

## *Local Law Filing*

162 WASHINGTON AVENUE, ALBANY, NY 12231

NEW YORK STATE DEPARTMENT OF STATE

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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.

Village of Penn Yan

Local Law 5 of the year 2012

A Local Law to impose a six (6) month moratorium on the installation, construction, operation of and the submission and processing of applications for High Impact Industrial Use within the Village of Penn Yan.

Be it enacted for a period of Six (6) months by the Village of Penn Yan as follows:

### **Section 1. Authority**

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Village Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

### **Section 2. Short Title**

This local law shall be known as the "Village of Penn Yan High Impact Industrial Use Moratorium Law of 2012."

### **Section 3. Definition:**

For the purposes of this Local Law the following shall have the meanings indicated:

1. **Code Enforcement Officer (CEO)** – The duly appointed Code Enforcement Officer of the Village of Penn Yan or any Deputy or Assistant appointed or designated by the Village Board.
2. **Deleterious Substance** – Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of 'industrial waste', 'hazardous', 'toxic', or similar substances so long as such items are employed by persons in one or more specific businesses or industries: (a) below regulatory concern radioactive material, or any radioactive material which is not below regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Village, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) solution mining brine or mineral brines, (f) any chemical, waste oil waste emulsified oil, mud sediment, chemicals that was used or produced in the drilling, development transportation, processing or refining of crude oil or natural gas, (g) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas,

(h) drill cuttings from crude oil or natural gas wells, (i) any wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas, or (j) any waste classified as "Solid Waste" under 40 C.F.R. section 261.4(b)(5) [i.e. "Solid wastes which are not hazardous wastes,"] **exempting therefrom** animal manure.

**3. Deleterious Substance Disposal/Storage Facility** – Any of the following: (a) tanks or any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of deleterious substances that : (i) are being held for initial uses, (ii) have been used and are being held or subsequent reuse, (iii) are being held or treatment, or (iv) are being held or storage.

**4. Explosive Materials** – Substances capable of undergoing decomposition or combustion with great rapidity, evolving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling, **i.e.:** TNT, dynamite, nitroglycerin, and ammonium nitrate.

**5. High Impact Industrial Use** – High Impact industry uses or operations that are more likely than not to generate or involve any **five (5)** or more of the following impacts in the Village at any time during such use or operation:

- a. substantial surface disturbance;
- b. the presence, production, collection, handling, manufacture, use, storage, transfer or disposal of any deleterious substance;
- c. high-frequency high-impact truck traffic;
- d. an industrial use operation which, whether due to its nature or to a desire or need by the operator to employ financial resources most efficiently, or otherwise, is usually not limited to Monday to Friday daylight hours, but instead is often conducted on weekends and/or night hours;
- e. open air industrial use;
- f. open storage;
- g. flammable or explosive materials are present, used, produced, stored or disposed of;
- h. a private electric power generation facility;
- i. large scale water use;
- j. construction or use of more than 45,000 square feet of impervious surface;
- k. construction or use of a staging facility; or
- l. construction of pipelines, roadways and other infrastructure to move product and materials to from a proposed project site.

**6. High-Frequency, High-Impact Truck Traffic** - Any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact truck to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact truck to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.

- a. **GROSS VEHICLE WEIGHT RATING---** The weight specified by the manufacturer as the maximum load weight (truck plus cargo) of a vehicle.

- b. **HIGH-IMPACT TRUCK**--- A truck or tractor, as defined in the Vehicle and Traffic Law, with three or more axles, or ten or more wheels, and capable of hauling a gross vehicle weight of 34,000 pounds or more. High-impact truck does not include exempted vehicles.
- c. **EXEMPTED VEHICLES** --- Any of the following: (a) vehicles for agricultural or logging use, (b) school buses or other mass transit buses, (c) emergency vehicles, (d) military vehicles driven by active duty military personnel, or (e) trucks used in the construction, repair or maintenance of state, county, or Village roads or other public structures or property (f) Vehicles driven as part of a daily commute between home and a worksite or delivery destination.

**7. Injection Well** - A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Wells does not include: (a) single family septic systems that receive solely residential waste, (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground, (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power, or (d) bore holes drilled to produce potable water to be used as such.

**UNDERGROUND INJECTION**--- Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an injection well.

**8. Large Scale Water Use** - Any water withdrawal or sequestering water use of over 100,000 gallons of water in any thirty (30) day period from water resources within the Village or elsewhere. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes and used within the Village.

