

Local Law Filing

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County
City of Wethersfield
Town
Village

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
DEC 29 2006

MISCELLANEOUS
& STATE RECORDS

Local Law No. 1 of the year 2006

A local law entitled, "Town of Wethersfield Wind Energy Conversion Device/Farm Licensing, Siting and Design Regulations and Requirements Law."

Be it enacted by the Town Board of the

County
City of Wethersfield as follows:
Town
Village

As set forth in the attached page(s).

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1)

BE IT ENACTED by the Town Board of the Town of Wethersfield as follows,

SECTION I. AUTHORITY

The Town Board of the Town of Wethersfield enacts this local law under the authority granted by:

1. Article IX of the New York State Constitution, §2 (c) (6) and (10).
2. New York Statute of Local Government, §10 (1) and (7).
3. New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (1) (a) (6), (11), (12), and (14).
4. New York Town Law §130 (1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of Streets and Highways), (7-a) (Location of Driveways), (11) (Peace, Good Order and Safety), (15) (Promotion of Public Welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building Lines).
5. New York Town Law §64 (17-a) (Protection of Aesthetic Interest), (23) (General Powers).

SECTION II. TITLE

This local law shall be known as the "Town of Wethersfield Wind Energy Conversion Device/Farm Licensing, Siting and Design Regulations and Requirements Law."

SECTION III. INTENT AND PURPOSE

The purpose of this local law is to provide the discretionary licensing, siting and design regulations and requirement framework for the approved establishment of Wind Energy Conversion Devices/Farms to protect the health, welfare, safety, peace and tranquility of the residents of the Town of Wethersfield; furthermore, to address the visual, aesthetic and land use compatibility aspects of Wind Energy Conversion Devices/Farms. This local law establishes a permissive and discretionary framework for the establishment of Wind Energy Conversion Devices/Farms in the Town of Wethersfield.

SECTION IV. DEFINITIONS

- A. **APPLICANT** – Owner or Operator of a Wind Energy Conversion Device/Farm.

- B. ELECTROMAGNETIC INTERFERENCE (EMI) – The interference to communication systems created by scattering of electromagnetic signals.
- C. SHADOW FLICKER – The alternating pattern of sun and shade caused by wind tower blades casting a shadow.
- D. WIND ENERGY CONVERSION DEVICE - The siting of one (1) mechanical device such as a wind charger, windmill or wind turbine designed and used to convert wind energy into a form of energy for commercial sale. The net metering of the output from a wind charger, windmill or wind turbine pursuant to a tariff filed with the New York State Public Service Commission shall not be considered a Wind Energy Conversion Device and is not subject to regulation by this local law.
- E. WIND ENERGY CONVERSION FARM - The siting of two (2) or more mechanical devices such as a wind charger, windmill or wind turbine designed and used to convert wind energy into a form of energy for commercial sale. The net metering of the output from a wind charger, windmill or wind turbine pursuant to a tariff filed with the New York State Public Service Commission shall not be considered a Wind Energy Conversion Farm and is not subject to regulation by this local law.
- F. TOTAL HEIGHT – The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.
- G. WIND TOWER – The monopole, freestanding, or guyed structure that supports a wind turbine generator.
- H. RESIDENCE – A house, apartment or other shelter that is the usual residence of a person, family or household that has county approved water, sewer and electric, or a combination thereof, at the adoption of this local law. A place where one actually lives as distinguished from a domicile or place of temporary sojourn, such as, but not limited to, a camper body on cinder blocks, a mobile home in the woods used as a hunting camp or camping site.

SECTION V. SITING REGULATIONS AND DESIGN REQUIREMENTS

A Intent

It is the intent of the siting regulations and design requirements to promote the public health, safety and general welfare of the Town of Wethersfield residents by addressing, in a careful manner, the establishment, placement, construction, enlargement and erection of Wind Energy Conversion Devices/Farms on a comprehensive Town-wide basis by providing a discretionary framework for the establishment of the same.

