

LOCAL LAW FILING

(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 Clayton

Local Law No. 1 of the year 2011

A local law to Amend Local Law No. 1 of the Year 2007

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

Section 1.

Section 7 of Local Law No. 1 of the year 2007 is amended by adding the following definitions thereto:

GOOD NEIGHBOR AGREEMENT – A written agreement between an applicant for a Wind Energy Facility Permit and a property owner within the Wind Energy Facility Overlay District (“WEFOD”) on whose property a WECS will not be sited, through which agreement said property owner receives or is to receive compensation from the applicant in consideration for either an easement or an agreement in connection with the setback requirements of this Law.

NON-PARTICIPATING PROPERTY OWNER – An individual or entity owning property within the WEFOD for which there is neither a lease for the siting of at least one WECS, or a Good Neighbor Agreement.

PARTICIPATING PROPERTY OWNER – An individual or entity owning property within the WEFOD that has at least one signed lease for the siting of a WECS on his property or who has a signed Good Neighbor Agreement with the applicant.

WIND ENERGY FACILITY OVERLAY DISTRICT (“WEFOD”)– That certain area located within the Town of Clayton, as defined by the Town of Clayton Zoning Ordinance within which Wind Energy Facilities may be located subject to the review and permitting requirements of the Wind Energy Facilities Law of the Town of Clayton, New York.

Section 2.

Section 10 (I) of Local Law No. 1 of the Year 2007 is amended to read as follows:

(I) List of property owners with tax parcel number, 911 property address number and mailing address for each parcel located within 1,250 feet of the boundaries of the proposed site, and certification as to each such owner whether such owner is a Participating Property Owner.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 3.

Section 10 (L) shall be amended by adding the following at the end thereof:

3. Certification as to the manufacturer of all components, to include the foundation, base and all materials used therein for each WECS intended to be used in the construction and installation of the facility and the location of its manufacturer.

4. Certification of the applicant of its intent to employ not less than 75% of its total workforce used to construct and install the facility from residents within the Counties of Jefferson, St. Lawrence, Lewis and Oswego.

Section 4.

Section 15 (A) of Local Law No. 1 of the Year 2007 shall be amended by adding the following at the end thereof.

This sound level restriction may not be altered or waived by agreement between the applicant and any property owner, and any such attempt to waive or lessen this requirement shall be ineffective and shall not be binding on the Planning Board or the Town of Clayton.

Section 5.

Section 15 (C) of Local Law No. 1 of the year 2007 shall be amended to change the setbacks to read as follows:

1. 500 feet from offsite lot lines of a Participating Property Owner.
2. 1,250 feet from the nearest offsite residence, hospital, school, church, public library, or offsite lot line of a Non-participating Property Owner.
3. 500 feet from the boundary of the nearest public highway.

Section 6.

Section 16 (A) of Local Law No. 1 of the Year 2007 shall be amended to read as follows:

A. In the event a Wind Energy Facility does not meet a setback requirement or other criteria, other than noise established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver will be granted from such requirement by the Planning Board in the following circumstances:

1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the setback limitations imposed by this Local Law, and that consent is granted to setbacks less than required; and

2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

Section 7.

Local Law No. 1 of the Year 2007 shall be amended by adding the following new Section 21 immediately following Section 20, and renumbering all subsequent Sections.

Section 21. Mitigation of Property Devaluation.

A. Purpose. In order to protect against the devaluation of property within the WEFOD as the result of the construction and installation of a Wind Energy Facility, the following procedures shall be established and the requirements imposed herein upon the applicant shall be complied with as a condition to continued validity of any permit issued hereunder.

B. Baseline Assessment. Upon the approval by the Planning Board of an application under this Law and the issuance of a Wind Energy Permit, the Town Assessor shall compile and establish the following baseline assessments:

1. A total Town-wide assessed valuation of all parcels within the Town (excluding waterfront parcels) as of the date of filing of the final tax roll last filed immediately prior to the issuance of the Wind Energy Facility Permit.

2. A total assessed valuation of all parcels located within the WEFOD as of the date of filing of the final tax roll last filed prior to the issuance of the Wind Energy Facility Permit.

C. Each year from the date following completion of construction and installation of the project for a period of 5 years therefrom, the Assessor shall establish and file with the Town Clerk's Office a total Town-wide assessed valuation of all parcels within the Town (excluding waterfront properties) as of the date of filing of the final tax roll in such year, and a total assessed valuation for all parcels located within the WEFOD as of the same date. During each such year within such 5 year period, the total assessed value of all parcels within the WEFOD shall be compared to the total assessed value of such parcels for the immediately preceding year. In any year in which the aggregate assessed valuation of such parcels decreases, and the aggregate assessed valuation of the Town-wide parcels (excluding waterfront properties) has either not decreased or has decreased at a lesser percentage than the decrease within the WEFOD, the permittee/developer shall pay to the Town, to be held in a fund for the benefit of Non-participating Property Owners, an amount equivalent to the difference in the percentage decrease in total assessed valuation within the WEFOD and the percentage decrease in total assessed valuation for the Town-wide parcels (excluding waterfront property) multiplied by the total amount of the decrease in assessed valuation within the WEFOD.

