

PROPOSED LOCAL LAW NO. 6-2022
A LOCAL LAW AMENDING TOWN OF EDEN CODE CHAPTER 217 (WIND ENERGY CONVERSION SYSTEMS) TO IMPLEMENT PROVISIONS OF THE NEW TOWN OF EDEN COMPREHENSIVE PLAN

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

Section 1. Chapter 217 of the Town of Eden Code (Wind Energy Conversion Systems) is hereby repealed and replaced with the following:

Chapter 217
Wind Energy Conversion Systems

§ 217-1 Purpose.

The Town Board of the Town of Eden adopts this chapter to promote the effective and efficient use of wind energy conversion systems (WECS) and to regulate the placement of wind energy conversion systems so that the public health, safety, natural resources, and aesthetics will not be jeopardized.

§ 217-2 Findings.

- A. The Town Board of the Town of Eden finds and declares that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce our dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
- B. The Town Board of the Town of Eden further finds and declares that:
 - (1) Wind turbines that convert wind energy to electricity are currently available on a commercial basis from many manufacturers.
 - (2) The generation of electricity from properly sited wind turbines can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users.
 - (3) Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health and safety of neighboring property owners and the general public, and the aesthetics of the community.

§ 217-3 Definitions.

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

OVERSPEED CONTROL

A mechanism used to limit the speed of blade rotation to below the design limits of the WECS.

SITE

The physical location of a WECS, including the related tower and transmission equipment.

SWEPT AREA

The largest area of the WECS which extracts energy from the wind stream. In a conventional propeller-type WECS, 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 the WECS.

WIND ENERGY CONVERSION SYSTEM (WECS)

A machine that converts the kinetic energy in the wind into a usable form (commonly know as a "wind turbine" or "windmill"). The WECS includes all parts of the system except the tower and the transmission equipment; the turbine or windmill may be on a horizontal or vertical axis, rotor or propeller. A WECS shall be designed and used for electricity generation to be used on the property in which it is located and not for commercial use.

WIND MEASUREMENT TOWER

A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction, which may be installed prior to or in conjunction with a WECS or Windmill Farm.

WINDMILL FARMS

More than one WECS (two or more wind turbines or windmills) located within one site or adjacent sites designed and used for the commercial delivery of electricity to the power grid, including all related infrastructure, collection and distribution lines, substations/transformers, access road(s), accessory structures, and related accessory equipment or facilities. May also be referred to as a "utility-scale WECS" or "wind farm."

§ 217-4 Requirements.

No WECS shall be permitted in the Town of Eden unless a Special Permit has been issued by the Town Board and Site Plan Approval has been issued by the Planning Board in accordance with the provisions of this Chapter.

A. Zoning district requirements.

(1) Districts permitted.

(a) A WECS may be allowed in the Parkland (PK), Agricultural Priority (AG), Rural Residential (RR), Neighborhood Residential (R2), and Light Industrial (LI) Zoning Districts of the Town of Eden only by special use permit, subject to the lot and setback requirements contained herein.

(b) A windmill farm and/or wind measurement tower may be allowed in the Rural Residential (RR) and Light Industrial (LI) Zoning Districts of the Town of Eden only by special use permit subject to the lot, setback, siting, and other requirements contained herein.

(2) Neither a WECS nor a windmill farm shall be allowed in the Mixed-Use 1/2 (MU-1/MU-2) Zoning

Districts.

B. Application requirements. All site plan applications and special use permit applications for WECS and windmill farms shall meet the requirements of §§ **225-30** and **225-46** of the Eden Town Code and include a drawing that depicts the following additional requirements:

- (1) Property lines and physical dimensions of the site.
- (2) Location, approximate dimensions and types of major existing structures and uses on site.
- (3) Location and elevation of the proposed WECS.
- (4) Location of all aboveground utility lines on site or within one radius of the total height of the WECS.
- (5) Location and size of structures and trees above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
- (6) Show the zoning designations of the immediate and adjacent sites and the locations of any buildings or improvements that are within the fall zone of a proposed tower as set forth in Chapter **225**, Zoning.
- (7) Include make, model, picture and manufacturer's specifications, including noise decibels.

C. General provisions. Approval of all site plans or special use permits for the installation of a WECS or windmill farm shall comply with the following requirements:

- (1) WECS size. This chapter covers those WECS of any size.
- (2) Water pumpers. Nonelectrical windmills used for pumping water may be exempted from the provisions of Subsection **C(3)** through **(15)**, but they must be sited in such a manner as to maintain a clear fall zone of 1.5 times the height of the structure.
- (3) Compliance with Building Code.
 - (a) Building permit applications shall be accompanied by standard drawings of structural components of the wind energy conversion system, including support structures, tower, base and footings. Drawings and any necessary calculations shall be certified, in writing, by a New York State registered professional engineer that the system complies with the current building code. This certification would normally be supplied by the manufacturer.
 - (b) Where the structural components or installation vary from the standard design or specification, the proposed modifications shall be certified by a New York State registered professional engineer for compliance with the seismic and structural design provisions of the Building Code.

