

A Local Law known as Local Law No. 1 of the Year 2009, entitled “Windmill Law of the Town of Alden.”

Be it enacted by the Town Board of the Town of Alden as follows:

**SECTION 1. TITLE**

This Law shall be known as Local Law No. 1 of the Year 2009 entitled “Windmill Law of the Town of Alden.”

**SECTION 2. PURPOSE**

The Purpose of this Local Law is to promote the effective and efficient use of Wind Energy Conversion Systems (also commonly known as “windmills” or “wind turbines”) and to regulate the placement of Wind Energy Conversion Systems so that the public health, safety, and general welfare; natural resources; and aesthetics will not be jeopardized. The further Purpose of this Local Law is to amend the Alden Town Code to add a new law regulating the size, location, setback requirements, installation, operation, and maintenance of Wind Energy Conversion Systems within the Town of Alden. This Local Law is intended to insure that Wind Energy Conversion Systems constructed within the Town of Alden are not detrimental to other property owners, do not create a nuisance, and are not detrimental to the health, safety and general welfare of the residents of the Town of Alden.

**SECTION 3. FINDINGS**

A. The Alden Town Board finds and declares that wind energy is an abundant, renewable, and nonpolluting energy resource of the Town of Alden and that its conversion to useable forms of energy, including electricity, will reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

B. The Alden Town Board further finds and declares that: (1) Wind Energy Conversion Systems that convert wind energy to usable forms of energy, including electricity, are currently available on a commercial basis (for both residential and commercial uses) from many manufacturers; (2) the generation of usable forms of energy, including electricity, from properly sited Wind Energy Conversion Systems can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from Wind Energy Conversion Systems to utilities or to other users; and (3) the regulation of the siting and installation of Wind Energy Conversion Systems is necessary for the purpose of protecting the health and safety of neighboring property owners and the general public, and the aesthetics of the Town of Alden.

**SECTION 4. DEFINITIONS**

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

**AGRICULTURAL OR FARM OPERATION** - In compliance with New York State Agriculture and Markets Law (AML) Section 305-a(1) as well as eligible for an Agricultural Property Tax Assessment or Exemption.

**BUILDING CODES** – Collectively the Town of Alden Building Code, the New York State Building Construction Code, and the New York State Uniform Fire Prevention and Building Code.

**ELECTRICAL CODE** – The New York State Electrical Code.

**FALL ZONE** – The radius around a Wind Energy Conversion System within which all portions of the Wind Energy Conversion System would fall in the event of a structural failure of the Wind Energy Conversion System, equal to 1.5 times the Total Height of the Wind Energy Conversion System.

**HUB** – The center portion of the blade cluster that connects the blades to the Wind Energy Conversion System base.

**NEUTRAL COLOR** – A hueless color.

**NONREFLECTIVE COLOR** – A color that does not throw back light.

**OVERSPEED CONTROL** - A mechanism used to limit the speed of blade rotation to below the design limits of Wind Energy Conversion System.

**PRINCIPAL BUILDING** - A building in which the main or principal use of the lot is conducted.

**SEQRA** – The New York State Environmental Quality Review Act.

**SHADE** - The decrease of light intensity of twenty percent (20%) or more.

**SHADOW FLICKER** - The alternating pattern of sun and Shade caused by Wind Energy Conversion System blades casting a shadow.

**SITE** - The physical location of a Wind Energy Conversion System, including the related Tower and transmission equipment.

**SWEPT AREA** - The largest area of a Wind Energy Conversion System which extracts energy from the wind stream. In a conventional propeller-type Wind Energy Conversion Systems, there is a direct relationship between swept area and the rotor diameter.

**TOTAL HEIGHT** - The height of the Tower and the furthest vertical extension of a Wind Energy Conversion System.

**TOWER** – The support structure, including guyed, monopole, and lattice types upon which a wind turbine and other mechanical devices are mounted.

**WIND ENERGY CONVERSION SYSTEM (WECS)** - A machine that converts the kinetic energy in the wind into a usable form of energy. A WECS includes all parts of the system including the Tower and the transmission equipment. The Wind Turbine may be on a horizontal or vertical axis, rotor or propeller.