- a. **WATER; WATER RESOURCES** --- All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Village or any portion thereof.
- b. **WATER WITHDRAWAL**--- Removal or capture of water from water resources within the Village.

**9. Natural Gas** - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

**10. Natural Gas and/or Petroleum Extraction Activities** - the digging or drilling of a

well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

**11. Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes -**

Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Village, (b) crude oil or natural gas drilling fluids, (c) crude oil or natural gas exploration, drilling, production or processing wastes, (d) crude oil or natural gas drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material), (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of crude oil or natural gas, (f) soil contaminated in the drilling, transportation, processing or refining of crude oil or natural gas, (g) drill cuttings from crude oil or natural gas wells, or (h) any other wastes associated with the exploration, drilling, production or treatment of crude oil or natural gas. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) animal manure and/or recognizable and non-recognizable food wastes, or (ii) waste generated by agriculture use.

**12. Natural Gas and/or Petroleum Extraction, Exploration Extraction, Exploration or Production Wastes Disposal/Storage Facility -** Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.), (b) impoundments, (c) pits, (d) evaporation ponds, or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

**13. Natural Gas and/or Petroleum Exploration or Production Wastes Dump -** Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**14. Natural Gas Compression Facility -** Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

**15. Natural Gas Processing Facility -** Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and

dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams.

**16. Open Air Industrial Use** – An industrial use that includes storage outside of an enclosed building of raw materials, components, equipment, products, byproducts, waste, deleterious substances or other materials, either as a primary activity, or as an accessory use or incidental to another activity or use.

**17. Open Storage** – The holding, keeping or storage outside of an enclosed building of any chemicals, petroleum products, or deleterious substances, in total quantities of greater than two hundred (200) pounds or two hundred fifty (250) hours at any time during the use.

**18. Private Electric Power Generation Facility** – One or more power generators of more than 1000 horsepower in the aggregate, fueled by diesel, oil gas, propane or other fossil fuel, the primary function of which is the provision of electricity to an industrial use.

**19. Staging Facility** – A vehicle storage or parking facility or location capable of use for the storage, parking or operation of more than twenty (20) high impact trucks at the same time.

**20. Substantial Surface Disturbance** – A development activity which will likely disturb the existing surface or more than two (2) acres of land.

**21. Village** – The Village of Penn Yan

**22. Village Board** – The duly elected Village Board of the Village of Penn Yan

#### **Section 4. Legislative Purpose**

A. The purpose of this Local Law is to enable the Village of Penn Yan to prevent High Impact Industry as well as the processing of any application for High Impact Industry within the Village of Penn Yan for a reasonable time pending the Village Planning Board and Village Board completing and adopting regulations controlling High Impact Industrial Uses in the Village of Penn Yan.

B. It is further the purpose of this Local Law to fulfill the Village's pre-construction constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Village of Penn Yan, as well as to protect the value, use and enjoyment of property in the Village by temporarily prohibiting the submission and processing of applications for and commencement of operation of any High Impact Industrial Use within the Village.

C. The Village Board finds that the following concerns must be considered with respect to the commencement of operation of any High Impact Industrial Use in the Village of Penn Yan and the possible adoption of regulations with respect thereto:

1. The Village of Penn Yan presently has no zoning or other regulations related to High Impact Industrial Uses.

2. Public comment at Village Board meetings has indicated that High Impact Industrial Uses in other areas produce unanticipated negative impacts on aquifers, wells and local highway infrastructure, along with other potential negative impacts on a community.

3. Accordingly, any High Impact Industrial Use may have an adverse impact upon the health, safety, welfare and comfort of residents of the community, particularly adversely impacting residents in the vicinity of such high impact industrial uses.

4. The scenic and aesthetic attributes of the Village of Penn Yan as they relate to the use of land in the Village for residential, recreational and tourism purposes and the potential negative impact thereon by high impact industrial uses should be considered.

5. That High Impact Industrial Uses in the Village of Penn Yan may have an adverse affect upon real estate values in the Village of Penn Yan.

6. That the Village Board of the Village of Penn Yan has legitimate goals and aims in protecting the aesthetic and scenic resources as well as real estate values and other natural resources within the Village.

7. That high impact industrial uses without adequate protection for resources, may cause the Village to forever lose those resources.

8. That the aesthetics, view, vistas, visual impacts, noise impacts, safety, water resources, highway infrastructure, environmental and overall well being of the residents of the Village of Penn Yan must be considered and are the responsibility of the Village Board as relates to adoption of regulations pertaining to high impact industrial uses.

