

**LOCAL LAW NO. 1 OF 2008, ENTITLED,  
"2007 AMENDMENTS TO THE TOWN OF BETHANY ZONING LAW"**

**BE IT ENACTED** by the Town Board of the Town of Bethany as follows:

**SECTION I.            AUTHORITY**

The Town Board of the Town of Bethany 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.     The supersession authority of New York Municipal Home Rule Law, §10 (2) (d) (3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
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), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building Lines).
7.     New York Town Law §64 (17-a) (Protection of Aesthetic Interest), (23) (General Powers).

**SECTION II.           TITLE**

This local law shall be known as "Amending the Town of Bethany Zoning Law Relative to Wind Energy Conversion System/Wind Energy Facility."

**SECTION III.           INTENT AND PURPOSE**

The Town Board of the Town of Bethany adopts this amendment to the Town of Bethany Zoning Law to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), without harming public health and safety, and to avoid jeopardizing the welfare of the residents. Said amendments provide standards for Small WECS designed for on-site home, farm and small commercial uses and that are primarily used to reduce on-site consumption of utility power.

**SECTION IV.           FINDINGS**

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

1. While wind energy is a potential 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, but the potential benefits must be balanced against potential impacts.
2. The generation of electricity from properly sited small wind turbines can be a cost effective mechanism for reducing on-site electric costs, with a minimum of environmental impacts.
3. Regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Large-scale multiple-tower wind energy facilities represent significant potential aesthetic impacts because of their large size, lighting and shadow flicker effects.
5. Installation of large-scale multiple-tower wind energy facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and harm farmlands through improper construction methods.
6. Large-scale multiple-tower wind energy facilities may present risks to the property values of adjoining property owners.
7. Large-scale wind energy facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties, particularly in areas of low ambient noise levels.
8. Construction of large-scale multiple-tower wind energy facilities can create traffic problems and damage local roads.
9. If improperly sited, large-scale multiple-tower wind energy facilities can interfere with various types of communications.
10. The Town has many scenic viewsheds which would be negatively impacted by large scale multiple-tower wind energy facilities.

## **SECTION V. ENACTMENT**

The Town Board of the Town of Bethany hereby adopts the following changes to the Town of Bethany Zoning Law as follows:

### **1. TABLE OF CONTENTS**

ARTICLE VI SUPPLEMENTARY REGULATIONS

Add SECTION 613 SMALL WIND ENERGY CONVERSION SYSTEM  
(Small WECS)

**2. ARTICLE I ENACTING CLAUSE, TITLE, PURPOSE &  
APPLICATION**

SECTION 106 DEFINITIONS

Add AGRICULTURAL OR FARM OPERATIONS - The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation and timber processing. Such farm operation may consist of one (1) or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

Add EAF - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes Rules and Regulations.

Add ELECTROMAGNETIC INTERFERENCE (EMI) – The interference to communication systems created by scattering of electromagnetic signals.

Add RESIDENCE - See DWELLING UNIT; DWELLING, ONE-FAMILY; DWELLING, TWO-FAMILY; DWELLING, MULTI-FAMILY AND DWELLING-PRIVATE.

Add 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.

Add SHADOW FLICKER – The alternating pattern of sun and shade caused by wind tower blades casting shadow.

Add SITE - The parcel of land on which something is located (or is to be located), the physical position in relation to the surroundings.

Add SOUND PRESSURE LEVEL - The measurement of sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures approved by the Town of Bethany Town Board.

Add 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 10 kW and which is intended to primarily reduce on-site consumption of utility power.

- Add TOTAL HEIGHT - The height of the tower and the furthest vertical extension of the Small WECS.
- Add 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").
- Add WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public utility uses otherwise allowed under this Zoning Law do not include Wind Energy Facilities.
- Add WIND MEASUREMENT TOWER - A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction. Temporary towers, for no more than a two (2) year period, may be allowed as part of a Small WECS application, where the requested tower meets all height, setback and other requirements of the Zoning Law.
- Add WIND TOWER – The monopole, freestanding or guyed structure that supports a wind turbine generator, gearbox and rotor blades.

**3. ARTICLE III ENFORCEMENT, ADMINISTRATION & AMENDMENTS**

**SECTION 208 PLANNING BOARD**

**B. Powers and Duties**

**1. Site Plan Review**

- Amend Review of site plans in accordance with NYS Town Law Section 274-a set forth in subsection C of this section, for any application for a zoning permit other than those for one (1) and two (2) family dwellings and their accessory uses and/or buildings unless otherwise required by this Local Law (i.e. special use permit) or customary farm operations as defined by subdivision 11 of Section 301 of the NYS Agriculture and Markets Law.

**4. ARTICLE III ZONING DISTRICT REGULATIONS, ZONING MAPS**

**SECTION 301 GENERAL REGULATIONS**

**J. Height Exceptions**

- Amend 2. District building height regulations shall not apply to Commercial Communication Towers.
- Add 3. District building height regulations shall not apply to Small WECS but shall be restricted in height as follows:
  - a. Eighty (80) feet or less on parcels between one (1) and five (5) acres.
  - b. One hundred fifty (150) feet or less on parcels of five (5) or more acres.

