

Town of Genoa
Local law #2 of 2021
Wind Energy Siting Review Law

BE IT ENACTED by the Town Board of the Town of Genoa, County of Cayuga, State of New York, as follows:

ARTICLE 1

SECTION 1 -Authority. This local law is adopted pursuant to the authority and provisions of § 10 of the Municipal Home Rule Law, § 10 of the Statute of Local Governments, and Town Law § 130, and Town Law Article 16, including §§ 268 and 274-a therein.

SECTION 2 -Purpose and Legislative Matters. This local law shall be known as the “Wind Energy Siting Review Law” or simply herein, the “local law”. The purpose and intent of this local law is to further the purposes of site planning within the Town of Genoa, by both promoting wind power and protecting the land and persons from the impacts of such land use and development, including to help preserve important soils and open spaces, to mitigate impacts and nuisances, and to help ensure harmony with natural site conditions and surrounding land uses, including through decommissioning and siting requirements, including but not limited to:

- A. Taking advantage of a safe, abundant, and renewable energy resource;
- B. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- C. Reducing potential aesthetic impacts because of their large size, lighting, vibration, noise, and shadow flicker effects;
- D. Protecting the environment and resources for future generations by minimizing the impacts of Wind Energy Systems on environmental resources, such as important agricultural lands, forests, wildlife and other protected resources;
- E. Managing commercial renewable energy development to provide a balance between energy needs that protect the environment and respect for the Town’s rural agricultural landscape; and
- F. Reduce noise disturbances for local residents, as well as reduce potential traffic problems and damage to local roads.

SECTION 3 - 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 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 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 such existing Wind Energy Facility shall be allowed without full compliance with this local law.
- C. No WECS, Wind Measurement Tower, or Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Genoa except with a Wind Energy Facility Site Approval pursuant to this local law.

D. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (i) there will be no increase in Total Height; (ii) no change in the location of the WECS; (iii) no additional lighting or change in facility color; (iv) no increase in noise produced by the WECS, and (v) the WECS is not currently in violation of any condition or approval or provision of this local law.

SECTION 4 - Definitions. As used in this local law, the following terms shall have the meanings indicated:

Applicant: Any person or entity responsible for submitting a Site Plan application for review by the Town Board, or otherwise responsible for compliance with the terms, conditions, and requirements of this local law.

Building: A structure wholly or partially enclosed within exterior walls, or within exterior party walls, and a whole or partial roof, affording shelter to persons, animals, or property.

Residence: Any dwelling suitable for habitation existing in the Town of Genoa 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: The level which is equaled or exceeded a stated percentage of time. A 50 dBA Leq 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 when approved by the Town Board.

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. When lots or parcels are adjacent, the combined lots shall be considered as one for purposes of applying setbacks and yardage, height, bulk, and density requirements and, generally, the shared property line may be disregarded. Any property which has a Wind Energy Facility, or which has entered an agreement for a Wind Energy Facility, or a setback agreement or other agreement, waiver, consent, shall not be considered off-Site for Siting and other purposes under this local law.

Site or Siting Approval(s) (also sometimes Site Planning applications, reviews, or approvals): A Site Plan application approved by the Town Board pursuant to this Wind Energy Siting Review Law and Town Law § 274-a. This includes any decision upon an application, but principally includes a conditional, partial, limited, or application approval, as issued by the Town Board upon a Site Plan for a Wind Energy Facility of any size submitted by any Applicant, including but not limited to any Siting Approvals, other approvals, consents, or resolutions or motions authorizing any Wind Energy Facility, or change therein, including those issued for any waivers referenced in this local law.

Site Plan: A rendering, drawing, sketch, written plan, map, survey, or similar documents, prepared to specifications as required by and under this local law, which shows the arrangement, layout, and design of the proposed uses of land as shown upon such plan, together with supporting data and

information as required by this local law, or as is reasonably requested or necessary in the discretion of the Town Board, to render such plan complete and ready for review.

Small Wind Energy Conversion System (or "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 100 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.

Town: The Town of Genoa in Cayuga County, New York.

Town Board: The Town Board of the Town.

Wind Energy Conversion System (or "WECS"): A machine that converts the kinetic energy in the wind into a usable form (commonly, a "wind turbine" or "windmill"). For all height and setback calculations, this includes all parts and extensions, including blades, pitch bearing devices, vertical axes, nacelles, generators, and attached devices and extensions of any kind or nature.