**COMMERCIAL WECS** - A WECS that has the capacity to generate greater than twenty-five (25) kilowatts.

**NON-COMMERICAL WECS** - A WECS that has the capacity to generate twenty-five (25) kilowatts or less.

**NON-ELECTRICAL WECS** – a WECS that generates a useable form of energy other than electricity.

**WINDMILL FARM** - More than one (1) WECS located within a single Site or on adjacent Sites.

**COMMERCIAL WINDMILL FARM** – A Windmill Farm where the combined capacity of all WECS on the Site or adjacent Sites can generate greater than twenty-five (25) kilowatts.

**NON-COMMERCIAL WINDMILL FARM** – A Windmill Farm where the combined capacity of all WECS on the Site or adjacent Sites can generate twenty-five (25) kilowatts or less.

**WIND TURBINE** – Any piece of energy generating equipment that converts wind energy into a useable form of energy including electrical energy through the use of airfoils, rotating turbine blades, or similar devices to capture wind.

## **SECTION 5. REQUIREMENTS FOR COMMERCIAL WECS AND COMMERCIAL WINDMILL FARMS**

Commercial WECS and Commercial Windmill Farms are allowed within all zoning districts of

the Town of Alden (1) following the issuance of a Special Use Permit pursuant to Article XI of Chapter 20, Zoning, of the Alden Town Code; (2) upon receiving site plan approval pursuant to Article XII of Chapter 20, Zoning, of the Alden Town Code and (3) upon the issuance of a Building Permit pursuant to Chapter 7, Building Code Administration, of the Alden Town Code (including payment of the required Building Permit fee, as set forth in the Town's Fee Schedule as from time to time amended by resolution of the Alden Town Board).

A. Site Plan Review Application Requirements. All Site Plan Review applications for Commercial WECS and Commercial Windmill Farms shall meet the requirements of Article XII of Chapter 20, Zoning, of the Alden Town Code and shall include the following additional requirements:

- (1) Name and address of the applicant.
- (2) Evidence that the applicant is the owner of the Site involved or that the applicant has written permission of the Site owner to make such an application.
- (3) A drawing that depicts:
  - (i) Property lines, lease lines, and/or easement lines, and physical dimensions of the Site;
  - (ii) Location, approximate dimensions, and types of existing structures and uses on the Site;
  - (iii) Location and elevation of each proposed Commercial WECS;
  - (iv) Location of all aboveground and of all underground utility lines on the Site and within two (2) times the radius of the Total Height of each proposed Commercial WECS;
  - (v) Location and size of any structures and trees with a height greater than thirty five (35) feet within a five-hundred (500) foot radius of each proposed Commercial WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open lattice towers are not considered structures. In the case of wooded areas, the wooded area must be located but individual trees need not be located;
  - (vi) Show the zoning designations of the immediate Site and adjacent parcels and the locations of any buildings or improvements that are within the Fall Zone;

(vii) Include the make, model, picture and manufacturer's specifications for each WECS;

(viii) Information regarding noise decibel levels; and

(ix) Site topographic data.

(4) Show Compliance With Building Codes:

(a) Site Plan Review Applications shall be accompanied by standard drawings of structural components of the Commercial WECS, including support structures, Tower, base and footings. Drawings and any necessary calculations shall be certified, in writing, by a New York State Licensed Professional Engineer that the Commercial WECS complies with the current Building Codes. ~~This certification is normally supplied by the Commercial WECS manufacturer, and the additional certification is required only if the same is not supplied by the Commercial WECS manufacturer and~~

~~(b) Where the structural components or installation vary from the standard design or specification, the proposed modifications shall be certified, in writing, by a New York State Licensed Professional Engineer for compliance with the seismic and structural design provisions of the Building Codes.~~

(5) Show Compliance With Electrical Code:

(a) Site Plan Review Applications shall be accompanied by a line drawing identifying the electrical components of the Commercial WECS to be installed, in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code, and

(b) Site Plan Review Applications shall include a written statement from a New York State Licensed Professional Engineer indicating that the electrical system conforms to good engineering practices and complies with the Electrical Code. This certification is normally supplied by the manufacturer. ~~Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified, in writing, by a New York State Licensed Professional Engineer for compliance with the requirements of the Electrical Code and good engineering practices.~~

(6) Demonstrate Rotor Safety. The Site Plan Review Application must include a written statement by a New York State Licensed Professional Engineer certifying that the rotor

and overspeed controls have been designed and fabricated for the proposed use in accordance with good engineering practices. The Engineer shall also certify the structural compatibility of possible Towers with available rotors. This certification is normally supplied by the manufacturer and shall include the distance and trajectory of the thrown blade from an exploding Wind Turbine or propeller based upon reasonable and practical assumptions ~~and the additional certification is required only if the same is not supplied by the Commercial WECS manufacturer.~~

(7) The Site Plan Review fee as set forth in the Town's Fee Schedule, as from time to time amended by resolution of the Alden Town Board.