- (4) Compliance with Electrical Code.
 - (a) Building permit applications shall be accompanied by a line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the electrical code. The application shall include a statement from a New York State registered professional engineer indicating that the electrical system conforms with good engineering practices and complies with the electrical code. This certification would normally be supplied by the manufacturer. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.
 - (b) Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State registered professional engineer for compliance with the requirements of the electrical code and good engineering practices.
- (5) Rotor safety. Each 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. Additionally, certification of appropriate clear zones for ice throw or blade throw (in the case of an exploding/malfunctioning turbine or propeller in accordance with Loss of Blade Theory) and structural compatibility of the proposed tower with the turbine and rotor(s) shall also be provided. The application must include a statement by a New York State registered professional engineer certifying that these safety components have been included and the siting, design, and fabrication for the proposed use is in accordance with good engineering practices. This certification would normally be supplied by the manufacturer.
- (6) Guy wires. Anchor points for guy wires for the WECS tower shall be located within property lines and not on or across any aboveground electrical transmission or distribution line. The point of ground attachment for the guy wires shall be enclosed by a fence six feet high.
- (7) Tower access. Towers should have either:
 - (a) Tower-climbing apparatus located no closer than 12 feet to the ground.
 - (b) A locked anticlemb device installed on the tower; or
 - (c) The tower shall be completely enclosed by a locked, protective fence at least six feet high. For windmill farms a protective fence at least six feet high enclosing the entire site may be considered.
- (8) Noise. The WECS shall meet the requirements of any existing noise ordinance of the Town of Eden. In general, the noise of the turbine shall not exceed 50 dba, as measured at the boundaries of all the closest parcels that are owned by non-site owners and abut the site parcels. The applicant shall provide this information or otherwise provide compliance with these regulations should irregularities be noted after construction. Waivers may be granted subject to standards set forth in the special use permit (see §217-5E).
- (9) Electromagnetic interference. The WECS shall be operated such that no disruptive electromagnetic

interference is caused. If it has been demonstrated to a Town Building and Zoning Inspector that a wind energy conversion system is causing harmful interference, the operator shall promptly mitigate the harmful interference.

- (10) Signs. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage.
- (11) Height. The minimum height of the lowest part of the swept area of any WECS shall be 30 feet above the highest existing major structure or tree within a two-hundred-fifty-foot radius. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open-lattice towers are not considered structures. The total height of any WECS shall be equal to or less than 200 feet.
- (12) Setbacks.
 - (a) WECS shall be set back from any property line, aboveground utility line or other WECS a distance of 1.5 times the total height. The WECS shall also not be placed in the front yard of any existing structure.
 - (b) In the case of cluster development, a WECS shall be erected within the common open space area and shall be set back from all residences a distance greater than Subsection **C(12)(a)** above.
 - (c) Contiguous property owners may construct a WECS for use in common, provided that the required setback, as defined in Subsection **C(12)(a)** above, is maintained relative to the property lines of nonparticipant owners.
 - (d) The Zoning Board of Appeals is hereby authorized to review and approve use and area variances from the requirements contained in this Chapter or in Chapter 225, Zoning.
- (13) Utility interconnection (for those WECS which will be interconnected to a utility grid). If proposed, no wind turbine shall be installed until evidence has been given of a signed interconnection agreement, or letter of intent, with the interconnecting utility company. For a WECS, interconnection is permitted as a secondary element of the overall use, but shall in no way be used for commercial purposes.
- (14) Abatement. If a wind energy conversion system or systems are not maintained in operational condition for a period of one year and/or pose a potential safety hazard, the owner or operator shall take expeditious action to remedy the situation upon notice by the Town of Eden and its duly authorized representatives. The Town of Eden reserves the authority to abate any hazardous situation and to pass the cost of such abatement onto the owner or operator of the system. If the Town of Eden determines that the WECS has been abandoned or poses a safety hazard, the system shall be removed within 45 days of written notice to the owner or operator of the system with windmill farms subject to the decommission and restoration as noted herein.
- (15) Liability insurance. The applicant, owner, lessee or assignee shall maintain a current insurance policy which will cover installation and operation of the wind energy conversion system at all times. As a part of the application review process, the Town may require proof that the applicant is carrying sufficient

liability, workers compensation, etc. during installation and operation of proposed facility. Limits for said policy shall be set on size and scope of each project.

