

Hanover Wind Law

Town of Hanover

Article XVI

Wind Energy Conversion Systems: (WECS)

SECTION 1601 - Legislative-Intent

The **Town of Hanover** recognizes the increased demand for converting wind energy into electrical energy. The intent of this local law is to regulate wind energy (WECS) in the **Town of Hanover**. The intent of this local law is to accommodate the necessary infrastructure for the provision of utility scale and Small WECS wind-powered electricity generation in facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the **Town of Hanover**. Furthermore, to address the visual, aesthetic and land use compatibility aspects of wind energy conversion systems. (WECS)

SECTION 1601 .1- Authority

The Town Board of the Town of Hanover 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) and (7).
3. New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10(1)(a)(6), (11),(12), and (14).
4. 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).
5. New York Town Law § 64(17-a)(protection of aesthetic interests) and (23)(General powers).

SECTION 1602 - Definitions

Accessory, Facility, or Equipment: Any structure other than a WECS, related to the use and purpose of deriving energy from such towers, located at the tower facility.

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 utility scale enterprise, including a "utility scale horse boarding operation" as defined in subdivision thirteen of New York Agriculture and Markets Law § 301 and "timber processing," as defined in subdivision fourteen of New York Agriculture and Markets

Law § 301. 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.

EIS: Environmental Impact Statement 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.

Nacelle: The portion of the wind turbine that connects the rotor to the support tower and houses the generator, gearbox, drive train and braking system.

Residence: Shall mean any dwelling suitable for habitation existing in the Town of Hanover on the date an application is received including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multi-purpose building, but shall not include correctional institutions.

SEQRA: The New York State Environmental Quality Review Act and its implementing regulations in Title VI of the New York Code of Rules and Regulations, Part 617.

Site: The parcel or parcels of land where a WECS is to be placed. The site can 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 set back requirements. Any property that has a WECS, or has entered an agreement for said facility or a set back agreement, shall not be considered off-site.

Siting Agency: The applicant, person or persons who are applying to site a utility scale wind energy-deriving tower facility.

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 ten (10) kilowatts, and which is intended to primarily reduce consumption of utility power at that location.

Sound Pressure Level: Means that level which is equaled or exceeded a stated percentage of time. L₁₀-50 dBA indicates that at any hour of the day 50 dBA can be equaled or exceeded only ten (10%) percent of the time, or for six (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.

SWPPP: Stormwater Management Pollution Prevention Plan, as required by New York State Department of Environmental Conservation regulations.

Total Height: The height of the tower and the furthest vertical extension of the WECS.

Utility Scale: Means a WECS other than a Small WECS.

Wind energy conversion systems (WECS): Shall mean any mechanism designed for the purpose of converting, wind energy into electrical energy.

Wind Energy Facility: Any wind energy conversion system, Small WECS, or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads, and other accessory structures and appurtenances.

Wind Measurement Tower: A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

Wind Overlay Zoning District: A district which encompasses one or more underlying zones and that establishes requirements for Wind Energy Facilities.

SECTION 1603 Permits

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

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Hanover except in a Wind Energy Overlay District with a Special Use Permit approved pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Hanover except pursuant to a Special Use Permit issued pursuant to this Local Law.

D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Hanover except pursuant to a Special Use Permit issued pursuant to this Local Law.

E. This Local Law shall apply to all areas of the Town of Hanover.

F. **Exemptions.** No permit or other approval shall be required under this Article 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 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.

G. **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), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's

demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; (4) no increase in noise produced by the WECS, and (5) the WECS is not currently in violation of any permit condition or provision of this Local Law.

I. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

SECTION 1604 Procedure

1. Applications for siting WECS facilities shall be submitted to the Hanover Code Enforcement officer. Applications shall be made by the owner of the property or his/her duly authorized representative, who shall attend the meeting of the Town Board to discuss the application. Any application deemed incomplete by the code enforcement officer or the Town Board shall be returned to the applicant and the Town or its Officer or Board shall undertake no action.
2. The Town Board may refer the application to the Planning Board for recommendations, which shall be reported by the Planning Board to Town Board within forty-five (45) days of said referral.
3. **Public Hearing:** After reviewing the site plan and recommendations, if any, from other involved Town or County Agencies, the Town Board shall hold a Public Hearing, which Public Hearing shall be held within sixty-two (62) days from the day the application is received by the Town Board. Notices of the Public Hearing shall be mailed to adjacent property owners within five hundred (500) feet from the property line boundaries of the proposed Wind Energy Overlay District and published in the Town's official newspaper, one time, not less than ten (10) nor more than twenty (20) days before said hearing. But where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required.
4. The applicant shall prepare and mail the notice of public hearing prepared by the Town, and shall submit an affidavit of service to the Town Clerk. The assessment roll of the Town shall be used to determine mailing addresses.
5. The public hearing may be combined with public hearings on any environmental impact statement or requested waivers.

6. **Final Special Use permit and Site Plan:** A final site plan for the Special Use Permit application shall substantially conform to the site plan that has been approved, and may incorporate any revisions or other features recommended by the Town of Hanover Planning Board.
7. **Town of Hanover Town Board Action:** Within sixty-two (62) days from the date of the public hearing, the Hanover Town Board shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the Board. The decision of the Hanover Town Board shall be filed in the Office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant.
8. **Conditions attached to the Issuance of Special Use Permits:** The Town of Hanover Town Board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits
9. **Reimbursable Costs:** Costs incurred by the Hanover Town and Planning Boards for consultation fees or other extraordinary expense in connection with the review of a proposed special use permit shall be charged to the applicant.

Section 1605 Wind Energy Conversion System Facility Permit Required

No Wind Energy Conversion System shall be sited, located, constructed, erected or modified without the issuance of a special use permit as prescribed in this article. (Reference 1603)

Section 1606 Zoning District and Bulk Requirements

1. **WECS Facilities** may be permitted in the Wind Overlay Zoning District, which may be created in the Agricultural Residential (A-1) District, upon the issuance by the Hanover Town Board of a Special Use Permit, under this Article; all applications will require a site plan as provided herein.
2. **Setbacks.** Each WECS shall be setback as measured from the center of the WECS a minimum distance of:
 - a. 500 feet from the nearest Site boundary property line, right-of-way, easements, and power lines and 500 feet where the boundary is with state, county, town, or village -owned property.
 - b. 500 feet from the nearest public road.
 - c. 1,000 feet from the nearest off-site Residence, school, church or historic structure existing at the time of application, as measured to the exterior of such structure.

- d. 100 feet from state-identified wetlands. This distance may be adjusted to be greater 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.
 - e. 500 feet from gas wells, electric or gas distribution lines unless waived in writing by the property owner and well owner or applicable utility owner.
3. **Noise Limit.** The statistical sound pressure level generated by a WECS shall not exceed $L_{10} - 50$ dBA measured at any off site Residence existing at the time of the application. If the ambient sound pressure level exceeds 48 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
 4. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 3 of this subsection shall be reduced by 5 dBA. A pure tone is defined to exist if the 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 contiguous 1/3 octave bands by 5 dBA for center frequencies of 500 Hz and above, by 8 dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
 5. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches, and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.
 6. Any noise level falling between two whole decibels shall be the lower of the two.
 7. All applications for WECS exceeding 120 feet in height shall be treated as a Type One Action under the State Environmental Quality Review Act.

SECTION 1607: APPLICATION REQUIREMENTS

A plan for the proposed development of a project utility scale WECS, including the proposed Wind Energy Overlay District and individual Special Use Permit applications for WECS shall show and include the following:

- A. Name of the project, the address and Section, Block and Lot number of each proposed WECS location and the boundary lines of the parcel on which the project will be located, a location map showing proposed sites location, date, North arrow and scale. Engineering and or Surveyor maps.
- B. Name and mailing address of the developer or applicant and owners of the parcels where development is proposed.
- C. Name and mailing address of all owners of record of abutting parcels, or those owners within fifteen hundred (1,500) feet of the property lines of parcel where development is proposed. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
- D. A map prepared by a surveyor or engineer licensed in the State of New York shall be provided in the EIS showing all existing lot lines, easements and right-of-ways, and a sketch plan showing proposed road access including provisions for paving, if any, proposed transmission lines and accessory facilities and location of all existing and proposed utility systems to the facility. A map of all above and below ground utilities near the tower site that could possibly be impacted.
- E. Boundaries of the proposed Wind Energy Overlay Zoning District.
- F. A map showing existing and proposed topography at a maximum of five (5) foot contour intervals. (Applies to utility scale only)
- G. A landscape plan showing all existing natural land features, trees, forest cover, buildings and structures and all proposed changes to these features including size and type of plant material and erosion control measures. (Applies to utility scale only)
- H. State Environmental Quality review Act (SEQRA). Nothing shall prohibit the Board from requiring an environmental impact statement if deemed necessary by the Board. WECS are considered a Type 1 action and require a full Environmental Assessment Form (EAF) and a visual EAF to be completed and submitted to the town.
- I. Photography, assessing the visibility from the key viewpoints, existing tree lines and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the "as built" above the ground site facilities as they would appear from distances within three (3) mile

radius of such WECS. No fewer than four (4) and no more than the number of proposed individual WECS plus three (3) color photos.

Pictures shall be no smaller than 8"x10". This requirement may be waived for Small WECS.

- J. Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any WECS.
- K. Justification for any clearing required. (Applies to utility scale only)
- L. **Preliminary report proposed by the WECS siting agency describing:** (Applies to utility scale only)
 - i. Surrounding topography in relation to the capabilities for generation of electricity by wind.
 - ii. Required improvements for construction activities, including those within the public right-of-way or land controlled by the Town of Hanover.
 - iii. Proposed mitigation measures for visual impacts of the tower facility.
 - iv. Proposed safety measures to mitigate wind energy-deriving tower failure.
- M. Elevation map showing the wind energy-deriving tower's height and design including a cross section of the structure and components of the nacelle; the wind energy-deriving tower's compliance with the applicable structural standards and the wind energy-deriving tower's abilities in terms of producing energy. (Applies to utility scale only)
- N. A description of the general geographic areas that would be acceptable for wind projects within the Town of Hanover; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the WECS. (May waive for Small WECS)
- O. Description of the applicant's long range plans with project market demand and long-range facility needs within the Town of Hanover. (May waive for Small WECS)
- P. Digital elevation model-based project visibility map showing the impact of visibility of the project from other locations, to a distance radius of three (3) miles from the center of the project. The base map used shall be a published topographic map showing natural and structural or built features. (To be provided in the EIS. May waive for Small WECS)
- Q. Report showing soil logs, soil profile analysis and storm water run-off calculation for the area being disturbed. (To be provided in the SWPPP and EIS. May waive for Small WECS)

- R. Plans to prevent the pollution of the surface or ground water, erosion of soil, both during and after construction, excessive run-off and flooding of the other properties as applicable. There should be pre-construction and post-construction drainage calculations for the site done by a New York State licensed engineer showing there will be no increase of run-off from the site. (To be provided in the SWPPP and EIS, May waive for Small WECS)
- S. All information regarding requirements for migratory bird flyways with documents by the EPA, NYSDEC or US Fish and Wildlife Service. (To be provided in the EIS, May waive for Small WECS)
- T. All information regarding FAA rules and regulations, additional permits necessary or any other applicable regulations from the Federal Communications Commission (FCC) and Federal Aviation Agency (FAA) for installation of conversion systems. Proof of compliance with the FCC and FAA regulations shall be submitted prior to the finalization of the EIS and issuance of a Special Use Permit by the Town Board, Town of Hanover.
- U. Blade Throw and Ice Throw Risk: Either the Application or the EIS shall evaluate the risk from Blade Throw and Ice Throw Risk.
- V. **Catastrophic Tower Failure:** A report from the turbine manufacturer stating:
- i. The wind speed and conditions that the turbine is designed to withstand (including all assumptions)
 - ii. The incidence of catastrophic failures and the conditions reported at the time of failure.
- W. **Noise Report:** A noise report that shall at a minimum include the following: (May waive for Small WECS)
- i. A description and map of the project's noise producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected, and the basis of the expectation.
 - ii. A description and map of the noise sensitive receptors, i.e., residences, libraries, schools, places of worship and other facilities where quiet is important within two (2) miles of the proposed facility.
 - iii. A report prepared by a qualified engineer, that analyzes the pre-existing ambient daytime and nighttime noise regime (including seasonal variation), including but not limited to: separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction: and analyses at

affected sensitive receptors located two (2) miles of the proposed project site. Potential sensitive receptors at relatively less windy or quieter locations than the project should be emphasized.

