

LOCAL LAW NO. 3 FOR THE YEAR 2007

Be it hereby enacted by the Town Board of the Town of Enfield as follows:

LOCAL LAW NO 3 OF 2007, ENTITLED "UTILITY SCALE  
WIND ENERGY CONVERSION SYSTEMS (USWECS)

Is hereby adopted to read in it entirety as follows:

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1. **Title**

This local law may be cited as the "Utility Scale Wind Energy Conversion Systems Local Law of the Town of Enfield, Ithaca, New York".

2. **Purpose**

The Town Board of the Town of Enfield adopts this local law to provide the necessary regulations for the establishment of Utility Scale Wind Energy Conversion Systems (USWECS). These regulations are intended to encourage and promote wind energy development in the locations and under circumstances whereby the use may be established without harming public health and safety, and to avoid jeopardizing the welfare of the residents.

3. **Permitted Areas**

USWECS may be permitted upon issuance of a Special Use Permit on any parcel meeting the standards of this local law.

4. **Authority**

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

- A. New York State Constitution, Article IX, §2(c)(6) and (10).
- B. New York Statute of Local Governments, § 10 (1), (6), and (7).
- C. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
- D. 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 special use permits under this local law, to the extent such grant of power is different than under Town Law §274-b.
- E. New York Town Law, Article 16 (Zoning).
- F. 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).
- G. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

5. **Findings**

The Town Board of the Town of Enfield finds and declares that:

- A. Residents of the Town of Enfield may face energy shortages and increasing energy prices and the local generation of electricity and promotion of alternative home heating resources can provide clean and reliable electricity, and contribute to local and state-wide energy self reliance and diversify and strengthen the local economy.
- B. The generation of electricity from properly sited wind turbines and other renewable energy sources can be a cost effective mechanism for reducing on-site electric costs with a minimum of environmental impacts.
- C. Large-scale multiple-tower Wind Energy Facilities may present significant

potential impacts on viewsheds, wildlife and neighboring properties because of their large size, lighting, shadow flicker effects and noise level.

- D. The use of other small-scale renewable energy conversion systems (other than small wind turbines) can reduce reliance on petroleum based home heating products and electricity generated from fossil fuels, thereby decreasing the air and water pollution that results from the use of conventional energy sources and contributing to the long term health of global ecosystems.
- E. Permitting and regulating the use of renewable, non-polluting energy and regulating the location and installation of wind turbines and other renewable energy conversion systems is necessary to protect and promote the safety and welfare of town residents.
- F. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
- G. If not properly regulated, installation of 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.
- H. Wind Energy Facilities may present a risk to birds, bats and other creatures if not properly sited.
- I. If not properly sited, Wind Energy Facilities may adversely affect the property values of adjoining property owners.
- J. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact the quiet enjoyment of properties in the vicinity.
- K. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
- L. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

## 6. Definitions

As used throughout this local law, the following terms shall have the meanings indicated:

**EAF:** The 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.

**FAA:** The Federal Aviation Administration.

**MECHANICAL WIND TURBINE:** A Wind Energy Conversion System that converts wind energy to mechanical power.

**RENEWABLE ENERGY CONVERSION SYSTEM (RECS):** A Renewable Energy Conversion System other than a WECS and includes but is not limited to solar panels, geothermal heat pumps, wood, wood pellet, hay and other types of biomass stoves.

**RENEWABLE ENERGY FACILITY:** A Small Wind Energy Conversion System or a Small Renewable Energy Conversion System as those terms are defined herein.

**SEORA:** 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.

**SITE:** The parcel of land where the USWECS is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

**SMALL RENEWABLE ENERGY CONVERSION SYSTEM ("Small RECS"):** A Renewable Energy Conversion System designed for on-site home, farm, or commercial use primarily to reduce on-site consumption of public utility energy.

**SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS"):** A wind Energy Conversion System is any device that converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blades, tower, base, and pad transformer, if any, which is intended to primarily reduce on-site consumption of utility power.

**TOTAL HEIGHT:** The distance measured from grade to the uppermost extension of any blade, or the maximum height reach by any part of the WECS or USWECS.

**UTILITY SCALE WIND ENERGY CONVERSION SYSTEM (USWECS):** Any WECS having one of the following:

- (a) a rated capacity of 500 kilowatts or greater;
- (b) 200 feet or greater in height; or
- (c) the purpose of such energy generated is intended for commercial sale.

**WIND ENERGY CONVERSION SYSTEM ("WECS"):** A machine that converts the kinetic energy in the wind into electrical or mechanical energy (commonly known as a "wind turbine" or "windmill").

**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.

**WIND MEASUREMENT TOWER:** A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction. Temporary (no more than 2 years) towers may be allowed as part of a USWECS application, where the requested tower meets all height, setback and other requirements of this local law.