1. Protect human life and health.
2. Address the visual, aesthetic and land use compatibility aspects of wind energy conversion devices/Farms.
3. Encourage the location of Wind Energy Conversion Devices/Farms in areas where the adverse impacts on the community are minimized.
4. Encourage the configuration of Wind Energy Conversion Devices/Farms in a way that minimizes the adverse visual impact of the same.
5. Enhance the provisions of Wind Energy Conversion Devices/Farms regulations within the Town.
6. Minimize the total number of Wind Energy Conversion Devices/Farms throughout the Town.
7. Maximize the positive fiscal impacts for the community and land owners and permitting for the continued economic vitality of the agricultural community.

B. Design Requirements

1. Set Backs

- a. The tower or towers for a Wind Energy Conversion Device/Farm must meet the following set back requirements (all set back distances shall be measured from the center line of the wind turbine).
- b. Every Wind Energy Conversion Device in a Wind Energy Conversion Farm must be set back (as measured from the center of the base of the tower):
 - i. from the property line of the parcel on which the Wind Energy Conversion Device is located by a minimum distance of five hundred (500) feet, unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the abutting landowner.
 - ii. from any permanent livable residence and/or building for public congregation that is on any parcel by a minimum distance of $\frac{1}{4}$ mile, unless waived in writing, in the form of an easement that is recorded in the

Wyoming County Clerk's Office, by the owners of such residence or building of public congregation.

- iii. from the right-of-way of any public road by a minimum distance of five hundred (500) feet.
3. Spacing and Density - A Wind Energy Conversion Device must be separated from any other Wind Energy Conversion Device, or adjacent Wind Energy Conversion Farm by a minimum distance equal to twice the height of the Wind Energy Conversion Device and by a sufficient distance so that the Wind Energy Conversion Device does not interfere with the other Wind Energy Conversion Device.
4. Structure - A Wind Energy Conversion Device must be of monopole construction to the extent practicable. If monopole construction is not practicable, a Wind Energy Conversion Device must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a Wind Energy Conversion Device may be guyed.
5. Clearance - The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least thirty (30) feet.
6. Access and Safety
 - a. Security - A Wind Energy Conversion Device, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
 - b. Climbing Aids - Monopole Wind Energy Conversion Devices shall have all climbing aids and any platforms locked and wholly inside the tower.
 - c. Operational Safety - Wind Energy Conversion Devices shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
7. Lightning - All Wind Energy Conversion Devices shall provide a continuous electrical path to the ground to protect the tower from lightning.

other visual affect of the turbines relating to the level of natural or artificial illumination.

13. Signs - No wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device/Farm may be used to advertise or promote any product or service.
 - a. A weather resistant sign plate no greater than two (2) square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower.
 - b. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device so as to be visible from any public road.
14. Agriculture Mitigation
 - a. Minimize impacts to normal farming operations by locating structures along field edges where possible.
 - b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - c. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
 - d. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.
15. Noise - Audible noise due to the operation of any part of a Wind Energy Conversion Device shall not exceed fifty (50) DBA for any period of time, when measured at any permanent, livable residence, school, hospital, church, public park or public library, unless the project developer has obtained a noise easement, as recorded in the Wyoming County Clerk's Office.

16. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
17. Shadow Flicker
 - a. Shadow Flicker Map - Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas / locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
 - b. Shadow Flicker Duration - Shadow flicker for all sensitive areas/locations within the project area shall not exceed thirty (30) minutes per day and thirty (30) hours per year. Any sensitive area/locations within the project area which exceed the above standard will have this impact mitigated with every effort made to reduce it below the above standard unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the affected landowner.
 - c. An analysis shall be completed showing the effect of shadow flicker upon any and all fish hatcheries and trout streams within ½ mile proximity of the project area. This analysis can be submitted as part of the application or can be included in the Draft Environmental Impact Statement (DEIS).
18. Electromagnetic Interference (EMI) - All Wind Energy Conversion Devices shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any Wind Energy Conversion Device or the applicant shall mitigate any such interference.
19. Avian Analysis
 - a. The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Devices/Farms upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information on critical flyways.

- b. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.
- c. This analysis can be submitted as part of the application or can be included in a Draft Environmental Impact Statement (DEIS).

