

*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.

Town of LaFayette

Local Law No. \_\_\_\_\_ of the year 2023.

A local law to amend Chapter 290 (Zoning) of the Code of the Town of LaFayette by adding  
(Insert Title)  
new section 290-25.1 regulating the installation and operation of large wind energy systems

Be it enacted by the Town Board of the

Town of LaFayette as follows:

**Section 1.** Chapter 290, § 290-25.1 of the Code of the Town of LaFayette entitled “Wind energy systems, large” is hereby added to read in its entirety as follows:

**§ 290-25.1 Wind energy systems, large.**

A. Intent. This section is designed to properly regulate and site large wind energy systems and, thus, deal with potential problems they can create, including aesthetic impacts, drainage problems, harm to farm operations, a risk to bird and bat populations, risks to the property values of adjoining properties, significant noise, traffic problems during construction, and electromagnetic interference with various types of communication. Exemption(s):

(1) The substantive and procedural requirements of this section shall not apply to any large wind energy system that is governed by Article 10 of the Public Service Law of NYS, as currently in effect and as hereafter amended from time to time. New York State regulations currently govern who reviews and approves of the installation of large wind energy systems as follows:

- i. Projects under 20 MW: Local review.
- ii. Projects between 20 MW to 24.9 MW: May opt into State review via § 94-c of the New York Public Service Law or Local review.
- iii. New Projects 25 MW or more: State review via § 94-c of the New York Public Service Law.

B. Specific definition.

Large Wind Energy System - A wind turbine, or group of wind turbines in a facility, whose purpose is to generate electricity that is fed into a power grid for sale to an electric utility or for use by more than one individual residence or farm. This excludes small systems for residential, agricultural, and small commercial use where the system produces energy exclusively for a single residence or farm which are governed by § 290-25.

- C. Use classification. A large wind energy system shall be classified as an accessory use at a lot of record.
- D. Application. In addition to the application requirements for a special use permit from the Town Board pursuant to the criteria set forth in § 290-38(D) of this Code, an application for a large wind energy system shall include the following additional information:
- (1) Construction plan. A detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment and loads to be transported; identification of temporary facilities intended to be constructed and contact agent in the field with name, email address and telephone number.
  - (2) Decommissioning and site restoration plan. A decommissioning and site restoration plan that shall identify the lot(s) of record it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the site to the condition existing prior to establishment of the commercial large wind energy system. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  - (3) Description. A description of the project, including the number of large wind energy systems, data pertaining to each tower's safety and stability, including safety results from test facilities and certification from the turbine manufacturer that the turbine is manufactured to operate at safe speeds, and, for each large wind energy system, the make, model, a picture, and manufacturing specifications, including noise decibel data and maximum rated capacity.
  - (4) Emergency response plan. A detailed emergency response plan created in consultation with the emergency response agency(ies) having jurisdiction over the site. The proposed plan may include, but is not limited to, the following:
    - (a) Fireproof or fire-resistant building materials.
    - (b) Buffers or fire-retardant landscaping.
    - (c) Availability of water.
    - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment.
    - (e) Provision of training and firefighting equipment for local fire protection personnel.
  - (5) Engineering report. This shall be prepared by a professional engineer and provide information regarding:
    - (a) Ice throw. The report shall calculate the maximum distance that ice from the turbine blades could be thrown.
    - (b) Blade throw. The report shall calculate the maximum distance that pieces of the turbine blades could be thrown.
    - (c) Catastrophic tower failure. The report shall include a statement from the turbine manufacturer detailing the wind speed and conditions that the turbine is designed to withstand.
    - (d) Certification that the foundation and tower design are sufficient to withstand wind-loading requirements for structures as established by the Uniform Code.