## 7. **Applications and Requirements**

Applications for USWECS Special Use Permits shall provide the following to the Town of Enfield Planning Board:

- A. 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.
- B. 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 (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- C. A copy of written notification to each property owner (indicating names and mailing addresses) of all property adjacent to the proposed USWECS Site and/or within 1,250 feet of the proposed tower Site, indicating that each property owner has been notified of the proposed application.
- D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- E. A completed EAF long form and a Visual EAF Addendum. If not included in the EAF long form, the following information must be provided:
  - (a) A detailed plot and development plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
    - (i) Physical dimensions of the property, existing structures and proposed structures.
    - (ii) Location of all existing and proposed towers site(s) and/or structures including address, or other property identification, of

each proposed tower location, including tax map section, block and lot number.

- (iii) Location of all electrical lines and facilities.
  - (iv) Existing topography.
  - (v) To demonstrate compliance with the setback requirements, draw circles around each proposed tower location equal to:
    - (1) One and a half times the tower height.
    - (2) Five hundred foot perimeter.
    - (3) One thousand foot perimeter.
    - (4) One thousand five hundred foot perimeter.
  - (vi) Methods of traffic circulation.
  - (vii) Ingress and egress identifying the following factors:
    - (1) Location and description of nearest publicly maintained road.
    - (2) Description of access route from nearest public road including:
      - Road surface material stating the type and amount of surface cover.
      - Width and length of access route, and location of ingress and egress.
      - Dust control procedures.
      - A road maintenance program or schedule
- F. A location map to scale of all dwellings, structures, and electric lines and facilities within one-half (1/2) mile of the boundary of the property upon which the USWECS are to be located.
- G. Reference to any easements necessary for the proposed use of the land.
- H. Standard drawings of the structural components of the USWECS, including structures, pole or tower, base, footings, guy lines where required, and guy line anchor bases. The drawings shall include the distance of these components from all property lines.
- I. Height of any structure over thirty-five (35) feet within a five hundred (500) foot radius of the proposed USWECS.
- J. For each proposed USWECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
- K. Hazard prevention plan addressing the following features:
  - (a) safe electrical wiring between turbines,

- (b) fire prevention plan,
  - (c) landscape plan to avoid fire spreading,
  - (d) list of any hazardous fluid and certification of containment of fluids.
- L. Written certification from a structural engineer that the foundation and tower (tower with the rotor and rotor-related equipment) conform with standard engineering practices and comply with the appropriate provisions of all State, Federal, County and Town Code rules and regulations, and that the tower and rotor-related equipment are compatible.
- M. Written certification from an electrical engineer that the electrical system conforms with standard engineering practices and complies with the appropriate provisions of all State, Federal, County and Town Code rules and regulations.
- N. Written certification from a mechanical engineer that the rotor overspeed control system has been designed for the proposed use on the proposed Site and conforms with standard engineering practices and complies with the appropriate provisions of all State, Federal, County and Town Code rules and regulations.
- O. Copy of written notification to the FAA and approvals received.
- P. Copy of written notification to the operator of any microwave communications link that is located within a 1.5 mile radius of the USWECS.
- Q. Utility interconnection data and copy of written notification to the utility company requesting the proposed interconnection and approvals received.
- R. Liability Insurance: Prior to the issuance of a building permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company that liability insurance has been obtained to cover damage or injury which might result from the failure of the tower and/or the USWECS or any part thereof and transmission facility. The Town Board, in consultation with the Town's insurer, may set the level of insurance required at whatever level it deems adequate.
- S. Sign plan detailing sign dimensions, content, and locations.
- T. Landscape and vegetation plan, including site grading, proposed removal of vegetation, landscape design, and open areas.
- U. A description of proposed uses, including hours of operation, number of employees, and type and volume of traffic expected to be generated.
- V. Decommissioning Plan: The applicant shall submit a decommissioning plan,

which shall include:

- (a) the anticipated life of the USWECS;
- (b) the estimated decommissioning costs in current dollars;
- (c) how said estimate was determined;
- (d) the method of ensuring that funds will be available for decommissioning and restoration;
- (e) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and
- (f) the manner in which the USWECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

- W. Compliant Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
  
- X. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
  - (a) A construction schedule describing commencement and completion dates; and
  - (b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
  
- Y. Additional information, if any, not included in the full environmental assessment/Environmental Impact Statement (FEIS), as deemed necessary by the Town Board if more than three (3) residences are located within a quarter mile of the proposed USWECS facility or if there is a potential for significant environmental impacts, which may include, but is not limited to, the following:
  - (a) Information sufficient to determine that the applicant has applied for and received approvals required by the FAA, and other approvals and/or permits required by relevant state and federal agencies.
  - (b) Visual impact demonstrations including before and after photo-simulations and elevation drawings showing the height, design, color, night lighting, and location of the proposed facility as viewed from neighboring areas.
  - (c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.
  - (d) Noise Analysis: A noise analysis by a competent acoustical consultant

documenting the noise levels associated with the proposed USWECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Planning Board may recommend modification of this requirement). The noise analysis shall include low frequency noise.

