumulative impact of this truck traffic has the potential to result in significant adverse impacts on local roads and, to a lesser extent, state roads where truck traffic from this activity is concentrated. It is not feasible to conduct a detailed traffic assessment given that the precise location of well pads is unknown at this time. However, such traffic has the potential to damage roads.”
- “Also, wastes from the treatment of production waters may contain concentrated Naturally Occurring Radioactive Material (NORM) and, if so, controls would be required to limit radiation exposure to workers handling this material as well as to ensure that this material is disposed of in accordance with applicable regulatory requirements.”

5. It is the purpose of this Local Law to uphold and implement the Town of Meredith Comprehensive Plan and its Agriculture and Farmland Protection Plan. The Town Board of the Town of Meredith, in adopting a comprehensive plan in 1985, and in adopting an update in June 2006, and an addendum with an Agriculture and Farmland Protection Plan in November 2012 has been active in planning for its future. Through its Comprehensive Plan and other land use plans, the Town has clearly established a future vision for itself to be accomplished by its land use policies. It is clear that heavy industrial activities, including high volume hydrofracking for natural gas, are inconsistent with these policies and the Town’s desired vision for its future growth and development.

For example:

A. The 1985 Comprehensive Plan states:

“Within Meredith, planning can establish logical patterns of land use which are based upon the needs and desires of the community. Attractive, carefully developed, orderly communities have inherently sound economic foundations. When we permit haphazard, disorganized and unattractive development, we allow the destruction of the very essence of sound community life. *In effect we require those people who take pride in their property to subsidize the exploitation of their community by the few entrepreneurs whose sole interest is in securing a maximum profit from real estate development (emphasis added)*³.

³ From the Introduction section of the 1985 adopted Town of Meredith Comprehensive Plan.

Protecting the rural, small-town character of the community is a primary planning goal. An individual landowner's decision to alter the use of this land by selling subdivided lots to prospective home builders or to a land speculator/developer is based on many factors. In most cases the decision to change the land use is made only after careful consideration has been given to the effects that the change will have on the environment and community. Sometimes land use decisions are not made in the best interest of the community and are not compatible with the environment. [Such] land use decisions may lead to increases in town taxes, a decline in agricultural activity, substandard housing, deterioration of the countryside scenery and generally contribute to haphazard and inefficient uses of the land."

- B. The 1985 Plan further states "It is important to understand that it is the mix...of land uses that creates the character of the community. For instance, in the town a small percentage of the land is developed. There are few businesses and commercial activities, a good deal of agricultural uses, some scattered residential development and some undeveloped land. Since one of the community's goals is to maintain the character of the area, it is important to recognize that it is these proportions which make the character what it is."
- C. The 2006 Updated Comprehensive Plan establishes that it is the Town of Meredith's vision to "preserve and maintain the Town of Meredith's historic, agricultural and rural character; to guide development to meet the economic, social and recreational needs of all its residents; and to foster a unified community while maintaining the unique ambiance of the small rural town that is Meredith".
- D. The 2006 Updated Comprehensive Plan further establishes the following municipal goals⁴:
 - 1. Preserve the rural, scenic and natural resources of the community.
 - 2. Preserve the existing economic resources of the community, especially agriculture.
 - 3. Ensure the Town of Meredith is prepared for future challenges in the New York City Watershed and the Susquehanna/Chesapeake Bay Watershed.

⁴ From the 2006 adopted Town of Meredith Comprehensive Plan, pages 52, 60, 61 and 62.

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4. Preserve the historic resources of the community.
 5. Clearly identify recreational activities and promote them to benefit all potential participants.
- E. The Town Board subsequently updated the 2006 Comprehensive Plan to include a detailed, strategic plan oriented solely to the protection and enhancement of agriculture in Meredith. This strategic plan establishes the following goals⁵:
1. Increase the availability of locally-grown, affordable food.
 2. Increase the financial success of farms.
 3. Maintain the rural character of the Town of which open farm lands are an important component.
 4. Keep farms using environmentally sustainable practices to protect water quality and open spaces.
 5. Maintain the low-density residential development pattern in Town in a way that does not promote conversion of farms to non-farm uses.
 6. Prevent industrial activities that alter the community's rural character and that would be in conflict with further growth of our agricultural economy.
 7. Increase the diversity of agricultural operations.
 8. Protect critical farmlands.
- F. The 2012 Agriculture and Farmland Protection Plan further recognizes that environmental concerns and impacts from associated support activities related to natural gas drilling may lead to additional conversion of farmland and industrialization of the landscape⁶.
- G. Further in adopting its comprehensive plan, the Town Board incorporated analysis of its natural resources and community character. The Town has inventoried, mapped, and discussed the environmental features of Meredith. Each plays a role in contributing to the quality of life, economy,

⁵ From the 2012 adopted Agriculture and Farmland Protection Plan, page 23

⁶ 2012 Town of Meredith Agriculture and Farmland Protection Plan, page 19

and health, safety and welfare of our residents. The Town of Meredith concludes the following:

1. Surface water bodies including streams, wetlands, and ponds play many critical ecological and cultural roles including providing drinking water, wildlife and plant habitats, and recreational uses.
2. Bedrock aquifers provide 100% of drinking water for residents and farms. Currently, groundwater resources are of high quality. In addition to supporting existing land uses, quality groundwater is critical to our future economic development as outlined in this Plan. Industrial development may degrade both water supplies and water quality. Ground water contamination can result from certain land uses because surface water and groundwater are connected due to soil permeability (recharge). Discharges of pollutants such as chemicals and petroleum products on land can impact aquifers.
3. The Town of Meredith recognizes that most ecological and economic systems (such as provision of drinking water, recreation, wildlife habitats, and future economic growth of tourism and small business) are all dependent on adequate sources and quality of water. Agriculture and recreation are also dependent on high quality water sources. Wetland ecosystems and streams (along with associated floodplains and stream corridors) are important habitats, and work to remove and recycle nutrients and sediments, filter impurities, and store water to reduce flood damage and feed groundwater aquifers. In Meredith, groundwater aquifers are the source of drinking water for all residents.
4. Topography and slope are also very important to Meredith because they are a significant part of the landscape and thus important to defining the character of the Town. Many of the remaining woodlands in Meredith are located in areas having steep slopes so these lands are critical to the biodiversity and environmental health of the Town.
5. No roads in Meredith are well-suited for high volume industrial traffic and the Town's topography makes construction or re-construction of roads difficult and costly. Local roads are narrow and designed for low-volume residential or agricultural traffic. Route 28 is the only major transportation corridor through the Town. It is a winding two-lane road that travels across steep hills and valleys. Expansion of Route 28 could have significant adverse impacts on hills and valleys and much of the countryside that supports agriculture.

6. Plants and animals play an important role in Meredith as part of the environmental quality of the Town and contribute to the character of the area. Biologic diversity offers citizens an attractive and desirable place to live. Outdoor recreation - from hunting and fishing to bird watching - is important to many Town residents. The biodiversity of the area is an indicator of the health of the environment. A diversity of healthy habitats results in a diversity of plant and animal life. Residents highly value open spaces, wetlands and other important habitat areas and desire to have these important features remain. Forest ecosystems protect the quantity and quality of water supplies, clean the air, create new soil, prevent erosion, and can moderate the climate.
7. Meredith residents highly value the community character of the Town. In addition to the physical natural resources, agricultural land activities along with the many scenic resources throughout the Town predominate the visual community character. Agriculture is one of the major land uses and biggest business in the Town.
8. The crucial issues of importance to the Town of Meredith revolve around water quality, water quantity, rural aesthetics and character, and human health. These are all closely tied to the natural resources of the Town and its biodiversity (plants, animals and their habitats). If natural resources are lost, replacing them with human-made substitutes requires enormous costs related to designing, building, maintaining and improving what nature already provides. Further, a landscape that is biologically diverse is more stable and resilient.
9. Currently Meredith has no industrial land uses, low traffic volumes, and there are few non-residential uses. The land use of drilling for and extraction of natural gas, particularly as presently accomplished by use of high volume hydrofracking, is a widely distributed activity and has the potential to result in intensive new land uses throughout much of the Town. While some of the well pad areas would be restored after initial fracking operations have been completed, there will be permanent surface disturbances associated with gathering lines, compressor stations, and water impoundments that the Town of Meredith has to consider.
10. Reliance upon extractive industries creates a boom/bust economy and is at an intense scale that is at cross-purposes to this goal. That reliance holds the potential to provide a possible short term economic benefit at the cost of damages to human health and the environment which might be irreversible. Further, it may not be feasible to promote and develop agriculture due to the removal of agricultural land for gas

drilling activities and impacts associated with gathering lines, access roads, grading, removal of top soil, etc.

- H. Further, it is the purpose of this Local Law to prohibit those activities related to heavy industry that may adversely impact wetlands, streams, groundwater resources, public roads, historic landscapes, agriculture, and Meredith's small town character. Impacts related to heavy industry that Meredith seeks to avoid include, but are not limited to, contaminated water supplies, air pollution, traffic congestion, deterioration of roads and bridges, noise, introduction of industrial uses into non-industrial areas, human and animal illness, and changes to the rural character of Town which are incompatible with, and contrary to, the Town's established land use policies and its vision and goals for itself.
- I. It is the responsibility of the Town to protect its resources from activities that may impact wetlands, streams, groundwater resources, public drinking supplies, public roads, historic landscapes, agriculture, and small town character, and to ensure the long-term economic prosperity of our area. Meredith has concluded that as a land use, heavy industries and gas drilling are inconsistent with and would compromise our ability to meet the vision and goals as expressed in the adopted plans of the Town. Thus, the Town concludes that heavy industrial land uses, including exploration for and extraction of natural gas via high volume hydrofracking, should be prohibited in the Town of Meredith.
- J. It is the responsibility of the Town to protect the health and well-being of its citizens. Adverse impacts to air quality, water quality and the integrity of drinking water supplies pose threats to human health. Large increases in the types and volumes of traffic traversing local roadways have the potential to pose a threat to human safety. Meredith has concluded that heavy industries and gas drilling, especially at the large scale at which these activities are taking place in some communities located over the Marcellus Shale formation, are activities that pose a threat to the health, safety and well-being of the citizens of Meredith and therefore should be prohibited.