Wind Energy Facility: A development project, consisting of an integrated system of WECS, including Small WECS and 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, staging yards, concrete batch plants, and all related improvements and appurtenances that support the construction or operation of a Wind Energy Facility.

Wind Measurement Tower (sometimes called a Met Tower); A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

ARTICLE 2

SECTION 5 - Applications for Wind Energy Facility Siting Approvals. An application for a Wind Energy Facility Siting Approval shall include the following:

- A. 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.
- B. 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.
- C. Address, or other property identification, of each proposed WECS location, including address and tax map section, block, and lot number.
- D. A description of the project, including the number and maximum rated capacity of each WECS.

- E. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
1. Property lines and physical dimensions of the Site.
 2. Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within any setback distances specified in this local law.
 3. Location and elevation of each proposed WECS.
 4. Location of all above ground utility lines on the Site or within a one-mile radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 5. Location and size of structures above 35' in height within any setback distances specified in this local law. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open lattice towers are not considered structures.
 6. To demonstrate compliance with the setback requirements of this local law, circles drawn around each proposed tower location equal to the applicable setback distances specified herein.
 7. Location of the nearest residential structure located off the Site, and the distance from the proposed WECS.
 8. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- F. 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.
- G. 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 or lights for the structure, but if such determination is not available at the time of the application, no Siting Approval for any lighted facility may be issued until such determination is submitted.
- H. List of property owners, with their mailing addresses, within 500' 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.
- I. 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 supporting documentation used to substantiate the cost estimates;
 5. The estimated decommissioning cost shall not incorporate any salvage value that may be realized with the sale of materials, facility structures, or equipment, land, or other assets associated with the Large-Scale Energy System at the time of decommissioning;
 6. The method of ensuring that funds will be available for decommissioning and restoration;
 7. the-method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and
 8. 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 3', 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.

- J. Complaint Resolution: The application shall 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.
- K. An application shall include information relating to the construction/installation of the Wind Energy Conversion Facility as follows: (i) a construction schedule describing expected commencement and completion dates; and (ii) a description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
- L. Applications for Wind Energy Facility Site Approval for Wind Measurement Towers subject to this local law may be jointly submitted with the Wind Energy Facility application.
- M. For each proposed WECS, include make, model, picture, and manufacturers' specifications, including noise decibel data, and also 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.
- N. A landscape plan depicting all existing all-natural land features, trees, forest cover, and all proposed changes to these features including size and type of plant material and erosion control measures.
- O. The Town Board may require soil and geotechnical test data if such data is necessary to judge the adequacy of design or soil capacity and loading.
- P. Completed Part I of the SEQRA Full Environmental Assessment Form, including, when required by the Town, the following test and study data:
 - 1. 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.
 - 2. 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. Balloon testing and photographic analyses of visual impacts based upon such testing may also be required.
 - 3. Safety Plan: A fire protection and emergency response plan created in consultation with the fire department(s) and first and emergency responders having jurisdiction over, or responding to events near, the proposed Site. A safety Plan must also analyze and consider WECS failures, ice throw, and other potential accidents and events that can cause material harm to Buildings and persons.
 - 4. 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 and multi-spectrum analyses across A-, C-, and Z-weighted fields.

5. Market Value Impact Analysis: Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties neighboring WECS Sites.
 6. EMI Studies: An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communications.
- Q. The Applicant shall, prior to the receipt of Site Approval, 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 the applicable Transmission Owner.
- R. A statement signed under penalties of perjury, that the information contained in the application is true and accurate.

SECTION 6 - 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 an 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.
- 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 or the application materially amended.
- E. Upon submission of a complete application, including any applications for any waivers, 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 2,500' of the boundary of the parcel on which any proposed Site is located. The Town Board shall also have a notice printed in a newspaper of general circulation in the Town, no less than 10 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, and all publication shall be at the expense of the Applicant.
- G. The public hearing may be combined with public hearings under SEQRA or upon requested waivers.
- H. Notice of the project shall also be given to Cayuga County per the requirements of General Municipal Law §§ 239-l through 239-n.
- I. Applications for WECS are deemed Type I projects under SEQRA whenever the Town Board is the lead agency, and the Town shall participate as and interested or involved agency, as applicable, when it is not the permitting or reviewing authority or the lead agency under SEQRA.
- 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 under said § 239-1, *et seq.*, when 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 local law.

