

# **BUILDING AND DEVELOPMENT CONTROL LOCAL LAW TOWN OF SMITHFIELD**

**AS AMENDED BY LOCAL LAWS  
1992-2, 1993-2, 1995-1, 1995-2, 2004-1, 2005-1, 2006-2, 2007-1, 2010-1**

11/9/2010

## ARTICLE I: TITLE, ENACTING CLAUSE, PURPOSE, APPLICATION

### Section 1.1 Purposes of the Building and Development Control Local Law

The purposes of this Building and Development Control Local Law and the regulations herein set forth are to provide for the orderly growth of the Town, to encourage the most appropriate use of land, to promote compatible land uses, to protect and conserve the value of property, to prevent the overcrowding of land, and to promote the health, safety and general welfare of the public.

### Section 1.2 Application of Regulations

Except as herein provided:

No building or land shall hereafter be used or occupied and no building, structure or mobile home or part thereof shall be erected, moved or altered unless in conformity with the regulation herein specified.

## ARTICLE II: DEFINITIONS

### Section 2.1 Customary Meaning of Words

Except where specifically defined herein all words used in this Local Law shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular, the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the word “shall” is intended to be mandatory.; “occupied” or “used” shall be considered as though followed by words “or intended, arranged or designed to be used or occupied”.

### Section 2.2 Definitions

Agricultural Products – Any organic product with commercial value grown or raised on a farm, including but not necessarily limited to, vegetable, plants, trees, seedlings and other produce, cattle, hogs, chicken, turkeys, goats, sheep, milk and other livestock products, corn, grains, soybeans, hay, straw and other livestock feeds.

Agricultural Use or Farm – Lot containing at least ten acres which is used primarily for raising livestock or other agricultural products, including greenhouses and other farm structures and the storage of agricultural equipment; and as an accessory use the sale of agricultural products raised on the property. Cultivation of wood lots is considered an agricultural use.

Board of Appeals – Board of Appeals of the Town of Smithfield.

Building – Any structure other than a mobile home having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, or other personal property.

Building Line – The line parallel to the lot line beyond which a building cannot extend under the terms of Local Law. This is the line from which the setback measurements for purposes of Section 3.4 of this Local Law are determined. If a building has an attached sun parlor, enclosed porch, and/or unenclosed porch projecting more than ten (10) feet from the wall of the building, excluding the steps, then the setback shall be measured from the front edge of the porch rather than from the wall of the main building.

Building Permit – A permit issued by the Codes Enforcement Officer stating that the purpose for which a building or land is to be used is in conformity with all requirements under this Local Law, the New York State Uniform Building Code and any other applicable Codes and Ordinances for the lot on which it is located or is to be located.

Certificate of Occupancy – A certificate issued by the Codes Enforcement Officer upon completion of construction, alteration, or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this Local Law and such adjustments thereto granted by the Town Board or Planning Board.

Double Wide Mobile Swelling – A single family residence structure containing not less than 1200 square feet of living space, exclusive of basements, garages, attics and similar spaces not constituting habitable space under the New York State Building Code which consists of two separate and distinct halves, each of which contains a permanent towing frame as part of its structure which makes it capable of being towed in a public highway, and each of which is manufactured in such a manner as to be used as a dwelling or place of business only in conjunction with the other half when the halves are placed together.

Dwelling, Modular – A dwelling unit of modular construction consisting of more than one component module and designed to be permanently anchored to a foundation, thereby becoming a fixed part of the real estate. (For the purpose of this Local Law a modular home containing one dwelling unit shall be considered a single-family dwelling.)

Dwelling, Multifamily – A building or portion thereof containing two or more dwelling units and used for occupancy by two or more families living independently of each other.

Dwelling, Single Family – A detached building containing one dwelling unit only.

Dwelling Unit – A complete self-contained residential unit, with living, sleeping, cooking, and sanitary facilities within the unit, for use by one family.

Family – One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit, provided that unless all members are related by blood, marriage or adoption, no such single housekeeping unit shall contain more than five unrelated members.