- (16) Lighting of tower. Lighting of the tower for aircraft and helicopters will conform with FAA standards for wattage and color, when required.
- (17) Environmental impact. Any WECS or windmill farm project will be subject to the State Environmental Quality Review Act (SEQRA); a windmill farm will require a visual assessment. The visual assessment shall include viewshed mapping and/or cross section analysis to identify any areas of potential visual impact as well as the potential impact of any adjoining properties with respect to “rotor flicker” as a result of shadows cast from the rotating blades. This assessment shall include an evaluation of potential impacts and recommended visual mitigation measures.
- (18) Decommissioning and restoration. For windmill farms, the applicant shall include the following information regarding decommissioning of the project and restoring the site:
 - (a) Decommissioning plan. A formal plan shall be submitted to include the following elements:
 - [1] The anticipated life of the project, including any potential lease extensions;
 - [2] The estimated full decommissioning costs (no including salvage value) in current dollars as well as an inflation escalation for the life of the project, certified by a NYS licensed professional engineer;
 - [3] The method and schedule for updating the costs of decommissioning and restoration;
 - [4] The method of ensuring that funds will be available for decommissioning and restoration; and
 - [5] The anticipated manner in which the project will be decommissioned and the site restored to original conditions.
 - (b) The Planning Board and/or the Town Board shall require the applicant to provide an appropriate and adequate demolition bond for purposes of removing the WECS facility in case the applicant fails to do so as required above. Proof of this bond shall be provided each year or at renewal time of any special permit.
 - (c) The sufficiency of the demolition bond shall be confirmed at least every five 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 applicant. 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 10 days of the applicant's receipt of such report.
- (19) Host Community Agreement. To ensure that windmill farm projects adequately benefit the overall community and that wind energy resources are used to support and mitigate the costs and impacts the

wind development will have on the community, applicants for windmill farm projects shall enter into a Host Community Agreement (HCA) with the Town. The applicant or its successors shall be required to pay the Town a mutually agreed upon Host Community Fee annually to compensate the Town for any expenses (e.g., monitoring, inspections) and environmental impacts associated with the project as may be necessary to protect the Town's and its citizen's interest. The Host Community Fee shall be in addition to any payment in lieu of taxes (PILOT) which may be authorized to be collected by the Town.

- (20) Road Use Agreement. To ensure that local roads are protected and repaired and impacts to traffic and local business operations are accounted for, the applicant shall supply the Town with a plan for designated hauling routes for windmill farm project equipment. A road use agreement shall be executed with the appropriate agency of jurisdiction for the remediation of damaged roads upon completion of the installation or maintenance of a WECS and for adequate maintenance of the roads during construction such that the roads remain open and passable. Prior to the issuance of any building permit, a bond or other surety acceptable to the agency and sufficient to compensate the Town for any damage to public roads shall be secured and provided to the Town.

§ 217-5 Additional special use permit requirements.

Application. Every application for a special use permit shall be made, in writing, to the Town Board in accordance with the requirements of the Town, shall be accompanied by a filing fee as set forth in the Town's Standard Schedule of Fees. In addition to these fees, the Town may hire consultants and/or experts as necessary to provide technical review and evaluation. The applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultants in connection with the review of the application. The special use permit application will include the following:

- A. Name and address of the applicant.
- B. Evidence that the applicant is the owner of the premises involved or that the applicant has written permission of the owner to make such an application.
- C. A plot plan and development plan drawn in accordance with § 217-4 and § 225-30D of the Town Code.
 - (1) Property line and physical dimensions of the proposed site;
 - (2) Location, approximate dimensions and types of major existing structures and uses of the site;
 - (3) Location and elevation of the proposed WECS;
 - (4) Where applicable, the location of all transmission facilities proposed for installation; and
 - (5) Where applicable, the location of all road and other service structures proposed as part of the installation.
 - (6) Where applicable, all transmission lines and wiring shall be buried to the power grid connection (including along any roads or highways) and include necessary encasements in accordance with the

National Electric Code and Town requirements. The applicant is required to show the locations of all proposed underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

- D. An environmental assessment form (full EAF) and visual EAF.
- E. Waivers, easements & variances. In the event the noise levels resulting from a WECS or windmill exceeds the criteria established in this article, or a setback requirement is not met, a waiver may be granted from such requirement(s) provided the following:
 - (1) Written consent from the affected property owner(s) shall be obtained stating that they are aware of the WECS or windmill, the requirements set forth by this article, and that consent is granted for:
 - (a) Allowance of noise levels that exceed the maximum limits otherwise allowed; and/or
 - (b) Allowance of distance setbacks less than required; and/or
 - (c) Allowance of rotor (shadow) flicker on all or part of an adjoining property and/or structures.
 - (2) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's office describing the benefitted and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefitted WECS in accordance with this article, or the acquisition of the burdened parcel by the owner of the benefitted parcel or the WECS.
 - (3) In any case where written consent is not obtained, a variance from the Zoning Board of Appeals shall be required.
- F. Other information as requested by the Town Planning Board, and the Town Board.

§ 217-6 Penalties for offenses.

Any person who violates any provision of this chapter shall be guilty of a violation and subject to a fine of not more than \$250, imprisonment not to exceed 15 days, or both such fine and imprisonment.

§ 217-7 Enforcement.

The Town Code Enforcement Officer or his designee shall be provided access, at any time, to any WECS site for the purposes of ensuring compliance with this and any other applicable code. Such access shall be upon providing twenty-four-hour advance notification to the owner/operator of any such site.

Section 2. This local law shall be effective upon filing with the New York State Secretary of State.