SECTION 7 - Standards for Wind Energy Facilities and WECS. The following standards shall apply, unless specifically waived by the Town Board as part of a Siting Approval.

- A. All power transmission lines from the tower to any Building or other structure shall be located underground to the maximum extent practicable.
- B. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS unless mandated by FCC or other laws regarding collocation.
- C. No advertising signs are allowed on any WECS, including fencing and support structures. Nothing in this provision shall prohibit identification information or safety notifications.
- D. No tower shall be lighted, illuminated, or lit except to comply with FAA requirements or 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.
- E. 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, shall be visible on any part of the tower, hub, or blades, except for tower identifier numbers near the tower base and safety signage.
- F. Guy wires shall not be used unless all details are set forth in any Site Plan application, and guying and guy wires are specifically approved for the specific facility or WECS where installed or utilized.
- G. 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 Siting Approval for the specific WECS or related structure(s) or improvement(s) causing, or contributing to, the interference.
- H. 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.
- I. Wind Energy Facilities shall be designated to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

- J. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable laws, regulations, and permits, including for decommissioning events.
- K. The maximum Total Height of any WECS shall be 300’.
- L. Construction of the WECS shall be limited to the daylight hours, unless the Siting plan is approved for night installations to avoid daytime wind events.
- M. The standards for restoration and preservation of farmland of the New York State Department of Agriculture and Markets’ “Guidelines for Agricultural Mitigation for Windpower Projects” shall be followed.
- N. The operator of a wind facility shall provide reasonable mitigation to the owner of any off-Site Residence, including after-built Residences, where annual expected combined flicker and shadow hours are more than 30 hours per year or 30 minutes per day.

SECTION 8 - 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. 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.
- C. No climbing pegs or tower ladders shall be located closer than 12’ to the ground level at the base of the structure for towers.
- D. The minimum distance between the ground and any part of the rotor or blade system shall be 50’.
- E. 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.

SECTION 9 - 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 associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (i) minimizing traffic impacts from construction and delivery vehicles; (ii) minimizing WECS related traffic during times of school bus activity; (iii) minimizing wear and tear on local roads; and (iv) minimizing impacts on local business operations. Siting Approval 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, or any damage left improperly repaired or unrepaired.

SECTION 10- Setbacks for Wind Energy Conversion Systems.

- A. The statistical Sound Pressure Level generated by a WECS shall not exceed 50 dBA Leq measured at the nearest existing Residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties and each nearest existing Residence. When, due to topography or other factors, additional residential Residences merit testing, the Applicant shall have appropriate measurements undertaken and studies completed. If the ambient Sound Pressure Level exceeds 45 dBA, the standard shall be ambient noise level plus no more than 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement. This is a minimum standard, and for good cause shown the Town Board may require greater or lesser the noise and Sound Pressure Levels upon a project or per tower basis, including taking into account sensitive receptors and the effects of cyclical or patterned and repeating sound impacts.
- 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 above in this Section shall be reduced by 5 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 5 dBA for center frequencies of 500 Hz and above, by 8 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 project 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 5 minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing Residences and ambient noise level measurement techniques shall employ all practical means of reducing the effect of naturally generated wind noise at the microphone. Ambient noise level measurements may be performed when natural 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. 1.2x tip height or Total Height (whichever is greater), or more as determined by the Town Board, from the nearest Site boundary property line.
 2. 1.2x tip height or Total Height (whichever is greater), or more as determined by the Town Board, from any right of way of public roads.
 3. 1,200' or more, as determined by the Town Board, from the nearest off-Site Residence, measured from the exterior of such Residence.
 4. 1.2 x tip height or Total Height (whichever is greater), or more as determined by the Town Board, 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' or more, as determined by the Town Board, from the property line of any school, church, hospital, or nursing facility.
- F. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

SECTION 11 - 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 existed at the time the Siting approval is granted, a waiver may 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 setback limitations imposed by this local law, and that consent is granted to (i) allow noise levels to exceed the maximum limits otherwise allowed or (ii) 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.
- B. Waivers granted under this Section differ from waiver requests for waivers under Article 5 of this local law, and no Article 5 waiver is required if a waiver is given under this Section. Further, if a waiver is not obtained under this Section, no waiver under Article 5 may be granted for any Site relating to the subject matter of waivers in this Section.

