

Local Law Filing

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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.

Town of Van Buren

Local Law No. 8 of the year 2008.

A local law to add a new Chapter 196 to the Code of the Town of Van Buren to provide for the
(Insert Title)
construction, operation and regulations of small wind energy systems in certain
Agricultural and residential districts.

Be it enacted by the Town Board of the
Town of Van Buren as follows:

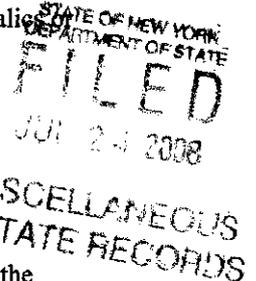
1. The Code of the Town of Van Buren is hereby amended to add a new Chapter 196, to read as follows:

CHAPTER 196

WIND ENERGY SYSTEMS

§ 196-1. Purpose/Definitions

1. Purpose: The purpose of this Chapter is to regulate the placement, construction, and modification of small wind energy systems while promoting the safe, effective and efficient use of such systems. These regulations relate to small wind energy systems and do not address large-scale wind turbines (wind farms) which are typically intended to sell energy directly to power companies or retail users.
2. Findings:
 - a. The Town Board of the Town of Van Buren 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 the Town's 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 Van Buren further finds and declares that the 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 for preserving the aesthetics of the community.

3. Definitions of terms:

- a. Small Wind Energy System: A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics which has a rated capacity of no more than 15kW for single-family residential use only and no more than 125kW for farming applications, and is not for resale to any other individual and/or commercial entity. Commercial wind energy systems are not addressed within this Chapter.
- b. System Height: With regard to a small wind energy system, the combination tower height plus blade length.
- c. Tower: With regard to a small wind energy system, the structure on which the wind turbine is mounted.
- d. Tower Height: With regard to a small wind energy system, the height above grade of the fixed portion of the tower.
- e. Turbine: The parts of a small wind energy system including the blades, generator and tail.
- f. Radio, Television, Telephone and Wireless Internet Systems: Commercial towers and structures that support the transmission of radio, television, telephone and wireless internet signals.

§ 196-2. Permits

1. Required Permits: No person, firm or corporation, or other entity being the owner or occupant of any land or premises within the Town of Van Buren shall use or permit the use of land or premises for the construction of a tower for an on-site small wind energy system without first obtaining a special use permit from the Zoning Board of Appeals and site plan approval from the Planning Board.
2. Special Use Permit: In addition to the criteria established pursuant to § 196-2(1), the following criteria are hereby established for purposes of granting a special use permit for a small wind energy system:
 - a. Ownership: Ownership of the small wind energy system must be the same as the owner of the fee interest in the real property upon which it is located. In the event of transfer of ownership of the property, the ownership of the small wind energy system must also be transferred to the new owner or the tower must be decommissioned.
 - b. Zoning district/lot requirements: Small wind energy systems are permissible in the AR-80 and R-40 districts only. A small wind energy system shall not be allowed on

any parcel unless a main structure occupied by inhabitants more than twenty-five percent (25%) of the time exists thereon. In any event, there shall be no more than two (2) small wind energy systems per parcel for farming applications in the AR-80 district and no more than one (1) small wind energy system per parcel in the R-40 district.

- c. Net Metering Requirements: The applicant shall certify that he/she will comply with the requirements contained in the New York State net metering law and accompanying regulations unless the applicant intends, and so states on the application, that the small wind energy system will not be connected to the utility grid.
 - d. Proximity to Radio, Television, Telephone and Wireless Internet Systems: Small wind energy systems shall not be located in any area where their proximity interferes with existing fixed broadcast, retransmission, or reception antennae for radio, television, or any microwave transmission systems such as cell phone towers or wireless internet transmission systems.
 - e. Noise Limitations: Noise emanating from small wind energy systems shall not exceed fifty (50) decibels, as measured at the closest property line. The maximum noise level may be exceeded during short-term events such as severe storms involving high wind speeds (<30 MPH).
 - f. Height: The height of the tower shall not exceed eighty (80) feet for residential applications and one hundred fifty (150) feet for farming applications measured from the ground to the top of the highest point with the blade tip rotated to its highest vertical point.
 - g. Lightning Protection: All small wind energy systems shall have lightning protection.
 - h. Utility Service: All power lines from the wind turbines to the interconnection equipment must be located underground, must meet all applicable national and state electrical codes and must be recorded with the New York Underground Facility Protection Organization (UFPO).
3. Setbacks: Small wind energy systems shall comply with all setbacks within the affected zoning district, in addition to the requirements listed below. If setback requirements overlap between the affected zone and this Chapter, the more stringent requirement(s) supersede:
- a. All towers will be placed in the rear yard;
 - b. Setback distances shall be equal to one hundred and twenty-five percent (125%) of the tower height plus the blade length from all adjacent property lines;
 - c. Setback distances shall be equal to one hundred and twenty-five percent (125%) of the tower fall/collapse zone from any dwelling inhabited by humans on the proposed site; and

- d. Anchor points for guy wires for the on-site use of a small wind energy system tower shall be located no closer than five (5) feet from the property line and shall not be placed on or across any above-ground electric transmission distribution lines.