SECTION 305 RESIDENTIAL DISTRICT – R

B. Uses Requiring Special Use Permit

- Delete 2. ~~Wind-energy conversion system—production models~~
- Add 11. Small WECS

SECTION 306 AGRICULTURAL-RESIDENTIAL DISTRICT A-R

A. Permitted Uses

- Add 6. Small WECS – When utilized solely for agricultural operations in a State or County agricultural district.
- Add 7. Animal waste storage facility

B. Uses Requiring Special Use Permit

- Amend 2. ~~Wind-energy conversion system—production models~~ Small WECS - When utilized solely for any non-agricultural use.
- Delete 18. ~~Animal-waste-storage-facility~~

SECTION 307 COMMERCIAL DISTRICT – C

B. Uses Requiring a Special Use Permit

- Add 12. Small WECS

SECTION 308 INDUSTRIAL DISTRICT – I

B. Uses Requiring a Special Use Permit

- Add 7. Small WECS

**5. ARTICLE VI SUPPLEMENTARY REGULATIONS**

Add SECTION 613 SMALL WIND ENERGY CONVERSION SYSTEM  
("Small WECS")

**A. APPLICABILITY**

1. The requirements of this section shall apply to all Small WECS proposed, operated, modified, or constructed after the effective date of this local law.
2. Small WECS for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this local law shall not be required to meet the requirements of this local law; provided, however, that:
  - a. Any such preexisting Small WECS which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this local law prior to recommencing production of energy.
  - b. No modification or alteration to an existing Small WECS shall be allowed without full compliance with this local law.
  - c. Any Wind Measurement Tower existing on the effective date of this local law shall be removed no later than twenty-four (24) months after said effective date, unless a special use permit for said Small WECS is obtained.

**B. PERMITS**

1. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Bethany except in compliance with this Zoning Law.
2. No WECS, other than a Small WECS, shall be constructed, reconstructed, modified, or operated in the Town of Bethany. No Wind Measurement Tower that is in conjunction with a Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Bethany, except as part of an application for a Small WECS.
3. No Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Bethany unless in conformity with these regulations and after the issuance of a special use permit pursuant to this Zoning Law.
4. These regulations shall apply to all areas of the Town of Bethany.

5. Exemptions:
    - a. No special use permit or other approval shall be required under this Zoning Law for Small WECS utilized solely for agricultural operations in a State or county agricultural district, as long as the Wind Tower and Wind Measurement Tower is set back at least one and one-half (1½) times its total height from a property line and does not exceed one hundred fifty (150) feet in height.
    - b. Small WECS over one hundred fifty (150) feet in total height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with Article II of the Town' s Zoning Law, but shall not require a height variance.
    - c. Prior to the construction of a Small WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
  6. Transfer. No transfer of any Wind Energy Facility or special use permit, nor sale of the entity owning such facility including the sale of more than thirty percent (30%) of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town Board, which approval shall be granted upon (1) receipt of proof of the ability of the successor to meet all requirements of this Zoning Law and (2) written acceptance of the transferee of the obligations of the transferor under this Zoning Law. No transfer shall eliminate the liability of an applicant or of any other party under this Zoning Law.
  7. Notwithstanding the requirements of this Section, replacement in kind or modification of a Small WECS may occur without Town Board approval when:
    - a. There will be no increase in total height;
    - b. No change in the location of the Small WECS;
    - c. No additional lighting or change in facility color; and
    - d. No increase in noise produced by the Small WECS.
- C. APPLICATIONS - Applications for Small WECS special use permits shall include:

1. Name, address, 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 is required.
2. Name, address, 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:
  - a. confirming that the property owner is familiar with the proposed applications; and
  - b. authorizing the submission of the application.
3. Address of each proposed tower site, including tax map section, block and lot number.
4. Evidence that the proposed total height does not exceed the height recommended by the manufacture or distributor of the system.
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 Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
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. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

D. DEVELOPMENT STANDARDS - All Small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Zoning Law that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one (1) acre in size. However, this requirement can be met by multiple owners submitting a joint application, where the aggregate size of their lots is at least one (1) acre.

2. Only one (1) Small WECS (plus, where authorized, a temporary wind measurement tower) per legal lot shall be allowed. Where there are multiple applicants, their joint lots shall be treated as one (1) lot for purposes of this limitation.
3. Small WECS shall be used primarily to reduce the on-site consumption of utility-provided electricity.
4. Total heights shall be limited as follows:
  - a. Eighty (80) feet or less on parcels between one (1) and five (5) acres.
  - b. One hundred fifty (150) feet or less on parcels of five (5) or more acres.
  - c. 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.
5. Maximum turbine output will not be limited to a kilowatt amount. Instead, an applicant shall:
  - a. submit proof of the energy consumption for the preceding five (5) years for the property in which the placement of a Small WECS is being considered; and
  - b. the applicant's engineer for the Small WECS shall certify to the information on the total potential output of the Small WECS; and
  - c. the applicant shall provide a ten (10) year projection of the anticipated electrical needs for the property in which the placement of a Small WECS is being considered which shall be supported by written documentation; and
  - d. in no case shall a Small WECS be constructed which would exceed one hundred and ten percent (110%) of the anticipated demand for the property.
6. 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.

