

Local Law No. ____ of 2021

Be it hereby enacted by the Town Board of the Town of Independence as follows:

Section 1: The “Wind Energy Facility Law of the Town of Independence, New York,” is hereby amended to read in its entirety as follows:

WIND ENERGY FACILITIES

Article I

§ 1. Title.

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Independence, New York.”

§ 2. Purpose.

The Town Board of the Town of Independence adopted this Local Law to govern any development of Wind Energy Conversion Systems (“WECS”), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized. The Town of Independence desires to balance green energy and economic development with protections for the health, welfare and safety of the citizenry of the Town of Independence. This Local Law is intended to allow responsible development in a way that benefits the local community and citizenry.

§ 3. Authority.

The Town Board of the Town of Independence enacts this Local Law under the authority granted by:

1. Article IX of the New York State Constitution, § 2(c)(6) and (10).
2. New York Statute of Local Governments, § 10(1) and (7).
3. New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10(1)(a)(6), (11), (12), and (14).
4. New York Town Law § 130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).

5. New York Town Law § 64(17-a)(protection of aesthetic interests) and (23)(General powers).

§ 4. Findings.

A. The Town Board of the Town of Independence finds and declares that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from reliance upon conventional energy sources.

2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective under certain circumstances, and in some cases existing power distribution systems may be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at the installed location can be reduced.

3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.

5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction or drainage methods.

6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.

7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.

8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties and residents.

9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.

10. If improperly sited, Wind Energy Facilities can interfere with various types of communications.

§ 5. Permits Required; Transfer; Modifications.

A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Independence except in compliance with this Local Law.

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Independence except with a Wind Energy Facility Permit approved pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Independence except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.

D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Independence except pursuant to a Wind Energy Permit issued pursuant to this Local Law.

E. This Local Law shall apply to all areas of the Town of Independence.

F. Exemptions. No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a wind energy permit in accordance with Article II of this Local Law, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

G. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; (4) no increase in noise produced by the WECS, and (5) the WECS is not currently in violation of any permit condition or provision of this Local Law.

§ 6. Definitions.

As used in this Local Law, the following terms shall have the meanings indicated:

AGRICULTURAL OR FARM OPERATIONS — means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of New York Agriculture and Markets Law § 301 and “timber processing,” as defined in subdivision fourteen of New York Agriculture and Markets Law § 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

EAF — Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE — means any dwelling suitable for habitation existing in the Town of Independence on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA — the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SOUND PRESSURE LEVEL — means the level which is equaled or exceeded a stated percentage of time. An $L_{eq} - 50$ dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

SITE — The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 300 kW and which is intended to primarily reduce consumption of utility power at that location.

TOTAL HEIGHT — The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM (“WECS”) — A machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”).

WIND ENERGY FACILITY — A development project, consisting of an integrated system of Wind Energy Conversion Systems or Small Wind Energy Conversion Systems, including Wind Measurement Towers, and all associated Wind Energy Related Infrastructure..

WIND ENERGY RELATED INFRASTRUCTURE – the components of a Wind Energy Facility, excluding WECS and Wind Measurement Towers, that are necessary or convenient for the construction or operation of the Wind Energy Facility, including electric collection lines, substations, interconnection lines, switchyards, access roads, communication facilities, operation and maintenance buildings and facilities, and laydown yards and concrete batch plants.

WIND MEASUREMENT TOWER — a tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

WIND ENERGY PERMIT — A permit granted pursuant to this Local Law granting the holder the right to construct, maintain, and operate a Wind Energy Facility.

§ 7. Applicability.

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that:

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of 12 months shall meet the requirements of this Local Law prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than 24 months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is renewed or obtained through written application and payment of the appropriate fee.

Article II Wind Energy Conversion Systems

§ 8. Applications For Wind Energy Permits For Wind Energy Facilities.

A. An application for a Wind Energy Permit for a Wind Energy Facility shall include the following, presented in the following order:

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

2. Name, address, and telephone number of the owners of properties on which the Wind Energy Facility will be located. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed application and (ii) authorizing the submission of the application.

3. Address, or other property identification, of each proposed WECS location, including Tax Map section, block, and lot number.

4. A description of the project, including the number and maximum rated capacity of each WECS.

5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:

(a) Property lines and physical dimensions of the Site.

(b) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within the setback distances specified in Section 13.E of the boundaries of the proposed WECS Site.

(c) Location and elevation of each proposed WECS.

(d) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(e) Location and size of structures above 35 feet within the setback distances specified in Section 13.E of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.