IV. Definitions

Agriculture - The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including timber operations as defined in AML Article 25-AA (301).

Aquifer – A geologic formation, group of formations, or part of a formation capable of storing or transmitting and yielding ground water to wells or springs.

Comprehensive Plan – A long-range plan intended to guide the growth and development of the Town of Meredith which includes inventory and analysis leading to recommendations for the Town's land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities, and community design, all related to the Town's goals and objectives for these elements and adopted pursuant to New York Town Law 272-a.

Environment - All external conditions and influences in an area including geology, water resources, air quality, plants and animals, agricultural resources, aesthetic resources, historic resources, open space resources, recreational, cultural, and municipal resources, road and transportation systems, visual character and community character.

Gathering Line – A pipeline that transports gas from a current production facility to a transmission line or main line. A 'gathering line' is distinguished from a main or trunk line by the length, diameter, and pressure of the pipe. It is the intent of this definition to include all gathering lines whether or not they are regulated or un-regulated by another government agency.

Heavy Industry – Chemical manufacturing; exploration for natural gas; extraction of natural gas; natural gas processing facilities (as defined elsewhere in this Law) and/or compressor stations; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; coal processing; nuclear waste dump, and steel manufacturing.

Natural Gas Exploration, Extraction, or Processing - The exploration for natural gas, the extraction of natural gas from the ground, regardless of the extraction method used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity or use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new well, regardless of well type;
- Development of a well operations site and associated structures and infrastructure;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;

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- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Installation and/or use of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with, the exploration for or extraction of natural gas

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

Non-Conforming Use – A use or activity that was lawful prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of the law.

Pollution - The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or animal life or to property.

Road – A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

Waterbody - Any natural or artificial pond, lake, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

Watercourse –

- i. Rivers, streams, brooks and waterways which are delineated on the most recent edition of the United States Geological Survey topographic maps of the Town.
- ii. Any other streams, brooks and waterways containing running water for a total of at least three (3) months a year.
- iii. Lakes, ponds, marshes, swamps, bogs, natural springs and all other bodies of water, natural or artificial, which are fed by or have discharge to another wetland, waterbody or watercourse.

V. Regulation

Beginning on the effective date of this Local Law, it shall be unlawful for any person to conduct any new industries within the Town of Meredith identified as "Heavy Industry" pursuant to page 13 of this Local Law.

VI. Enforcement

Any violation of this law shall be an offense punishable by a fine not exceeding \$250. Each day's violation shall constitute a separate offense. Upon authorization by the Town Board, the Town may institute an action or proceeding in a court of competent jurisdiction to: (a) enforce any provision of this Law; (b) seek and obtain injunctive relief to prevent, restrain, enjoin, correct, or abate any violation of of this Law; and (c) seek and obtain a judgement for fines for the violation of this Law. The foregoing provisions for enforcement of this Law are not exclusive, but shall be in addition to any and all remedies available to the Town at law or in equity.

VII. Non-Conforming Uses

New "Heavy Industry" uses, as defined elsewhere in this Law, shall be prohibited in the Town of Meredith beginning on the effective date of this Local Law.

Any leases of property for the purpose of allowing gas, oil or coal extraction, or any gas, oil or coal extraction operations which are being presently conducted on land in the Town as of the effective date of this Law, shall be subject to the following:

A. Existing Leases. Where a lease that allows gas, oil or coal extraction has been executed and where no substantive gas, oil or coal extraction activity has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

B. Existing Gas, Oil and Coal Extraction Operations

1. Where a lease that allows gas, oil, or coal extraction has been executed, and where substantive gas, oil or coal mining extraction activity is occurring as of the effective date of this Law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.

2. Upon the depletion of any gas or oil well or coal mine that is allowed to remain in operation pursuant to this provision, or upon any other termination of the gas, oil or coal extraction activity for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity may not be renewed.
3. Further, no gas, oil or coal extraction activity allowed to remain in operation pursuant to this provision shall be permitted to expand after the effective date of this Local Law. An example of expansion would include, but is not limited to, addition of one or more new wells at an existing well pad.

VIII. Severability

The invalidity of any part or provision (e.g., word, section, clause, paragraph, sentence) of this Law shall not affect the validity of any other part of this Law which can be given effect in the absence of the invalid part or provision.

IX. Interpretation; Conflict with other Laws

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

X. Effective Date

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.