- (6) FAA notification. A copy of written notification to the FAA pertaining to the installation of a large wind energy system.
- (7) Insurance. Proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with the construction and operation of the proposed project. The Town shall be named as an additional insured under the general liability policy of the applicant.
- (8) Landscaping plan. A landscaping plan prepared and sealed by a registered design professional showing the current vegetation, describing the area to be cleared, listing the specimens proposed to be added, and detailing regrading and restoration measures to be taken after construction according to NYSDAM and NYSDEC guidelines. The plan should also include details pertaining to erosion and sediment control as well as stormwater management pursuant to any applicable regulation of the NYSDEC.
- (9) NYSERDA. Evidence from NYSERDA that the site is feasible for commercial wind energy generation.
- (10) Site plan. A site plan prepared and sealed by a licensed land surveyor or registered design professional drawn in sufficient detail to clearly show the following:
  - (a) Lot lines, physical dimensions of the site, and the location, dimensions and types of existing structures and uses on the site.
  - (b) Roads, whether private or public.
  - (c) Adjoining properties within 500 feet of the site, including zoning designations, residences, schools, churches, hospitals, and libraries within 1,000 feet of each tower.
  - (d) The proposed location, elevation, and total height of each large wind energy system.
  - (e) Aboveground and underground utility lines within a radius of 1.5 times the total height of the large wind energy system.
  - (f) Setback lines.
  - (g) All other proposed facilities on the site, including transformers, electrical lines, substations, storage or maintenance units, ancillary equipment or structures, transmission lines, and fencing.
  - (h) Federal, state, county or local parks, recognized historic or heritage sites, state and federal identified wetlands, or important bird areas within a radius of 10 miles, as identified in federal, state, county, local or New York Audubon's GIS databases or other generally available documentation.
  - (i) In granting site plan approval, the Planning Board may impose other conditions and restrictions deemed necessary for the maintenance and safety of such towers and/or to preserve and protect the character of the neighborhood and health, safety, and welfare of the community.
- (11) Studies. Studies prepared by a qualified person on:
  - (a) Agricultural mitigation. An analysis detailing the agricultural mitigation needed to restore a farm operation disturbed by a large wind energy system. The applicant shall solicit input from the NYSDAM on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.
  - (b) Avian impact. An analysis of bird and bat migration, nesting, and habitat that would be affected by the proposal. The applicant shall solicit input from the NYSDEC on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.

- (c) Cultural resources. An analysis describing the potential impacts of the project upon cultural resources as identified by NYSOPRHP. Such study shall be approved by such state office and include any follow-up study or assessment recommended by NYSOPRHP.
- (d) Electromagnetic interference. An analysis of the potential for electromagnetic interference with microwave, radio, television, personal communication systems, 911, and other wireless communication. A copy of the written notification to all communication operators within two miles of the project shall be attached to such study.
- (e) Fiscal and economic impact. A property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on the value of lots of record adjoining the project site.
- (f) Geotechnical impact. An analysis of soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing, foundation design criteria for all proposed structures, slope stability analysis, grading criteria for ground preparation, cuts and fills, and soil compaction.
- (g) Land use and water impacts. An analysis detailing potentially impacted wetlands, surface water and groundwater resources, and the geology and land use of the site.
- (h) Noise. A noise analysis that shall include a description and map of the project's noise-producing features and the noise-sensitive environment, including the range of noise levels and the tonal and frequency characteristics expected at the nearest property lines surrounding the proposed project. The analysis shall compare expected project noise levels to the maximum sound levels specified under (E)(9). The applicant shall solicit input from the NYSDEC on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.
- (i) Shadow flicker. An analysis that shall identify locations where shadow flicker may interfere with residences and roadways and the expected duration of the flicker. The study shall identify measures that shall be taken to eliminate or mitigate the problem, which may include ceasing operation during periods when shadow flicker effects are at their greatest.
- (j) Visual impact. An analysis that shall include a computerized photographic simulation showing the site fully developed and demonstrating any visual impacts from key observation points (KOPs). KOPs are points on a travel route within a three-mile radius and other likely observations points on private property within a one-mile radius from the center of the project. KOPs will be selected in consultation with and approval of the Planning Board. The applicant shall solicit input from the NYSDEC on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.
- (12) Transportation plan. A preliminary transportation plan describing ingress and egress to the proposed project site to deliver equipment and provide access during and after construction. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, as well as measures which will be taken to restore damaged or disturbed access routes following construction. A copy of the written notification to all local, state and/or federal transportation agencies shall be included in such plan.
- (13) Large wind energy system drawings. Vertical drawings of all large wind energy systems, showing total height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, and the location of climbing pegs and access doors. One drawing may be submitted for each large wind energy system of the same type and total height.

