

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Somerset

Local Law No. 3 of the year 2018

A local law (Insert Title) amending the supplemental zoning regulations related to Commercial/Industrial
wind energy conversion systems.

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Somerset as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2018 of the (County)(City)(Town)(Village) of Somerset was duly passed by the Town Board of the Town of Somerset on January 29 2018, in accordance with the applicable *(Name of Legislative Body)* provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

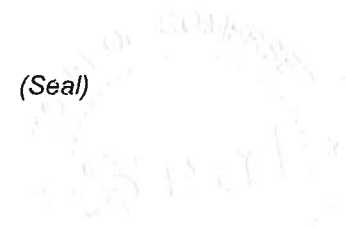
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph, 1 above.

Tracy L. Carmo

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 1/30/2018

(Seal)



A Local Law amending the supplemental zoning regulations related to Commercial/industrial wind energy conversion systems.

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

Repeal § 205-43.2 in its entirety.

Repeal § 205-43.3 in its entirety.

Repeal § 205-43.5 (E) in its entirety and replace with:

Applicability/severability. No wind facility or wind energy conversion system shall be constructed, reconstructed, modified or operated in the town of Somerset, except in compliance with this section and in compliance with all conditions of approval established by the Town Board.

- (1) This section shall not supersede Sections 205-11 BB, 205-40 A (8), or 205-55 B (8)(g) of the Somerset Town Code. If any provision of this section conflicts with any provision of the Town of Somerset Town Code other than Sections 205-11 BB, 205-40 A (8), or 205-55 B (8)(g), provisions of this Section shall apply.
- (2) If any provision, section, or requirement of this section shall be finally determined not to apply, or to be unenforceable by any court or government agency or body, then all other applicable provisions of the Somerset Town Code shall apply, including but not limited to Sections 205-11 BB, 205-40 A (8), and 205-55 B (8)(g), and any tall structures zoning law the Town may adopt.
- (3) If any provision, section or requirement of this section shall be finally determined not to apply, or to be unenforceable or void, by any court, state or federal agency having authority to so determine, it shall not affect the validity or enforceability of this section as a whole or any other part thereof.
- (4) Nothing in this section shall prevent the ability of the Town of Somerset to appeal or seek court determination of any action by any agency, tribunal, or lower court.

Repeal § 205-43.5 (H) (1) (a) and replace with:

- (a) No commercial/industrial wind energy systems shall be allowed in any zoning district other than Industrial.

Add § 205-43 (H) (1) (c):

- (c) No commercial/industrial wind energy systems shall be allowed in any area where such system or systems are likely to have a material and adverse impact on the land use plans set forth in the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara counties Regional Planning Board, dated November, 1979.

Add § 205-43 (H) (1) (D):

- (d) No Wind Energy Conversion Systems shall be allowed within three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park.

Repeal § 205-43 (H) (2) in its entirety and replace with:

- (2) Setbacks. No commercial/industrial wind energy systems shall be allowed within the following setbacks. If more than one setback applies, the most-restrictive setback shall prevail. To protect the public health and safety, the setbacks set forth in this section shall not be waived by any person or entity.

- (a) The minimum setback from any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system, shall be one-half mile or 6 times the height of the turbine, whichever is higher.

- (b) Minimum setback from any villages, hamlets, schools, churches, cemeteries shall be one mile.

- (c) Minimum setback from any structure, district, building, or site eligible for listing on the National Registry of Historic Places shall be one mile.

- (d) Notwithstanding the setbacks described in § 205-43 (H) (2) (a), the minimum setback for a residence, if greater than the setbacks described in § 205-43

(H)(2)(a), shall be the minimum distance necessary to ensure that Lmax does not exceed 6 dB above pre-existing daytime or nighttime A-weighted background noise levels. For the purposes of this subsection, Lmax shall mean the maximum instantaneous sound level modeled within a one second period. Lmax for any given distance from a wind turbine shall be modeled in accordance with ISO 9613-2, using a ground attenuation factor of zero (G=0) to compensate for the elevated height of the noise source. In addition, low frequency sound with a frequency below 63 Hz shall be modeled in accordance with ISO 9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Model output should be used to generate a map of 6 dB Lmax isolines around each proposed noise source. If the distance from the noise source to the modeled 6 dB isoline is greater than the setbacks described in subsection (H)(2)(a), the 6 dB setback described here shall apply.

Repeal §205-43.5 H (15) and replace with:

(15) The maximum total height of any WECS shall shall not exceed 200 feet under any circumstances.

Repeal §205-43.5 H (16) and replace with:

(16) Construction of the WECS shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

Repeal §205-43.5 H (27) and replace with:

(27) Noise standards for wind energy systems. No wind generation facility shall be measured or modelled to emit A-weighted sound levels in excess of the following during operation:

(a) Facilities with a plant capacity up to and including 50 kilowatts. Operation of facilities with a plant capacity up to and including 50 kilowatts shall not result in: (1) sound pressure levels that exceed 42 dBA more than 5% of the time at a distance of 100 feet from any residence or

inhabitable structure; or (2) audible prominent discrete-frequency tones pursuant to the latest revision of ANSI S1.13 Annex A at a distance of 100 feet from any residence or inhabitable structure.

- (B) Facilities with a plant capacity greater than 50 and up to and including 150 kilowatts. Operation of facilities with a plant capacity greater than 50 kilowatts and up to and including 150 kilowatts shall not result in sound pressure levels in excess of 42 dBA, including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.
- (C) Facilities with a plant capacity greater than 150 kilowatts. Operation of facilities with a plant capacity greater than 150 kW shall not result in sound pressure levels in excess of 42 dBA between the hours of 7 A.M. and 9 P.M. or 35 dBA between the hours of 9 P.M. and 7 A.M., including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.
- (D) Modeling sound levels. Modeled sound levels for a proposed facility shall not exceed the limits set forth in this section. The sound impact of any proposed wind turbine shall be modeled such that broadband sound is modeled in accordance with ISO 9613-2, assuming no ground attenuation ($G=0$). In addition, low frequency noise with a frequency lower than 63 Hz shall be modeled in accordance with ISO9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Sound modeling shall include and report L_{max} sound levels that could be generated by the project, and such report shall include a map of isolines representing L_{max} sound levels at 1 dB intervals up to and including 6 dB for each proposed wind turbine.

Add §205-43.5 H (33)

- (33) All electrical transmission lines associated with WECS shall be buried underground to the maximum extent physically possible. Where above ground transmission

lines must be installed, guy wires or similar support structures shall be prohibited.

This law shall be effective upon filing with the Office of the Secretary of State.