§ 196-3. Site Plan Review

1. Site Plan Review: The following submission guidelines and requirements must be observed for the site plan approval process:

- a. Tower Design

- i. The tower shall be designed to handle the maximum potential load as certified by a New York State licensed engineer. In addition, under no circumstances shall the height of the system exceed the height recommendations specified by the manufacturer of the system.
- ii. The minimum distance between the ground and the turbine blades must be twenty-five (25) feet, measured at the lowest point of the blade arc.
- iii. The tower shall maintain a galvanized finish.
- iv. No wind tower, turbine, building or other structure associated with a small wind energy system may be used to advertise or promote any product or service. A weather-resistant sign plate no greater than two (2) square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Code Enforcement Officer. Such sign shall also warn of electrical shock or high voltage. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building or other structure associated with a small wind energy system so as to be viewable from any public road.
- v. The small wind energy system shall not be artificially lighted unless required by the Federal Aviation Administration or other appropriate authority with jurisdiction. The use of stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration may be subject to on-site field testing before the Planning Board as a prerequisite to the Board's site plan approval, with notice to be provided to existing residential uses within two thousand (2,000) feet of each tower for which such strobe lighting is proposed.
- vi. The tower shall be enclosed with a six (6) foot tall fence or the base of the tower shall not be climbable for a distance of fifteen (15) feet from the base of the tower.
- vii. To the greatest extent possible, existing roadways shall be used for access to the tower. In case any new roadways must be constructed to access the small wind energy system, they shall be constructed in such a way as to allow for the passage of emergency vehicles in the event of an emergency. Each application shall be accompanied by correspondence from the responding fire department

and emergency care provider as to the acceptability of the proposed ingress and egress to the tower.

- viii. The small wind energy system shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, turbine components or enclosed shelter. The applicant shall file a document explaining how the small wind energy system may be shut down in case of an emergency with the Town of Van Buren Code Enforcement Office.
- b. Plot plan and development drawings prepared by a New York State licensed engineer that describe all of the following:
 - i. Property lines and physical dimensions of the proposed site, including contours at five (5) foot intervals;
 - ii. Location, dimensions and types of all existing structures and uses on the site;
 - iii. Location and elevation of the proposed on-site small wind energy system;
 - iv. Location and size of structures or trees above thirty (30) feet within a five hundred (500) foot radius of the proposed small wind energy system;
 - v. Location of all roads and other service structures proposed as part of the installation;
 - vi. Location of all existing above-ground utility lines, transmission towers and existing small wind energy systems within one thousand two hundred (1,200) linear feet of the site;
 - vii. Where applicable, the location of all transmission facilities proposed for installation;
 - viii. Soil type at construction site along with an engineering analysis of the tower showing compliance with the Uniform Statewide Building Code;
 - ix. Line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information can be supplied by the manufacturer;
 - x. Compliance with the requirements contained in the New York State net metering law and accompanying regulations unless the applicant intends, and so states on the application, that the small wind energy system will not be connected to the utility grid;
 - xi. Wind survey or other substantiation demonstrating that proposed site is capable of meeting the manufacturer's specified electrical output. Any such wind survey or other substantiation must be conducted at the exact proposed construction site so as to demonstrate the existence of sufficient wind to power the system;
 - xii. Landscape plan showing all existing natural land features, trees, forest cover, and all proposed changes to these features, including size and type of plant material; and

- xiii. A full environmental assessment form, including a visual impact analysis. The following additional material may be required by the Planning Board:
 - (1) Digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three (3) miles from the center of the project. Scaled use shall depict a three (3) mile radius as not smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features.
 - (2) No fewer than four (4) color photographs taken from locations within a three (3) mile radius from the proposed location, as selected by the Planning Board, and computer enhanced to simulate the appearance of the as-built aboveground small energy system site facilities as they would appear from these locations.
2. **Public Hearing:** No action shall be taken by the Planning Board to issue a site plan approval until after a public notice and hearing. Notice of the public hearing shall be published in the official newspaper of the Town of Van Buren at least five (5) days before the date set for such hearing(s), and written notice of the hearing shall be mailed to the applicant or his/her agent at the address provided in the application at least twenty (20) days before such hearing. The applicant, in turn, shall be responsible for notifying, by certified mail, all property owners of record within three hundred (300) feet of the boundary line of the property to which the application relates of the time, date and place of such public hearing at least ten (10) days prior to such hearing. Notice shall be deemed to have been given if mailed to the property owner at the tax billing address listed on the property tax records of the Town Assessor. At least seven (7) days prior to such public hearing, the applicant shall file with the Planning Board an affidavit verifying that notice was properly mailed to nearby property owners. Failure of the property owners to receive such notice shall not be deemed a jurisdictional defect.
3. **Waiver:** The Planning Board may, under appropriate circumstances, waive one or more of the submission requirements contained herein.

