

# 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 Pompey

Local Law No. 1 of the year 2010.

A local law to add a new Section 165-15 to the Code of the Town of Pompey  
(Insert Title)  
regulating on-site wind energy conversion systems.

Be it enacted by the Town Board of the

Town of Pompey as follows:

1. The Code of the Town of Pompey is hereby amended by adding a Section 15 to Chapter 165, to read as follows:

## § 165-15. WIND ENERGY

A. **Authority.** The Town Board of the Town of Pompey enacts this Section under the authority granted by:

1. Article IX of the New York State Constitution;
2. New York Statute of Local Governments;
3. New York Municipal Home Rule Law; and
4. New York Town Law – including, but not limited to, those sections pertaining to Building Code, Electrical Code, Fire Prevention, Use of Streets and Highways, Locations of Driveways, Peace, Good Order and Safety, Promotion of Public Welfare, Excavated Lands, Unsafe Buildings, Trespass, Building Placement, Protection of Aesthetic Interests, and General Powers.

B. **Purpose.** The Town Board of the Town of Pompey adopts this Section for the following purposes:

1. By adopting this Section, it is the Town Board's intention to promote the effective and efficient use of small Wind Energy Conversion Systems (WECS) and to regulate the placement of small WECS so that the public health, safety, natural resources and aesthetics of the Town will not be jeopardized.
2. This Section covers only Small WECS, whether they are building-mounted, building-supported, or free-standing, or on grid or off grid facilities that are fundamentally constructed for the purpose of single-family residential or agricultural usage. Horizontal or vertical axis wind turbines may be used. This Section does not address commercial WECS (*see* Schedule Limiting Use of Buildings and Land, Town of Pompey Zoning Law).
3. Small WECS existing in the Town at the time this Section is enacted are exempt from these provisions as long as the facility is not modified or altered.

C. **Findings.** The Town Board of the Town of Pompey finds and declares that:

1. Wind energy is an abundant, renewable and non-polluting energy resource of the Town and its conversion to electricity will reduce our dependence on nonrenewable energy sources, which in turn will decrease air and water pollution resulting from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines can be cost-effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities.
3. Regulations on the siting and installation of wind turbines are necessary for the purpose of protecting the health and safety of neighboring property owners and the general public, and to preserve the natural resources and aesthetics of the community.
4. If not properly sited, small WECS can present potentially significant aesthetic impacts because of their height. The aesthetics of the community is a key issue and must play a significant role in the siting of proposed facilities. Town landowners are encouraged to engage adjacent property owners in the siting of proposed facilities.
5. If not properly sited, small WECS may present a risk to bird and bat populations.

6. If not properly sited, Small WECS may or may not present risks to the property values of adjoining property owners.
7. Small WECS may constitute a source of noise which may be disruptive to the public.

D. **Definitions.** As used in this Section, the following terms shall have the meanings indicated:

**BUILDING** – a structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or chattels.

**BUILDING-MOUNTED OR BUILDING-SUPPORTED WECS** – any WECS unit mounted on a house or accessory building.

**HORIZONTALLY-MOUNTED SMALL WECS** – also known as Horizontal Axis Wind Turbines (“HAWTs”) shall mean a wind turbine that has the main rotor shaft arranged horizontally.

**INVENTORIED RESOURCE** – are parcels of land or aesthetic resources that are of local or statewide significance such as state parks, lakes, forests , historic places on listed on the National or State Historic places list, areas designated as scenic.

**OFF-GRID** – Small WECS that are not connected to the public electricity grid.

**ON-GRID** – Small WECS that are connected to the public electricity grid.

**ROTOR** –diameter of the circle swept by the tips of the rotating blades of a Small WECS.

**SITE** – the parcel of land on which the Small WECS is to be placed.

**SMALL WECS** – A wind energy conversion system consisting of a wind generator, wind tower, and associated control or conversion electronics which has a rated capacity of no more than 30 kW for single-family residential use only and no more than 125kW for agricultural applications.

**SYSTEM HEIGHT** – the height of the wind tower structure as measured from the original grade to the rotor at the furthest vertical extension of the Small WECS.

**VERTICALLY-MOUNTED SMALL WECS** – also known as Vertical Axis Wind Turbines (“VAWTs”) shall mean a wind turbine that has the main rotor shaft arranged vertically.

**VIEWSHED** – those topographical points from which the WECS is visible.

**WIND ENERGY CONVERSION SYSTEMS (“WECS”)** – a machine that converts kinetic energy in the wind to a usable form, commonly referred to as a “wind turbine” or “windmill.” The WECS includes all parts of the system including, but not limited to, the base, foundation, wind generator, nacelle, rotor, wind tower, inverter, batteries, and all other components used in the system. The WECS may be mounted on a horizontal axis, vertical axis, rotor or propeller.