Farm Building – Any building used for the housing of agricultural equipment, or agricultural products or for the incidental or customary processing of agricultural products, and provided that such building is located on, operated in conjunction with and necessary to the operation of the farm.

Farm Equipment – Tractors, machinery, trucks and other equipment used in the production, harvesting, handling, maintenance and storage of agricultural products and farm buildings.

Garage, Private – A secondary building used in conjunction with a primary building which provided for the storage of motor vehicles and in which no occupation, business or services for profit (other than incidental and infrequent services for profit) are carried on.

Landscaping – The act of changing or enhancing the natural features of a plot of ground (usually around a building) so as to make it more attractive, as by adding lawns, trees, bushes, shrubs, etc.

Lot – Parcel of land occupied, or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

Lot Area – An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculation lot area.

Lot Depth – The horizontal distance between the front and rear lot lines, measured at right angles to the front lot line.

Lot Lines – The property lines bounding the lot.

Lot Width – The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

Mobile Home – A single, self contained portable structure or vehicle with a permanently affixed towing frame, capable of being propelled or towed on a public highway (whether or not the wheels are presently attached), and so designed and constructed as to permit (pursuant to applicable codes) its use as a residence or as an office for the conduct of a trade, business, profession or occupation. For purposes of this Local Law, travel trailer and motor homes shall not be considered mobile homes.

Mobile Home Park – A parcel of land at least five (5) acres in size owned and operated by a single party upon which (5) or more mobile homes are placed and occupied for residential purposes in accordance with licenses issued by the Town of Smithfield and the Madison County Department of Health.

Mobile Home Site – Any designated parcel of land in a mobile home park provided by the operator and designed for accommodating one mobile home, its accessory buildings, structures and equipment for the exclusive use of the occupants.

Modular Construction – A structure built in accordance with the requirements of the New York State Building Code, which is not constructed on the parcel where it is intended to be placed, but rather is

transported to the site in a substantially constructed state for placement upon a permanent foundation, and which does not contain a permanent towing frame as part of the structure.

Motor Home – A motor vehicle propelled by its own power which contains sleeping, and/or cooking and/or sanitary facilities designed and constructed for vacation or other similar temporary use.

New Mobile Home – Any mobile home purchased directly from a mobile home dealer which has not been previously utilized as a residence or for the conduct of a trade, business, profession or occupation.

Nonconforming Use or Structure – A use, accessory use, structure, secondary structure, accessory structure, lot, yard or any other activity, component of dimension relating to the use of land, and the improvements thereon, which does not comply with the applicable regulations contained in this Local Law, but which was not in violation of any laws or ordinances at the time of adoption of this Local Law.

Plan (Plot or Site) – The design of a development, including a: plot or subdivision, all covenants relating to use, location, and bulk of buildings and other structures, intensity or use or density of development, private streets, ways and parking facilities. The phrase “provisions of the Plan” when used in these regulations shall mean the written and graphic materials referred to in this definition.

Planning Board – Planning Board of the Town of Smithfield.

Permanent Residence – Any building, structure, or mobile home placed on a parcel with the intent that it remain there indefinitely for use as a residence.

Residence – A dwelling place so constructed and/or situated, with water, sewage and utility facilities attached or provided, so as to contemplate and permit (pursuant to applicable codes) continuous, year-around use thereof for human habitation.

Screening – A permanent barrier including but not limited to, fences, bushes, or trees or other natural and/or artificial material, at least four (4) feet high, which obscures the visual character of any given building or use of land.

Setback – The distance between a lot line and principle, accessory, or secondary structure as required by this Local Law. Where a public or private right-of-way abuts a lot line, the setback shall be measured from the boundary line of said right-of-way closest to the interior of the lot.

Skirting – Material of rigid composition for placement around all sides of a mobile home extending from the base of the mobile home to the surface of the ground or pad beneath it, with vent spaces as necessary, and painted in such a manner as to be compatible with the mobile home.

Special Use Permit – A permit for a use considered generally compatible with other permitted uses, but only if certain conditions are met.