- iv. A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at sensitive receptor locations.
- v. A description and map of the cumulative noise impacts.
- vi. A description of the projects proposed noise control features, including specific measures proposed to protect workers, and specific measures proposed to mitigate noise impacts for sensitive receptors to a level of insignificance.
- vii. Identification of any problem areas
- viii. Summary of Project Developer's proposed Noise Complaint resolution Program, including post-construction testing.
- ix. Manufactures Noise design and field-testing data both audible (dBA) and low frequency (deep base vibration) for all proposed structures.

Section 1608 - Standards:

The development of utility scale WECS and related structures may be permitted with approval by the Hanover Town Board, subject to the following requirements:

- A. **Location:** Applications for wind energy-deriving towers shall locate, erect and site towers in accordance with the following requirements:
 1. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operations.
 2. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personnel communication systems would produce electromagnetic interference with signal transmission or reception. If it is determined that a WECS is causing electromagnetic interference, the applicant/operator shall take the necessary corrective action to eliminate this interference including

relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECS causing the interference.

3. No individual tower facility shall be installed in any location where there is a recognized migratory flight path for birds or at a location where birds commonly congregate, unless applicant can demonstrate that the operation of the wind energy-deriving Tower will not have a significant impact on either migratory or resident birds. Conclusions of no significant impact within these recognized areas shall be the results of studies conducted over a period of a minimum of one year by expert consultants and in compliance with NYS DEC regulations, at the expense of the applicant.
4. WECS shall be painted a non-obtrusive (e.g. light environmental color such as white, gray or beige) color that is non reflective.
5. A New York State Licensed professional engineer shall certify that the construction and installation of the conversion system meets or exceeds the manufacture's construction and installation standards. (Town Board may waive for Small WECS)

B. Emergency Shutdown/Safety

1. Procedures acceptable to the Hanover Town Board for emergency shutdown of power generation unit shall be established and available with local agencies as required by the Town.
2. No tower or facility shall exhibit any signs or advertising. Applicant shall post an emergency telephone number so that the appropriate people may be contacted should any wind energy-deriving tower need immediate attention.
3. No WECS shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
4. The safety of the design of all conversion systems shall be certified by a licensed professional engineer experienced in WECS. The standard for certification shall be good engineering practices and shall conform to New York State's officially adopted building and electrical codes.

5. The minimum distance between the ground and any part of the rotor blade shall be thirty (30) feet.

C. Lighting:

Lighting shall be in compliance with FAA regulations.

D. Utility Service

All power transmission lines from the wind generation electricity facilities to non-site substations shall be underground unless specifically waived by the Town Board as part of the Special Use Permit. Where the electrical components of an installation vary from the Manufacturer's standard design or specifications, the proposed modifications shall be reviewed and certified by a N.Y.S. registered professional engineer for compliance with requirements of the national Electrical Underwriter's Code and good engineering practices.

E. Height:

1. The height of any WECS shall be limited to the minimum required to provide needed energy by demonstrated demand, or need.
2. Small WECS shall not exceed a total of seventy-five (75) feet unless the parcel on which the WECS is to be located is ten (10) acres or more, in which case the maximum height of the tower, including the turbine and blades, shall be 120 feet.
3. WECS shall not exceed a total height of 420 feet including the turbine and blades.

E. Access Road:

Existing roadways shall be used for access to the site whenever possible. In the case of constructing roadways, they shall be constructed in a way so that they do not disrupt normal drainage patterns, and are not conspicuous to the surrounding environment.

G. Accessory Structures/Facilities

Transmission facilities and or buildings shall be located behind ridges or vegetation to screen from visibility unless specifically waived by the Town Board as part of the Special Use Permit. Removal of trees and other vegetation on the site shall affect the minimum area and number of trees possible to minimize soil erosion.