**WIND GENERATOR** – blades and associated mechanical and electrical conversion components mounted on top of the wind tower.

**WIND TOWER** – freestanding structure that supports the wind generator.

- E. **Standards.** No Small WECS shall be constructed which does not meet following standards, unless clearly stated otherwise or specifically waived by the Town.
1. **Permits.** No person, firm or corporation, or other entity being the owner or occupant of any land or premises within the Town shall use or permit the use of land or premises for the construction of a tower for an on-site Small WECS without first obtaining a building permit. However the WECS must meet all current building and town codes
  2. **Schedule Limiting Height, Location and Clearances for WECS.** To facilitate public understanding of this Section and for the better administration thereof, the regulations limiting the height, location and clearances for Small WECS have been set forth in the annexed schedule. Such schedule is hereby adopted and declared to be a part of this Section, hereinafter referred to as the “schedule,” and may be amended in the same manner as any other part of this chapter. All limitations as to height, location, and clearances shall be those set forth in such schedule.
  3. **Safety.**
    - a. **Ground Clearance.** The minimum distance between the ground and any part of the rotor-blade apparatus shall be twenty-five (25) feet measured at the lowest point of the rotor-blade arc.
    - b. **Wind Tower Design.** The wind tower shall be designed to handle the maximum potential structural load. In addition, under no circumstances shall the height of the system exceed the height recommendations specified by the manufacturer of the system.

- c. Wind Tower Access. The Small WECS shall not be accessible to unauthorized personnel. Access to the wind tower shall be limited by means of a fence no lower than six (6) feet in height around the tower base with a locking portal and with a locking gate on the fence, or by limiting the wind tower climbing apparatus to no lower than fifteen (15) feet from the base of the tower.
- d. Warning Signage. A weather-resistant sign plate no greater than two square feet in size containing the name of 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 at a height of five feet or on the fence surrounding each tower and viewable by a Code Enforcement Officer. Such sign shall also warn of electrical shock or high voltage.
- e. No Advertising or Promoting. No word or graphic representation, other than appropriate warning signs, may be placed on a wind generator, wind tower, building or other structure associated with the Small WECS. No brand names, logo, advertising, mark or promotion shall be placed or painted on the wind tower, rotor, wind generator or tail vane where it would be visible from the ground, except that a Small WECS manufacturer's logo may be displayed on the wind generator housing in an unobtrusive manner.
- f. Lighting. The small wind energy system shall not be artificially lit unless required by the Federal Aviation Administration or other appropriate authority with jurisdiction.
- g. Braking Mechanisms. The Small WECS shall be equipped with an automatic braking, governing or feathering system to prevent uncontrolled rotation, over-rotation and excessive pressure on the wind tower structure, rotor blades, wind generator components or enclosed shelter (in the case of building mounted and/or supported small WECS) . No Small WECS shall be permitted which lacks such a system. The applicant shall file with the Town Code Enforcement Officer a document explaining how the small wind energy system may be shut down in case of an emergency.
- h. Emergency Shutdown. In the event of a failure of the braking system, the Small WECS shall have a positive means to disconnect it from the local power grid.
- i. The existing structure or occupied space where the Small WECS is sited shall be able to withstand the additional load, force, torque, and vibration imposed by the Small WECS for the foreseeable future. All related components must be designed in accordance

with generally acceptable industry standards and the entire facility, including building onto which the Small WECS will be attached, will be safe and in compliance with all applicable governmental building codes, laws and regulations, and in accordance with generally accepted engineering practices and industry standards including, without limitation, acceptable standards for stability, wind and ice loads.

- j. Color. The Small WECS wind tower and blades shall be painted a non-reflective, unobtrusive color that blends into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize visual disruption.
- k. Duty to Repair Unsafe System. Any Small WECS shall be promptly repaired if it becomes inoperable. The property owner shall comply with the provisions set forth in Section H of this Section.
- l. Abandonment; Abatement; Decommissioning. The property owner shall comply with the provisions set forth in Section H- Operation, Fees and Penalties.

4. Site Requirements.

- a. Power Transmission Lines. All power transmission lines from the Small WECS to the electrical power utility grid or to any building or other structure shall be located underground to the maximum extent practicable.
- b. Zones Permitted. Small WECS that meet all requirements of this ordinance shall be permitted anywhere in the town except in the 5 Hamlets of Pompey. (Oran, Delphi, Watervale, Pompey Hill, Pompey Center)
- c. Number per Building. The maximum number of rooftop mounted or building stabilized systems shall be no more than the roofline length divided by 15 feet.

