

## ***Local Law Filing***

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**TOWN OF SOMERSET  
LOCAL LAW NO. 2 OF THE YEAR, 2006**

**A Local Law Entitled “Amendment to the Code of the Town of Somerset”**

Be it Enacted by the Town Board of the Town of Somerset as Follows:

The Code of the Town of Somerset is hereby amended by this Local Law, as follows:

Section 1. Chapter 205, Zoning, is amended by adding the following new section:

§205-43.3 Noncommercial wind energy conversion systems.

- A. The placement, construction, and major modification of all noncommercial wind energy conversion systems within the boundaries of the Town of Somerset shall be permitted only by special use permit, upon site plan approval issued by the Planning Board herein and issuance of a building permit, and subject to all provisions under this section shall be made as follows
- B. Applications under this section shall be made as follows:
- (1) Applicants for a special permit to place, construct or modify wind energy conversion systems within the Town of Somerset shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:
    - (a) Name and address of the applicant
    - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
    - (c) A site plan drawn in sufficient detail to show the following:
      - [1.] Location of the tower(s) on their site and the tower height, including blades, rotor diameter and ground clearance.
      - [2.] Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the Wind Energy Conversion Systems.
      - [3.] Dimensional representation of the various structural components of the tower construction including the base and footing.
      - [4.] Tower must be installed as per manufacturer’s specifications which

should include

- a. Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the residential wind turbine and tower.
  - b. Turbine drawings: Photographs or detailed drawings of each wind turbine model, including the tower and foundation.
  - c. Noise report.
  - d. Foundation requirements.
  - (h) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
  - (i) Electrical line drawing: 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 Electrical Code adopted by New York State.
  - (j) Floodplain: An application that includes any wind turbine which is located within a 100-year flood plain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by 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.
  - (k) Other Information: Such additional information as may be reasonably requested by the Town Engineer or Planning Board.
- C. Special use permits issued for Wind Energy Conversion Systems shall be subject to the following conditions.
- (1) Setbacks: The applicant shall adhere to the following setbacks.
    - (a) From property lines: (Zones R-1, R-2 and RLS Only)  
A minimum 1.5 times the total WECS height from all property lot lines.
    - (b) From property lines: (excluding Residential Zones R-1, R-2 and RLS)  
A minimum 1.5 times the total WECS height from any property line.
    - (c) From public road and highways:  
A minimum 1.5 times the total WECS height from any public road and highway.
    - (d) From railroads:  
A minimum 1.5 times the total WECS height from any railroad right-of-way.
    - (e) From aboveground Transmission Lines greater than 12 kilovolts:  
A minimum 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts.
  - (2) Only one residential wind energy conversion system tower per legal lot shall be allowed or as determined by the Planning Board, and the system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed across property lines.
  - (3) Maximum height: The maximum overall height of any noncommercial wind energy conversion system shall be 150 feet.
  - (4) Noncommercial wind energy conversion system shall be placed or located in rear yards.
  - (5) Notification of adjacent property owners
    - (a) All applicants are required to notify all property owners within 1000 feet of the property line of the proposed parcel where the noncommercial wind energy conversion system will be erected of the proposed project. The adjacent property owners shall be notified by the Town Clerk in writing within 10 days of filing an application for WECS Permit with the Town of Somerset. This notification shall include the size, location and planned construction date of

residential WECS system. Failure to comply with this notification will not constitute a jurisdictional defect.

- (6) Signage:
  - (a) Signage limited: No advertising sign or logo shall be placed or painted on any non-commercial wind energy facility. A noncommercial wind energy facility permit may allow the placement of the tower's manufacturer's logo on a system generator housing in an unobtrusive manner.
- (7) Lighting:
  - (a) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) Color and finish.
  - (a) Color and finish: Wind turbines shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective.
- (9) Compliance with regulatory agencies.
  - (a) 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 the Wind Energy Conservation System.
  - (b) The applicant is required to submit a long Environmental Assessment Form (EAF) with the Town of Somerset designated as lead agent for the SEQR process.
- (10) Compliance with the Local Waterfront Revitalization Plan.
  - (a) The applicant is required to conform to all requirements of the Town of Somerset Local Waterfront Revitalization Plan.
- (11) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.
  - (a) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
  - (b) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical code.
  - (c) Wiring: All wiring associated with the wind energy facility shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers or lines.
  - (d) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
  - (e) Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level.
  - (f) Anchor points for guy wires: 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 6 feet high or sheathed in bright orange or yellow covering from to eight feet above the ground. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.

- (g) Signage: Appropriate warning signage shall be placed on wind turbine towers, and electrical equipment. Signage shall also include one (1) twenty-four-hour emergency contact numbers to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.
- (12) Noise requirements: The applicant shall adhere to the following noise requirements.
  - (a) Audible noise standard: The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out of any one-hour time period or to exceed 50 dB(A) for any time period.
  - (b) Operations – low frequency noise: A noncommercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (13) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat.
  - (a) Endangered or threatened species: Development and operation of a residential wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Somerset Comprehensive Plan and/or the studies and plans of the regional planning commissions.
  - (b) Migratory birds: Development and operation of a residential wind energy facility shall not have an adverse impact on migratory bird species.
- (14) Interference with residential television, microwave and radio reception.
  - (a) The noncommercial wind energy conversion energy system shall be operated such that no electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (15) Unsafe and inoperable wind energy facilities; site reclamation: The applicant shall adhere to the following:
  - (a) Removal and site restoration: Unsafe noncommercial wind energy facilities, inoperable noncommercial wind energy facilities, and noncommercial wind energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the noncommercial wind energy facility shall be eliminated and the site shall be restored to its natural condition to the extent feasible.
  - (b) Public nuisance: Every unsafe noncommercial wind energy facility and every inoperable noncommercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable noncommercial wind energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
  - (c) Inoperable, defined: A noncommercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- (16) Interconnection and Electrical Distribution Facilities: The applicant shall adhere to the following:
  - (a) Facility Standards: All interconnection facilities shall be constructed to the specifications of the utility.

