

TOWN OF LOCKPORT
LOCAL LAW NO. 3/2016 OF THE YEAR, 2016

A Local Law Entitled “Adding Noncommercial Wind Energy Conversion Systems Article to the Code of the Town of Lockport”

Be it enacted by the Town Board of the Town of Lockport as Follows:

Article XXVII shall be added to the Zoning Chapter of the Code of the Town of Lockport entitled “Noncommercial Wind Energy Conversion Systems” as follows:

§ 200-188. Findings.

The Town Board of the Town of Lockport makes the following findings:

- A. The Town Board of the Town of Lockport finds a growing need to properly site noncommercial wind energy conversion systems. Prior to the adoption of this article, no specific procedures existed to address the siting of noncommercial wind energy conversion systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location, construction and maintenance of these systems.
- B. Furthermore, the Town Board finds that the small-town atmosphere and character of the Town of Lockport requires extensive regulation of noncommercial wind energy conversion systems and this amendment is necessary to direct the location of noncommercial wind energy conversion systems within the boundaries of the Town of Lockport to minimize the number of such towers, to protect residential, business areas and other land uses from potential adverse impacts of noncommercial wind energy conversion systems to preserve the overall beauty, nature and character of the Town of Lockport and to protect the health, safety and general welfare of the citizens of the Town of Lockport.
- C. Noncommercial Wind Energy Conversion Systems need to be regulated for removal when no longer utilized.

§ 200-189. Definitions.

The following definitions shall apply to this Chapter:

APPLICANT – The person or entity filing an application and seeking a permit under this Article; the owner of a noncommercial WECS or a proposed project; the operator of a noncommercial WECS or proposed project; any person acting on behalf of an applicant, noncommercial WECS project or proposed noncommercial WECS. Whenever the term “applicant” or “owner” or “operator” are used in this Section, said term shall include any person acting as an applicant, owner or operator.

NONCOMMERCIAL WIND ENERGY CONVERSION SYSTEM – A Wind Energy Conversion System, which may be referred to and/or abbreviated as “WECS” throughout this Article, consisting of one wind turbine, one tower, and associated control or conversion electronics, with a total maximum height of not more than one hundred sixty-five (165) feet, as measured from the ground elevation to the top of the tip of the blade in the vertical position, and is intended to primarily supply electrical power for the use on the subject property.

SEQRA – The New York State Environmental Quality Review Act, as amended from time to time.

TOWER – The support structure, including guyed, monopole, and lattice types, upon which a wind turbine and other mechanical devices are mounted.

TOWER HEIGHT – The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

TOTAL HEIGHT – (also MAXIMUM OVERALL HEIGHT) – The height of the Wind Energy Conversion System measured from the ground elevation to the top of the tip of the blade in the vertical position.

WIND TURBINE – Any piece of electrical generating equipment that converts wind energy into electrical energy through the use of airfoils, rotating turbine blades, or similar devices to capture the wind.

§ 200-190. Use districts where allowed.

Subject to the provisions of this Article, noncommercial wind energy conversion systems shall be allowed only in the Agricultural District (AG) Use District, Agricultural Residential (AR) Use District, or Industrial (IN) Use District. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to allow noncommercial energy conversion systems in other districts are hereby superseded.

§ 200-191. General regulations.

- A. The placement, construction, and major modification of all noncommercial wind energy conversion systems within the boundaries of the Town of Lockport shall be permitted only by Special Permit by the Town of Lockport Planning Board in use districts where allowed in accordance with the criteria established in this article, after SEQRA review with the Town of Lockport Planning Board designated as Lead Agency, upon concurrent site plan approval issued by the Town of Lockport Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this article.
- B. All noncommercial wind energy conversion systems existing on the effective date of this Article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such existing towers. New construction other than routine maintenance shall comply with the requirements of this chapter.

- C. No noncommercial wind energy conversion system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- D. Any applications (including variance applications) pending for noncommercial energy wind conversion systems on the effective date of this article shall be subject to the provisions of this article.
- E. This article shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Lockport.