B. General Requirements for Site Plan Approval. All Site Plan Approvals for the installation of Commercial WECS and Commercial Windmill Farms shall comply with Article XII of Chapter 20, Zoning, of the Alden Town Code and with the following additional requirements:

- (1) All equipment and materials shall be used or installed in accordance with the drawings and diagrams submitted with the Site Plan Review Application.
- (2) Rotor Safety. Each Commercial WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor.
- (3) Guy Wires. Anchor points for guy wires for Commercial WECS shall be located within property lines, lease lines, or easement lines and not on or across any aboveground electrical transmission or distribution line. Commercial WECS guy wires are strongly discouraged. However, if necessary the point of ground attachment for guy wires shall be enclosed by a fence eight (8) feet high.
- (4) Tower Access and Apparatus:
  - (a) Towers shall have either:
    - (i) Tower-climbing apparatus located no closer than fifteen (15) feet to the ground;
    - (ii) A locked anticlimb device installed on the Tower; or
    - (iii) The Tower shall be completely enclosed by a locked, protective fence at least eight (8) feet high. For Commercial Windmill Farms a protective fence at least eight (8) feet high enclosing the entire Site may be required by the Alden Town Board, and

(b) Whenever possible, any apparatus necessary for a Commercial WECS shall be located inside the base of the Tower.

(5) Audible Noise Standard. The audible noise resulting from the operation of any Commercial WECS shall not be created which causes the noise level at the property line, lease line, or easement line of the proposed Site to be in excess of five (5) decibels (dBA) above that of the mean twenty-four (24) hour decibels (dBA) operating noise that currently exists for more than five (5) minutes out of any one (1) hour time period. Upon the completion of construction of a Commercial WECS, the Alden Town Board may require a Sound Study to ensure compliance with this Audible Noise Standard.

(6) Electromagnetic Interference. All Commercial WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated to the Alden Town Code Enforcement Officer that a Commercial WECS or a Commercial Windmill Farm is causing harmful interference, the owner or operator shall promptly mitigate the harmful interference to the satisfaction of the Alden Town Code Enforcement Officer.

(7) Warning Signs. Warning signs shall be posted at the base of each Commercial WECS Tower warning of electrical shock and/or high voltage. All such warning signs shall be visible from all directions.

(8) Height. The minimum height of the lowest part of the Swept Area of any Commercial WECS shall be thirty (30) feet above the highest existing structure or tree within a two-hundred-fifty (250) foot radius of the Commercial WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open-lattice towers are not considered structures, unless they would otherwise come into contact with moveable parts of the Commercial WECS. The Total Height of a Commercial WECS shall be equal to or less than six hundred (600) feet.

(9) Setbacks:

(a) A Commercial WECS shall be set back from any property line, lease line, or easement line (as described below) aboveground utility line, or other WECS a distance greater than one and one-half (1.5) times its Total Height. The entire set back area shall not include public roads and must be located on the property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the Commercial WECS, except as further allowed in this subsection, and may not be located within any setback area established by this Chapter;

(b) If a Commercial WECS is attached to an existing structure, set back requirements may be modified by specific permission of the Alden Town Board;

(c) The Commercial WECS shall not be placed in the front yard of any Principal Building;

(d) The setback between commercial WECS and existing dwellings must be equal to ten (10) times the Commercial WECS Total Height; and

(e) Contiguous property owners may construct a Commercial WECS for use in common, provided that the required setback, as defined in Subsection B(9) above, is maintained relative to the property lines, lease lines or easement lines of nonparticipant owners. As a condition of site plan approval for the construction of a Commercial WECS for use in common, a signed and acknowledged agreement between all involved contiguous property owners governing the ownership, use and maintenance must be submitted to and approved by the Alden Town Board. Said Agreement must run with the land and must be duly recorded in the Office of the Erie County Clerk.

(10) Lighting. In the interests of public safety (mercy flights in particular), Commercial WECS exceeding one hundred (100) feet in Total Height shall have red warning lights meeting Federal Aviation Administration (FAA) standards, attached at or above Hub level.

