

Windplant ordinance adopted by the Town of Malone, New York, 5-24-06

## **Local Law No. - of 2006**

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

**Section 1: Chapter 80, entitled “WIND ENERGY FACILITIES,” is added to the Town Code of the Town of Malone to read in its entirety as follows:**

### **WIND ENERGY FACILITIES**

#### **Article I**

##### **§ 80-1 Title**

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Malone, New York.”

##### **§ 80-2 Purpose.**

The Town Board of the Town of Malone adopts this chapter to promote the effective and efficient use of the Town’s wind energy resource through wind energy conversion systems (WECS), without harming public health and safety, and to avoid jeopardizing the welfare of the residents.

##### **§ 80-3 Authority**

The Town Board of the Town of Malone enacts this Local Law under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
5. New York Town Law, Article 16 (Zoning).

6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).

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

#### **§ 80-4. Findings.**

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

1. While wind energy is a potential abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources, but the potential benefits must be balanced against potential impacts.

2. The generation of electricity from properly sited small wind turbines can be a cost effective mechanism for reducing on-site electric costs, with a minimum of environmental impacts.

3. Regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Large-scale multiple-tower Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.

5. Installation of large-scale multiple-tower Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road Sites, and harm farmlands through improper construction methods.

6. Large-scale multiple-tower Wind Energy Facilities may present risks to the property values of adjoining property owners.

7. Large-scale Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties, particularly in areas of low ambient noise levels.

8. Construction of large-scale multiple-tower Wind Energy Facilities can create traffic problems and damage local roads.

9. If improperly Sited, large-scale multiple-tower Wind Energy Facilities can interfere with various types of communications.

10. The Town has many scenic viewsheds which would be negatively impacted by large-scale multiple-tower Wind Energy Facilities.

## **§ 80-5. Permits Required**

A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Malone except in compliance with this Chapter.

B. No WECS other than a Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Malone. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Malone, except in conjunction with and as part of an application for a Small WECS.

C. No Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Malone except pursuant to a Special Use Permit issued pursuant to this Chapter.

D. This Local Law shall apply to all areas of the Town of Malone except within the Village of Malone.

E. Exemptions. No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 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 this Local Law, but shall not require a height variance. Prior to the construction of a 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.

F. 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 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town, which approval shall be granted upon (1) receipt of proof of the ability of the successor to meet all requirements of this Local Law and (2) written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

G. Notwithstanding the requirements of this Section, replacement in kind or modification of a Small WECS may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the location of the Small WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the Small WECS.

## **§80-6 Definitions.**

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

AGRICULTURAL OR FARM OPERATIONS - means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial

enterprise, including a commercial horse boarding operation” as defined in subdivision thirteen of this section and “timber processing” as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

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

RESIDENCE – means any dwelling for habitation, either seasonally or permanently by one or more persons. A residence may be part of a multidwelling or multipurpose building, and shall include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SITE -- The parcel of land where the WECS 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.

SOUND PRESSURE LEVEL -- means the level which is equaled or exceeded a stated percentage of time. An  $L_{10} - 50$  dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”)-- A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW and which is intended to primarily reduce on-site consumption of utility power.

TOTAL HEIGHT -- The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM (“WECS”)-- A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

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 Small WECS application, where the requested tower meets all height, setback and other requirements of this Chapter.

### **§80-7. Applicability**

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility 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.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

3. 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 Wind Energy Facility is obtained.

C. Wind Energy Facilities are allowed as accessory uses. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

## Article II

### **Small Wind Energy Conversion Systems**

#### **§ 80-8 Purpose and Intent**

The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

#### **§ 80-9 Permitted Areas.**

Small WECS may be permitted upon issuance of a Special Use Permit (1) on any parcel meeting the standards of this Chapter in the Countryside and Open Space Zones, or (2) in any zoning district on a Site of at least 5 acres.

#### **§ 80-10 Applications.**

A. Applications for Small WECS special use permits shall include:

1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent, as well as an original signature of the applicant authorizing the agent to represent the applicant, is required.

2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block and lot number.
4. Evidence that the proposed tower 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.

#### **§ 80-11 Development Standards.**

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article 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 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 acre.
2. Only one 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 lot for purposes of this limitation.
3. Small WECS shall be used primarily to reduce the on-site consumption of utility-provided electricity.
4. Tower heights shall be limited as follows:
  - a. 65 feet or less on parcels between one and five acres.
  - b. 80 feet or less on parcels of five 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. The maximum turbine power output is limited to 10 KW.
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). Facilities shall not exceed the ridgeline level, where the ridgeline is defined as the average height of the summer-time vegetation on the parcel.
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.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie- ins" to a public utility company and public utility company transmission poles, towers and lines. 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 sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner
12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
  - b. A locked anti-climb device installed on the tower.
  - c. A locked, protective fence at least six feet in height that encloses the tower.
13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on 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 feet high or sheathed in bright orange or yellow covering from three to eight 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 pre-existing 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 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

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

#### **§80-12 Standards**

A Small Wind Energy System shall comply with the following standards:

**1. Setback requirements.** A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

**2. Noise.** Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured by an unweighted meter at the closest property line.

#### **§80-13 Abandonment of Use**

A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property within 24 additional months at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town of Malone.

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

### **Article III Miscellaneous**

#### **§80-14 Variances.**

A. 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 Chapter, or a WECS primarily designed to generate electricity for off-site use, or any large-scale multiple-tower wind facilities.

B. If a court of competent jurisdiction (1) orders the Zoning Board of Appeals to consider a use variance for any Wind Energy Facility other than a Small WECS, and such use variance is granted, or (2) the prohibition on any Wind Energy Facility other than a Small WECS is invalidated, no Wind Energy Facility 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, and shall comply with the following minimum setbacks:

a. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 45$  dBA measured at the nearest off-Site dwelling existing at the time of application. If the ambient sound pressure level exceeds 45 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

b. 1,500 feet from the nearest Site boundary property line.

c. 1,500 feet from the nearest public road.

d. 1,500 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.

e. One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.

f. 250 feet from federal or state-identified wetlands, to protect bird and bat populations. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

### **§80-15 Fees**

A. Non-refundable Application Fees shall be as follows:

1. WECS Special Use Permit: \$150.

B. The fees established by this section may be changed by Town Board resolution, adopted after a duly-noticed public hearing.

### **§80-16 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.

### **§80-17 Enforcement; Penalties and remedies for violations.**

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Chapter.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this Chapter or in noncompliance with the terms and conditions of any permit issued pursuant to this Chapter, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six 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 \$350 for each violation and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this 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.
- D. The penalties established by this section may be changed by Town Board resolution, adopted after a duly-noticed public hearing

SECTION 2: Chapter 79 of the Town Code, the “Zoning Regulations for the Town of Malone, New York,” is amended by adding the following to Section 79-5, “Definitions”:

WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, as each is defined in Chapter 80 of this Code, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public Utility uses otherwise allowed under this Chapter do not include Wind Energy Facilities.

### SECTION 3: **Severability**

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

### SECTION 4: **Effective Date**

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