- (e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring USWECS Sites.
- (f) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the USWECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

Z. The applicant shall, prior to the receipt of a building permit:

- (a) provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner; and
- (b) provide a statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

## 8. **Development Standards and General Standards**

The following standards apply to the review and approval of USWECS. A Special Use Permit is required for all USWECS consisting of wind turbine generators-transmission lines, and accessory buildings and structures. To issue a Special Use Permit, the Town of Enfield Planning Board with the assistance of the Enfield Code Enforcement Officer and other professionally certified experts as appropriate, must find that the following general standards are met.

### A. **Visual Appearance and Design**

- (a) USWECS shall be either painted a non-reflective, neutral color or appropriate material designed to blend the USWECS with surrounding landscape.
- (b) All USWECS on the same Site shall blend with the background environment to the maximum extent practicable and should be uniform in style and color.

- (c) The applicant shall use low profile and unobtrusive building designs for on-site buildings to minimize industrial character of projects in rural or remote areas.

**B. Lighting**

USWECS shall not be artificially lighted, except as required by FAA.

**C. Signs**

No advertising shall be allowed except for reasonable identification of the manufacturer or operator of the Wind Energy Facility. Educational signs and displays on wind energy may also be allowed in appropriate locations.

**D. Power Lines**

Electrical controls and control wiring and power lines shall be wireless or installed underground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

**E. Wildlife and Plant Resources**

The facility shall not have a significant adverse effect on endangered or threatened wildlife or plant species or their critical habitats, including either migratory or resident avian and bat populations.

**F. Traffic Routes**

- (a) Construction of USWECSs poses potential risks because of the large size construction vehicles and their impact on traffic, safety and their physical impact on local roads. Construction and delivery vehicles for USWECSs and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit USWECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- (b) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a USWECSs. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the

Town for any damage to local roads.

**G. Setbacks**

Each USWECS, including the closest tip of the rotating blades, shall be set back from the following by a distance of 1.5 times the USWECS Total Height at all times:

- (a) Communication and electrical lines.
- (b) Other USWECS.
- (c) Transmission facilities (sub-stations(s)).
- (d) Inhabited or inhabitable on-site structures, existing at the time of application, measured from the exterior of such residence.
- (e) From any property line (including site boundary line).

Each USWECS, including the closest tip of the rotating blades, shall be set back from the following by 1,250 feet at all times:

- (a) From the nearest neighboring off-site inhabited or inhabitable structures, existing at the time of application, measured from the exterior of such residence, and that of any school, church, hospital or nursing home.
- (b) Public roads (measured from the road right-of-way) including seasonal roads.
- (c) Robert Treman State Park property and Connecticut Hill Wildlife Management Area.
- (d) Neighboring town and county borderlines (unless neighboring town or county grants an easement).

**H. Noise**

- (a) USWECS shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed fifty (50) dBa, measured at the boundaries of all of the abutting parcels. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- (b) In the event audible noise due to USWECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Section K "Signal Interference" shall be reduced to fifty (50) dBa. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBa for center frequencies of five hundred (500) Hz and above, by eight (8) dBa for center frequencies between one

hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

**I. Noise and Setback Easements**

In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver will be granted from such requirement by the Town Board in the following circumstances:

- (a) Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and
- (b) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, whose consent shall be granted upon either the completion of the decommissioning of the benefited USWECS in accordance with this section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the USWECS.
- (c) Waivers granted under this section differ from other waivers in this Local Law in that no other waiver is required if a waiver is given under this section.

**J. Safety**

- (a) Each USWECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (b) Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each USWECS installation shall be determined on the basis of individual applications as safety needs dictate.
- (c) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Town Board may require additional signs based on safety needs. Emergency number,

- contact information and emergency procedures shall also be filed with the local Town Clerk, Fire Department and Code Enforcement Office.
- (d) No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
  - (e) The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
  - (f) USWECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
  - (g) All guy wires or other supports shall be clearly marked.

**K. Signal Interference**

The applicant shall minimize or mitigate interference with electromagnetic communications, such as television, microwave, navigational, or radio signals, caused by any USWECS. USWECS construction or operation may not interfere with existing emergency communications systems. If it has been demonstrated that a USWECS is causing harmful interference, the USWECS operator shall promptly mitigate the harmful interference or cease operation of the USWECS.

