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Test 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 Busti

Local Law No. 4 of the year 2011

Be it enacted by the TOWN OF BOARD of the
Town of BUSTI

Local Law No. 4 for the year 2011 of the Town of Busti, County of Chautauqua and State of New York.

Town of Busti
Local Law No. 4 of 2011
Small Wind Turbines

Be it enacted by the Town of Board of the Town of Busti, County of Chautauqua and State of New York, as follows:

SECTION 1. AUTHORITY.

The Town Board of the Town of Busti adopts this Local Law under the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(6) and (10);
2. New York Statute of Local Governments, §10(1), (6), and (7);
3. New York Municipal Home Rule Law, §10(1)(1) and (ii) and §10(l)(a)(6), (11), (12), and (14);
4. The super session authority of New York Municipal Home Rule Law, §10(2)(d)(3);
5. New York Town Law, Article 16 (Zoning);
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines); and
7. New York Town Law §64(17-a)(protection of aesthetic interests) and (23)(General Powers).

SECTION 2. SMALL WIND TURBINES LAW.

Local Law No. 3 of 2011, entitled the "SMALL WIND TURBINES LAW", is hereby adopted to add a new Section 91-809 to the Zoning Code of the Town of Busti, which shall read in its entirety as follows:

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STATE RECORDS

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DEPARTMENT OF STATE

Section 91-809. Small Wind Turbines

1. **Purpose.** It is the purpose of this subsection to promote the safe, effective and efficient use of Small Wind Energy Systems installed to reduce the on-site consumption of utility-supplied electricity, while providing reasonable controls to protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system.

The Town of Busti recognizes that privately-owned small wind turbines are non-polluting, help reduce reliance on fossil fuels, help reduce public utility electrical demand and contribute to the efficiency of the utility grid.

The Town of Busti further recognizes that small wind turbines are substantively different from commercial wind farms and from commercial cellular or radio towers as they are designed to supply electrical power for the owner and are not typically revenue-generating ventures. The much larger-scale wind turbines and wind farms intended to sell energy directly to power companies or retail users are not permitted uses under the Town of Busti Zoning Code.

2. **Findings.** The Town of Busti finds that wind energy is an abundant, renewable, and non-polluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decreases the air and water pollution that results from the use of conventional energy sources. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the local energy supply portfolio. Small wind systems also make the electricity supply market more competitive by promoting customer choice.

A number of laws and programs encourage the use of small-scale renewable energy systems including rebates, net metering, tax credits, and other incentives. However, many existing local zoning laws fail to permit such systems or contain restrictions, which, while not intended to discourage the installation of small wind turbines, can substantially increase the time and costs required to obtain necessary construction permits.

Therefore, we find that it is necessary to standardize and streamline the proper issuance of building permits for Small Wind Energy Systems so that this clean, renewable energy resource can be used in a cost-effective and timely manner.

3. Permits.

A. No Small Wind Energy System shall be constructed, modified, or operated in the Town of Busti except by obtaining a permit therefore as provided in this subsection.

B. If the applicant for a Small Wind Energy System can demonstrate that the proposed system meets all the requirements set out in Subsections 6 and 7 hereof, the Code Enforcement Officer may issue a Small Wind Energy Facility Permit for the system.

C. The Town of Busti Planning Board shall have sole discretion to review, consider, and issue a permit for all other proposed Small Wind Energy Systems that cannot meet the development and construction standards hereof. The Planning Board may, after a public hearing, so long as the waiver request is detailed in the public notice, grant a waiver from the strict application of the provisions of this subsection if, in the opinion of the Planning Board, the grant of said waiver is in the best interests of the Town. The Planning Board may consider as reasonable factors in evaluating the request, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request. The Planning Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

4. Where Permitted. Small Wind Energy Systems shall be a permitted use in the Conservation-Residential (CR), Conservation-Agricultural (CA), CAMP, Industrial (I), and Light Manufacturing & Research & Development (LMR) Districts, subject to the requirements set out below:

5. Application for Permit. An application for a Small Wind Energy System shall be submitted to the Town of Busti Code Enforcement Office on the form provided by it and shall include:

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

B. Name, address and 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:

(1) Confirming that the property owner is familiar with the proposed applications; and

(2) Authorizing the submission of the application.

C. Address of each proposed tower site, 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 plot plan drawn to scale to the extent possible and in sufficient detail to show the proposed location of the Small Wind Energy System in relation to all structures, property lines, and public roads within a 500 foot radius of the system, including a circle drawn around the proposed location depicting the setback requirements set out below.

F. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code of the Town of Busti and the New York State Building Code.

6. Developmental Standards.

A. Tower height. Tower height shall not exceed 120 feet and shall be exempt from any other height restrictions of this Zoning Code. To prevent wind turbulence harmful to the Small Wind Energy System, the minimum height of the lowest part of any horizontal or vertical axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a radius of 250 feet. The Planning Board may modify this requirement if the applicant demonstrates that a lower height or smaller radius will not jeopardize the safety of the wind turbine structure.

B. Setbacks. The following standards shall apply to Small Wind Energy Systems:

(1) A Small Wind Energy System shall be set back from the property line of abutting property a distance of no less than 1.5 times the total system height.

(2) No part of the wind system structure, including guy wire anchors, may extend closer than 10 feet to the property boundaries of the installation site.

(3) A small wind energy system shall be set back from the nearest public road a distance no less than 1.5 times the total system height, or 100 feet, whichever is greater.

(4) There shall be no habitable structures on the applicant's property within the fall zone.

C. Number of Systems. No lot under 5 acres in size shall contain more than one Small Wind Energy System.

D. Noise. Small wind energy systems shall not exceed 50 DBA, as measured at the closest neighboring inhabited dwelling at the time of installation, except during short-term events such as severe wind storms and utility outages.