Street Line – Limit of street or highway right-of-way line. For the purpose of this Local Law, street line shall be the highway right-of-way line, whether or not set forth in a deed or shown on a map, defining the corridors for vehicular and pedestrian traffic used by the general public.

Structure – Anything constructed, erected, installed on or in the ground or which is attached to something located on or in the ground which shall be safe and stable. Structures included but are not limited to stadiums, signs, and in-ground swimming pools.

Structure Accessory – Structure designed to accommodate an accessory use, but detached from the principle structure such as a garage for vehicles accessory to the principle use, a free standing storage shed, garden house, or similar facility. An accessory structure attached or contained within a principle structure shall be considered part of the principle structure. Barns or other structures designed or intended for the housing of livestock or other animals shall not be considered accessory structures.

Structure Height of – The vertical distance measured from the average elevation of the proposed finished grade at the front of the structure to the highest point of the roof.

Structure, Principle – A structure designed primarily to accommodate the principle use of a lot, such as a dwelling, house, apartment, office, factory, and other commercial structures. A structure designed to provide closed storage of vehicle and which is attached to or contained within a principle structure shall be considered part of the same.

Temporary Residence-- Any mobile home place on a parcel for use as a residence during such time, not to exceed two years, as a permanent dwelling is being constructed upon same parcel.

Travel Trailer – A vehicle not propelled by its own power and drawn by a separate powered motor vehicle, which contains sleeping, and/or cooking and/or sanitary facilities designed and constructed for vacation or other similar temporary use.

Use, Accessory – A use customarily incidental and subordinate to the principle use or structure and located on the same lot with such principle use or structure.

Use, Principle – An activity which may be carried on independently of any other activity and which generally characterizes the primary purpose for which land and/or the principle structures thereon are intended and designed.

Used Mobile Home – Any mobile home other than a new mobile home as defined herein.

Yard – An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided in this Local Law.

Yard, Front – The open space extending the full width of the lot from the front line parallel to the part of the principle building which is nearest to such front lot line.

Yard, Rear – An open space extended across the entire width of the lot from the rear lot line parallel to the part of the principle building which is nearest to such rear lot line, unoccupied except for accessory building and open porches.

## ARTICLE III: REGULATIONS APPLICABLE TO ALL PROPERTIES, BUILDINGS AND USES

Section 3.1 The following uses are permitted uses on all properties within the Town:

- a. Single family dwellings and associated private garages and outbuildings, including tool sheds, playhouses and greenhouses, pet shelters and swimming pools.
- b. Farms and farm buildings, including the sale of agricultural products grown or produced upon the premises.
- c. Orchards, tree and plant nurseries and forestry operations (limited to growing and cutting of trees and excluding commercial operations involving processing and/or manufacturing of trees and tree products).
- d. In-home occupations not involving regular motor vehicle traffic by someone other than a resident of the premises upon or to the premises as a result of the conduct of business constituting the in home occupation.
- e. Municipal buildings, parks, libraries, museums and schools.
- f. Churches
- g. Double wide mobile dwellings upon satisfaction of the following standards, as determined and verified by the Codes Enforcement Officer:
  - i. All double wide mobile dwellings shall be sited upon either a full basement with a concrete floor, a crawl space with a concrete floor, or a six inch floating concrete slab. All concrete slabs shall contain steel reinforcing and shall be at least as large as the exterior dimensions of the home to be placed upon it.
  - ii. All double wide mobile dwellings placed on a concrete slab must be skirted with concrete blocks at least six inches in depth parged with masonry material and waterproof coating. The area beneath the floor of the dwelling must be adequately ventilated as required by the New York State Building Code and the manufacturer's recommendation, as applicable.
  - iii. The roof pitch of the dwelling shall be not less than 4:12.
  - iv. The exterior of the dwelling must be comprised of a material approved for use as siding under the New York State Building Code.
  - v. The roof of the dwelling must be comprised of a material approved for residential roofing applications under New York State Building Code.
  - vi. All double wide mobile dwellings without watertight area suitable for storage, such as a basement or garage area, must include an accessory storage building having at least 100 square feet of watertight storage area. There shall be no outdoor storage of personal property of any kind, (other than motor vehicles in a driveway or suitable constructed

parking area), unless contained within a fenced-in area which prevents the contents of the area from being viewed from outside the fence.

