

**ARTICLE VI SUPPLEMENTARY REGULATIONS**

**SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS**

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto a road without backing out onto it.

A. Residential Uses

1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
2. Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units.
3. Home occupation: Three (3) parking spaces, plus one (1) additional parking space for every two hundred (200) square feet of office space.

B. Motel

Three (3) parking spaces, plus one (1) spare for every guest room.

C. Places of Public Assembly

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of business area.

F. Restaurant, Eating and Drinking Establishments (other than drive-in)

One (1) parking space for every one hundred (100) square feet of floor area).

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G. Industrial, Wholesale, Warehouse, Storage, Freight and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

**SECTION 602 OFF-STREET LOADING SPACE REQUIREMENTS**

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading vehicles.

**SECTION 603 MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify requirements for parking and loading spaces.

**SECTION 604 LAND ABUTTING A RESIDENTIAL USE**

Where in any district a commercial or industrial use is created adjacent to an existing residential use, a buffer strip shall be established by the non-residential user along the lot line adjacent to the residential use.

**SECTION 605 GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS**

A. Gasoline stations, gasoline station/markets, motor vehicle repair shop, motor vehicle sales agencies and drive-in businesses shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet on any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least forty thousand (40,000) square feet.
3. Lot frontage shall be at least two hundred (200) feet.
4. Lot depth shall be at least one hundred fifty (150) feet.

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5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.
6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.
7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

**SECTION 606 PUBLIC UTILITY FACILITY**

Public utility installations shall comply with the following:

1. Such facility shall be surrounded by a fence approved by the Town Board.
2. The facility shall be landscaped in a manner approved by the Town Board.
3. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
4. Any other requirements as determined by the Town Board.

**SECTION 607 SIGNS**

A. General Standards

Every sign shall be designed, attached, supported and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window or fire escape.

Unless otherwise restricted in this Section, signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare. Only signs installed by a governmental agency or required by a governmental agency, law or regulation, are permitted within the right-of way for

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a public highway.

B. Off-Premises Signs

Off-premises commercial signs are not permitted in any district.

C. Signs Permitted In All Districts Without A Zoning Permit

1. One (1) number and/or name plate identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.
2. One (1) lawn sign identifying residents, not exceeding one (1) square foot, or two (2) square feet if double-faced. Such signs are to be non-illuminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.
3. One (1) sign identifying the name of the farm owner or name of the farm not exceeding six (6) square feet in area and located not less than ten (10) feet from a lot line.
4. One (1) limited purpose sign shall not exceeding six (6) square feet in size and not be located less than ten (10) feet from a lot line. When applicable, limited purpose and/or temporary signs shall be removed within ten (10) days after the activity, event or function ends. Limited purpose and/or temporary signs used more than sixty (60) consecutive days per year shall require the issuance of a zoning permit and shall comply with the regulations for the respective zoning district where it is located.
5. Signs necessary for public safety or welfare.

D. Signs Permitted in Residential and Agricultural-Residential Districts

The following signs are permitted in R and A-R Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding six (6) square feet in area.
2. One (1) non-commercial sign, not exceeding six (6) square feet in area on any one side and located not less than ten (10) feet from a lot line.
3. Temporary signs, identifying a construction project and the specialists concerned, not exceeding six (6) square feet in area for a dwelling or other

buildings or structures.

E. Signs Permitted in Commercial and Industrial Districts

The following signs are permitted in C and I Districts upon issuance of a zoning permit.

1. Two (2) on-premise signs, one of which may be free standing, shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of one hundred (100) square feet or an area equal to fifteen (15) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the facade of the building.
2. Free-standing signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size:
  - a. Each commercial or industrial use may have one free-standing sign. Such free-standing sign shall have an area of not more than twenty-five (25) square feet nor be more than twenty-five (25) feet in height, and located not less than ten (10) feet from a lot line.
  - b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free standing sign shall be allowed in a shopping center.
3. Off-premises directional signs not exceeding four (4) square feet in size and limited to two (2) signs per use shall be permitted.
4. Two (2) limited purpose signs. Such signs shall not exceed six (6) square feet in size and not be located less than ten (10) feet from a lot line. When applicable, such signs shall be removed upon completion of the sale, rental or event.

F. Non-conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which, the sign is located is discontinued. This shall include both temporary and permanent signs.

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2. Non-conforming signs may not be enlarged, extended, relocated or altered in anyway, except to make them conform to provisions of this Local Law. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

**SECTION 608 ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD then the Town Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

**SECTION 609 JUNKYARD**

A. Establishment

No person shall establish, operate, or maintain a junkyard until obtaining a special use permit in compliance with Section 210.

