

TOWN OF WESTERLO

LOCAL LAW NO. 2 of 2019

**A LOCAL LAW ESTABLISHING A TEMPORARY LAND USE MORATORIUM PROHIBITING
COMMERCIAL SOLAR ENERGY SYSTEMS, ENERGY STORAGE SYSTEMS, AND WIND
GENERATION SYSTEMS WITHIN THE TOWN OF WESTERLO**

**BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WESTERLO AS FOLLOWS:
SECTION 1. PURPOSE AND INTENT.**

This local law is intended to temporarily prohibit the creation or siting of Commercial Solar Energy Systems installations, Commercial Energy Storage Systems, and Commercial Wind Generation Systems (as hereinafter defined) within the Town of Westerlo for a period of up to twelve (12) months, pending the further development and adoption of a comprehensive plan, local laws and/or ordinances prepared to regulate and govern such installations. It is deemed necessary to enact this moratorium in order to permit the Town Board adequate time in which to draft suitable additional legislation to allow for proper siting and development of the solar industry within the Town of Westerlo. During the term of the moratorium, the Town of Westerlo shall work to prepare and eventually adopt revisions to the Town comprehensive plan and additional land use provisions and regulatory processes to provide for the benefit, health and general welfare of the residents of the Town of Westerlo.

The objective of this moratorium is to allow the Town of Westerlo to assess and address its Code to promote community planning values by properly regulating future commercial scale solar installations, commercial energy storage systems, and commercial wind generation systems. During the pendency of the moratorium, the Town Board will consider how best to permit such installations so as to harmoniously integrate such installations with the existing agricultural community and landscape. If the community allows such development during that time, the goals of the Town Comprehensive Plan and its related legislation favoring the successful continuity of agricultural operations could be undermined or damaged. Moratoria are useful in controlling or temporarily inhibiting development until satisfactory final regulations are adopted.

For these reasons, the Town Board finds that temporary moratorium legislation is both advisable and necessary for a reasonable and defined period of time in order to further develop and adopt necessary zoning and land use changes to the Westerlo Town Code, thus protecting and furthering the public interest, health and safety.

SECTION 2. TEMPORARY MORATORIUM.

- A. *There is hereby adopted in the Town of Westerlo a twelve (12) month moratorium on the consideration, receipt or granting of land use applications, site plan approval, and zoning changes or amendments to permit the siting or creation of “Commercial Solar Energy Systems,” “Commercial Energy Storage Systems,” and “Commercial Wind Generation Systems.”*

“Commercial Solar Energy Systems” are defined, for the purpose of this local law, as any installation of solar panels or equipment undertaken principally for commercial purposes with an intention of generating power in excess of 25 kilowatts for resale into the power grid by a third party. Any installations by, or undertaken on behalf of individual landowners, householders, businesses or farmers, primarily for the purpose of off-setting their own electric energy use as set forth in section 18.40 of Local Law 1 of 1989 (as amended) shall not be considered a Commercial Solar Energy System and shall be specifically exempted from this moratorium.

“Commercial Energy Storage Systems” are defined, for the purpose of this local law, as any rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems, and associated electrical equipment designed to store and provide electrical power primarily off site or for commercial purposes. Any installations by, or undertaken on behalf of individual landowners, householders, businesses or farmers, primarily for personal, residential and onsite use shall not be considered a Commercial Energy Storage System and shall be specifically exempted from this moratorium.

“Commercial Wind Generation Systems” are defined, for the purpose of this local law, as any individual or collection of wind turbine generators designed to convert the kinetic energy in wind into a usable form of electricity, and any and all related infrastructure, electrical lines, substations, access roads and accessory structures, which are designed and intended to produce electricity to be consumed primarily off site or for commercial purposes. Any installations by, or undertaken on behalf of individual landowners, householders, businesses or farmers, primarily for the purpose of off-setting their own electric energy use shall not be considered a Commercial Wind Generation System and shall be specifically exempted from this moratorium.

- B. During the term of the moratorium the Town Board intends to develop, consider and adopt changes to comprehensive land use plan and local laws so as to regulate Commercial Solar Energy Systems, Commercial Energy Storage Systems, and Commercial Wind Generation Systems. Said moratorium shall be effective as of the date set forth herein below.*
- C. While the moratorium is in effect, no applications shall be accepted, and no permits issued or approvals given by any Board, agency or official of the Town of Westerlo for the siting or creation of Commercial Solar Energy Systems, Commercial Energy Storage Systems, or Commercial Wind Generation Systems.*

SECTION 3. APPLICABILITY.

The provisions of this local law shall apply to all real property within the Town of Westerlo, and all land use applications for the siting or creation of Commercial Solar Energy Systems, Commercial Energy Storage Systems, and Commercial Wind Generation Systems within the Town of Westerlo.

SECTION 4. RELIEF FROM APPLICABILITY OF MORATORIUM.

Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this local law following a noticed public hearing before the Town Board, at which hearing the Town Board shall consider:

- 1. The proximity of applicant’s premises or the subject of applicant’s request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other environmental concerns.*
- 2. The impact of the proposed application on the applicant’s premises and upon the surrounding area.*
- 3. Compatibility of the proposed application with the existing land use and character of the area in general proximity to the subject of the application, and its effect upon aesthetic resources of the community.*
- 4. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of Westerlo.*

5. *The written opinion of the Town of Westerlo Planning Board and the Town of Westerlo Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.*
6. *Such other reasonable considerations and issues as may be raised by the Town Board.*

In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be consistent with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner which is unique to the property owner, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the recommendations of the Comprehensive Plan.

An application for relief of application of the moratorium shall be accompanied by a fee of \$500, together with the applicant's written undertaking, in a form to be approved by the Town Attorney, to pay all of the expenses of the Town Board and any agent or consultant retained by the Town Board to evaluate and consider the merits of such application.

SECTION 5. STATUTORY AUTHORITY; SUPERSESSSION.

This local law is promulgated and adopted pursuant to Municipal Home Rule Law and the State Environmental Quality Review Act, and its implementing regulations. It expressly supersedes any provisions of the Town Code of the Town of Westerlo, and sections 267, 267-a, 267-b, 267-c, 274-a, 274-b and 276 of the Town Law of the State of New York.

This local law shall supersede and suspend those provisions of the Town Code and New York state law which require the Planning Board and the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

SECTION 6. SEQRA DETERMINATION

The Town Board hereby determines that the adoption of this local law is a Type II action under 6 NYCRR 617.5(c)(36) and that environmental review under the NYS Environmental Quality Review Act (SEQRA) is not required.

SECTION 7. CONFLICTS.

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Code provision.

SECTION 8. SEVERABILITY.

The invalidity of any word, section, clause, sentence, paragraph, part or provision of this local law shall not affect the validity of any other part of the law which can be given effect without such invalid part or parts.