§ 200-192. Special permit requirements.

Applications under this article shall be made as follows: Applicants for a special permit to place, construct, and make a major modification to a noncommercial wind energy conversion system within the boundaries of the Town of Lockport shall submit ten (10) sets of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- A. A completed State Environmental Quality Review Act (SEQRA) short form environmental assessment form (EAF), unless a long form which includes the visual EAF addendum is required by the Town's professional engineer or consultant or the Town of Lockport Planning Board, with the Town of Lockport Planning Board designated as lead agency for the SEQRA process.
- B. Necessary Permit Information:
 - (1) Name and address of the applicant;
 - (2) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application;
 - (3) Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of all Noncommercial WECS components;
 - (4) Photographs or detailed drawings of each Noncommercial WECS component including the tower and foundation;
 - (5) Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection;
 - (6) An acoustic report shall be furnished for the specific wind turbine technology which provides sound curve based on production levels for the overall dB(A) measurement of the wind turbine at different wind speeds based on field testing. This should be done in accordance with the Small Wind Certification Council (SWCC) which has standardized North American reporting on turbine energy and sound performance;
 - (7) A report from the turbine manufacturer stating the wind speed and conditions that the wind turbine is designed to withstand (including all assumptions);

- (8) A copy of written notification to the Federal Aviation Administration (FAA) and to Mercy Flight, and any correspondence from said entities;
 - (9) If a proposed Noncommercial WECS is located within two (2) miles of any microwave communications link, then the application shall include a copy of a written notification to the operator of the link; and
 - (10) If a proposed Noncommercial WECS is located within a 100-year floodplain area, then the application shall include any such flood hazard areas are shown on the floodplain maps with a detailed report which shall address the potential for wind erosion, water erosion, sedimentation, and flooding, and which shall propose mitigation measures for such impacts.
- C. A site plan drawn in sufficient detail to show the following:
- (1) Location of the tower(s) on the lot and the tower height, including blades, wind turbine diameter, and ground clearance;
 - (2) Dimensional representation of the various structural components of the tower construction including the base and footing;
 - (3) Property lot lines and the location and dimensions of all existing structures and uses on the lot within five hundred (500) feet of the Noncommercial WECS;
 - (4) Proposed plan for restoration of the site after construction according to NYS Department of Environmental Conservation and Town of Lockport guidelines and requirements;
 - (5) Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code; and
 - (6) Wind characteristics and dominant wind direction from which fifty percent (50%) or more of the energy contained in the wind flows.
- D. Any such additional information as may be required by the Town's professional engineer or consultant, Town of Lockport Planning Board, Town Attorney, Building Inspector or other Town entity.

§ 200-193. Special permit criteria.

Special Permits issued for a Noncommercial WECS shall meet the following conditions:

- A. Minimum lot area: The minimum lot area needed for one tower and one wind turbine shall be ten (10) acres (two (2) wind towers and two (2) wind turbines need a minimum lot area of at least twenty (20) acres).
- B. Setbacks: Any Noncommercial WECS shall adhere to the following setbacks:
 - (1) From any residential (R1 or R2), business (B1 or B2), manufactured home park (MHP) or planned unit development (PUD) use district: A minimum seven hundred and fifty feet (750) feet from all property lot lines bordering a residential (R1 or R2), business (B1 or B2), manufactured home park (MHP) or planned unit development (PUD) use district.