B. Location Requirements

Said use shall not be located within two hundred (200) feet from any highway right-of-way; on hundred (100) feet from any body of water or property line; or five hundred (500) feet from any existing dwelling (excluding a dwelling on the lot), church, school, hospital, public building, or place of public assembly.

In reviewing this special use application, the Town Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic Considerations

The Town Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonable protected from having an unfavorable effect thereon. In this connection the Town board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or

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artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

Required yards shall be mowed as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the junkyard shall be encouraged.

D. Fencing

Before use, a new junkyard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens said use and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than two hundred (200) feet from the right-of-way of a public highway, nor closer than one hundred (100) feet to any other property line. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage, wrecking, or other work shall be accomplished within the area enclosed by the fence.

Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this Section in whole or in part, the fencing requirements herein may be reduced by the Town Board, provided, however, that such natural barrier conforms with the purpose of this Section.

E. Existing Junkyard

All junkyard existing at the time of adoption of this Local Law shall be limited to the size, area, and scale of the present use and operation unless a special use permit is authorized in accordance with these regulations.

F. Annual Review

The Zoning Enforcement Officer shall inspect at least annually the operation of a junkyard to make sure it complies with the provisions of this Local Law and any and all conditions prescribed by the Town Board when issuing the special use permit.

**SECTION 610 ADULT BUSINESSES**

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A. Purposes

The Town of Bethany conducted a study of the potential secondary affects poses by adult business. This study along with other similar studies has shown buildings and establishments operated as adult uses pose secondary effects that have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Bethany, this Section is intended to control those secondary affects of adult businesses by requiring issuance of a special use permit, restricting adult uses to Commercial and Industrial Zoning Districts with minimum required setbacks from other specified uses, and otherwise regulating their operation.

B. Definitions

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

1. Adult Establishment - A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult message establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:
  - a. An adult bookstore is a bookstore which has a "substantial portion" (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:
    - i. Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical area"; or,
    - ii. Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."
  - b. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:

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- i. Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities"; or,
  - ii. Films, motion pictures, video cassettes; slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas", and
  - iii. Employees who as part of their employment, regularly expose to patrons "specified anatomical areas", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
- c. An adult theater is a theater which regularly features one (1) or more of the following:
- i. Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or,
  - ii. Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
  - iii. An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.
- d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.
- e. An adult message establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician,

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surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

- f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.
- g. Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons "specified anatomical areas" and which is not customarily open to the general public during such features because it excludes minors by reason of age.
- h. For the purpose of defining adult establishments, "specified sexual activities" are:
  - (i) human genitals in a state of sexual stimulation or arousal;
  - (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or
  - (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.
- i. "Specified anatomical areas" are:
  - (i) less than completely and opaquely concealed
    - (a) human genitals, pubic region,
    - (b) human buttock, anus or

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- (c) female breast below a point immediately above the top of the areola; or
    - (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.
  - j. For the purpose of determining whether a "substantial portion" of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.
  - k. For the purpose of determining whether a bookstore has a "substantial portion" (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.
- 2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.
- 3. Substantial - For the purposes of the Section the term "substantial" shall mean an amount equal to or greater than twenty-five (25) percent of the total

C. Restrictions Affecting Adult Establishments

Adult establishments, including but not limited to adult bookstore, adult eating or drinking establishments, or adult theater, adult motel, adult message establishment, nude model studio or other adult commercial establishment, or any combination thereof: shall be permitted upon the issuance of a special use permit subject to the following restrictions:

- 1. No such adult establishment shall be located within one hundred (100) feet of the boundaries of any Residential or Agricultural-Residential zoning

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district or within five hundred (500) feet of any existing residential use located on another lot.

2. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship or children's playground.
3. No such adult establishment shall be located in any zoning district except the Commercial (C) or Industrial (I) Districts.
4. Only one (1) adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

E. Special Use Permit

No use as described in this Section shall be established until the issuance of a special use permit by the Town Board. Application for such a special use permit shall be in writing to the Town Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed, the requirements of Section 210 of the Zoning Law and such additional information as shall be required by the Town Board.

**SECTION 611 MUNICIPAL SOLID WASTE PROCESSING FACILITY**

A. Establishment

No person shall establish, operate, or maintain a municipal solid waste processing facility until obtaining a special use permit in compliance with Section 210.