§ 196-4. Insurance and Oversight

1. **Insurance:** Prior to the issuance of any special use permit under this Chapter, the applicant shall provide the Zoning Board of Appeals proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, that liability insurance has been obtained to cover any property damage or personal injuries which might result from the failure of the small wind energy system or any part thereof. In the event of a transfer of ownership of the property containing a small wind energy system, the new owner shall be required to provide the Zoning Board of Appeals proof that it has obtained the requisite property and personal liability insurance coverage under this Section. An insurance policy issued under this section shall provide for notice to the Zoning Board of Appeals in the event that such policy is cancelled. Such insurance policy may be an

existing homeowners' or farm insurance policy for the property on which the small wind energy system is to be located. The Town Board, in consultation with the Town of Van Buren's insurers, may set the level of insurance required under this Section at whatever level it deems adequate.

2. Power to Impose Conditions: In granting any site plan approval, special use permit or variance for an on-site small wind energy system, the Zoning Board of Appeals or Planning Board, as the case may be, may impose reasonable conditions to the extent that such Board finds that these conditions are necessary to minimize any adverse effect or impact on neighboring properties or on the community.
3. Fees: Fees for applications and permits under this Chapter shall be established by resolution of the Town Board of the Town of Van Buren.
4. Inspections: The Code Enforcement Officer shall have the right at any reasonable time to enter, in the company of the owner or his/her agent, the premises on which a small wind energy system is being or has been constructed to inspect all components of the installation. When practicable, the Code Enforcement Officer shall provide the owner with written notice of his/her intent to conduct an inspection at least twenty-four (24) hours before such inspection. Upon inspection, the Code Enforcement Officer may order the owner to make repairs or alterations to the system in the event that the system is deemed deficient or dangerous, and may order that the wind energy system cease operation until such repairs or alterations are made. In the event that the wind energy system is deemed to pose an immediate danger to life or property, the Code Enforcement Officer shall have the right to enter the property forthwith, without the owner being present, and to take such action as is deemed reasonably necessary to eliminate such danger.
5. Failure to Repair: In the event the owner of a small wind energy system fails to make the repairs or alterations requested by the Code Enforcement Officer within six (6) months, the Code Enforcement Officer shall order the owner to remove the wind turbine and all accessory structures from the property within forty-five (45) days. If the owner fails to remove the tower within such time, the Town shall arrange to have the wind turbine and all accessory structures removed. The total expense of such removal shall constitute a lien on the real property on which the wind turbine and accessory structures were located until paid or otherwise satisfied or discharged.
6. Nonuse: If any small wind energy system is not operated for a continuous period of twelve (12) months, the Town will notify the owner by registered mail and provide forty-five (45) days for a response.

- a. In the response, the owner shall set forth reasons for the operational disruption and provide a timetable for corrective action. Such timetable for corrective action shall not exceed forty-five (45) days.
 - b. If the owner is unable to place the small wind energy system back in service on or before one hundred and twenty (120) days from the date the Town mailed the notice required under this section, the owner shall remove the wind turbine and all accessory structures from the site, as well as restore the site to its original condition, within thirty (30) days. Failure to remove the wind turbine/accessory structures and restore the site in accordance with these regulations shall be a violation of this Chapter. In the event the owner fails to remove the wind turbine/accessory structures and restore the site as required by this section, the Town may arrange to have such work completed. The total expense of such work shall constitute a lien on the real property upon which the wind turbine and accessory structures were located until paid or otherwise satisfied or discharged.
7. Penalties: 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. For purposes of imposing a fine under this subdivision, a person shall be guilty of a separate and additional violation for each day he fails to correct a violation of any provision of this Chapter.

§ 196-5. Severability

1. Severability: If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.
2. This Chapter shall take effect immediately upon filing in the office of the Secretary of State.

(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. 8 of 2008 of the Town of Van Buren was duly passed by the Town Board on 7-15, 2008, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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.

Lynn Precourt

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

(Seal)

Date: 7-15-08

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

[Handwritten Signature]

Attorney for the Town
Title

Town of Van Buren

Date:

7-15-08