

SOLAR AND/OR WIND ENERGY MORATORIUM

Local Law No. 4 of the year 2016

A Local Law to Affect a Moratorium within the Town of Kirkwood on the Placement of Solar and/or Wind Energy Equipment, Materials and Support Activities

Adopted June 7, 2016

Be it enacted by the Town Board of the Town of Kirkwood as follows:

Section 1. TITLE.

This Local Law shall be known as the "Moratorium on the Placement of Solar and/or Wind Energy Equipment, Materials and Support Activities within the Town of Kirkwood."

Section 2. AUTHORITY AND INTENT, FINDINGS, PURPOSE.

A. Authority and Intent.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Kirkwood 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); Municipal Home Rule Law § 10(1), (2), (3), (4), (20) and (27); Statute of Local Governments §10(1), (6), and (7); Town Law § 4-412(a); Town Law Article 7 (Building Zones) inclusive; and Environmental Conservation Law § 27-0711.

This Law is a land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town.

B. Findings.

The Town Board desires to address, in a careful manner, the activities prohibited by Section 4 of this Local Law by allowing the Town a reasonable time to study the potential impacts, effects, and possible controls over such activities and to consider possible amendments to the Town's zoning laws and comprehensive plan to address the same.

C. Purpose.

The purpose of the Local Law is to enable the Town of Kirkwood to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting the activities prohibited by Section 4 of this Local Law, for a reasonable time, so as to allow the Town time to study the potential impacts, effects, and possible controls over such activities and to consider

Possible amendments to the Town's zoning laws and comprehensive plan to address the same. The Town Board finds that a moratorium of twelve months duration, coupled with a mechanism for an "unnecessary hardship" variance procedure and a provision for the "grandfathering" of legal, pre-existing non-conforming uses, will achieve an appropriate balancing of interests between (i) the public need to safeguard the character and other resources of the Town of Kirkwood; and (ii) the rights of individual property owners or businesses desiring to conduct such land use activities during such period.

Section 3. DEFINITIONS.

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

Zoning Board of Appeals — The Zoning Board of Appeals of the Town of Kirkwood.

Solar and/or Wind Energy Activities — Activities related to the development of energy production through solar and wind power, including but not limited to the placement of solar panels and wind turbines, as well as the placement of supporting and related infrastructure such as transmission lines, substations, *etc.*

Solar and/or Wind Energy Support Activities — Any actions, equipment, fixtures, *etc.*, intended to aid or assist with the development Solar and/or Wind Energy Activities.

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.

Town — The Town of Kirkwood, Broome County, New York.

Town Board — The Town Board of the Town of Kirkwood.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance (except as contemplated by Section 7 of this Law), building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Solar and/or Wind Energy Activities; or (ii) any Solar and/or Wind Energy Support Activities.

B. From and after the date of this Local Law, no Person shall 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 Solar and/or Wind Energy Activities; or (ii) any Solar and/or Wind Energy Support Activities.

C. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve months after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

SOLAR AND/OR WIND ENERGY MORATORIUM

D. This moratorium and prohibition shall apply to all real property within the Town.

E. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. PENALTIES.

A. Compliance Orders. The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in violation of this Local Law. If the condition or activity is not remedied after the issuance of a compliance order, then an appearance ticket may be issued as provided hereinafter.

B. Appearance Tickets. The Code Enforcement Officer is authorized to issue appearance tickets for any violation of this Local Law. Any person who violates any provision of this Local Law shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

C. Civil Penalty. In addition to those penalties prescribed herein, any person who violates any provision of this Local Law shall be liable to a civil penalty of not more than \$2,500 for each day or part thereof during which such violation continues. The civil penalties provided by this section shall be recoverable in an action instituted in the name of the Town of Kirkwood.

D. Injunctive Relief. An action or proceeding may be instituted in the name of the Town of Kirkwood, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Local Law. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board.

E. Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation of this Local Law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section. In addition to the above-provided remedies, the Town Board may also seek reimbursement to the Town for costs incurred by the Town in identifying and remedying each violation, including but not limited to, reasonable attorney's fees.

Section 6. GRANDFATHERING OF LEGAL, PRE-EXISTING NON-CONFORMING USE.

Notwithstanding any provision hereof to the contrary, any Solar and/or Wind Energy Activities or Solar and/or Wind Energy Support Activities that are being conducted in the Town as of the effective date of this Local Law and are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation pursuant to and in compliance with all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then such Activities

shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of this Section.

Any expansion of a lawful, pre-existing nonconforming use shall not be grandfathered under this Section, and instead shall in all respects be prohibited as contemplated by Section 4 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use, whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

Section 7. HARDSHIP USE VARIANCE.

The Zoning Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located: (i) the applicant cannot realize a reasonable return, provided that 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 district or neighborhood; (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that the alleged hardship has not been self-created.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations. The Zoning Board of Appeals, in the granting of a hardship use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 8. 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,

SOLAR AND/OR WIND ENERGY MORATORIUM

even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 9. 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 or policies of the Town of Kirkwood.

Section 10. GENERAL PROVISIONS.

A. The Code Enforcement Officer is hereby designated as the enforcement officer for purposes of interpreting and enforcing this Local Law.

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 11. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State in accordance with section 27 of the Municipal Home Rule Law.