

LOCAL LAW FILING

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of-----Pompey-----

Local Law No.-----5 ----- of the year 2008

A local law imposing a six month Moratorium on the placement of Wind Power Generating Facilities (windmills) in the Town of Pompey

(Insert Title)

Be it enacted by the Town Board-----
(Name of Legislative Body)

of the Town of Pompey as follows:

Section 1. Title.

This local law shall be referred to as Imposing a Six-Month Moratorium on applications or proceedings for applications for, or the issuance of approvals, permits and zone changes for the construction of Wind Power Generating Facilities (windmills) within the Town of Pompey.

Section 2. Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Pompey (the "Town") to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Pompey hereby declares a six-month moratorium on applications or proceedings for applications for, or the issuance of approvals, permits and zone changes for the construction of Wind Power Generating Facilities within the Town of Pompey.

This moratorium will allow time for Town officials to review and update the Town's regulations regarding the commercial and residential use of Wind Power Generating Facilities. Additionally, this moratorium will allow the Town to, among other things, provide where Wind Power Generating Facilities may be allowed, set maximum heights, provide for appropriate setbacks from property lines, and make such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town of Pompey and its citizens.

The Town Board has determined that it is necessary to clarify which zoning districts within which Wind Power Generating Facilities may be permitted, as well as what set backs and

other issues relating to the siting of Wind Power Generating Facilities should apply, and the allowable heights of Wind Power Generating Facilities.

The Town Board desires to address, in a careful manner, the establishment, placement, construction, and development of Wind Power Generating Facilities through a comprehensive review of wind energy and its effect on land use.

Section 3. Scope of Controls.

A. Definitions

1. Wind Power Generating Facilities: Those facilities which generate original power on site to be transferred to a transmission system for distribution to customers. The definition of wind power generating facilities shall include individual wind power generating facilities erected and used for private use, as well as transmission lines, access roads, meteorological towers and other related facilities.

B. During the effective period of this Local Law:

1. The Town of Pompey Planning Board shall not grant any site plan approvals that will have as the result the establishment or construction of any Wind Power Generating Facilities as defined in this Local Law within the Town of Pompey.

2. The Town of Pompey Building and Zoning Office shall not issue any building permits or certificates of compliance that will have as a result the establishment or construction of any Wind Power Generating Facilities as defined in this Local Law within the Town of Pompey.

3. The Town of Pompey Zoning Board of Appeals shall not grant any variance or other permit for any use that would result in the establishment or construction of any Wind Power Generating Facilities as defined in this Local Law within the Town of Pompey.

4. The Town Board of the Town of Pompey shall not grant any requests for the rezoning of any commercial property classification to accommodate the establishment or construction of any Wind Power Generating Facilities as defined in this Local Law within the Town of Pompey during the moratorium imposed by this Local Law.

5. This moratorium shall supercede all relevant provisions of the New York State Town Law, the New York State Building Code, the Town of Pompey Town Code and any other applicable law, rule or regulation

C. The Town Board of the Town of Pompey reserves the right to 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, variance, zone change or 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 six (6) months from the effective date of this Local Law. In the event that the Town Board of the Town of Pompey adopts or accepts a plan for the establishment or construction of any Wind Power Generating Facilities prior to the date that the moratorium imposed by this Local Law expires, then in that event the moratorium imposed by this Local Law shall expire immediately on the date that the Town adopts or accepts a plan for the establishment or construction of any Wind Power Generating Facilities as defined in this law within the Town of Pompey.

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.

During the period of this moratorium the Town shall endeavor to establish a comprehensive set of regulations for the establishment or construction of Wind Power.

Section 6. Location.

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Pompey.

Any dispute as to whether a property is encompassed within the geographic area detailed above shall be referred to the Code Enforcement Officer for a written interpretation. Any such determination may be appealed to the Town Zoning Board of Appeals.

Section 7. Penalties.

Any person, firm, corporation or other entity that shall establish, place, construct, erect or in any way to site or locate Wind Power Generating Facilities as defined in this law within the Town of Pompey in violation of the provisions of this Local Law or shall otherwise violate the provisions of this Local Law shall be subject to:

- A. Such penalties imposed by Section 165-38 of the Pompey Town Code; and
- 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 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 of the Town of Pompey 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 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. Procedure. 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 five (5) days' written notice in the official newspaper of the Town. 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 an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Governing Body shall vary the application to this Local law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 10. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the New York Secretary of State in accordance with the Municipal Home Rule Law.

(Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 5 of 2008 of the Town of Pompey 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.

Ann Christmas, Town Clerk

(Seal) Date: _____

STATE OF NEW YORK
COUNTY OF ONONDAGA

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