

**ORDINANCE NO. 2010-04
TOWN OF UNION
ROCK COUNTY, WISCONSIN**

**AN ORDINANCE TO EXTEND A TEMPORARY STAY
ON CONSTRUCTION OF LARGE WIND ENERGY SYSTEMS
IN THE TOWN OF UNION**

RECITALS

1. A “wind energy system” is an electricity generating facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s). A “wind turbine” is a wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator. A “large wind energy system” is a wind energy system with turbines exceeding 170 feet in height and 100 kilowatts in nameplate capacity.
2. There is an interest in establishing large wind energy systems in the Town of Union.
3. There exist potential health and safety issues related to the construction of large wind energy systems including, but not limited to, electrical connections, electric and magnetic fields, tower failure (falling turbines), falling ice, blade throw, flicker or shadow flicker, and noise.
4. The Town Board has been authorized under Wis. Stat. § 60.10(2)(c) to exercise powers conferred on Village Boards, and also has the authority to adopt zoning regulations under Wis. Stat. §§ 60.61 and 60.62 and 61.35.
5. Pursuant to the Wisconsin Model Ordinance Reference Guide (drafts 4/23/2007 and 5/22/2007), the Town developed and adopted a Large Wind Energy Systems Licensing Ordinance No. 2008-06 on November 13, 2008, that provides a review and permitting process as well as health and safety standards for large wind energy systems, and complies with Wis. Stat. § 66.0401.
6. Since the adoption of Ordinance No. 2008-06, the Wisconsin Court of Appeals issued a decision relating to the validity of local regulation of wind energy systems. *Ecker Brothers v. Calumet County*, 2009 WL 2032336, 2007AP2109 (Ct. App. July 15, 2009). Calumet County appealed the Court of Appeals decision to the Wisconsin Supreme Court on August 14, 2009.

7. Also after the temporary stay was adopted, the Wisconsin Senate and Assembly amended Wis. Stat. § 66.0401 in such a way as to affect the Village's authority to regulate wind energy systems. The Public Service Commission plans to issue rules pursuant to Wis. Stat. § 66.0401, and these rules may affect the Village's authority and the procedure necessary for regulating wind energy systems.
8. The Court of Appeals decision, Wis. Stat. § 66.0401 and the new PSC rules may require the Town to use a different process to regulate wind energy systems than in Ordinance No. 2008-06.
9. On October 1, 2009, the Town Board adopted Ordinance No. 2009-02, imposing a temporary stay on the construction of large wind energy systems in the Town of Union.
10. Reissuance of a temporary stay on the construction of large wind energy systems in the Town of Union is necessary to allow the Town to adapt any new wind energy system ordinance to these recent changes in state law and the anticipated PSC rules.
11. The Town Board believes that the adoption of a temporary stay will promote the public health and safety of people in the Town.

NOW THEREFORE, based on the above recitals and pursuant to Article XI, section 1 of the Wisconsin Constitution, sections 60.22(3), 61.34, 60.61 and 60.62 of the Wisconsin Statutes, and any and all other sources of authority that authorize the adoption of this ordinance, the Town Board of the Town of Union, Rock County, Wisconsin, do hereby ordain as follows:

SECTION 1. Temporary Wind Energy System Stay.

There is hereby established a temporary stay on the construction of wind energy systems in the Village. During the temporary stay provided by this ordinance it shall be unlawful to install or construct any wind energy system or part thereof, and the Village shall not process any applications relating to the proposed construction of any wind energy system.

SECTION 2. Duration.

The temporary stay will be in effect for 12 months from the date of adoption of this ordinance or, as to applications for wind energy systems submitted during those 12 months and after the Public Service Commission publishes regulations pursuant to Wis. Stat. § 66.0401, until the 1st day of the fourth month after the Town receives the application, pursuant to Wis. Stat. § 66.0401(4)(a)2. During the temporary stay provided

ordinance it shall be unlawful to install or construct any large wind energy system or part thereof. The Town may develop and adopt local regulations of wind energy systems during the pendency of the moratorium and during the 3 months after receipt of an application for a wind energy system during the moratorium. Applications submitted during the pendency of the moratorium will be subject to any such local regulation adopted by the Town during the moratorium and the 3 months after receipt of an application.

SECTION 3. Inconsistent Ordinances Voided.

All ordinances or provisions of ordinances inconsistent with or contravening the provisions of this Ordinance are hereby temporarily voided and shall have no legal force or effect during the period that this Ordinance is in effect.

SECTION 4. Scope.

The temporary stay provided by this Ordinance shall apply throughout the Town.

SECTION 5. Severability.

If any section or part of this Ordinance is adjudged to be unconstitutional, unlawful, or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 5. Effect of Invalidity.

If this Ordinance is adjudged to be unconstitutional, unlawful, or invalid by a court of competent jurisdiction, the Large Wind Energy Systems Licensing Ordinance (No. 2008-06) shall have legal force and effect.

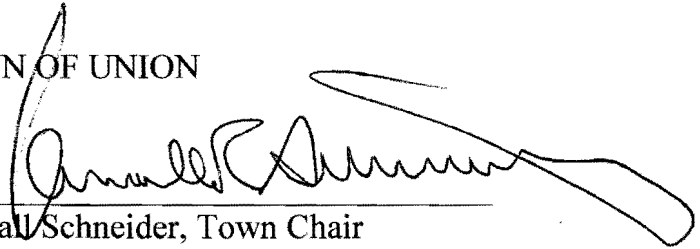
SECTION 6. Effective Date.

This Ordinance shall become effective upon adoption and publication or posting, as provided by law.

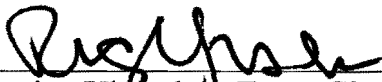
The above and foregoing Ordinance was duly adopted by the Town Board of the Town of Union at a meeting held on November 11, 2010 by a vote of 2 in favor, 0 opposed and 1 not voting.

TOWN OF UNION

By:


Kendall Schneider, Town Chair

ATTEST:


Regina Ylvisaker, Town Clerk

Approved:

11.11.10

Posted:

11.12.10

Published:

11.17.10