D. In the event there has been a decrease in the aggregate assessed valuation of the parcels within the WEFOD from the baseline assessment during the 5 year period, and if during said 5 year period a Non-participating Property Owner sells his property at an arm's length sale after having been on the market for not less than the median average number of days for non-waterfront residential properties sold within the Town of Clayton during the immediately preceding year as such figure is calculated by the Jefferson-Lewis Board of Realtors upon request by the Town of Clayton, for an amount less than the assessed valuation of such parcel as established in the baseline assessment year, such property owner shall be reimbursed the difference between such sale price and such assessed valuation from the fund established pursuant to this section. To be entitled to reimbursement, the property owner shall file with the Town Clerk a copy of the recorded deed for the transaction, together with copies of the signed and filed forms TP-584 and RP-5217 filed with the deed at the office of the Jefferson County Clerk. The Town of Clayton shall remit payment for such reimbursement not later than ninety (90) days following the filing of the recorded deed and accompanying forms with the Town Clerk.

E. Any money remaining in the fund established pursuant to this section at the expiration of the 5 year period shall be transferred to the Town of Clayton Renewable Energy Fund.

F.. The applicant, or any subsequent owner of the Wind Energy Facility, shall have the right to challenge the assessed valuations established pursuant to this section pursuant to Article 78 of the Civil Practice Law and Rules.

Section 8.

Local Law No. 1 of the Year 2007 shall be amended by adding the following new Section 22 immediately following Section 21, and renumbering all subsequent Sections:

Section 22. Post Construction Certifications.

A. Purpose. It is the intent of the Town of Clayton to encourage the developer of a Wind Energy Facility to purchase, to the greatest extent possible, its structural components and turbine from manufacturers located and doing business in the United States of America in order to support the general economy of the Nation and, to the greatest extent possible, to employ a workforce during the construction and installation process from available workers within the local communities and surrounding counties. To foster that intent, the Town of Clayton requires that 75% of the structural components and turbines used in the construction and installation of a Wind Energy Facility be manufactured in the United States of America, and that 75% of the workforce used in such construction and installation be residents of one of the counties of Jefferson, St. Lawrence, Lewis or Oswego.

B. Manufacturing Certification. Not later than 45 days following completion of construction and installation of the Wind Energy Facility, the applicant/developer shall provide written certification to the Town of Clayton by filing with the Town Clerk, a complete list of all structural components for each WECS, including the turbines, the foundations, bases and all materials used therein, together with identification of its manufacturer, and the address and location of its manufacturer. In the event that less than 75% of such components and turbines for each WECS are not manufactured within the United States of America, the developer shall deposit to the Town of Clayton Renewable Energy Fund the sum of \$1,000.00 for each percentage point that each WECS within the Wind Energy Facility is under the 75% threshold.

C. Workforce Certification. Not less than 45 days following completion and installation of the facility, the applicant/developer shall provide the Town of Clayton with certified payroll records of all employees utilized in the applicant/developer's workforce to construct and install the facility, which payroll records shall include the permanent resident address of each such employee. In the event that less than 75% of such total workforce are not residents of Jefferson, St. Lawrence, Lewis or Oswego counties, the applicant/developer shall pay to the Town of Clayton Renewable Energy Fund the sum of \$1,000.00 for each percentage point below the 75% threshold.

D. The Wind Energy Facility Permit issued to the applicant shall be conditioned upon compliance with the provisions of this Section.

Section 9.

Section 34 (B) of Local Law No. 1 of the year 2007 shall be amended to read as follows:

Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or, operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the Enforcement Officer, and any person who shall assist in so doing,

shall be guilty of an offense and subject to a fine of not more than \$1,000.00 or to imprisonment for a period of not more than 6 months, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue, and in the event such violation involves the failure to comply with operational restrictions imposed under this Law or pursuant to any permit or approval issued hereunder such as, but not limited to, noise levels or setback requirements, each WECS within the Wind Energy Facility that is in violation of such restriction shall constitute a separate and distinct offense for each such restriction violated. In addition to the criminal penalties imposed hereunder, the Town may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 for each violation, and each week said violation continues shall be deemed a separate violation and/or for injunctive relief in connection with such violation.

_(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.) I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2011 of the Town of Clayton was duly passed by the Town Board on August 10, 2011 , in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____ (Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. Such local (Elective Chief Executive Officer)

law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

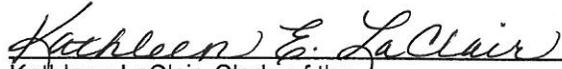
I hereby certify that the local law annexed hereto, designated as local law No. ____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general)election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November ____, 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the town of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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 paragraph ____ above.


Kathleen LaClair, Clerk, of the
Town of Clayton

(seal)

Date: 8/10/11

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

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.

Signature

Joseph W. Russell, Town Attorney
Town of Clayton

Date: 8/11/11