- (b) Interconnection Standards: Interconnection shall conform to procedures and standards established by the Federal Regulatory Commission, and the New York State Public Service Commission, as applicable.
- (17) Certification: The applicant is required to provide the following certifications.
  - (a) Certification of structural components: The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. 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.
  - (b) Certification of electrical system: 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 Electrical Code that have been adopted by New York State.
  - (c) Certification of rotor overspeed control: The rotor overspeed 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.
- (18) General Complaint Process:
  - (a.) During construction the Town of Somerset Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
  - (b.) Post construction: 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 complaint from the Town of Somerset code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- (19) Final Inspection conducted by Code Enforcement Officer in conjunction with the Town Engineer to insure compliance with all manufacturers' specifications and the New York State Uniform Construction Code.

E. Application fees and costs:

- (1) Application Fee: Applicant shall pay all costs associated with the Town of Somerset's review and processing of the application. Applicant shall submit a deposit with the application in the amount of as determined by resolution by the Town Board. The Town of Somerset may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.

F. Findings:

- (1) Findings necessary to grant a noncommercial wind energy facility permit: In order to grant a noncommercial wind energy facility permit, the Town of Somerset shall review the application; all filings by any other party; and conduct a public hearing. A noncommercial wind energy facility permit shall not be granted unless the Town of Somerset makes the following findings based on substantial evidence:
  - (a) Consistent with the Comprehensive Plan: The proposed noncommercial wind energy facility project is consistent with the Comprehensive Plan of Town of Somerset.
  - (b) Will not unreasonably interfere with the orderly land use and development plans: The proposed noncommercial wind energy facility will not

unreasonably interfere with the orderly land use and development plans of the Town of Somerset.

- (c) Not detrimental to the public health, safety and general welfare of the community: The proposed noncommercial wind energy facility will not be detrimental to the public health, safety or general welfare of the community.
- (d) Complies with all required provisions of the Zoning Ordinance: The proposed non-commercial wind energy facility shall comply with all required provisions of the zoning ordinance, unless variances have been properly applied for and granted pursuant to Article XVIII of Chapter 205 of the Code of the Town of Somerset.

G. The Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for the tower (Wind Energy Conversion System).

H. The special use permit shall not be assignable or transferable.

I. Amendments to special use permit – Any changes or alterations post construction to the wind energy conversion system shall be done only by amendment to the special use permit and subject to all requirements of this section.

Section 2. No permit or other approval shall be required under this chapter for noncommercial wind energy systems solely used for agricultural operations located in a state or county agricultural district, as long as the property owner, or designated agent submits the following to the Town of Somerset Planning Board for review prior to installation:

1. Information requested in Section 205-43.3, Subsection B.1.d (Manufacturer Info)
2. A sketch plan showing their compliance with the setbacks outlined in Section 205-43.3, Subsection C.1 ) (Set plan with setbacks)
3. Compliance with Section 205-43.3, Subsection C.11 (Safety and Security requirements)
4. Compliance with Section 205-43.3, Subsection C.14 (Radio/TV Interference)
5. Compliance with Section 205-43.3, Subsection C.16 (Interconnection to Electrical Facilities)
6. Compliance with Section 205-43.3, Subsection C.18 (Mechanical/Electrical Certifications)

Section 3. If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not be enacted.

Section 4. This Local Law shall take effect immediately upon filing with the Secretary of State of New York.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2006 of the Town of Somerset was duly passed by the Town Board on July 11, 2006, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 200\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 200\_\_, and was approved/not approved/repassed after disapproval by the (Elective Chief Executive Officer\*) and was deemed duly adopted on \_\_\_\_\_ 200\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 200\_ of the Town of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 200\_, and was approved/not disapproved/repassed after disapproval by the (Elective Chief Executive Officer\*) on \_\_\_\_\_, 200\_. Such Local Law was submitted to the people by reason of a mandatory/permissive referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the general/special/annual election held on \_\_\_\_\_, 200\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_ of 200\_\_ of the County/City/Town/Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 200\_, and was approved/not approved/repassed after disapproval by the (Elective Chief Executive Officer\*) on \_\_\_\_\_ 200\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 200\_, in accordance with the applicable provisions of law.

\_\_\_\_\_

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as Local Law No. \_\_\_\_ of 200\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special/general election held on \_\_\_\_\_ 200\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated at Local Law No. \_\_\_\_ of 200\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_, 200 \_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

*(Seal)*

\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village  
Clerk or officer designated by local legislative body  
**REBECCA A. CONNOLLY, MMC,**  
**Town Clerk, Town of Somerset**  
Date: \_\_\_\_\_, 2006

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
**EDWIN J. SHOEMAKER, Town Attorney**  
**Town of Somerset**  
Date: \_\_\_\_\_, 2006