**L. Inoperation/Reclamation/Abandonment of Use**

- (a) The USWECS which has not been used to produce electricity for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner and/or operator within 120 days after notice from the Town of Enfield Town Board. The property owner and/or operator is to restore the Site to its original condition and foundation removed three (3) feet below final grade, depending on land use, and vegetation restored. A bond or other appropriate form of security may be required to cover the cost of removal and site restoration. Failure to comply with this section or with any and all conditions that may be attached to a Special Use Permit shall constitute grounds for the revocation of the permit by the Town of Enfield, after notice and a hearing before the Town Board. The Town of Enfield reserves the right of salvage in the event the applicant does not remove any USWECS deemed inoperable.
- (b) Decommissioning Bond or Fund: The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Board and Attorney for the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-

financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a building permit is issued.

- (c) **Operation:** A USWECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. The owner of each USWECS shall have it inspected at least every two years for structural and operational integrity by a NYS licensed professional engineer, and shall submit a copy of the inspection report to the Town. If such report recommends that repairs or maintenance are to be conducted, the owner shall provide to the Town Board a written schedule for the repairs or maintenance. Operational condition includes meeting all noise requirements and other permit conditions. Should a USWECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- (d) Notwithstanding any other abatement provision under this Local Law, if the USWECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the USWECS and require the removal of the USWECS within 90 days. If the USWECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the USWECS.

**M. Federal and State Requirements**

The USWECS shall meet or exceed any standards and regulations of the FAA and any other agency of the state or federal government with the authority to regulate USWECS or other tall structures in effect at the time the Special Use Permit is approved.

**N. Storm-Water Run-Off/Erosion Control**

Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.

**O. Hours of Construction**

Construction of the USWECS shall be limited to the hours of 7 a.m. to 7 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town Board.

**P. SEQRA Review**

Applications for USWECS shall be deemed Type I projects under SEQRA. The Town of Enfield Planning Board shall be responsible for the review of the proposed project under SEQRA, shall, where appropriate, act as lead agency under SEQRA and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project in accordance with the requirements of SEQRA.

**9. Hearing Required**

- A. Public hearing and decision on Special Use Permits. The Town Board shall conduct a public hearing within sixty-two (62) days from the day a complete application is received. Public notice of said hearing shall be printed in the official newspaper at least five (5) days prior to the date thereof. The Town Board shall decide the application within sixty-two (62) days after the close of the public hearing. The time within which the Town Board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the Town Board on the application after the holding of the public hearing shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.
- B. Notice to applicant, county planning agency and adjacent owners. At least ten (10) days before such hearing, the Town Board shall mail notices thereof to the applicant and to the county planning agency, as required by Town Law section 274-b and General Municipal Law section 239-m, which notice shall be accompanied by a full statement of such proposed action. The Town Board shall also mail notice of such application and public hearing to the owners of all property adjacent to the proposed tower Site and/or within 500 feet of the proposed tower Site.
- C. Compliance with SEQRA. The Town Board shall comply with the provisions of the state environmental quality review act under Article 8 of the Environmental Conservation Law and its implementing regulations.
- D. Conditions attached to the issuance of special use permits. The Town Board shall have the authority to impose such reasonable conditions and restrictions as are

directly related to and incidental to the proposed Special Use Permit. Upon its granting of said Special Use Permit, any such conditions must be met in connection with the issuance of any other required permits to be issued by the town.

10. **Waivers**

- A. After a public hearing, the Town Planning Board may recommend to the Town Board to grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Planning Board, the grant of said waiver is in the best interests of the Town. The Town Planning Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, public health, safety, the welfare of the residents, the benefit to the applicant, feasible alternatives, and the scope of the request.
- B. Waivers involving any setback or noise limitation under this section must meet the requirements of this law under Section 8. I. "Noise and Setback Easements". Written consents must be received from all affected property owners or a waiver cannot be granted.
- C. The Town Planning Board has no authority to waive any provision dealing with fiscal responsibility or financial offsets that effect the budgetary responsibilities of the Town Board. Application for this type of waiver must be directed to the Town Board.

11. **Fees**

A non-refundable Application Fee, shall be paid to the Town of Enfield when the application for Special Use Permit is submitted.

12. **Tax Exemption**

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

13. **Enforcement, Penalties and Remedies for Violations**

- A. This local law shall be enforced by the code enforcement officer(s) of the Town. Such appointee(s) shall have the authority to issue appearance tickets pursuant to the provisions of the Criminal Procedure Law.
- B. Any person owning, controlling or managing any building, structure or land who

shall undertake a Wind Energy Facility in violation of this local law or in noncompliance with the terms and conditions of any permit issued pursuant to this local law, 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 \$1,000 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue.

- C. The Town may also institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation. Each week said violation continues shall be deemed a separate violation.
- D. 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 special use 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, or to prevent any illegal act.

14. **Severability**

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

15. **Effective Date**

This local law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.