H. Security Provisions:

1. No climbing device of any kind shall be attached to the outside of a WECS. Only internal ladders with locked doors.
2. All towers or poles must be unclimbable by design or protected by anti-climbing devices.
3. A WECS is prohibited upon the roof of any structure unless the structure has been approved for installation of a conversion system by a structural engineer certified by the State of New York.

I. Compliance with the National Electrical Code:

1. Building permit applications shall be accompanied by a one line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner conforms to the National Electrical Code. The application shall include a statement from a New York State licensed professional engineer indicating that the electrical system conforms to good engineering practices and complies with the National Electrical Code. The manufacturer normally supplies this certification. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.
2. All electrical lines shall be placed in compliance with the current electrical code standards and appropriately marked and identified as specified by the Town. A visible warning sign of "High Voltage" will be placed at the base of all WECS. The letters on the sign shall be a minimum of six (6) inches in height.
3. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission owner.

J. Insurance/Liability

The applicant, owner, lessee or assignee shall maintain a current insurance policy which will cover installation and operation of the WECS at all times. As part of the application review process, the Town of Hanover may require proof that the applicant is carrying sufficient liability, workers compensation, etc, during installation and operations of proposed facility. Limits for said policy shall be set according to the size and scope of each project.

K. Abatement:

1. Any WECS which has not been generating energy for a period of one (1) year shall be removed from the premises to a place of safe and legal disposal. Any and all structures, guy cables, guy anchors and or enclosures accessory to such WECS shall also be removed. The site shall be restored to as natural a condition as possible. Such removal shall be completed within six (6) months after 1 year of non-use of such WECS. The permittee is responsible for removal.
2. **Bond/Security:** All successful applicants shall furnish and file with the Town Clerk a performance bond to be payable to the Town and in an amount to be determined by the Town for the purpose of covering damage to any Town property during the construction, maintenance, operation or removal of the WECS facility.
3. **Decommissioning Security.** In addition, all successful applicants shall furnish and file with the Town Clerk a bond or other security for the purpose of paying for the removal of and de-commissioning of the WECS facilities in the event that such WECS facilities are no longer in use and require removal under this article and upon failure of the then-owner or operator to remove same in accordance with this article (such bond or other security, a "Decommissioning Bond"). The Decommissioning Bond shall remain valid and enforceable during the entire time the facility is permitted to operate and for an additional period of two years thereafter and as may be necessary to ensure the de-commissioning and removal of the WECS in the event the owner/operator fails to do so as required by this article. The Decommissioning Bond 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.
4. **Decommissioning Plan:** The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three 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. The Plan shall include the Decommissioning Bond required by this Section.

5. If removal of towers and appurtenant facilities is required and applicant, permit holder, or successors fails to remove the towers and appurtenant facilities from the property within one hundred twenty (120) days from the date of notification by the Town Board, the Board shall contract for such removal and pay for removal from the Bond.

L. Right of Entry and Inspection:

Upon notice to the applicant, the Code Enforcement Officer or any duly authorized agent of the Town shall be allowed to enter on the property and make such inspections as deemed necessary during the construction and assembly of the WECS, and to ensure compliance with permit conditions.

M. Fees

Applications, permits, and inspection fees for WECS applicants under this article shall be as established by the Town Board of the Town of Hanover by Town Board Resolutions, as from time to time enacted.

SECTION 1609 – WECS FACILITIES MAINTENANCE

The Town Code Enforcement Officer and/or Building Inspector or outside consultant designated by the Town Board are empowered to enforce these regulations.

1. The sufficiency of the bond for removal shall be confirmed at least every year by an analysis of the cost of removal and property restoration performed by a licensed New York State professional Engineer with results to be communicated to the Town. If the bond amount in force is not sufficient to cover the cost of the removal, it shall be increased within thirty (30) days to cover such amount.
2. The Facility shall be inspected at least every two (2) years for structural Integrity by a New York licensed professional engineer and a copy of the inspection report submitted to the Town.
3. All WECS shall be maintained in good order and repair and all such work shall comply with all applicable code requirements of any governmental body issuing such rules and/or regulations.
4. No outside storage of vehicles, materials or waste shall be allowed except for the limited periods when the facility is undergoing construction, repair or maintenance.