E. Standards.

- (1) Advertising. No advertising shall be allowed on any part of the large wind energy system, including the fencing and support structures. No lettering, company insignia, brand names, logo, or graphics shall be allowed on the tower or blades. Reasonable identification of the large wind energy system by the manufacturer and owner is permitted.
- (2) Ecosystems and animals. Large wind energy systems may not cause any violations of the Endangered Species Act or of NYS endangered species regulations.
- (3) Interference with electromagnetic communications, radio signals, microwave and television signals. No large wind energy system shall be installed in any location absent sufficient proof being submitted to the Planning Board that the system's proximity to microwave communications, fixed broadcast, retransmission or reception antenna for radio, wireless phone, or other personal communications systems will not produce substantial electromagnetic interference with signal transmission or reception. Any interference with television signals shall be mitigated.
- (4) Colors and surfaces of large wind energy system. Colors and surface treatment of all large wind energy systems shall minimize visual disruption by using white, beige, off-white, gray or another nonreflective, unobtrusive color unless mandated otherwise by the FAA.
- (5) Landscaping. Subject to the owner's preference, the landscaping of the large wind energy system should be appropriate to screen accessory structures from roads and adjacent residences. It should be designed to minimize the impacts of land clearing and loss of open space.
- (6) Lighting.
  - (a) Large wind energy systems shall comply with all applicable FAA requirements for air traffic warning lights.
  - (b) No artificial lighting shall be allowed on large wind energy systems except to the extent required by the FAA or other air safety authority. Minimal ground level security lighting is permitted.
- (7) Minimum lot size. A large wind energy system shall be installed on a lot of record equal to or greater than 20 acres.
- (8) Operation.
  - (a) Maintenance. The owner of the large wind energy system shall submit an annual report of operations and maintenance to the Town.
  - (b) All large wind energy systems shall be maintained in operational condition meeting all of the requirements of this section at all times, subject to reasonable maintenance and repair outages. If the large wind energy system becomes inoperative, damaged, unsafe, or violates a standard, the owner shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer may extend the period by 90 days.
  - (c) If the large wind energy system is not repaired or brought into compliance within the time frame stated above, the Town may, after a public hearing, order remedial action or revoke the special use permit and order removal of the large wind energy system within 90 days.
  - (d) Inspections. All large wind energy systems shall be inspected annually for structural and operational integrity by a registered design professional. The Town has the right to enter the lot of record containing a large wind energy system at any reasonable time to inspect the large wind energy system.
- (9) Noise.

- (a) The noise level generated by a large wind energy system shall not exceed 45 dBA for more than six minutes out of any one-hour time period, nor exceed 50 dBA for any time period, as measured at the lot line of a nonparticipating lot of record.
  - (b) In the event that audible noise due to large wind energy system operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Subsection E(9)(a) 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 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.
  - (c) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard may 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 DB 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-generating noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbines' operation, provided that the wind velocity does not exceed 30 miles per hour at the ambient noise measurement location.
  - (d) The noise level generated by a large wind energy system shall not increase ambient sound levels by more than three dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, within 2,500 feet of the participating lot of record.
  - (e) Independent certification shall be required after construction demonstrating compliance with this noise standard.
- (10) Safety.
- (a) The minimum distance from the ground to the rotor blade tips shall not be less than 50 feet.
  - (b) Large wind energy systems shall not be climbable up to 15 feet above the ground. This can be achieved through anticlimbing devices or a fence around the tower with locking portals at least six feet high.
  - (c) All access doors on towers or to electrical equipment shall be locked or fenced.
  - (d) There shall be clearly visible signs on all large wind energy systems, electrical equipment, and wind energy facility entrances warning of electrical shock or high voltage and harm from revolving machinery. Signage shall also include twenty-four-hour emergency contact information.
  - (e) Each large wind energy system shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the large wind energy system. No large wind energy system shall be permitted which lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
  - (f) All structures which may be charged with lightning shall be grounded according to the NEC.
- (11) Setbacks.
- (a) Each large wind energy system shall be set back 1.5 times its height from all existing residences on a

nonparticipating owner's lot of record.