- vii. The Codes Enforcement Officer shall inspect the site prior to installation of the double wide mobile dwelling and shall conduct inspections to ensure compliance with the manufacturers set-up requirements and proper electrical, water and septic connections, as well as the applicable site preparation and other requirements of this Local Law.

Section 3.2 The following uses are permitted uses on all properties within the Town upon the issuance of a Special Use Permit by the Planning Board.

- a. Multifamily dwellings (including all buildings housing or intended to house two or more families in separate living quarters).
- b. All commercial uses.
- c. All industrial uses.
- d. In-home occupations other than those specified in section 3.1 (d) of this Local Law.
- e. Facilities for the storage, dismantling or processing of scrap metal, junk, junk cars and equipment or solid waste.
- f. Private clubs and non-commercial recreational uses.

Section 3.3 The following lot size and dimension standards apply to all uses, including single family dwellings, and all structures unless otherwise specified in this Local Law:

- a. Minimum lot size shall be one (1) acre unless an alternate septic system is required to comply with New York State standards, in which case the minimum lot size shall be two (2) acres.
- b. Minimum road frontage shall be two hundred (200) feet.
- c. Minimum lot depth shall be one hundred fifty (150) feet.
- d. Minimum front yard setback shall be sixty (60) feet.
- e. Minimum rear yard setback shall be thirty (30) feet.
- f. Minimum side yard setback shall be thirty (30) feet.
- g. Maximum building height shall be thirty-five (35) feet (farm buildings shall be exempt from this requirement).
- h. Maximum area of lot coverage by building(s) or structures shall be twenty (20) percent.
- i. Lot depth shall not be more than three (3) times the length of the road frontage of the lot.

Wind Power (Sections 3.3B – 3.3D)

Section 3.3-B The following lot size, dimension and construction standards apply to wind powered electricity generation facilities only, and shall supersede any other inconsistent provisions of this Local Law:

- a. Minimum lot size shall be five (5) acres.
- b. Minimum road frontage shall be four hundred fifty (450) feet.
- c. Minimum lot depth shall be four hundred fifty (450) feet.
- d. Maximum structure height shall be as determined by the Planning Board in the course of its special permit review.
  - i. The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and: all surrounding street and property

lines, public streets right of way, overhead utility lines, and dwellings, and any other generation units, above-ground transmission facilities, electrical substations and separate meteorological tower facilities, shall be equal to no less than 1.5 times the sum of the proposed structure height plus the rotor radius. The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds that the following circumstances apply: the property line in question a) separates two properties that are both part of a commercial wind powered electricity generation facility, and b) either, i) both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed on them as part of the project under review, or ii) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of the easement area is appropriately restricted.

- ii. No experimental, home built, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure, and a determination by the Planning Board of appropriate setback distances on the basis of that documentation.

### Section 3.3-C Additional standards for granting special use permits for wind power electricity generation and transmission facilities.

No special use permit shall be granted for commercial wind power electricity generation and/or transmission facilities unless it is determined by the Planning Board that the proposed use meets all of the following criteria, in addition to those general criteria listed in Section 3.3-B:

- a. No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- b. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, re transmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. The applicant shall submit documentation to this effect from a recognized consultant practicing in the field.
- c. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board's approval as it applies to existing residential uses within 2000' of each tower for which such strobe lighting is proposed on property belonging to anyone other than the owner of the tower facility site in question.
- d. No individual tower facility shall be installed in any location that would substantially detract from or block the view or a portion of a recognized scenic view shed, as viewed from any public road right-of-way or publicly owned land.
- e. Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.