E. Compliance with New York State Uniform Building Code. The application for a Small Wind Energy System shall be accompanied by standard drawings of the wind turbine structure, including the tower, base and footings. An engineering analysis of the tower showing compliance with the New York State Uniform Building Code and certified by a licensed professional engineer shall also be submitted. This requirement may be satisfied by documentation presented by the manufacturer.

F. Compliance with National Electric Code. The application for a Small Wind Energy System shall be accompanied by a line drawing of the electrical components on a plot plan in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This requirement may be satisfied by documentation supplied by the manufacturer.

G. Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. The allowed height shall be reduced 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.

H. Utility notification. No Small Wind Energy System shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

I. **Liability Insurance.** Prior to the construction of any Small Wind Energy System, and on an annual basis thereafter, the owner shall provide 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 damage or injury which might result from the use of the system or any part thereof.

7. Construction Standards.

A. Exterior lighting on any structure associated with the Small Wind Energy System shall not be allowed, except that which is specifically required by the Federal Aviation Administration.

B. The system's tower and blades shall be a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to

the greatest extent possible and shall incorporate non-reflective surfaces to minimize any visual disruption.

C. 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.

D. At least one sign shall be posted on the tower at a height of five feet warning of potential electrical shock or high voltage and potential harm from revolving machinery.

E. 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.

F. Towers shall be constructed to provide one of the following means of access control or other appropriate method of access:

(1) Tower-climbing apparatus located no closer than 12 feet from the ground; and

(2) A locked anti-climb device installed on the tower (if tower is a climbable type).

G. 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 sheathed in bright orange or yellow covering from three to eight feet above the ground.

H. All small wind energy systems shall be equipped with manual and automatic overspeed controls. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.

8. Abandonment of Use. A Small Wind Energy Systems that is not used for 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 permit shall constitute grounds for the revocation of the permit by the Building Department.

9. **Inspection.** The Code Enforcement Officer or his designated representative shall have the right at any reasonable time to perform an inspection of a Small Wind Energy System, after conducting the inspection, the Code Enforcement Officer may order the owner to render the system inoperative for reasons related to assuring safety of operations or abating noise. The owner shall not return the system to service until any and all of the reasons which caused the Code Enforcement Officer to issue the order to the owner to make the system inoperative have been corrected. Prior to allowing a system to resume operations, the Code Enforcement Officer may require the owner to have an inspection made and a report issued by a professional engineer licensed in the State of New York, certifying that the system is safe.

10. Fees.

A. In addition to any fee schedule adopted by the Town of Busti Town Board, there shall be non-refundable application fee as follows:

1. Small Wind Energy System: \$100.00 per application.

B. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

11. Enforcement; Penalties and Remedies for Violations.

A. The Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this Section.

B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the code enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$500 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a First offense, for a Second offense (both within a period of five years), a fine not less than \$500 nor more than \$750, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than \$750 nor more than \$ 1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

SECTION 3. DEFINITIONS

The following definitions are hereby added to Section 91-202 of the Town of Busti Zoning Code, in the appropriate alphabetical order:

BEHIND THE METER - A generating system producing electrical power for use on a grid-connected property, but which system may or may not be capable of sending power back into the utility grid.

FALL ZONE – The area, defined as the farthest distance from the tower base, in which a wind turbine tower will collapse in the event of a structural failure. The radius of the area is the same as the total system height.

OFF-GRID - A stand-alone generating system not connected to or in any way dependent on the utility grid.

SMALL WIND ENERGY SYSTEM - A wind energy conversion system (WECS) consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 300 kW, and which is primarily but not exclusively intended to provide electrical power for use on-site (either behind the meter or off-grid).

TURBINE - The parts of a wind system including the rotor, generator and tail.

TOTAL SYSTEM HEIGHT - The height from ground level to the tip of the rotor at its highest point.

WIND TURBINE TOWER - The guyed or freestanding structure that supports a wind turbine generator.

WIND TURBINE TOWER HEIGHT - The height above grade of the fixed portion of the wind turbine tower, excluding the wind turbine and rotor.

SECTION 4. SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional, unenforceable by a court of law, all unaffected provisions hereof shall survive such

declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

SECTION 5. EFFECTIVE DATE.

This Local Law shall take effect immediately upon having been filed with the Secretary of State of the State of New York.

Upon roll call vote:

Supervisor Kathleen A. Sullivan, aye

Councilman Jesse M. Robbins, aye

Councilwoman Marsha L. Hern, aye

Councilman Richard A. Sanders, aye

Councilman Kenneth J. Lawton, aye

Diane M. VanDewark

Town Clerk

(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. 4 of 2011, of the Town of Busti was duly passed by the Town Board on October 17, 2011 in accordance with the (Name of Legislative Body) applicable 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) (repassed) (*Name of Legislative Body*) after disapproval) by the and was deemed duly adopted , 20 (*Elective Chief Executive Officer*•) 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 , was (approved) (not approved) (repassed) after (*Name of Legislative Body*) disapproval) by the on 20 . Such local law was submitted (*Elective Chief Executive Officer*•) 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 , 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) (repassed) (*Name of Legislative Body*) after disapproval) by the on , 20 . Such local law was subject to (*Elective Chief Executive Officer*•) 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 countywide 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 there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph __1__, above.

Debra M. VanDewark
Clerk: of the County legislative body,
City, Town or Village Clerk: or officer
Designated by local legislative body
Date: October 21, 2011

(Seal)

(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 CHAUTAUQUA

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.

Joel H. Seachrist
Signature: Joel H. Seachrist, Town Attorney
Town of Busti
Date: October 28, 2011