- (2) From any property lot lines: A minimum one and one half (1 ½) times the total height of the Noncommercial WECS from any property lot line.
 - (3) From buildings or structures:
 - (a) A minimum one and a half (1 ½) times the total height of the Noncommercial WECS from any building or structure, except if said building or structure is used for the actual operation of the noncommercial WECS; and,
 - (b) A minimum of five hundred (500) feet from any dwelling.
 - (4) From public roads and railroads:
 - (a) A minimum one and a half (1 ½) times the total height of the Noncommercial WECS from any public road or railroad (measured from the road right-of-way or property line); and,
 - (b) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
 - (5) From schools, public parks: A minimum of seven hundred and fifty (750) feet from all property lot lines bordering a school or public park.
 - (6) From the edge of the Niagara Escarpment: A minimum of two hundred and fifty (250) feet from the edge of the Niagara Escarpment.
 - (7) From aboveground transmission lines greater than twelve (12) kilovolts:
 - (a) A minimum one and a half (1 ½) times the total height of the Noncommercial WECS from any aboveground transmission line greater than twelve (12) kilovolts.
 - (8) Notwithstanding the setback provisions set forth in these subsections, such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement that runs with the property for a period of twenty-five (25) years or the life of the Special Permit, whichever is longer, that the adjacent landowner(s) agrees to the elimination of the required setbacks. These setback requirements can only be varied through this agreement process with adjoining landowners and not through a variance with the Zoning Board of Appeals. Any agreement to the elimination of such property line setbacks shall not constitute the reduction or elimination of required setbacks from structures, as previously identified, and such setbacks from structures, for safety reasons, shall not be reduced or eliminated.
- C. Maximum overall height: The maximum overall height of any Noncommercial WECS shall be one hundred and sixty-five (165) feet, as measured from the ground elevation to the top of the tip of the blade in the vertical position.
- D. Number of towers and wind turbines allowed per lot: There shall only be allowed a maximum of two (2) wind towers and two (2) wind turbines per lot.
- E. The power produced from a Noncommercial WECS shall only be used for on-site consumption (except for net metering purposes).
- F. Noncommercial WECS shall only be located in rear yards.

G. Signage:

- (1) No advertising sign or logo shall be placed or painted on any Noncommercial WECS; and
- (2) Noncommercial WECS Special Permit may allow the placement of the tower's manufacturer's logo on a system generator housing in an unobtrusive manner.

H. Color and finish:

- (1) Wind turbines and towers shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective; and
- (2) The design of Noncommercial WECS buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend the facility to the natural setting and the existing environment.

I. Lighting: Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the FAA or required by Mercy Flight (and approved by the Town of Lockport Planning Board).

J. Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a Noncommercial WECS.

K. Safety and security requirements:

- (1) Safety shutdown: Each Noncommercial WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the wind turbine. A manual electrical and/or over-speed shutdown disconnect switches shall be provided and clearly labeled on the Noncommercial WECS. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the tower structure, rotor blades, and wind turbine components;
- (2) All structures which may be charged with lightning shall be grounded according to applicable electrical code;
- (3) The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than thirty (30) feet;
- (4) Wind turbine towers shall not be climbable up to fifteen (15) feet above ground level;
- (5) All access doors to Noncommercial WECS structures and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present;
- (6) Anchor points for any guy wires for a system tower shall be located with 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 (6) feet high or sheathed in bright orange or yellow covering from to eight (8) feet above the ground. The minimum set back for the guy wire anchors shall be twenty (20) feet from the property boundary; and

- (7) Appropriate warning signage shall be placed on wind turbine towers and electrical equipment. Signage shall also include one (1) twenty-four hour emergency contact number to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

L. Noise requirements:

- (1) The audible noise standard due to wind turbine operations shall be in conformance with the Town's noise ordinance; and
- (2) A Noncommercial WECS shall not be operated so that impulsive sound below twenty (20) Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.

M. Impact on wildlife species and habitat:

- (1) Development and operation of a Noncommercial WECS shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats; and
- (2) Development and operation of a Noncommercial WECS shall not have an adverse impact on migratory bird species.

N. Interference with residential television, microwave, and radio reception.

- (1) The applicant must submit information that the proposed construction of a Noncommercial WECS will not cause interference with microwave transmissions, cellular transmissions, residential television interference, or radio reception of domestic or foreign signals; and
- (2) The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.

O. Interference with aviation navigational systems:

- (1) No Noncommercial WECS shall be installed or operated in a manner that causes interference with the operation of any aviation facility; and
- (2) All Noncommercial WECS sitings shall comply with FAA and Mercy Flight regulations.