B. Location Requirements

A municipal solid waste processing facility shall only be located along an arterial (State) or County Highway. Said use shall not be located within one hundred (100) feet from any side or rear property line; two hundred (200) feet from any surface water source (i.e, stream, creek, off-site pond, designated wetland, etc.);

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within a designated flood hazard area; or within three hundred (300) feet from any existing residential, commercial or public assembly type of use.

In reviewing this special use application, the Town Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public assembly; vehicular access routes and traffic safety; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes .

C. Aesthetic Considerations

The Town Board shall also take into account the clean, wholesome and-attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon.

D. Annual Review

The Zoning Enforcement Officer shall inspect at least annually the operation of a municipal solid waste processing facility to make sure it complies with the provisions of this Local Law and any and all conditions prescribed by the Town Board when issuing the special use permit.

E. Permitted Uses And Materials

1. Commercial Waste - Solid waste generated by stores, offices, institutions, restaurants, warehouses, and non-manufacturing activities at industrial facilities.
2. Composting Facility - A solid waste management facility used to provide aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.
3. Construction and Demolition Debris - Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition Of structures and roads; any uncontaminated solid waste consisting Of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. such waste includes, but is not limited to, bricks, concrete and other masonry

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materials, soil, rock, wood, wall coverings, plaster drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no hazardous liquids, and metals that are incidental to any of the above. Solid waste that is not construction and demolition debris (even if resulting from the construction, remodeling, repair and demolition of structures and roads and land clearing) includes, but is not limited to, asbestos waste, garbage corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, carpeting, furniture, appliances, tires, drums and containers, and fuel tanks. Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique, other than that employed at a construction and demolition processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding.

4. Construction and Demolition Processing Facility - A recyclables handling and recovery facility which receives and processes construction and demolition debris by any means, recovering recyclables in the process.
5. Garbage - Putrescible solid waste including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods. Garbage originates primarily in home kitchens, stores, markets, restaurants and other places where food is stored, prepared, or served.
6. Household Hazardous Waste - Household waste which, but for its point of generation, would be a hazardous waste under Part 371 of 6 NYCRR, including pesticides as defined in ECL Article 33.
7. Household Waste - solid waste discarded from single or multiple dwellings, hotels, motels, campsites, public and private recreation areas, ranger stations, and other residential sources.
8. Processing Facility - A combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics of solid waste through processes such as, but not limited to, separating, bailing or shredding before its delivery to a landfill, composting facility, or solid waste incinerator.
9. Recyclables - Solid waste that exhibits the potential to be used repeatedly

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in place of a virgin material.

10. Recyclables Handling and Recovery Facility - A solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected.
11. Refuse-Derived Fuel Processing Facility - The combination of structures, machinery, or devices utilized to reduce or alter the volume of mixed solid waste before delivery to a solid waste incinerator.
12. Resource Recovery Facility - A combination of structures, machinery, or devices, utilized to separate, process, modify, convert, treat, or prepare collected solid waste so that component materials or substances or recoverable resources may be recovered or used as a raw material or energy source.
13. Transfer Station - A solid waste management facility other than a recyclables handling and recovery facility exclusively handling non-putrescible recyclables, that can have a combination of structure, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

F. Nonpermitted Uses And Materials

1. Asbestos Waste - Friable solid waste that contains more than one percent (1%) asbestos by weight and can be crumbled, pulverized or reduced to powder, when dry, by hand pressure. Asbestos waste also includes any asbestos containing solid waste that is collected in a pollution control device designed to remove asbestos.
2. Ash Residue - All the solid residue and any entrained liquids resulting from the combustion of solid waste or solid waste in combination with fossil fuel at a solid waste incinerator, including bottom ash, boiler ash, fly ash, and the solid residue of any air pollution control device used at a solid waste incinerator.
3. Disposal Facility - A solid waste management facility or part of one, at which solid waste is intentionally placed into or on any land or water, and at which solid waste will remain after closure.