(f) To demonstrate compliance with the setback requirements of this Local Law, circles drawn around each proposed tower location equal to the setback distances specified in Section 13.E.

(g) Location of the nearest residential structure located off the Site, and the distance from the proposed WECS.

(h) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.

6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.

7. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

9. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.

10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.

12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

(a) A construction schedule describing expected commencement and completion dates; and

(b) A description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.

13. Completed Part 1 of the Full Environmental Assessment Form.
14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the Wind Energy Facility application.
15. For each proposed WECS, include make, model, picture, and manufacturers' specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement ("DEIS") prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
 - a. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
 - b. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - c. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.
 - d. Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
 - e. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties neighboring WECS Sites.

f. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.

18. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.

19. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

§ 9. Application Review Process.

A. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.

B. Eight copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees shall be paid at the time of the receipt of the application.

C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.

D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.

E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.

F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed WECSs, and published in the Town's official newspaper, no less than ten nor more than 20 days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

H. Notice of the project shall also be given to the Allegany County Planning Board, in the manner provided for by General Municipal Law §§ 239-l and 239-m.

I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings.

J. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

K. Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

§ 10. Standards for Wind Energy Facilities and WECS.

A. The following standards shall apply, unless specifically waived by the Town Board as part of a Wind Energy Permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

2. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.

3. No advertising signs are allowed on any WECS, including fencing and support structures. Nothing in this provision shall prohibit identification information or safety notifications.

4. Lighting of tower. No tower shall be lit except to comply with FAA requirements and for safety/security needs at the tower entrance. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.

5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single color or a camouflage scheme. WECSs within a Wind Energy Facility shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project. No lettering, company insignia, or advertising, or graphics shall be on any part of the tower, hub, or blades, except for tower identifier numbers near the tower base and safety signage.

6. Guy wires shall not be used for wind turbines.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would materially degrade signal transmission or reception without mitigation. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing material electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the affected parties. Failure to remedy material electromagnetic interference is grounds for modifying the Wind Energy Permit to eliminate the specific WECS or WECSs causing the interference.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when practicable. The use of previously developed areas will be given priority wherever practicable.
10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
12. The maximum Total Height of any WECS shall be 600 feet.
13. Construction of the WECS shall be limited to the daylight hours, except for certain activities that require calmer wind conditions than may be expected during the day, subject to approval of the Town Code Enforcement Officer.
14. The standards for restoration and preservation of farm land of the New York State Department of Agriculture and Markets' "Guidelines for Agricultural Mitigation for Windpower Projects" shall be followed.

§ 11. Required Safety Measures.

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. [Intentionally left blank]

C. Appropriate warning signs shall be posted, visible in all directions upon approaching the tower, warning of electrical shock or high voltage and containing emergency local contact information. The Town Board may require additional signs based on safety needs.

D. No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

E. The minimum distance between the ground and any part of the rotor or blade system shall be 20 feet.

F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§ 12. Traffic Routes.

A. Construction of WECSs poses potential risks because of the large-size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

B. The applicant is responsible for remediation of damaged roads during and upon completion of the installation or maintenance of a Wind Energy Facility. A public improvement bond shall be posted prior to the start of construction of a Wind Energy Facility in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

§ 13. Setbacks For Wind Energy Conversion Systems.

A. The statistical sound pressure level generated by a WECS shall not exceed $L_{eq} - 50$ dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in § 15(A) shall be reduced by five dBA. A pure tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above,

by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.

C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences and schools. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.

D. Any noise level falling between two whole decibels shall be the lower of the two.

E. Each WECS shall be setback as follows, as measured from the center of the WECS:

1. 1.1 x tip height, or more, from the nearest Site boundary property line.
2. 1.1 x tip height, or more, from the right of way of public roads.
3. 1,200 feet or more from the nearest off-Site residence, measured from the exterior of such residence.
4. 1.5 x tip height, or more, from any structure visited daily by one or more people (e.g., dairy barns), or any above-ground utilities, unless waived by the utility companies.
5. 1,200 feet or more from the property line of any school, church, hospital, or nursing facility.
6. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

§ 14. Noise and Setback Easements.

A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria 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 Town 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 noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) allow 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 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.

B. Waivers granted under this Section differ from waiver requests under Article V of this Local Law in that no Article V waiver is required if a waiver is given under this Section, and an Article V waiver must be sought rather than a waiver under this Section if the adjoining property owner will not grant an easement pursuant to this Section.

§ 15. Issuance Of Wind Energy Permits.

A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval, or disapproval fully stated.

