

SOLAR AND WIND ENERGY SYSTEMS TEMPORARY MORATORIUM

LOCAL LAW NO. 4-2022

**A LOCAL LAW AFFECTING A TEMPORARY MORATORIUM WITHIN
THE TOWN OF KIRKWOOD ON THE DEVELOPMENT AND CONSTRUCTION
OF SOLAR ENERGY SYSTEMS AND WIND ENERGY CONVERSION SYSTEMS**

Adopted April 5, 2022

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 Development and Construction of Solar Energy Systems and Wind Energy Conversion Systems”.

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, § 2 (c); Municipal Home Rule Law §§ 10 and 20 through 27; Statute of Local Governments § 10; and the State Environmental Quality Review Act and its implementing regulations.

This Law is a land use regulation, which is intended to act as and is hereby declared to exercise the permissive “incidental control” of zoning and land use law that is concerned with the broad area of land use planning and the physical uses of land within the Town.

B. Findings.

The Town Board hereby finds that it is in the interest of public health, safety and welfare to address, in a careful and thorough manner, the activities prohibited by Section 4 of this Local Law. In order to accomplish this, the Town requires a reasonable period of time to further study the potential impacts and effects on land, the environment and the public in general caused by such activities, and to consider possible amendments to the Town’s laws and/or 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 land use 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 laws and/or comprehensive plan to address the same. The Town Board finds that a moratorium of six (6) months duration, coupled with an "unnecessary hardship" variance procedure and a provision for the "grandfathering" of legal, pre-existing non-conforming uses, will achieve an appropriate balance of interests between (i) the need to safeguard public health, safety and welfare, as well as the character and other resources of the Town of Kirkwood; and (ii) the rights of individual property owners.

Section 3. DEFINITIONS.

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

METEOROLOGICAL TOWER (MET Tower) --- A tower used solely for the measure of meteorological data such as temperature, wind speed, and wind direction.

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.

SOLAR ENERGY EQUIPMENT --- Electrical material, hardware, inverters, conduit, or any other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM --- The components and subsystems required to convert solar energy into electric energy suitable for use and to collect, store or deliver such converted electrical energy. The term includes, but is not limited to, Solar Panels, Solar Energy Equipment, substations, energy storage facilities and all other accessory facilities related/appurtenant thereto. The term also includes all solar energy systems regulated by Local Law 1 of the Year 2017 entitled "A Local Law to Regulate Solar Energy Systems, Solar Collection Systems, and Solar Energy Production Facilities (Solar Farms)".

SOLAR PANEL --- A photovoltaic device capable of collecting and converting solar energy into electricity.

SOLAR AND WIND ENERGY ACTIVITIES --- Any and all activities related to the development, permitting, siting and/or construction of energy production facilities utilizing wind or solar power, including but not limited to MET Towers, Wind Energy Conversion Systems, Solar Energy Systems, and the siting and construction of all accessory, supporting and related infrastructure such as transmission lines, substations, etc. This includes any activities related to the special permitting of wind turbines under Section 503.10 of the Zoning Code and the permitting of solar energy systems under Local Law 1 of the Year 2017 entitled "A Local Law to Regulate Solar Energy Systems, Solar Collection Systems, and Solar Energy Production Facilities (Solar Farms)".

TOWN --- The Town of Kirkwood, Broome County, New York.

TOWN BOARD --- The Town Board of the Town of Kirkwood.

WIND ENERGY CONVERSION SYSTEM (WECS) --- The components and subsystems required to convert wind energy into electrical energy suitable for use and to collect, store or deliver such converted electrical energy. This term includes, but is not limited to, Wind Turbines, substations, energy storage facilities and all other accessory facilities related/appurtenant thereto.

WIND TURBINE --- Any tower, pole or other structure, whether attached to a building, guyed, or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for producing electricity. This includes all wind turbines permitted by Section 503.10 of the Zoning Code.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the effective 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 any other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, use or operation upon any land, body of water, building or other structure located within the Town any of the following: (i) Solar Energy Systems; (ii) Solar Energy Equipment; (iii) MET Towers; (iv) WECS; (v) Solar and Wind Energy Activities.

B. From and after the effective 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) Solar Energy Systems; (ii) Solar Energy Equipment; (iii) MET Towers; (iv) WECS; (v) Solar and Wind Energy 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 six (6) months after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

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 or the Town Code Enforcement Officer 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 a civil 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 and/or any other remedy or penalty provided by law, 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 Energy Systems or Wind Energy Conversion Systems in the Town that have been duly approved as of the effective date of this Local Law, which are being operated in accordance with all applicable laws and regulations and in compliance with all valid permits required to be issued by the New York State Department of Environmental Conservation (“DEC”) and all other federal, state and local regulating agencies, 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 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 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 any Person aggrieved hereby.

No such use variance shall be granted without a showing by the applicant that applicable regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate 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 a hardship use variance from the provisions of this Local Law is granted to the applicant, the applicant shall be required to comply with all provisions of the Town’s then applicable land use laws and other laws and regulations. The Zoning Board, 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 of Kirkwood 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 9. SUPERSEDING INTENT AND EFFECT.

It is the specific intent of the Town Board that this Local Law shall supersede any inconsistent provisions of Sections 267, 267-a, 267-b, 274-a, 274-b and 276 of the Town Law of the State of New York, as well as all other inconsistent provisions of local ordinances, local laws, or local resolutions or policies of the Town of Kirkwood, including but not limited to provisions of the aforementioned state and local laws, ordinances, resolutions or policies that require the approval, or affect a default approval of land use applications within certain statutory time periods.

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.