SECTION 1610 – EXEMPTIONS

Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; (4) no increase in noise produced by the WECS, and (5) the WECS is not currently in violation of any permit condition or provision of this Local Law

SECTION 1611 – PURPOSE AND INTENT—SMALL WIND ENERGY CONVERSION SYSTEM

1. The purpose of this section is to provide standards for Small WECS designed for home, farm, and Small WECS use on the same parcel, and that are primarily used to reduce consumption of utility power at that location and not for sale off-premises.
2. Applications for Small WECS energy permits shall include:
 - a) Name, address, telephone number of the applicant. If the applicant will be represented by an agent, name, address, and telephone number of the agent, as well as an original signature.
 - 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) Address of each proposed tower location, including Tax Map section, block and lot number.
 - d) Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
 - e) 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 Uniform Fire Prevention and Building Code.
 - f) Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
 - g) 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 in the application, to connect the system to the electricity grid.
 - h) 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.
3. **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.

- a) 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.
- b) Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for the purposes of this section.
- c) Small WECS shall be used primarily to reduce the on-site consumption of electricity.
- d) Tower heights may be allowed as follows:
 - (i.) See Section 1608 E (2).
 - (ii.) 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.
- e) The maximum turbine power output is limited to 10 KW.
- f) 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.
- g) The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- h) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- i) 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 decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- j) 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.
- k) 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.
- l) 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.
- m) 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.

n) 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.

o) All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

p) All Small WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

5. **Standards.** A Small WECS shall comply with the following standards:

a) **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.

b) **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 at the closest neighboring inhabited dwelling.

6. **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 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.

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

7. A Small WECS shall be permitted only in Zoning District (A-1), Agricultural Residential.

SECTION 1612 – WIND MEASUREMENT TOWERS

1. **Wind Site Assessment.** The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer (“MET”) towers, shall be permitted on the issuance of a Special Use Permit in accordance with this section.

2. **Applications for Wind Measurement Towers.**

A. An application for a Wind Measurement Tower shall include:

a) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name,

- address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- 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) Address of each proposed tower location, including Tax Map section, block and lot number.
 - d) Proposed Development Plan and Map.
 - e) **Decommissioning Plan:** The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the Wind Measurement Tower; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the Wind Measurement Tower will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three 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. The Plan shall include the Decommissioning Bond required by this Section.
 - f) **Decommissioning Security.** The applicant, or successors, shall continuously maintain a fund or bond payable to 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 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.

3. **Standards for Wind Measurement Towers.**

- A. The distance between a Wind Measurement Tower and the property line shall be at least one and a half times the total height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Special Use Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of § 1-20.

SECTION 1613 – VIOLATIONS/PENALTIES

This article is adopted pursuant to the zoning and planning powers granted to the Town under Town Law of the State of New York and other applicable law, rule and regulation. In the event of any violation of this article or permit issued hereunder, the Town may

seek enforcement under any available authority, including but not limited to Town Law, Section 268, as from time to time amended.

Any applicant upon receipt of a Special Use Permit for a Wind Energy Conversion System Facility that substantially does not meet any of the requirements and/or conditions of that permit, shall have its permit revoked and the WECS Facility removed within one hundred twenty (120) days of notification by the Town of such violation. Nothing herein shall limit or prohibit the Town from seeking equitable or injunctive relief for a violation of this article in any court of competent jurisdiction.

SECTION 1614 – HOST COMMUNITY AGREEMENT

Nothing in this Article shall be read as limiting the ability of the Town to enter into Host Community Agreements with any applicant to compensate the Town for expenses or impacts on the community.

SECTION 1615 – 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.

SECTION 1616 - 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 1617 - MISCELLANEOUS

The amendments in this local law shall apply to any and all applications pending at the time of enactment for which final permits have not been issued.

SECTION 1618 - REPEALER

That the enactment of this local law shall act as a repealer of Local Law No. 4 of 2006 previously enacted by the Town Board of the Town of Hanover providing for wind energy conversion systems. That in the event of any conflict in local law, ordinance, rule or regulation having to do with wind energy conversion systems and wind energy facilities, the provisions of this Local Law shall prevail.

SECTION 1619 – EFFECTIVE DATE

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

Effective Date: _____