(11) Electrical Cabling. All interconnecting cables between each Commercial WECS and supporting or servicing structures shall be underground.

(12) Exterior Surface. The exterior surface of any visible components of a Commercial WECS must be a Nonreflective Color that is also a Neutral Color.

(13) Advertising. The use of any portion of a Commercial WECS for signs (except the warning signs required at Subsection B(7) above) or advertising purposes, including company name, banners, streamers, etc. is prohibited.

(14) Outside Storage. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when a Commercial WECS is undergoing additions, repair or renovation.

(15) Environmental Impact. All Commercial WECS and Commercial Windmill Farms are subject to SEQRA and require a visual assessment.

(16) Decommissioning and Restoration. The applicant shall include the following information regarding decommissioning of a Commercial WECS or Commercial Windmill Farm project and restoring the Site:

- (a) The anticipated life of each Commercial WECS;
- (b) The estimated decommissioning costs in current United States Dollars;
- (c) The method and schedule for updating the costs of decommissioning and restoration;
- (d) The method of ensuring that funds will be available for decommissioning and restoration;
- (e) The anticipated manner in which all Commercial WECS will be decommissioned and the Site restored;
- (f) The Alden Town Board shall require the owner or operator of a Commercial WECS to provide an appropriate and adequate demolition bond in an amount approved by the Alden Town Board for purposes of removing the Commercial WECS in case the owner or operator fails to do so as required above. Proof of this bond shall be provided annually to the Alden Town Clerk; and
- (g) The sufficiency of the demolition bond shall be estimated initially and confirmed at least every five (5) years by an analysis and report of the cost of removal and property restoration to be performed by a New York State Licensed Professional Engineer, the cost of same to be borne by the owner or operator. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within ten (10) days of the owner or operator's receipt of such report.

(17) Utility Interconnection for Commercial WECS. Written evidence that the electric utility service provider that serves the proposed Commercial WECS has been informed of the applicant's intent to install an interconnected customer-owned Commercial WECS, unless the applicant does not plan, and so states in the Site Plan Review Application to connect the Commercial WECS to the electricity grid.

(18) Insurance. The owner or operator of a Commercial WECS shall maintain a current liability insurance policy which will cover the installation and operation of the Commercial WECS at all times. As a part of the Site Plan Review process, the Alden

Town Board may require proof that the owner or operator is carrying sufficient liability, workers compensation, or other insurance as determined necessary by the Alden Town Board, during installation and operation of proposed Commercial WECS. Limits for said insurance policies shall be set by the Alden Town Board based on size and scope of each Commercial WECS project.

(19) Construction Bond. A construction bond in the amount of One Million United States Dollars (\$1,000,000.00 USD) to cover damage to any and all property is required. The bond shall remain in full force and effect during the construction phase of any and all Commercial WECS. The Alden Town Board in its sole and absolute discretion may likewise require that the Bond remain in full force and effect during the operational stage of the Commercial WECS and shall have the ability to require an increase in the amount of the bond in time as anticipated restoration costs increase.

(20) Repairs. Any work to repair a Commercial WECS shall comply with all applicable Building Codes, and Building Permit, as required by Chapter 7, Building Code Administration, of the Alden Town Code, shall be obtained to conduct such work. Any work that will substantially alter, as determined by the Town of Alden Code Enforcement Office, a Commercial WECS shall require site plan approval and a new special use permit.

(21) Maintenance. A Commercial WECS shall be maintained in good working order and repair at all times.

(22) Abatement. If any Commercial WECS is not maintained in an operational condition for a period of twelve (12) consecutive months and/or poses a potential safety hazard, the owner or operator shall take expeditious action to remedy the situation. The Town of Alden or its agent(s) reserve the authority to abate any hazardous situation and to pass the cost of such abatement onto the owner or operator of the Commercial WECS. If the Town of Alden or its agent(s) determine that a Commercial WECS has been abandoned (not maintained in an operational condition for a period of twelve (12) consecutive months) or poses a safety hazard, the Commercial WECS shall be removed within forty-five (45) days of written notice from the Town of Alden or its agent(s) to the owner or operator of the Commercial WECS.

C. Special Use Permit Application Requirements. Every application for a Special Use Permit for a Commercial WECS or Commercial Windmill Farm shall be made, in writing, to the Alden Town Board in accordance with the requirements of Article XI of Chapter 20, Zoning, of the Alden Town Code and shall also include the following additional information:

(1) Name and address of the applicant.