- (b) Each large wind energy system shall be set back two times its height from the nearest school, hospital, place of worship, or public library.
  - (c) Each large wind energy system shall be set back 1.5 times its height from all lot lines, overhead utility or transmission lines, other towers, electrical substations, meteorological towers, and roads.
  - (d) Each large wind energy system shall be set back 1.5 times tower height from all structures and buildings other than residences on a nonparticipating owner's property.
  - (e) Waivers. Setbacks may be waived by the designated approval authority if there is written consent from the affected owner(s) stating that he/she/they are aware of the large wind energy system and the setback limitations imposed by this section and that his/her/their consent is granted to allow reduced setbacks. However, in order to advise all subsequent owners of the burdened property, the consent shall be in the form required for an easement describing the benefitted and burdened properties and shall be recorded at the office of the County Clerk. The easement shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of decommissioning of the benefitted large wind energy system in accordance with this section, or the acquisition of the burdened lot of record by the owner of the benefitted parcel.
- (12) Shadow flicker. Large wind energy systems shall be located in a manner that makes reasonable efforts to minimize shadow flicker to any building and/or structure on a nonparticipating owner's lot of record or road. An owner of a large wind energy system shall be required to undertake reasonable mitigation measures for shadow flicker, provided it allows the continued operation of the large wind energy system.
- (13) Siting and installation.
- (a) Any construction on agricultural land should be conducted according to the NYSDAM's "Guidelines for Agricultural Mitigation for Wind Power Projects."
  - (b) Connection of transmission lines from the wind energy facility to local distribution lines.
- [1] No construction of any large wind energy system shall be started until evidence is given of a signed interconnection agreement or letter of intent with an interconnecting public service agency.
- [2] A large wind energy system shall meet the requirements for interconnection and operation as set forth in the public service agency's regulations.
- [3] Transmission lines and points of connection to local distribution lines should be combined to the extent possible. The large wind energy system should be connected to existing substations if possible, or if new substations are needed, the number should be minimized.
- (c) Power lines. Power lines between large wind energy systems and any other buildings or structures should be completely underground. Power lines between large wind energy systems and the on-site substation should be placed underground. Power lines for connection to a public service agency and transmission poles, towers, and lines may be aboveground.
  - (d) Road access to project site. Subject to the owner's preference, entrances to access roads shall be gated and kept locked. The project shall only use designated traffic routes established in the application review process. Routes should be chosen to minimize traffic impacts and shall take into consideration a large wind energy system adverse impact to traffic during school bus times, wear and tear on local roads, and impacts on local businesses. Existing roads should be used to the extent possible or, if new

roads are needed, they should minimize the amount of land used and the adverse environmental impacts. The applicant is responsible for remediation of any damaged roads due to siting and installation of the large wind energy system.

- (14) Total height. It is recognized that wind turbines require greater heights to reach elevations with wind currents reasonably adequate to generate energy. Towers used solely for energy-deriving purposes shall not exceed a total height of 350 feet from the ground to the tip of the blade at its highest point.
  - (15) Traffic routes.
    - (a) Construction of large wind energy systems poses potential risks because of the large sized construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for such systems and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:
      - [1] Minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas; and
      - [2] Minimizing related traffic during times of school bus activity; and
      - [3] Minimizing wear and tear on local roads; and
      - [4] Minimizing impacts on local business operations; and
      - [5] A plan for disseminating traffic route information to the public.
    - (b) The applicant/owner is responsible for obtaining all necessary permits and repairing damage on all roads, whether such damage occurs during the construction or maintenance of a large wind energy system. All applicable local, county, state and federal highway departments shall approve the transportation plan and a copy of such approvals shall be submitted to the Town.
  - (16) Type of construction. A large wind energy system shall be of monopole construction (single pole). No lattice structures or guy-wire-supported structures shall be permitted.
  - (17) Public hearings. No action shall be taken by the Town Board to issue a special use permit, by the Planning Board to issue preliminary site plan approval nor the Zoning Board of Appeals to grant a use and area variance until after public notice and hearing. Proper notice of a hearing before a board shall be given by legal notice published in the official newspaper of the Town at least five days before the date set for a public hearing and written notice mailed to the applicant or his agent at the address given in the application to be considered. The applicant shall be responsible for notifying by first-class mail all property owners of record within three (3) miles of the outside perimeter or boundary line of property involved in the preliminary application of the time, date and place of such public hearing by mail at least 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 records of the Town Assessor or at the property address. At least seven days prior to such hearing, the applicant shall file with the board his/her affidavit verification of mailing such notice. Failure of property owners to receive such notice shall not be deemed a jurisdictional defect.
- F. Abatement, decommissioning, site restoration plan and bond.
- (1) Abatement and decommissioning. If a large wind energy system is not operated for a continuous period of 12 months, the Town will contact the owner by registered mail and provide 90 days for a response. The owner is required to respond and set forth reasons for the stoppage and a timetable for action. If the Town has made all reasonable efforts to notify the owner but the owner does not satisfactorily respond,



