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


 of
Town **DUNKIRK**


Local Law No. 3 of the year 2010.

A local law adopting a wind energy conversion system law in the Town of Dunkirk.

Be it enacted by the Town Board of the


 of
Town **DUNKIRK**


SECTION 1

Purpose.

The Town Board of the Town of Dunkirk adopts this Section to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems ("WECS"), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

SECTION 2

Authority.

The Town Board of the Town of Dunkirk adopts this Section under the authority granted by:

1. Article IX of the New York State Constitution, § 2(c) (6) and (10).
2. New York Statute of Local Governments, § 10(1), (6), and (7).
3. New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10(1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10(2)(d)(3).
5. New York Town Law, Article 16 (Zoning).
6. 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), (36)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).

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

SECTION 3

Findings.

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

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited small systems, can be cost effective, and in many cases, existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

SECTION 4

Permits Required.

- A.. No Commercial Wind Energy Facility generating greater than 100 kw shall be constructed or operated in the Town of Dunkirk.
- B. No Wind Measurement Tower shall be constructed in the Town of Dunkirk.
- C. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Dunkirk except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- D. Notwithstanding any other provision of this Zoning Law, Special Use Permits for WECS shall be issued by the Town Board. The Town Board may refer the applications to planning board for recommendation.
- E. This Local Law shall apply to all areas of the Town of Dunkirk.
- F. FAA Role. The FAA has oversight of any object that could have an impact on navigable air space. All applications for a WECS shall demonstrate compliance with FAA.
- G. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

SECTION 5

Definitions.

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

1. **EAF** - Environmental Assessment Form used in the implementation of the SEQRA as that term that is defined in Part 16 of Title 6 of the "New York Codes, Rules and Regulations.
2. **RESIDENCE** - means any dwelling suitable for habitation existing in the Town of Dunkirk on the date SEQRA for the specific application is completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.
3. **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.

4. **SITE** - The parcel(s) of land where the Wind Energy Facility is to be placed.
5. **SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS")** - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW. It is intended to primarily reduce consumption of utility power at that location, with no more than one such generating capacity system per permit application and per parcel.
6. **SOUND LEVEL** - Measurement of local ambient sound level at the property line.
7. **TOTAL HEIGHT** - The height of the tower and the farthest vertical extension blade from ground level of the WECS.
8. **WIND ENERGY CONVERSION SYSTEM (WECS)** - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").
9. **STRUCTURE/POLE MOUNTED WECS** - A turbine mounted to a building or pole, with associated control or conversion electronics, which has rated capacity of not more than 100 kW.

SECTION 6

Small Wind Energy Conversion Systems.

Purpose and Intent.

The purpose of this Small WECS Section is to provide standards for small wind energy conversion systems designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location, and not for generation of power to sell to the Grid.

General Area Requirements

- a. Minimum set back from the nearest property line of parcel adjoining the site seeking a WECS application is to be 1.25 times the total height of the proposed structure except in the M- zone.

The maximum height limit of the installation of a WECS shall not exceed 160 feet measured at the top of blade apex

M- Zone Area Requirements

The generating capacity in the industrial zone is not more the 100kW total regardless of the number of WECS installed. Height requirements are 160 feet measured from ground level to blade apex. Setback to nearest site boundary property line is 1.25

times the height. One and half times height of the WECS from the nearest public road. Two times plus 50 ft. of the WECS from the nearest off site residence existing at the time of the application. The distance between more than one WECS shall be at least 1.25 times the height of the WECS.

SECTION 7

Applications.

All applications for Small WECS Wind Energy permits in the Town of Dunkirk shall be heard and decided by the Town Board of the Town of Dunkirk. The Town Board may refer all such applications to the Planning Board of the Town of Dunkirk for review and recommendations to the Town Board. Whether an application is referred to the Planning Board shall be within the sole discretion of the Town Board of the Town of Dunkirk.

Applications for Small WECS Wind Energy permits shall include:

1. Name, address, and telephone number of the applicant. If the applicant will be represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed WECS location, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the maximum height permitted under this law.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
7. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. Applicant must provide detailed site plan for WECS.

9. Applicant shall provide noise analysis acceptable to Town Board.
10. Applicant shall submit an Environmental Assessment Form (EAF) under SEQRA as part of the application.
11. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review.
12. Six 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.
13. 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 WECS proposed is increased.
14. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Energy Facilities Site, and published in the Town's official newspaper, no less than ten nor more than twenty 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.
15. The public hearing may be combined with public hearings on any Environmental Impact Statement.
16. Notice of the project shall also be given, when applicable, to (1) the Chautauqua County Planning Board, if required by General Municipal Law §§ 239-1 and 239-m and (2) to adjoining Towns under Town Law § 264.
17. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the application, in accordance with the standards in this Section.

SECTION 8

Development Standards

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

- A. Only one small wind energy system per parcel shall be allowed.
- B. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity but are permitted to obtain credit if allowed by the utility and New York

State Public Service Commission.

- C. Tower heights may be allowed as follows:
1. Total height of the tower not to exceed 160 feet.
 2. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
- E. The maximum turbine power output is limited to 100 kW or less.
- 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.
- J. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- K. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- L. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
1. Tower-climbing apparatus located no closer than 12 feet from the ground.
 2. A locked anti-climb device installed on the tower.
 3. A locked, protective fence at least six feet in height that encloses the tower.
- M. A fire protection and emergency response plan, (created in consultation with the fire department) having jurisdiction over the proposed zone.
- 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. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

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

SECTION 9

Standards.

Small Wind Energy System shall comply with the following standards:

A. Setback requirements. A Small WECS shall not be located closer to a property line than 1.25 times the total height of the WECS facility.

B. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the ambient sound level plus 10 decibels (dBA), as measured at the nearest property line.

SECTION 10

Abandonment of Use.

A. 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. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.

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

SECTION 11

Fees.

A. In addition to any fee schedule adopted by the Town of Dunkirk Town Board, there shall be non-refundable Application fees as follows:

1. Small WECS application fee \$250
2. Small WECS Special Use Permit \$100
3. The cost of all legal notices and mailings shall be assessed to the applicant.

SECTION 12

Tax Exemption.

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

SECTION 13

Enforcement; Penalties and Remedies for Violations.

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Section.
- B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense, for a Second offense (both within a period of five years), a fine not less than \$350 nor more than \$700, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than \$700 nor more than \$1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

SECTION 14

Severability.

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

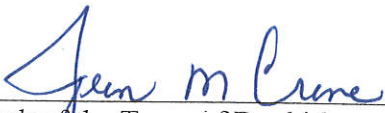
SECTION 15:

Effective Date.

This Local Law shall become effective immediately upon filing with the office of the Secretary of State.

1. I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2010 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on November 4, 2010, in accordance with the applicable provisions of law.

(Seal)


Clerk of the Town of Dunkirk

Date: 11/4/10

(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 CHAUTAUQUA

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.


Jeffrey G. Passafaro
Attorney
Town of Dunkirk

Date: November 4, 2010