- (2) Evidence that the applicant is the owner of the Site involved or that the applicant has written permission of the Site owner to make such an application.
- (3) A plot plan and development plan drawn in accordance with the Alden Town Code.
- (4) A SEQRA Long Form Environmental Assessment Form (full EAF) shall be supplied.
- (5) Aesthetics:
  - (a) Commercial WECS which are part of the same Commercial Windmill Farm that are located within view, or within one (1) mile of each other must be of uniform design, including Tower type, color, number of blades, and direction of blade rotation, and
  - (b) A SEQRA Visual Environmental Assessment Form (Visual EAF), as well as a visual impact assessment of any proposed Commercial WECS or any proposed modifications to existing Commercial WECS. The visual impact assessment shall include:
    - (i) “before and after” photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways or other major roads, from state county or local parks, other public lands, from any privately owned preserves and historic sites normally open to the public and from any other location where the Site is visible to a large number of visitors or travelers. A balloon test may also be required by the Alden Town Planning Board or by the Alden Town Board;
    - (ii) Alternative Tower designs;
    - (iii) Assessment of visual impact from abutting properties and streets of the Tower base, accessory buildings and any other elements of the Commercial WECS as identified by the Alden Planning Board;
    - (iv) A view shed map of the proposed Commercial WECS with a radius of seven (7) miles from any portion of the Commercial WECS;
    - (v) An inventory of all aesthetic resources in the view shed defined in item (iv) above; and

(vi) Shadow Flicker Maps shall be prepared showing projected annual hours of shadow flicker impact for all locations. Also included shall be maps showing the daily duration of the Shadow Flicker.

(6) A written report prepared by a New York State Licensed Professional Engineer, which describes the Commercial WECS height and design (including a cross section of the structure) demonstrates the Commercial WECS' compliance with applicable structural standards and describes the Commercial WECS' capacity.

(7) A signed, written, agreement by the applicant to remove the Commercial WECS and accessory structures if such Commercial WECS becomes technically obsolete or ceases to be used for its originally intended purpose for a period of twelve (12) consecutive months.

(8) All Commercial WECS shall be inspected at least every second year for structural integrity by a New York State Licensed Professional Engineer and a copy of such written inspection report shall be submitted to and filed with the Alden Town Code Enforcement Officer.

(9) The Special Use Permit fee as set forth in the Town's Fee Schedule, as from time to time amended by resolution of the Alden Town Board.

(10) Other information as requested by the Alden Town Planning Board and the Alden Town Board.

## **SECTION 6. REQUIREMENTS FOR NON-COMMERICAL WECS AND NON-COMMERICAL WIND FARMS**

Non-Commercial WECS and Non-commercial Windmill Farms are allowed within all zoning districts of the Town of Alden following the issuance of a Building Permit.

A. Building Permit Application Requirements. In addition to the requirements of Chapter 7, Building Code Administration, of the Alden Town Code, all Building Permit Applications for a Non-Commercial WECS or Non-commercial Windmill Farm must also include the following information:

(1) Name and address of the applicant.

(2) Evidence that the applicant is the owner of the Site involved or that the applicant has written permission of the Site owner to make such an application.

- (3) A drawing that depicts the following:
  - (i) Property lines, lease lines, and/or easement lines, and physical dimensions of the Site;
  - (ii) Location, approximate dimensions, and types of existing structures and uses on the Site;
  - (iii) Location and elevation of each proposed Non-Commercial WECS;
  - (iv) Show the zoning designations of the immediate Site and adjacent parcels;
  - (v) Include the make, model, picture and manufacturer's specifications for each Non-commercial WECS; and
  - (vi) Site topographic data.
- (4) The color of the Non-Commercial WECS.
- (5) Show Compliance With Building Codes:
  - (a) Building Permit Applications shall be accompanied by standard drawings of structural components of the Non-commercial WECS, including support structures, Tower, base, and footings. Drawings and any necessary calculations shall be certified, in writing, by a New York State Licensed Professional Engineer that the Non-commercial WECS complies with the current Building Codes. This certification is normally supplied by the manufacturer, and an additional written certification is required only if the same is not supplied by the manufacturer and
  - (b) Where the structural components or installation vary from the standard design or specification, the proposed modifications shall be certified in writing by a New York State Licensed Professional Engineer for compliance with the seismic and structural design provisions of the Building Codes.
- (6) Show Compliance With Electrical Code:
  - (a) Building Permit Applications shall be accompanied by a line drawing identifying the electrical components of the Non-commercial WECS to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code and

(b) Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified, in writing, by a New York State Licensed Professional Engineer for compliance with the requirements of the Electrical Code and good engineering practices.

