

TOWN OF SANFORD

RESOLUTION ADOPTING LOCAL LAW NO. 2-2019

At a regular meeting of the Town Board of the Town of Sanford, held at Sanford Town Hall, 91 Second Street, Deposit, New York on the 13th day of August, 2019, the following resolution was offered and seconded:

WHEREAS, on May 14, 2019, the Town Board introduced Proposed Local Law No. 2 of the Year 2019 entitled, “A Local Law Amending Local Law #1 of 2017 Entitled ‘Renewable Energy Systems’”, the purpose of which is to amend the Town’s zoning regulations regarding the development, siting and construction of wind energy conversion systems, meteorological towers and related facilities; and

WHEREAS, pursuant to state and local law, the said Proposed Local Law No. 2 was referred to, among other agencies, the Town of Sanford Planning Board for review and comment; and

WHEREAS, since May 2019, the Planning Board has held multiple meetings to consider the Town Board’s proposals in said Proposed Local Law No. 2, and is still in the process of conducting a provision-by-provision review of said Local Law; and

WHEREAS, at a regular meeting of the Town Board held on July 9, 2019, the Chairman of the Planning Board made a presentation to the Town Board detailing the scope and depth of the Planning Board’s review of said Proposed Local Law No. 2, and informed the Town Board that the Planning Board had adopted a resolution formally requesting that the Town Board adopt a temporary land use moratorium to afford the Planning Board time to complete a careful and thorough review of said Local Law; and

WHEREAS, the Town Board, at said meeting, agreed that the Planning Board should be afforded additional time to complete its review of said Proposed Local Law No. 2, and to further study the potential impacts, effects, and possible controls over wind energy conversion systems, meteorological towns and related facilities, and to consider possible amendments to the Town’s laws and comprehensive plan to address the same; and

WHEREAS, the Town Board further agreed that it will, in turn, require additional time to review the Planning Board’s recommendations regarding said Proposed Local Law No. 2 and the evidentiary support therefor, and to complete the legislative process with regard to said Local Law; and

WHEREAS the Town Board subsequently introduced Proposed Local Law No. 3 of the Year 2019 entitled “A LOCAL LAW AFFECTING A MORATORIUM WITHIN THE TOWN OF SANFORD ON THE DEVELOPMENT AND CONSTRUCTION OF WIND ENERGY CONVERSION SYSTEMS AND METEOROLOGICAL TOWERS”; and

WHEREAS, pursuant to state and local law, the Town Board duly referred said Proposed Local Law No. 3 to the Broome County Department of Planning and Economic Development and the Town of Sanford Planning Board for comment and review; and

WHEREAS, the Planning Board reviewed Said Proposed Local Law No. 3 at its regular meeting held on July 10, 2019 and has recommended approval of said Local Law; and

WHEREAS, the Broome County Department of Planning and Economic Development reviewed said Proposed Local Law No. 3 and determined that there would be no significant countywide or inter-community impacts associated with its enactment; and

WHEREAS, the Town Board scheduled a public hearing for August, 13 at 7:00 p.m. for said Proposed Local Law No. 3; and

WHEREAS, notice of said public hearing was duly advertised in the official newspaper of the Town and posted on the Town Clerk's signboard; and

WHEREAS, said public hearing was duly held at Sanford Town Hall, 91 Second Street, Deposit, New York on the 13th day of August, 2019 at 7:00 p.m. and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof; and

WHEREAS, adoption of said Local Law is a Type II action under the State Environmental Quality Review Act ("SEQRA") and its implementing regulations, specifically, 6 NYCRR 617.5 (c) (36). Thus, no determination of significance regarding its potential environmental impact is required; and

WHEREAS, the Town Board, after due deliberation, finds it in the best interest of public health, safety and welfare to adopt said Local Law.

NOW, THEREFORE BE IT RESOLVED that the Town Board of the Town of Sanford hereby adopts said Proposed Local Law No. 3 of the Year 2019 as Local Law No. 2 of the Year 2019 entitled "A LOCAL LAW AFFECTING A MORATORIUM WITHIN THE TOWN OF SANFORD ON THE DEVELOPMENT AND CONSTRUCTION OF WIND ENERGY CONVERSION SYSTEMS AND METEOROLOGICAL TOWERS"; and be it further

RESOLVED that the Town Clerk be and hereby is directed to enter said Local Law in the minutes of this meeting and give due notice of the adoption of said Local Law to the Secretary of State; and be it further

RESOLVED that this resolution will take effect immediately.

CERTIFICATION

I, Alison Lang, do hereby certify that I am the Town Clerk of the Town of Sanford and that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Town Board of the Town of Sanford at a meeting thereof held at the Town Hall on the 13th day of August, 2019. Said resolution was adopted by the following roll call vote:

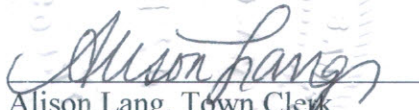
Supervisor Decker
Councilperson Vandermark
Councilperson Wist
Councilperson Ray
Councilperson Ditewig

Voted yes
Voted yes
Voted yes
Voted (Recused)
Voted yes

The resolution was thereupon declared duly adopted by a vote of 4.

Dated: August 13, 2019

Town of Sanford Seal



Alison Lang, Town Clerk
Town of Sanford

**TOWN OF SANFORD, BROOME COUNTY, NEW YORK
LOCAL LAW NO. 3 OF THE YEAR 2019**

**A LOCAL LAW AFFECTING A TEMPORARY MORATORIUM WITHIN THE TOWN OF
SANFORD ON THE DEVELOPMENT AND CONSTRUCTION OF WIND ENERGY
CONVERSION SYSTEMS AND METEOROLOGICAL TOWERS**

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

Section 1. TITLE.

This Local Law shall be known as the “Moratorium on the Development and Construction of Wind Energy Conversion Systems and Meteorological Towers.”

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 Sanford 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. 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 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, effects, and possible controls over such activities and to consider possible amendments to the Town’s laws and comprehensive plan to address the same.

C. Purpose.

The purpose of the Local Law is to enable the Town of Sanford 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 comprehensive plan to address the same. The Town Board finds that a moratorium of three (3) 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 Sanford; 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.

Town --- The Town of Sanford, Broome County, New York.

Town Board --- The Town Board of the Town of Sanford.

Wind Energy Activities --- Activities related to the development of energy production through wind power, including but not limited to the siting and construction of MET Towers, Wind Energy Conversion Systems, and the siting and construction of all accessory, supporting and related infrastructure such as transmission lines, substations, *etc.*

Wind Energy Conversion System (WECS) --- any mechanism including a Wind Turbine designed for the purpose of converting wind energy into electrical energy and all accessory facilities related thereto.

Wind Energy Support Activities --- Any actions, equipment, fixtures, *etc.*, intended to aid or assist with the development of Wind Energy Activities.

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.

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) MET Towers; (ii) WECS; (iii) Wind Energy Activities; (iv) Wind Energy Support 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) MET Towers; (ii) WECS; (iii) Wind Energy Activities; (iv) 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 three (3) 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 an action instituted in the name of the Town of Sanford.

D. Injunctive Relief. An action or proceeding may be instituted in the name of the Town of Sanford, 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 Wind Energy Activities or Commercial 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 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 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 Town Board 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 Town 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 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 Sanford, 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.