SECTION 12 - Issuance of Wind Energy Siting Approval.

- 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 any Siting Approval, conditions of Siting Approvals, or denials of application and other disapprovals fully stated.
- B. The decision of the Town Board shall be filed within 5 days in the office of the Town Clerk and a copy mailed to the Applicant by first class mail.
- C. If any approved Wind Energy Facility is not substantially commenced within 2 years of issuance of the Siting Approval, the Siting Approval shall expire, unless renewed by the Town Board after payment of a renewal fee equal to the original application fee.

SECTION 13 - Abatement.

- A. If any WECS remains non-functional or inoperative for a continuous period of 1 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-functionality or a 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, when required by law) 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. However, if redaction removed information necessary for the Applicant to sustain its case, such shall have

no effect upon any determination as may be made by the Town Board, which shall be based upon the record, and not what could have been in the record.

- C. 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 an irrevocable letter of credit, payable by demand notice, from a State of New York licensed financial institution, in form approved by the Town. All costs of the financial security shall be borne by the Applicant. All decommissioning bond requirements shall be fully funded before a Siting approval is issued. The Town may enter into an agreement to maintain security for a multiple jurisdiction project without further action by the Town Board.

SECTION 14 - Limitations upon Siting Approvals; Easements upon 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. Removal of trees, flora, and any Site preparation activities shall be part of a Site application.
- B. 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.
- C. 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.

SECTION 15 - Siting Approval Revocation.

- A. Siting Approvals 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 biennially, 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 Siting Approval 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. All 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 approval conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate any Siting Approval 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, if the WECS is not repaired or made operational or brought into a compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (i) order either remedial

action within a particular timeframe, or (ii) order modification of the Siting Approval 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 3

SECTION 16 - 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 Siting Approval in accordance with this local law.

SECTION 17 - Applications for Wind Measurement Towers. An application for a Wind Measurement Tower shall include:

- A. 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.
- B. 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.
- C. Address of each proposed tower location, including tax map section, block, and lot number
- D. Proposed Development Plan and Map.
- E. Decommissioning Plan, including a security bond (or other security) for removal.

SECTION 18 - Standards for Wind Measurement Towers. The distance between a Wind Measurement Tower and the property line shall be at least 1.5x the Total Height of the tower. Sites can include more than one piece of property, and if contiguous properties, then this requirement does not apply to any shared boundary line whenever the owners thereof have so agreed or consented in writing.

ARTICLE 4

SECTION 19 - 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; those 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 Conversion Systems and to protect the public health, safety, and community welfare.

SECTION 20 - Applications. Applications for Small WECS Siting Approvals shall include:

- A. 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.
- B. 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.
- C. Address of each proposed tower location, including tax map section, block, and lot number.
 - D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
 - E. 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.
 - F. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
 - G. 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.
 - H. 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.

SECTION 21 - Development Standards. All Small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this local law 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 WECS tower per legal lot or per acre, whichever is less, shall be allowed.
- C. Small WECS shall be used primarily to reduce the on-Site consumption of electricity.
- D. Tower heights may be allowed as follows:
 - 1. 65' or less on parcels between one and two acres.
 - 2. 120' 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 § 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 100 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 if the project terrain is determined to be unsuitable due to reasons of subsurface conditions, 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, submit an application to relocate the system, or cease operation of the system.

- K. Signs shall be posted, visible from all directions, on the tower at a height of 5' 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' from the ground.
 - 2. A locked anti-climb device installed on the tower.
 - 3. A locked, protective fence at least 6' 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 6' high or sheathed in bright orange or yellow covering from 3' to 8' 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 traditional turbine blade or a horizontal axis wind turbine blade shall be at least 30' above the highest structure or tree within a 250' radius of the WECS. Modification of this standard may be made when the Applicant demonstrates that a lower height or less clearance will not jeopardize the safety of the wind turbine or structure.
- P. All Small WECS tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Codes.
- Q. All Small WECS 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.

SECTION 22 - Standards. A Small WECS shall comply with the following standards:

- A. A Small WECS shall not be located closer to a property line than 1.5x the Total Height of the facility.
- B. 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 50 decibels (dBA), as measured at the closest neighboring, inhabited dwelling.