(7) Demonstrate Rotor Safety. If the manufacturer's standard design is altered, the Building Permit Application must include a statement by a New York State Licensed Professional Engineer certifying that the rotor and overspeed controls have been designed and fabricated for the proposed use in accordance with good engineering practices; the Engineer shall also certify the structural compatibility of possible Towers with available rotors. This certification is normally supplied by the manufacturer and shall include the distance and trajectory of the thrown blade from an exploding Wind Turbine or propeller based upon reasonable and practical assumptions and the additional certification is required only if the same is not supplied by the Commercial WECS manufacturer

(8) The Building Permit fee as set forth in the Town's Fee Schedule, as from time to time amended by resolution of the Alden Town Board.

B. General Requirements for a Building Permit. All applications for a Building Permit for a Non-commercial WECS and Non-commercial Windmill Farms shall comply with the following additional requirements:

(1) All equipment and materials shall be used or installed in accordance with the drawings and diagrams submitted with the Building Permit Application.

(2) Rotor Safety. Each Non-commercial WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor.

(3) Guy Wires. Anchor points for guy wires for Non-commercial WECS shall be located within property lines, lease lines, or easement lines and not on or across any aboveground electrical transmission or distribution line. Guy wires for Non-commercial WECS ~~fifty (50) feet or more in height~~ shall be marked, protected, or enclosed to ensure the public safety.

(4) Tower Access and Apparatus:

(a) Towers shall have either:

(i) Tower-climbing apparatus located no closer than fifteen (15) feet to

the ground;

(ii) A locked anticlimb device installed on the Tower; or

(iii) The Tower shall be completely enclosed by a locked, protective fence at least eight (8) feet high. For Non-commercial Windmill Farms a protective fence at least eight (8) feet high enclosing the entire Site is required, and

(b) Whenever possible, any apparatus necessary for a Non-commercial WECS shall be located inside the base of the Tower.

(5) Audible Noise Standard. Except during short-term events including utility outages and severe wind storms, a Non-commercial WECS shall be designed, installed and operated so that noise generated by the system shall not exceed 50 decibels (dBA), as measured at the closest neighboring property line. If it has been demonstrated to the Alden Town Code Enforcement Officer that a Non-Commercial WECS is generating more than 50 decibels (dBA) as measured at the closest neighboring property line, the owner or operator shall promptly mitigate the noise to the satisfaction of the Alden Town Code Enforcement Officer.

(6) Electromagnetic Interference. All Non-commercial WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated to the Alden Town Code Enforcement Officer that a Non-Commercial WECS or a Non-commercial Windmill Farm is causing harmful interference, the owner or operator shall promptly mitigate the harmful interference to the satisfaction of the Alden Town Code Enforcement Officer.

(7) Warning Signs. Warning signs shall be posted at the base of each Non-commercial WECS Tower warning of electrical shock and/or high voltage. All such warning signs shall be visible from all directions.

(8) Height. The minimum height of the lowest part of the Swept Area of any Non-commercial WECS shall be ten (10) feet above the highest existing structure or tree within a one-hundred (100) foot radius of the Non-commercial WECS but no less than twenty (20) feet above grade. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open-lattice towers are not considered structures, unless they would otherwise come into contact with moveable parts of the Commercial WECS. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the Non-commercial WECS. The Total Height of a Non-commercial WECS shall be equal to or less than one

hundred twenty (120) feet.

(9) Setbacks:

(a) A Non-commercial WECS shall be set back from any property line, lease line, or easement line (as described below) aboveground utility line, or other WECS a distance greater than one and one-half (1.5) times its Total Height. The entire set back area shall not include public roads and must be located on the property either owned or leased by the applicant or for which the applicant has obtained an easement and may not be located within any setback area established by this Chapter;

(b) A Non-commercial WECS may be placed in the front yard of any Principal Building provided that all setback requirements are met; and

(c) Contiguous property owners may construct a Non-commercial WECS for use in common, provided that the required setback, as defined in Subsection B(9) above, is maintained relative to the property lines, lease lines or easement lines of nonparticipant owners. As a condition of issuing a Building Permit for the construction of a Non-commercial WECS for use in common, a signed and acknowledged agreement between all involved contiguous property owners governing the ownership, use and maintenance must be submitted to and approved by the Town of Alden Code Enforcement Officer. Said Agreement must run with the land and must be duly recorded in the Office of the Erie County Clerk.