5. Setbacks, ROW, Structure, System Height

- a. Small Rooftop and Building-Supported Systems. There are no setback requirements for these systems if the building or structure to which the system is affixed or mounted meets the setback requirements currently in effect for the Town.

- b. **Small Free-Standing Systems.** These systems must meet the following right of way (ROW), side, and rear property line setbacks, as well as all requirements for overhead power lines and on-site underground utilities:
  - 1. **Front, Rear and Side Yard.** Minimum setbacks to property lines and ROW shall equal 120 percent of the system height, as determined using an “arc of fall” projection. This represents the minimum setback requirement with respect to any point on an inhabited structure. No part of a Small WECS or its supporting structures shall be within 10 feet of a property line.
    - a. **Overhead Power Lines.** All Small WECS shall maintain a distance of 150 percent of the system height, as determined using an “arc of fall” projection, from the Small WECS tower base and the closest point to the overhead power line.
    - b. **Underground Utilities.** No components of a Small WECS shall be within 10 feet of buried public water, drainage easements, sanitary sewer facilities, gas lines, cable lines, or power utilities. Also, no component of a Small WECS, other than underground wiring necessary for the operation of that system, shall be within 20 feet of a private sewage disposal system or an area of dedicated land for the replacement of said sewage disposal system. If no mapping or preliminary design has been undertaken for the purpose of a replacement system, it will be assumed that an area equal to the existing sewage system will be required and will provide the same clearance requirements as provided in the initial application.
    - c. **System Height.** The wind tower height of a Small WECS shall be no more than 100 feet as measured from the original grade at the proposed location and as otherwise provided by this Section. The rotor radius for any Small WECS shall not exceed 15 feet, thereby providing a maximum system height of 115 feet. For any site within 500 feet of the ROW of U.S. Route 20, no Small WECS will be approved for a system height that exceeds 75 feet.
    - d. **Compliance with Building Code.** All freestanding Small WECS must meet all appropriate provisions of the New York State Building Code.

- e. Compliance with ASCE. All freestanding Small WECS must meet the American Society of Civil Engineers (“ASCE”) Standard 7 for resistance to wind.
- f. All Power Lines from the Small WECS must meet all applicable national and state electrical codes.

**F. Site Plan Requirements and Approval.** Small WECS must comply with all relevant Town of Pompey Zoning Laws.

- 1. It is the responsibility of the applicant to provide all information and documentation necessary for the Town to determine what type of Small WECS is being proposed, its proposed location, and its aesthetic impact.

The applicant is to provide the following information for all small WECS at the time of application:

- a. A completed application form as supplied by the Town for approval of the installation and operation of a Small WECS. Such form shall include the applicant’s and landowner’s name and contact information.
- b. The relevant tax map numbers, including a description of the existing use and acreage of the site.
- c. Proof of ownership of the site or proof that the applicant has written permission from the owner to make such application.
- d. Survey map showing the following information:
  - 1. Property lines and physical dimensions of the site.
  - 2. Location, approximate dimensions and types of all existing structures, buildings and occupied spaces on the site.
  - 3. The proposed location for the Small WECS, including the elevation at that site.
  - 4. Location of all existing above-ground utility lines and other Small WECS within 500 linear feet of the proposed Small WECS location.
  - 5. Approximate location and size of all structures within a 500 foot radius of the proposed Small WECS location, including but not limited to, adjacent ownerships and existing

residences, schools, churches, hospitals, libraries, buildings and occupied spaces.

6. Location of all transmission facilities proposed for installation.
7. Location of all roads and structures proposed as part of the installation of the Small WECS.
8. Location of all federal, state, county or local parks, recognized historical or heritage sites, state-identified wetlands or important bird areas as identified in the federal, state, county, local or New York Audubon's GIS databases or other generally-available documentation, which areas are adjacent to the site.
9. Standard engineering drawings or plans of the wind turbine structure, including, but not limited to, an engineering analysis of the wind tower, tower base and footings, proposed tower location, rotor diameter, and ground clearance.
10. The applicant shall file a document with the Town Code Enforcement Officer explaining how the Small WECS may be shut down in case of an emergency.

- e. **Visual Impact Analysis.** Visual impact occurs when there is a detrimental effect on the perceived beauty of the place or structure. Mere visibility, even startling visibility of a small WECS, should not be a threshold for decision making. Use of setback criteria as well as the visual impact mitigation strategies (as appropriate and reasonable and dictated by the Town Board) will reduce the visual impact to acceptable levels.

The small WECS, by virtue of its visibility, must clearly interfere with or reduce the public's enjoyment and/or appreciation of an inventoried resource.