the Town can contract for removal and restoration using the money in the decommissioning bond, after salvage value, and charge the owner any difference in cost.

- (2) Decommissioning and site restoration plan. The plan shall include:
  - (a) The anticipated life of the large wind energy system; and
  - (b) Triggering events for decommissioning and removal; and
  - (c) The estimated decommissioning costs in current dollars; and
  - (d) How the estimate was determined; and
  - (e) Provision for a reestimate of such decommissioning costs every five years by a registered design professional; and
  - (f) The manner in which the large wind energy system will be decommissioned and the site restored, including removal of all structures, turbines, cabling, electrical components, debris, and foundations to a depth of four feet, restoration of the soil and vegetation, and restoration of roads and driveways, less any fencing or residual minor improvements requested by the owner.
- (3) The applicant shall be required to execute and file with the Town Clerk a bond, or other form of security for an initial term of up to and including the entire useful life of the large wind energy system as determined by and acceptable to the Town Attorney and Engineer, in an amount sufficient for the faithful performance of the terms and conditions of the permit issued under this section, and to provide the decommissioning, removal and restoration of the site subsequent to the removal of the large wind energy system. The amount of the bond or security shall be no less than 150% of the cost of the removal of the large wind energy system and restoration of the site, and shall be reviewed and adjusted at five-year intervals. The applicant shall submit, initially and every five years, documented justification, acceptable to the Town Attorney and Engineer, for the bond amount. In the event of a default upon performance of such condition or any of them, the bond or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or security shall remain in full force and effect until the complete removal of the large wind energy system and site restoration is finished acceptable to the Town Attorney and Engineer. The Town Attorney may also require a corporate guarantee to assure compliance with this section.

G. Transfer and replacement.

- (1) If ownership of a large wind energy system changes, the new owner shall present full contact information and proof to the Town that all required bonds and insurance policies remain in full force 30 days prior to the transfer of ownership.
- (2) Any replacement of or modification or alteration to a large wind energy system, excluding regular maintenance and repair, requires an amendment to the special use permit, which amendment shall not be unreasonably withheld.
- (3) Replacement of a large wind energy system may occur without an amendment to the special use permit when there will be:
  - (a) No increase in the total height of the large wind energy system; and
  - (b) No change in the location of the large wind energy system; and
  - (c) No additional lighting on the large wind energy system, except to the extent required by the FAA; and

- (d) No increase in noise produced by the large wind energy system.
- H. Tax exemption. The Town exercises its right to opt out of the tax exemption provisions of § 487 of the Real Property Tax Law of NYS, as currently in effect and as hereafter amended from time to time.
- I. Public service agency notification. The owner of a large wind energy system shall provide written authorization that the applicable public service has approved his/her/their intent to install an interconnected customer-owned large wind energy system. Off-grid large wind energy systems shall be exempt from this requirement.
- J. Buy American. All of the iron, steel, and manufactured goods used to construct, alter, maintain or repair a large wind energy system must be produced or manufactured in the United States.

**Section 2.** This Local Law is effective upon filing with the Secretary of State.

I hereby certify that the local law annexed hereto, designated as local law No. of 2023 of the Town of LaFayette was duly passed by the Town Board on \_\_\_\_\_, 2023, in accordance with the applicable provisions of law.

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.

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

(Seal)

Date: \_\_\_\_\_

**(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

Attorney for the Town  
 \_\_\_\_\_  
 Title

Town of LaFayette  
 \_\_\_\_\_

Date: \_\_\_\_\_