20. Height Limitation

- a. The maximum height for any device which is part of a Wind Energy Conversion Device/Farm shall be four hundred fifty (450) feet measured from the highest vertical point of the wind turbine when the turbine blade is in a vertical position perpendicular to its base.

C. Site Plan

- 1. Wind Energy Conversion Devices/Farms may not be constructed, erected, located, altered or used without first obtaining review and approval pursuant to this Article and a license.
 - a. The site plan, as specified herein, for all Wind Energy Conversion Devices/Farms must be reviewed by the Town Board and its designated expert.
 - b. Upon completion of the Town Board review of the Wind Energy Conversion Device/Farm site plan, the Town Board shall recommend approval, denial or conditional approval of the site plan.
 - c. The Town Board may then approve, deny or impose conditions on the Wind Energy Conversion Device/Farm site plan.
- 2. An applicant proposing a Wind Energy Conversion Device/Farm must submit the following site plan materials:
 - a. Survey of the property showing existing features such as contours, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property, and vehicular access;
 - b. Site plan showing the location of proposed structures;

- c. Preliminary layout plans, including the location of new access roads and transmission lines;
 - d. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
 - e. Anticipated construction schedule;
 - f. Description of operations (including anticipated regular and unscheduled maintenance); and
 - g. Storm Water Management Plan.
3. The Town Board may waive these submission requirements if this information is included in a Draft Environmental Impact Statement (DEIS).
- D. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).
- E. Application Fee
- 1. To initiate the review process contemplated by this Section, including site plan review, an applicant for a Wind Energy Conversion Device/Farm shall remit an application fee to the Town in the amount of five hundred (\$500.00) per megawatt of generating capacity for each anticipated device. Said sum shall not be refundable in whole or in part.
 - 2. The applicant shall pay the fees and expenses of any consultant(s) used by the Town Board to assist in the review of the application.
 - 3. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
 - 4. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.
- F. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.

SECTION VII. LICENSING REQUIREMENTS AND FEES

- A. Upon final Town Board approval of a Wind Energy Conversion Device/Farm site plan review, an applicant must apply for and obtain a license to operate a Wind Energy Conversion Device/Farm. Under no circumstances will the number of licenses issued for the Town of Wethersfield by the Town Board for Wind Energy Conversion Devices exceed sixty (60). The existing Vesta towers shall not be included in this total.
- B. The initial license issuance and each five (5) year renewal shall have a licensing fee assessed on each Wind Energy Conversion Device based upon the megawatt capacity of each Wind Energy Conversion Device. The assessed fee shall be \$500.00 per megawatt.
- C. The license issued by the Town of Wethersfield pursuant to this section shall contain, among other things, provisions regarding the potential decommission of a Wind Energy Conversion Device/Farm structure and further provide for the removal of Wind Energy Conversion Device structures that cease to be used for their intended purpose for a period of twelve (12) consecutive months and provide security for such removal.
- D. In considering whether to issue a license under this section, the Town Board for the Town of Wethersfield shall consider the following:
1. The approved site plan review and the aesthetic impact of the particular Wind Energy Conversion Device/Farm depicted in the site plan.
 2. The location of the Wind Energy Conversion Device/Farm, the aesthetic and objective impact of the Wind Energy Conversion Device/Farm upon the Town of Wethersfield.
 3. The satisfactory completion of and adherence to all requirements under the site plan review.
- E. No license shall be issued or renewed if it is found by the Town Board that the Wind Energy Conversion Device/Farm is in violation of any provision, term or requirement of the approved site plan and /or this local law.
- F. Wind Energy Conversion Systems shall be inspected annually, on behalf of the owner, by a licensed professional engineer for structural integrity and continued compliance with these regulations and the owner shall bear all reasonable costs associated with such inspection. A copy of such inspection report, including findings and conclusions, shall be submitted to

the Clerk no later than December 31st of each calendar year and shall include but not be limited to the following information:

1. An index record of all verbal or written complaints received by the owner from area property owners relative to the operation of Wind Energy Conversion Systems which shall include the manner in which the complaint was resolved.
- G. The applicant shall provide production records to the Town Clerk by March 1st of each calendar year for each and every Wind Energy Conversion Device in a form approved by the Town Board.
- H. Upon the original issuance of a license for a Wind Energy Conversion Device/Farm, the applicant agrees to dismantle and remove the Wind Energy Conversion Device/Farm from property(ies) when the Wind Energy Conversion Device/Farm ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the license is revoked or not renewed. The decision as to whether the project has been abandoned or the permit revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal. To secure the applicant's performance to dismantle and remove the Wind Conversion Device/Farm once the same ceases to be used for the intended purpose, the applicant will:
1. In conjunction with the issuance of the original license, the applicant shall post a bond or deposit with the Town, per Wind Energy Conversion Device, in an amount to be determined by the Town's engineer and to be held in escrow (the "Escrow Fund") by the Town pursuant to the terms of this local law. The Town reserves the right to review the bond or deposit annually to ensure sufficient monies are available for removal.
 2. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 3. After the applicant dismantles and removes the Wind Energy Conversion Device/Farm, said deposit shall be returned to the applicant.
 4. In the event that the Wind Energy Conversion Device/Farm is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Wind Energy Conversion Device/Farm dismantled and removed and charge the cost thereof against the Escrow Fund.

5. If the cost to dismantle and remove the Wind Energy Conversion Device/Farm is in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
 6. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.
- I. No transfer of any Wind Energy Conversion Device, nor sale of the entity owning such facility including the sale of more than thirty (30) percent of the stock of such entity (not counting sales of share on a public exchange), shall occur without prior approval of the Town, which approval shall be granted upon:
1. The receipt of proof of the ability of the successor to meet all requirements of this Local Law; and
 2. The written acceptance of the transferee of the obligations of the transferor under this Local Law.

No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

- J. This law is not intended to establish or create a right to operate Wind Energy Conversion Device/Farm but rather permits the Town Board to issue such a license to operate should it be determined to do so under the terms and conditions of said law.
- K. Before a license can be issued by the Town Board, a Host Agreement shall be entered into by the applicant and the Town of Wethersfield.
- L. Before a license can be issued by the Town Board, a Road Agreement shall be entered into by the applicant and the Town of Wethersfield.

SECTION VIII. PENALTIES

A violation of this local law is hereby declared to be an offense, punishable by a fine not exceeding five hundred dollars (\$500.00) per week, with each and every week constituting a separate offense of said law.

SECTION IX. REPEAL

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

SECTION X. SEVERABILITY/VALIDITY

In the event that any word, phrase or part of this local law shall be declared unconstitutional, the same shall be severed and separated from the remainder of this local law and shall not impact the remainder of said local law which shall remain in full force and effect.

SECTION XI. EFFECTIVE DATE

This local law shall take effect immediately upon filing in the office of the Secretary of State of New York as provided in section 27 of the Municipal Home Rule Law.

(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. 1 of 2006 of the (County)(City)(Town)(Village) of Wethersfield was duly passed by the Town Board on December 27, 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 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 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 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, as was (approved)(not approved)(repassed after disapproval) by the _____. 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 _____, 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 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 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 countywide 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 revisions proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law no. _____ of 20__ 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 majority of the qualified elector of such city voting thereon at the (special)(general) election held on _____ 20__, became operative

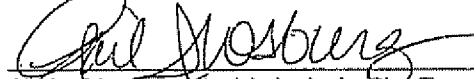
6. County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law no. _____ of 20__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November ____, 20__, 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 a majority of the qualified electors of the towns of said county considered as unit voting as 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 th whole of such original local law, a s was finally adopted in the manner indicated in paragraph 1, above.

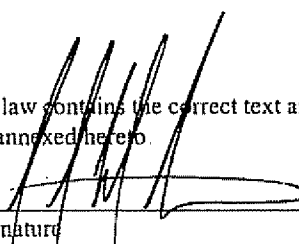
(SEAL)


Clerk of the County legislative body, City, Town or Village Clerk
Date: 12/27/06

(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 WYOMING

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


Signature _____
Attorney
County _____
City of Wetherfield
Town _____
Village _____
Date: 12/27/06
(3)