- f. **Visual Impact Mitigation Strategies.** The applicant may be asked to utilize additional mitigation strategies to reduce the visibility of the project. Mitigation strategies can be categorized into general groups, and the Town Board may require that one or more of the following mitigation strategies be used:

1. Screening
2. Relocation
3. Camouflage or Disguise
4. Low Profile

5. Downsizing
6. Non-Specular Materials
7. Lighting

2. If the proposed WECS meets all of the above criteria of this regulation, a Town Board meeting is not required; the Town Code Enforcement Officer will issue a permit. For those proposed small WECS that do not meet the above criteria, a zoning variance will be required.

**G. Nuisance Prevention.** No Small WECS shall be constructed or allowed to continue in operation unless the following standards are met:

1. Noise. A Small WECS shall be properly maintained and operated at all times with relation to property lines so that the noise produced during operation shall not exceed fifty (50) dBA, measured at the boundaries of all the closest parcels that are owned by non-site owners. This level, however, may be exceeded during short term events such as utility outages or wind speeds exceeding 25 miles per hour.
2. Electromagnetic and Microwave Communication Interference. Small WECS shall not be located in any area where their proximity interferes with existing fixed broadcast, retransmission, or reception antennae for radio, television, wireless telephones, and personal communication systems or other broadcast devices or preexisting microwave communication facilities. The Small WECS shall be operated so that no disruptive electromagnetic interference is caused.

**H. Operation; Inspection; Fees; Penalties.** In order to ensure that Small WECS are operated as provided for and intended by this Section, the applicant and/or landowner must meet the following additional requirements:

1. Operation of Small WECS.
  - a. Operational Condition. The Small WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a Small WECS become inoperable or should any part of the Small WECS become damaged, or should a Small WECS violate a permit condition the owner or operator shall remedy the situation within 90 days after written notice from the Town Board of said condition. The owner shall then have 90 days after written notice from the Town Board to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but in no event shall the total period exceed 180 days.

- b. Inspection. Prior to allowing the owner or operator of the Small WECS to resume operations, a Code Enforcement Officer may require the owner or operator to have an inspection performed and a report issued by a professional engineer licensed in the State of New York, certifying that the Small WECS and/or wind tower is safe.
- 2. Unsafe Small WECS.
  - a. If the Code Enforcement Officer deems any Small WECS unsafe or is deemed dangerous to the life, health, property or safety of the public or it is deemed so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible, the system shall, without any further action by the Town Board, be removed at the owner's expense.
- 3. Public Hearing and Removal.
  - a. Public Hearing. Notwithstanding any other abatement provision under this Section, if the Small WECS is not repaired or made operational or brought into permit compliance after notice from the Town, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either (i) remedial action within a particular timeframe, or (ii) revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days.
  - b. Removal. If removal of the Small WECS is ordered pursuant to this Section, the owner or operator shall remove the entire aboveground structure, (exclusive of the foundation) including transmission equipment and fencing, from the property. This provision shall not apply if the owner demonstrates to the Town that he/she has been making good faith efforts to restore the Small WECS to an operable and safe condition, but nothing in this provision shall limit the Town's ability to order the owner/operator to undertake remedial action after a public hearing.
  - c. Failure to Remove the Small WECS. If the Small WECS is not removed within 90 days, the Town may authorize dismantle and remove the Small WECS. The cost of removing the Small WECS and associated equipment will be a lien on the property and added to the property owner's tax bill.

4. Inspections and Enforcement. The Code Enforcement Officer in the company of the owner or operator, or his/her agent, may enter the premises on which a Small WECS is being or has been constructed to inspect all components of the installation. When practicable, the Code Enforcement Officer shall provide the owner or operator with written notice of his/her intent to conduct an inspection at least 48 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 the system is deemed unsafe, deficient or dangerous, and may order that the Small WECS cease operation until such repairs or alterations are made. In the event that the Small WECS 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. Fees. Fees for applications and permits under this Section shall be established by resolution of the Town Board.
6. Penalties. Any person who violates any provision of this Section 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 subsection, a person shall be guilty of a separate and additional violation for each day he/she fails to correct a violation of this Section.

I. **Severability.** If any clause, sentence, paragraph, subdivision, or part of this Section 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 Local Law shall take effect immediately upon filing in the Office of the New York State Secretary of State in accordance with the Municipal Home Rule Law.

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2010 of the Town of Pompey was duly passed by the Town Board on \_\_\_\_\_, 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.

\_\_\_\_\_  
Ann Christmas, Town Clerk

(Seal)

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

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.

\_\_\_\_\_  
Town Attorney