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4. Energy Recovery Incinerator - An incinerator in which household waste and non-hazardous industrial/commercial waste are combusted for energy production.
5. Hazardous Waste - A hazardous waste as defined in Part 371 of 6 NYCRR.
6. Incinerator - An enclosed device using controlled flame combustion used to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.
7. Industrial Waste - Solid waste generated by manufacturing or industrial processes. Such waste may include, but is not limited to, the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals, inorganic chemicals ; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include oil or gas drilling, production, and treatment wastes (such as brines, oil and frac fluids); or overburden, spoil, or tailings resulting from mining; or solution mining brine and insoluble component wastes.
8. Infectious Waste - Means and includes the following:
  - a. Surgical waste, which consists of materials discarded from surgical procedures involving the treatment of a patient on isolation, other than patients on reverse or protective isolation;
  - b. Obstetrical waste, which consists of materials discarded from obstetrical procedures involving the treatment of a patient on isolation, other than patients on reverse or protective isolation;
  - c. Pathological waste, which consists of discarded human tissues and anatomical parts which are discarded from surgery, obstetrical procedures, autopsy and laboratory procedures;
  - d. Biological waste, which consists of discarded excretions, exudates, secretions, suctionings, and disposal medical supplies which have come in contact with these substances that cannot be legally discarded directly into a sewer and that emanate from the treatment

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- of a patient on isolation, other than patients on reverse or protective isolation;
- e. Discarded materials soiled with blood emanating from the treatment of a patient on isolation, other than patients on reverse or protective isolation;
  - f. All waste being discarded from renal dialysis, including tubing and needles;
  - g. Discarded serums and vaccines that have not been autoclaved or returned to the manufacturer or point of origin;
  - h. Discarded laboratory waste which has come in contact with pathogenic organisms and which has not been rendered non-infectious by autoclaving or other sterilization techniques;
  - i. Animal carcasses exposed to pathogens in research, their bedding, and other waste from such animals that is discarded; and
  - j. Other articles that are being discarded that are potentially infectious and that might cause punctures or cuts, including hypodermic needles, intravenous needles and intravenous tubing with needles attached, that have not been autoclaved or subjected to a similar decontamination technique and rendered incapable of causing punctures or cuts.
9. Landfill - A disposal facility, or part of one, at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure and which is not a landspreading facility, a surface impoundment, or an injection well.
10. Sludge - Any solid, semi-solid or liquid waste generated from a wastewater treatment plant, water supply treatment plant, or air pollution control facility but does not include the treated effluent from a wastewater treatment plant.
11. Solid Waste Incinerator - An incinerator combusting solid waste or solid waste in combination Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses with fossil fuel, with or without energy recovery.

**SECTION 612 COMMERCIAL COMMUNICATION TOWERS**

No commercial communication tower shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations and after the issuance of a special use permit by the Town Board. No existing structure shall be modified to serve as a commercial communication tower unless in conformity with this Local Law and a special use permit has been issued.

A. Site Plan Review

The applicant shall be required to submit a site plan in accordance with Section 208. In addition to Section 208, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads. The Planning Board shall review the site plan as provided for in Section 208 and forward its recommendations to the Town Board, prior to the Town Board taking action on the special use permit as provided for in Section 210.

B. Supporting Documentation

The Town Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Town Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K below.

C. Shared Use of Existing Towers and/or Structures

At all times, shared use of existing towers and/or structures (i.e., a water tower, building, etc.) shall be preferred to the construction of new commercial communication towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower.

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1. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
2. The Town Board may consider a new commercial communication tower where the applicant demonstrates that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers/structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower/structure is found to be impractical, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection C, Paragraphs 1 and 2 above. Any new commercial communication tower approved for an existing tower/structure site shall be subject to the standards of Subsections (F) through (N) below.

E. New Tower at a New Location

The Town Board may consider a new commercial communication tower on a site not previously developed with an existing tower/structure when the applicant demonstrates that shared usage of an existing tower site is impractical, and submits a report as described in Subsection C. 2 above.

F. Future Shared Usage of New Towers

The applicant must examine the feasibility of designing a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. The scope of this analysis shall be determined by the Town Board. This requirement may be waived, provided that the applicant demonstrates that provisions of future shared usage of the facility are not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;

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3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Town Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased at the discretion of the Town Board, or it may be decreased in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer.
2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Town Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined by the Town Board at the pre-submission conference to be appropriate.

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any

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other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.
3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have.
2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae), but artificial lighting of any kind shall be prohibited, unless required by Federal Aviation Administration (FAA) or other recognized safety guidelines.
3. The Town Board may request a review of the application by a qualified structural engineer for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
6. The applicant shall provide documentation to the Town that certifies the operation of the proposed commercial communication tower facility will not

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interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special permit. Clear cutting of all trees in a single contiguous area exceeding twenty thousand (20,000) square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one (1) row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 601. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the Town Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

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 tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Town Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, 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.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

**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;

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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.

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- 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

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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)

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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.

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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.

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- 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

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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 property as 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

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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 (1½) 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.

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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.