P. Bond: A bond or other appropriate form of security may be required to cover the cost of the removal and site restoration by the Town of Lockport Planning Board.

Q. Erosion control:

- (1) Before the Town of Lockport shall issue a grading or building permit for a Noncommercial WECS, the applicant shall submit an Erosion Control Plan to the Engineering Department for its review and approval; and

- (2) The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

R. Certification:

- (1) The foundation, tower, wind turbine, and compatibility of the tower with related equipment shall be certified in writing by a structural engineer registered in New York State. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State;
- (2) After completion of the Noncommercial WECS, the applicant shall provide a post-construction certification from a licensed professional engineer registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans;
- (3) The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State;
- (4) The wind turbine over-speed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices; and
- (5) Certificate of Completion must be supplied by the applicant and approved by the Town of Lockport Code Enforcement Officer.

- S. Any Noncommercial WECS to be used strictly for Agricultural use purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Planning Board.

§ 200-194. Maintenance, procedures, and fees.

- A. Time limit on completion. After approval of a noncommercial WECS, the building permit shall be obtained within six months and the project shall be completed within twelve months. If not constructed, the special permit shall automatically lapse within twelve months after the date of approval by the Town of Lockport Planning Board.
- B. Inspections. Upon reasonable notice, Town of Lockport Code Enforcement officials or their designated representatives may enter a lot on which a Noncommercial WECS Special Permit has been granted for the purpose of compliance with any permit requirements. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Noncommercial WECS shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Code Enforcement Officer, that the wind turbine, tower, or other Residential WECS components have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any

fee or expense associated with this inspection shall be borne entirely by the permit holder.

- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of the Special Permit. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of any complaint from the Town of Lockport Code Enforcement Officer, the permit holder/contact person shall have seven (7) working days to reply to the Town in writing before any determination or decision is made by the Building Inspector.
- D. Continued Operation. A Noncommercial 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. Further, the Building Inspector shall also have the right to request documentation from the owner for the noncommercial WECS regarding the WECS' usage at any time.
- E. Removal. All noncommercial WECS facilities, including, but, not limited to, towers, blades, and accessory structures, shall be dismantled and removed immediately from the site when the permit has been revoked by the Town of Lockport Planning Board or the noncommercial WECS has been deemed inoperative or abandoned by the Building Inspector for a period of more than one hundred and eighty (180) days at the cost of the owner. If the owner does not dismantle and remove said noncommercial WECS facility as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.
- F. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a noncommercial wind conversion system shall be made by the Town Building Inspector, who shall provide the Owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Lockport Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the one hundred and eighty-one (181) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any special permit and/or variance approvals for the noncommercial WECS shall automatically expire.
- G. Special permit term. Special permits granted pursuant to this Article may be limited in duration by the Town of Lockport Planning Board.
- H. Application and annual fees. Applicant shall pay an initial application fee of Five Hundred (\$500) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its application to cover the cost of processing and reviewing the application. If approved, the Owner shall pay an annual fee of One Hundred and Fifty (\$150) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, to cover the cost of processing and reviewing the

annual inspection report and for administration, inspections and enforcement.

- I. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- J. Special permits granted under this article shall be issued only following a public hearing held as required by the Town Zoning Law.
- K. The Planning Board may grant the Special Permit, deny the Special Permit, or grant the Special Permit with written stated conditions. Denial of the Special Permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of the Special Permit, the applicant shall obtain a building permit for each noncommercial WECS.
- L. Any changes or alterations post construction to a Noncommercial WECS shall be done only by amendment to the Special Permit and subject to all requirements of this Code.
- M. In addition to the requirements of this Article, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

§ 200-195. Permit revocation.

If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit. Revocation may occur after the applicant is notified in writing of the violations and the Town of Lockport Planning Board holds a hearing on same.

§ 200-196. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 200-197. Severability

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.