7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks roads, trails).
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration (FAA).
9. All on-site electrical wires associated with the system shall be installed underground or on previously existing appropriate structures except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Town Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. 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.
11. At least one (1) sign, no larger than one (1) x two (2) feet, shall be posted on the tower at a height of five (5) 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's generator housing in an unobtrusive manner.
12. Wind and Wind Measurement Towers shall be constructed to provide one (1) of the following means of access control, or other appropriate method of access:
  - a. Tower-climbing apparatus located no closer than twelve (12) feet from the ground.
  - b. A locked anti-climb device installed on the tower.
  - c. A locked, protective fence at least six (6) feet in height that encloses the tower.
13. Anchor points for any guy wires for a system tower shall be not less than twenty-five (25) feet from the property line or highway right-of-way 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 three (3) to eight (8) feet above the ground.

14. 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 preexisting natural condition after completion of installation.
  15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least thirty (30) feet from the ground.
  16. All Small WECS structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
  17. All Small WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture to be an independently arrived standard.
- E. Setback Requirements - A Small WECS shall not be located closer to a property line than one and one-half (1½) the total height of the facility.
- F. Shadow Flicker Duration – Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.
- G. Noise - A Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed fifty (50) decibels (dBA), as measured by an unweighted meter at any property line.
- H. Abandonment of Use - A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be repaired or dismantled and removed from the property within twenty-four (24) additional months 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 special use permit shall constitute grounds for the revocation of the permit by the Town of Bethany Town Board.
1. In the event the applicant fails to dismantle and remove the Small WECS and the Town commences legal action to enforce the above paragraph, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.

2. If all reasonable attorney's fees and court costs are not paid by the applicant, the same may be added to the tax bill for the property as a special assessment jurisdiction.
- I. Maintenance and/or Performance Bond
    1. Prior to approval of any application, the Town Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said Small WECS during its lifetime and provide for its removal.
    2. The amount required shall be determined in the sole discretion of the Town Board, in consultation with the Town's Engineer, based upon the unique characteristics of the Small WECS and site.
    3. In furtherance of the forgoing, the applicant and/or owner shall cooperate with the Town Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.
  - J. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.
  - K. Variances - The Zoning Board of Appeals, in accordance with its normal procedures, may grant variances for Small WECS, but in no event shall the Zoning Board of Appeals grant a variance allowing a larger WECS, than permitted by this section, or a WECS primarily designed to generate electricity for off-site use or any large-scale multiple-tower wind facilities.
    1. If a court of competent jurisdiction (1) orders the Zoning Board of Appeals to consider a use variance for any WECS, other than a Small WECS, and such use variance is granted, or (2) the prohibition on any WECS, other than a Small WECS, is invalidated, no such WECS shall be allowed, except upon issuance of a special use permit issued by the Town Board after a public hearing, which permit shall require a Decommissioning Plan and Removal Bond, a Public Improvement Bond to protect public roads, Road Agreement, Host Agreement and shall comply with the following minimum setbacks:
      - a. The statistical sound pressure level generated by a WECS shall not exceed thirty-five (35) dBA measured at the nearest property line. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

- b. Four and one-half (4½) times the total height or one thousand, five hundred (1,500) feet, whichever is greater, from the nearest site boundary property line, public road, public right-of-ways, designated historic areas, wildlife preserves and/or wetlands.
- c. One and a half (1 ½) times the total height of the WECS from any above-ground utilities between turbines, marked trails, utility easements and uninhabited structures.
- d. 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 properly mitigate the harmful interference or cease operation of the system.
- e. Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.

L. Fees

- 1. Non-refundable application fees shall be as follows:
  - a. Small WECS special use permit fee of one hundred fifty (\$150.00) dollars.
  - b. The fees established in this section may be changed by Town Board resolution, adopted after a duly-noticed public hearing.
- 2. All legal and engineering expenses incurred by the Town for its out-of-pocket expenses in reviewing and processing an application, shall be paid by the applicant. The Town may, in its discretion, require an escrow account to be set up to ensure payment of these costs.

M. 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.

N. Enforcement; Penalties and Remedies for Violations

- 1. The Town Board shall appoint such town staff or outside consultants as it sees fit to enforce this section.
- 2. Any person owning, controlling or managing any building, structure or land who shall undertake a Small WECS 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 three hundred fifty (\$350.00) dollars or to imprisonment for a period of not more than six (6) months, or subject to both such fine and imprisonment. 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 amount of three hundred fifty (\$350.00) for each violation and each week said violation continues shall be deemed a separate violation.

3. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, 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.
4. The penalties established by this section may be changed by the Town Board by resolution adopted after a duly-noticed public hearing.

#### **SECTION VI. REPEAL**

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

#### **SECTION VII. 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 VIII. 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.