

**ADOPTED LOCAL LAW**

Filed with the NYS Department of State on \_\_\_\_\_, 2012

**TOWN OF MADISON MORATORIUM ON WIND POWER FACILITIES LAW**

**Section 1. Enactment and Title.**

The Town Board of the Town of Madison does hereby ordain and enact the Town of Madison Moratorium on Wind Power Facilities Law. This Local Law shall impose a moratorium on applications or proceedings for applications for, or the issuance of approvals or permits for the construction of Wind Power Facilities, other than Residential Wind Power Facilities within the Town of Madison. The capitalized terms in the foregoing sentence shall have the meanings ascribed to them in Local Law 2, entitled "Wind Power Facility Special Use Permit Regulations For the Town of Madison," adopted on April 14, 2011 (hereinafter the "Special Permit Regulations").

**Section 2. Authorization, Purpose and Intent.**

Pursuant to the authority and provisions of Section 10 of the Municipal Home Rule Law and the statutory powers vested in the Town of Madison to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Madison hereby declares a twelve month moratorium on applications or proceedings for applications for, or the issuance of approvals or permits for the construction of Wind Power Facilities within the Town of Madison (the "Town").

This moratorium will allow time for Town officials to review, clarify, amend and update the Town's Special Permit Regulations for windmills. Additionally, this moratorium will allow the Town to adopt such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town and its citizens.

The Town Board has determined that it is necessary to establish acceptable locations for Wind Power Facilities and to address other issues relating to the siting of Wind Power Facilities, including but not limited to the allowable setbacks and heights of Wind Power Generating Facilities. The Town has further determined that recent technological advances in the manufacture and construction of wind turbines render it necessary and advisable to reevaluate terms, requirements and conditions set forth in the Special Permit Regulations. The Town Board desires to address, in a careful manner, the establishment, placement, construction, and development of Wind Power Facilities through a comprehensive and up-to-date review of wind

energy and its effect on land use. Additionally, the Town Board shall direct the Town of Madison Planning Board (the "Planning Board") to appoint a committee of seven residents of the Town who have knowledge relevant to the purpose stated in this Local Law to gather and substantiate relevant information and make recommendations to the Planning Board in furtherance of the intent and purpose of this Local Law.

### **Section 3. Scope of Controls.**

During the effective period of this Local Law:

- A. Neither the Town Board nor the Planning Board shall grant any special permit or approval that will result in the establishment or construction of any Wind Power Facility (other than a Residential Wind Power Facility) within the Town.
- B. This moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town local law and any other applicable law, rule or regulation.
- C. The Town Board shall direct the Code Enforcement Officer to revoke or rescind any building permits or certificates of compliance issued in violation of this Local Law.

### **Section 4. No Consideration of New Applications.**

No application for construction affected by this Local Law or for approvals for a site plan, special permit or any other permit shall be approved by any board, officer, employee or agent of the Town while the moratorium imposed by this Local Law is in effect. Any applicable board, officer, employee or agent of the Town shall have the ability to hear and consider any application during the period of the moratorium imposed by this Local Law, but shall not approve or disapprove any application until the moratorium imposed by this Local Law is terminated. Nothing in this Local Law shall be construed such as to result in any default approval for any application heard or considered during the moratorium imposed by this Local Law.

### **Section 5. Term.**

The moratorium imposed by this Local Law shall be in effect for a period of twelve (12) months from the effective date of this Local Law. This moratorium may be extended by two additional periods of up to three (3) months each by resolution of the Town Board upon a finding and a necessity for such extension, or may be terminated earlier if the Town Board determines by resolution that the purpose of the moratorium has been fulfilled.

During the period of this moratorium the Town shall endeavor to adopt a comprehensive set of regulations for the siting, establishment and construction of Wind Power Facilities.

## **Section 6. Location.**

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Madison. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the Madison County Real Property Tax Office.

## **Section 7. Penalties.**

Any person, firm, corporation or other entity that shall establish, place, construct, erect or in any way to site or locate any Wind Power Facility (other than a Residential Wind Power Facility) within the Town in violation of the provisions of this Local Law or shall otherwise violate the provisions of this Local Law shall be subject to:

A. In addition to any penalties proscribed by State Law, any person, corporation or entity who violates any provisions of this local law shall be liable to a civil penalty of not more than \$1,000.00 for each day on part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Town.

B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction that may have taken place in violation of this Local Law. The cost of such removal, including attorneys fees incurred by the Town if any, shall constitute a lien and charge on any real property owned or leased by the violator located within the Town and shall be collected in the same manner and at the same time as other Town charges.

## **Section 8. Validity.**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

## **Section 9. Hardship.**

A. Should any owner of property affected by this Local Law suffer an “unnecessary hardship” in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board in writing for a variation from strict compliance with this Local Law upon submission of proof of such “unnecessary hardship”. For the purposes of this Local Law, “unnecessary hardship” shall not be the mere delay in receiving any payments of money or other consideration or in being permitted to make an application or waiting for a decision on the application for a building permit, variance, special permit, site plan, or other permit during the period of the moratorium imposed by this Local Law.

B. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said

application, schedule a Public Hearing on said application upon ten (10) days' written notice in the official newspaper of the Town and any other local newspaper deemed appropriate by the Town Board. At said Public Hearing, the property owner and any other person or party wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within twenty (20) days of the close of the Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer "unnecessary hardship" if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law. The term "property owner" or "owner of property" shall mean the person or persons holding fee simple title of record to a parcel or parcels of real property affected by this Local Law.

**Section 10. Effective Date.**

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

I hereby certify that the local law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 2012 of the Town of Madison 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 the above paragraph.

(Seal) Date: \_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF MADISON

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.

\_\_\_\_\_ Town Attorney