B. If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.

C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved Wind Energy Facility is not substantially commenced within two years of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire, unless renewed by the Town Board after payment of a renewal fee equal to the original application fee.

§ 16. Abatement.

A. If any WECS remains non-functional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including, without limitation, transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from the Wind Energy Facility, if

requested, necessary to prove the Wind Energy Facility is functioning, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a building permit is issued. The Town may enter into an agreement to maintain security for a multiple-jurisdiction project without further action by the Town Board.

§ 17. Limitations On Approvals; Easements On Town Property.

A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§ 18. Permit Revocation.

A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as bi-annually, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any

deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law, and consistent with § 19(A) and § 21(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe or (2) order modification of the Wind Energy Permit so as to eliminate the unrepaired WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Article III

Wind Measurement Towers

§ 19. Wind Site Assessment.

The Town Board acknowledges that prior to construction of a Wind Energy Facility, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

§ 20. Applications For Wind Measurement Towers.

A. An application for a Wind Measurement Tower shall include:

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower location, including Tax Map section, block, and lot number.
4. Proposed Development Plan and Map.
5. Decommissioning Plan, including a security bond for removal.

§ 21. Standards For Wind Measurement Towers.

A. The distance between a Wind Measurement Tower and the property line shall be at least one and a half times the Total Height of the tower. Sites can include more than one piece of

property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.

B. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of this Article.

Article IV

Small Wind Energy Conversion Systems

§ 22. Purpose and Intent.

The purpose of this Article is to provide standards for small wind energy conversion systems designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

§ 23. Applications.

A. Applications for Small WECS Wind Energy permits shall include:

1. Name, address, and telephone number of the applicant. If the applicant will be represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower location, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.

7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.

8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

§ 24. Development Standards.

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

A. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.

B. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.

C. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.

D. Tower heights may be allowed as follows:

1. 65 feet or less on parcels between one and two acres.

2. 120 feet or less on parcels of two or more acres.

3. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

E. The maximum turbine power output is limited to 300 kW.

F. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.

G. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.

H. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

I. All on-site electrical wires associated with the system shall be installed underground except for “tie- ins” to a public utility company and public utility company transmission poles, towers, and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

J. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

K. Signs shall be posted, visible from all directions, on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery, and giving a local contact number in case of emergency. No brand names, logo, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower’s manufacturer’s logo may be displayed on a system generator housing in an unobtrusive manner.

L. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

1. Tower-climbing apparatus located no closer than 12 feet from the ground.
2. A locked anti-climb device installed on the tower.
3. A locked, protective fence at least six feet in height that encloses the tower.

M. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

N. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

O. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

P. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

Q. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

§ 25. Standards.

A Small Wind Energy System shall comply with the following standards:

A. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

B. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

§ 26. Abandonment of Use.

A. Small WECS which is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the applicant and/or property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

Article V Waivers

§ 27. Waivers.

A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town. The Town Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request. Waivers so granted run with the land, and Wind Energy Facilities granted a waiver are deemed to be in compliance with the relevant provision of this local law.

B. The Town Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

Article VI Miscellaneous

§ 28. Fees.

A. Non-refundable Application Fees shall be as follows:

1. WECS Wind Energy Permit: \$300 per megawatt of rated maximum capacity.
2. Wind Measurement Towers Wind Energy Permit: \$200 per tower.
3. Small WECS Wind Energy Permit: \$150 per WECS.
4. Wind Measurement Tower Wind Energy Permit renewals: \$50 per Wind Measurement Tower.
5. Waiver Application Fee \$100 per tower site.

B. Building Permits. Building permits are required for each Wind Energy Facility. The Town believes the review of building and electrical permits for Wind Energy Facilities other than Small WECS requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$300 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.

C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

§ 29. Tax Exemption.

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by paragraph 8 of that law.

§ 30. Enforcement; Penalties and Remedies For Violations.

A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.

B. Any person owning, controlling, or managing any building, structure or land who shall undertake a wind energy facility or wind energy related infrastructure conversion facility or wind monitoring tower in violation of this Local Law, or 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 \$350 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense; for a second offense (both within a period of five years), a fine not less than \$350 nor more than \$700, or imprisonment not to exceed six months, or both; and for a third or more offense (all of which occurred within five years), a fine not less than \$700 nor more than \$1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties provided here, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

Section 2: Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 3 Repealer; Effect On Other Laws.

All resolutions, ordinances, and local laws or parts thereof in conflict herewith or which in any manner, in the absence of this Local Law, would address or apply to the approval, construction, operation, or decommissioning of Wind Energy Facilities are superseded by this Local Law.

Section 4: Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.