

ORDINANCE NO. 2011-01

**ORDINANCE TO ESTABLISH A TEMPORARY MORATORIUM ON THE
DEVELOPMENT OF WIND ENERGY SYSTEMS IN THE
TOWN OF BROTHERTOWN**

The Town of Brothertown, Calumet County, Wisconsin, hereby adopts an Ordinance establishing a temporary moratorium as follows:

Section 1. Legislative Findings.

- a. The Public Service Commission of Wisconsin recently adopted regulations governing the siting process and performance standards for wind energy systems, which are found at PSC 128.
- b. PSC 128 allows a town to adopt an ordinance regulating wind energy systems consistent with its provisions that may require a permit and payment of a reasonable application fee for the construction or expansion of wind energy systems.
- c. PSC 128 becomes effective on March 1, 2011.
- d. Calumet County is in the process of adopting an ordinance regulating wind energy systems consistent with Wis. Stat., § 66.0401 and PSC 128.
- e. Calumet County has adopted a moratorium on the development of wind energy systems effective until April 1, 2011.
- f. Residents of the Town of Brothertown have expressed a desire for the Town to exercise local control on issues relating to wind energy systems and obtain a fee for wind energy development.
- g. For the Town to exercise local control over wind energy systems, it must enact an ordinance consistent with PSC 128.
- h. Without an ordinance consistent with PSC 128, the Town has no authority to regulate wind energy system setbacks, noise levels, shadow flicker requirements, signal interference limits, stray voltage limits, or construction and operation standards.
- i. The Town does not have an ordinance regulating wind energy systems and, therefore, it requires time to establish an ordinance regulating wind energy systems consistent with PSC 128.

j. Because the Town of Brothertown does not have planning staff, it must either hire an attorney or consultant to draft an ordinance regulating wind energy systems, or it will draft an ordinance based on that adopted by Calumet County.

k. The Town also needs to develop application and compliance forms to administer any wind energy system ordinance it develops.

l. Time is of the essence in adoption of this moratorium.

m. This moratorium serves to preserve and protect the public health and safety.

Section 2. Authority. This Ordinance is adopted pursuant to Wis. Stat., §§ 60.10(2)(c), 60.22(3), 60.50, 60.61, 61.34, 62.17, 62.23, 66.0401 and 236.45. This Ordinance is also adopted pursuant to the Town's police powers, which are being exercised for the purpose of protecting the public health, safety, and general welfare in the Town of Brothertown.

Section 3. Temporary Moratorium on Acceptance of Applications, Construction, or Expansion of Wind Energy Systems. The Town does hereby declare a moratorium on the acceptance of applications for wind energy systems, the constructions of wind energy systems, and the expansion of wind energy systems, whether the applications are for building permits, driveway permits, or any other type of permit, or land division approval, that may be required to construct and operate wind energy systems in the Town. All applications submitted shall be returned without being considered.

Section 4. Term of Moratorium. This moratorium shall be in effect until six months after the date of its adoption. The Town reserves the right to lift this moratorium prior to that date if the Town adopts an ordinance regulating wind energy systems, or if the Town otherwise chooses to lift the moratorium. The Town reserves the right to extend this moratorium if it finds that an extension is necessary.

Section 5. 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 6. Scope. This temporary moratorium applies throughout the Town of Brothertown.

Section 7. Interpretation and Severability. This Ordinance shall be liberally construed to accomplish its intended purposes. If a court of competent jurisdiction determines that any section or provision is invalid or illegal, the court is authorized to substitute reasonable language in order to preserve the intended purposes of this ordinance. If any section or provision of this

Ordinance is adjudged to be invalid or illegal by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section 8. Definitions. For purposes of this Ordinance “wind energy system” shall have the same definition as that set forth in Wis. Stat., § 66.0403(1)(m).

Section 9. Effective Date. This Ordinance shall take effect upon adoption and publication as provided by law.

Adopted this 24th day of February, 2011.

TOWN OF BROTHERTOWN

By:

Charley Schneider
Town Chairperson

Attest:

SuAnne Yares, Clerk
Town Clerk