D. That to allow High Impact Industry Use without addressing the above factors may have a permanent, significant and substantial negative impact on the nature and quality of life in the Village of Penn Yan and on the health, safety, general welfare and comfort of its residents and their natural resources.

E. That to preserve the resources and character of the Village of Penn Yan, to consider further the concerns of the residents and property owners of the Village of Penn Yan, and to address further the needs of those residents and property owners, the Village of Penn Yan finds that it requires time to study the impacts, high impact industrial uses in the Village of Penn Yan.

F. The Village Board has requested the Village Planning Board to examine how the Village could protect itself from **unregulated** high impact industrial uses, by adoption of appropriate **controls**.

G. The Village Board hereby finds that a moratorium of six (6) months duration, coupled with a hardship waiver procedure and mechanism for persons seeking to begin high impact industrial uses within the Village of Penn Yan, will achieve the balancing of interests between the public need to safeguard the resources and character of the Village of Penn Yan, the health, safety and general welfare of its residents, and the rights of individual property owners, persons or businesses engaging in the high impact industry uses during such period.

## **Section 5. Imposition of Moratorium**

A. For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the commencement of high impact Industrial uses shall be accepted or processed by the Village of Penn Yan; (ii) no previously submitted applications for any purpose related to high impact industrial uses will be further processed by the Village of Penn Yan; (iii) the granting of any permit for same by any Board or Officer of the Village is prohibited; and (iv) installation, construction or erection of equipment or apparatus for High Impact Industry uses is prohibited within the geographic limits of the Village of Penn Yan, except as provided in Section 6 of this Local Law.

B. For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Village Board, Village Code Enforcement Officer, Village Highway Superintendent or other Officer, official, employee, agent or designee thereof of the Village of Penn Yan which request and/or approval would in any way commence, further or continue a process whereby High Impact Industry Use, or any part or component thereof, is or may be undertaken, commenced, constructed or erected.

C. **Exempted herefrom are existing businesses and/or operations in the Village of Penn Yan which would presently fall into the definition of high impact industrial use or fall into that definition by expansion or increase of any present use or operation. Also specifically exempted are any agricultural, municipal or educational uses or activities.**

## **Section 6. Alleviation of Extraordinary Hardship**

A. The Village Board of the Village of Penn Yan may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for high impact industrial use, the delay in commencement of directional drilling and/or hydraulic fracturing operations for production of natural gas, or any part or component thereof for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B. An application for an exception based upon extraordinary hardship shall be filed with the Code Enforcement Officer of the Village of Penn Yan, including a fee of One Thousand and 00/100 Dollars (\$1,000.00) for each geographic site proposed for High Impact Industry uses claimed to be subject to extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Village Board or its designee, shall prescribe as necessary for the Village Board to be fully informed with respect to the application.

C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Village Board at a meeting of the Village Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Code Enforcement Officer. The Village Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.

D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Village Board shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for high impact industrial uses.

2. The extent to which the proposed high impact industrial uses would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Village of Penn Yan, considering all the factors set forth in Section 4 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed high impact industrial uses would not lead to significant environmental degradation, undue adverse impacts on public health or safety, and/or have a negative impact upon the Village of Penn Yan considering the factors set forth in Section 4 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.

F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Village Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Village Board may approve, deny or approve in part and deny in part the application being acted upon.

## **Section 7. Penalties**

A. For the purposes hereof any person, in that person's individual capacity or acting as an employee, agent or officer of an entity, violating the provisions hereof, shall be subject to prosecution pursuant hereto.

B. A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed \$250.00 or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law, **including injunctive relief**. Each day that a violation exists shall be a separate prosecutable offense pursuant hereto.

## **Section 8. Superseding and Repealer Provisions**

This local law shall supersede the applicable sections of Article 16 of the Village Law, including, but not necessarily limited to Sections, 130, 261, 262, 263, 264, 265, 267, 268, 269 and 274-a, and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to industrial wind turbine towers, and/or industrial wind energy facilities, as defined herein.



**Section 9.    Validity**

In the event that any section, sentence, clause or phrase of this Local Law is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way affect the validity of the remaining portions of this Law.

**Section 10.    Effective Date**

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Village Board of the Village of Penn Yan.

*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. 5 of the year 2012, of the Village of Penn Yan was duly passed by the Village Board on November 20, 2012, 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 paragraph 1 above.

  
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Mary Ann Martin – Deputy Clerk

(SEAL)

Date: December 5, 2012