SECTION 23 - 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 property owner.
- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of law and Building codes, as well as safe building practices.

ARTICLE 5

SECTION 24 - 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 6

SECTION 25 - Fees and Escrow

- A. An application fee, as determined by the Town Board, shall accompany any application for a Site Plan review. Fees for Small WECS and Large-Scale Wind Energy System may be set from time-to-time by resolution of the Town Board. Initial fees for Small WECS are set at \$75 per tower, and Large-Scale Wind Energy System fees are set at \$1,000 per tower.
- B. The Applicant shall deliver with its application an amount as determined by the Town Board from time to time by resolution, or as specifically agreed upon between the Town and the Applicant, to be held in escrow during the application review process. The sum shall be held by the Town in a non-interest-bearing account and these funds shall be available to the Town to pay for the costs of reviewing the application, including, but not limited to, the costs of consultants engaged by the Town to assist in any review of the application as well as any costs related to any related notices or hearings. Following any grant or denial of the application, the Town shall return to the Applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the Applicant shall deposit such funds as are then necessary for the Town to pay any outstanding fees before the Town is required to proceed with any further review of the project.

SECTION 26 - Host Community or PILOT Agreement. Nothing in this Law shall be read as limiting the ability of the Town Board to enter into host community agreements or Payment in Lieu of Tax ("PILOT") agreements with any Applicant to compensate the Town for expenses of or impacts to or upon the community.

SECTION 27 - Enforcement.

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this local law, and each such person shall be deemed an Enforcement Officer under this local law.
- B. All provisions of New York State law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this local law, and for such purposes the violation of this

local law is hereby declared an unclassified misdemeanor. The Town's justice court is hereby vested and imbued with jurisdiction to issue administrative and other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York, as well as to hear and adjudicate allegations relating to the criminal or civil violation of this chapter and thereafter, if appropriate, impose any fine, penalty, or sanction.

- C. Any person or entity that violates any of the provisions of this local law shall be guilty of a criminal violation and subject to a fine of not more than \$500, or subject to a civil penalty of not more than \$1,000, to be recovered by the Town in a civil action. Each week that any noncompliance or violation continues is and may be charged as a separate violation.
- D. The application or pursuit of any civil or criminal fine, sanction, or penalty shall not preclude the pursuit of any other lawful remedy by the Town, including, but not limited to, the right to seek equitable relief. The remedies provided by this local law shall not be in lieu of, and shall be in addition to, any other right or remedy available to the Town, whether sounding in enforcement or otherwise.
- E. Whenever the Town shall believe from evidence satisfactory to it that there is a violation of this chapter, the Town may also bring an action to enjoin and restrain the continuation of such violation and in any such action preliminary relief may be granted under Article 63 of the Civil Practice Law and Rules and the Town shall not be required to post any bond or undertaking, and need not prove that there is there is or will likely be irreparable harm or that the Town has no adequate remedy at law. In such action, the court may also award any damages or other relief requested, including declaring the rights and interests of any parties and imposing any civil penalties.

SECTION 28 - Transfer, Sale or Assignment of Wind Energy Facility and related Siting Approvals.

- A. The Owner and Operator of the Large-Scale Wind Energy Facility shall give written notice to the Town Board of any proposed change in ownership or change in operation of the project as soon as possible, but not later than 90 days prior to the change in ownership operation. Such notice shall contain:
 - 1. A statement signed by the successor owner or operator that such person/entity assumes all of the obligations of the Siting Approval(s) and the decommissioning plan(s).
 - 2. Acknowledgement that the obligations shall continue despite the proposed change in ownership or operation.
 - 3. In the event of failure to give notice, the Siting Approval shall be deemed terminated and the project shall be deemed abandoned. The Town may immediately give notice to commence decommissioning pursuant to the Decommissioning plan and any bond or security therefor.
 - 4. In the event that such notice is given, and all applicable conditions in this law have been met, then the Siting Approval shall remain in effect.

SECTION 29 - Severability. If any clause, sentence, paragraph, or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or article thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 30 - Repealer; Effect on Other Laws; Effective Date. 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 Solar Energy Facilities are superseded by this local law. This local law shall take effect immediately.