(10) Lighting. In the interests of public safety (mercy flights in particular), Non-commercial WECS exceeding one hundred (100) feet in Total Height shall have red warning lights meeting Federal Aviation Administration (FAA) standards, attached at or above Hub level.

(11) Exterior Surface. The exterior surface of any visible components of a Non-commercial WECS must be a Nonreflective Color that is also a Neutral Color.

(12) Advertising. The use of any portion of a Non-commercial WECS for signs (except the warning sign required at Section B(7) above) or advertising purposes, including company name, banners, streamers, etc. is prohibited.

(13) Utility Interconnection for Non-commercial WECS. Written evidence that the electric utility service provider that serves the proposed Non-commercial WECS has been informed of the applicant's intent to install an interconnected customer-owned WECS,

unless the applicant does not plan, and so states in the Building Permit Application, to connect the Non-commercial WECS to the electricity grid.

(14) Decommissioning and Restoration. The applicant shall include the following information regarding decommissioning of a Non-commercial WECS or Non-commercial Windmill Farm project and restoring the Site:

- (a) The anticipated life of each Non-commercial WECS;
- (b) The estimated decommissioning costs in current United States Dollars;
- (c) The method and schedule for updating the costs of decommissioning and restoration;
- (d) The method of ensuring that funds will be available for decommissioning and restoration; and
- (e) The anticipated manner in which all Non-commercial WECS will be decommissioned and the Site restored.

(15) Repairs. Any work to augment or repair a Non-commercial WECS shall comply with the Building Codes and a Building Permit as required by Chapter 7, Building Code Administration, of the Alden Town Code shall be obtained to conduct such work.

(16) Maintenance. A Non-commercial WECS shall be maintained in good working order and repair at all times according to the Alden Town Code requirements.

(17) Abatement. If any Non-commercial WECS is not maintained in an operational condition for a period of twelve (12) consecutive months and/or poses a potential safety hazard, the owner or operator shall take expeditious action to remedy the situation. The Town of Alden or its agent(s) reserve the authority to abate any hazardous situation and to pass the cost of such abatement onto the owner or operator of the Non-commercial WECS. If the Town of Alden or its agent(s) determine that a Non-commercial WECS has been abandoned (not maintained in an operational condition for a period of twelve (12) consecutive months) or poses a safety hazard, the WECS shall be removed within forty-five (45) days of written notice from the Town of Alden or its agent(s) to the owner or operator of the Non-commercial WECS.

## **SECTION 7. EXEMPTIONS**

A. Non-commercial WECS that are less than fifty (50) feet in Total Height shall be exempted

from the provisions of Sections 6(B)(8), (10) and (14).

B. Non-commercial WECS associated with agricultural operations shall be exempted from the provisions of Section 6(B)(14).

C. Non-electrical WECS are exempt from the provisions of this Chapter.

D. In the event that a Windmill Farm contains both Commercial WECS and Non-Commercial WECS the more restrictive requirements of this Chapter shall be applied.

### **SECTION 8. VARIANCES**

Any and all variances to the requirements of this Chapter for specific installations must be approved by the Alden Town Board after a public hearing and recommendation by the Town of Alden Zoning Board of Appeals.

### **SECTION 9. PENALTIES FOR OFFENSES**

Any person or entity who violates any provision of this Chapter shall be guilty of a violation and subject to a fine of not more than Two Hundred-Fifty Dollars (\$250) per day, imprisonment not to exceed fifteen (15) days, or both such fine and imprisonment. Each day of continued violation shall constitute a separate offense.

### **SECTION 10. ENFORCEMENT**

The Alden Town Code Enforcement Officer or his/her designee shall be provided access, at any time, to any WECS Site for the purposes of ensuring compliance with this and any other applicable law and/or regulation. Such access shall be upon providing twenty-four (24) hour advance notification to the owner or operator of any such Site except that immediate access will be deemed granted in the case of an emergency situation.

### **SECTION 11. SEVERABILITY**

The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

### **SECTION 12. EFFECTIVE DATE**

This Local Law shall take effect upon filing in the Office of the New York State Secretary of State or as otherwise provided by law.