- f. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- g. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
- h. All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.
- i. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established as part of any special use permit issued.
- j. Prior to issuance of a Building Permit, the applicant shall provide the Town proof in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation and transmission facility.
- k. No wind turbines will be located within eight (8) rotor hub heights (of the model of turbine used) of an existing residence unless either:
  - i. Documentation based on accepted software designed for the purpose is presented demonstrating that the residences would not be affected by seasonal shadow flicker (the casting of moving shadows by rotor blades at certain predictable times of day and year), or
  - ii. Applicant submits a legally binding agreement requiring the shutting down of the turbine or turbines casting the shadow flicker during the identified time periods of the identified days, for each year of operation, when residential shadow flicker would occur.
- l. Turbine towers and rotors shall be painted matte white or matte grey or some other non-reflective, unobtrusive color acceptable to the Planning Board. Advertising on the tower or nacelle is prohibited.

Section 3.3-D Submission of additional supporting data for site plan of wind power electricity generation and transmission facilities.

In addition to the site plan materials otherwise listed in this Local Law, the following material shall be submitted to the Planing Board for the Board's special permit review of applications for commercial wind power electricity generation and /or transmission facilities:

- a. 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 miles from the center of the project. Scale used shall depict 3-mile radius as no smaller than 2.7 inches, and the base map used shall be a published topographic map showing cultural features.
- b. Color photos, no smaller than 3"x5", taken from locations selected or approved by the Planning Board within a three-mile radius from the center of the project and computer-enhanced to simulate the appearance of the site facilities as they would appear, as built, from these locations. No fewer than four and no more than the number of proposed individual wind turbines plus three of these photo simulations shall be provided, the exact number to be determined by the Planning Board.

### Section 3.4 Residential Lots Existing Prior to Adoption or Amendment of this Local Law

For residential uses, upon review and after issuance of a Special Use Permit by the Planning Board, nothing shall prohibit a lot of less area or less frontage than that required for a single family dwelling, provided that a.) the lot cannot be enlarged to conform with these requirements, when such lot, at the time of the passage or amendment of this Local Law regulating the size of building lots, was held under separate ownership from the adjoining lots, or b.) such lot is a principle element of a subdivision map filed in the Office of the Madison County Clerk prior to adoption of this Local Law.

### Section 3.5 Dwellings on Lots

There shall be only one residential building on a lot. More than one residence per lot shall only be permissible on farms for hired help or family members of the farm operator only, and then only upon the issuance of a Special Use Permit by the Planning Board.

### Section 3.6 Building Coverage, Open porches, Carports and Garages

In determining the percentage of building coverage of a lot or the size of yards, porches or carports open at the sides but roofed, and all principle and accessory buildings shall be included.

### Section 3.7 Reduction of Lot Area

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of this Local Law shall be smaller than herein prescribed. The provisions of this Section shall not apply when part of a lot is taken for a public purpose.

### Section 3.8 Yards on Corner Lots

Any yard adjoining a street shall be considered a front yard for the purposes of this Local Law, and shall comply with all requirements for a front yard.

### Section 3.9 Projection in Yards

In determining and front, side or rear yard setback, the point of measurement on the structure shall be the foundation, unless the structure has sills, cornices, pilasters, chimneys and/or eaves which extend more than two feet out from the foundation, in which case the point of measurement shall be the edge of such extension.

### Section 3.10 Access and Safety

The Planning Board may require changes or additions in relation to yards, driveways, driveway entrances and exits, landscaping, and the location and height of buildings and enclosures to insure safety, to minimize traffic difficulties, and to safeguard adjacent properties.

### Section 3.11 Accessory Structures in Residential Lots

Lot line setbacks from the side or rear lot lines shall be reduced to a minimum of ten (10) feet for each accessory structure per lot, which structure shall not exceed 400 square feet of total floor area. The maximum height of such accessory structure shall not exceed 20 feet. This exception shall not apply to garages, which shall meet the setback requirements of Section 3.3.

### Section 3.12 Storage of Vehicles and Junk

Construction equipment and materials, cans trucks of more than one ton carrying capacity, unlicensed motor vehicles, cars used for drag or stock car racing and accumulations of automotive or machine parts and/or scrap materials (including, but not limited to, metal, wood, paper or rags), rubbish or debris of any type must be stored in an enclosed garage or be hidden from the road and neighboring properties by an opaque fence at least eight (8) feet in height. Any such fence shall be located, to meet the setback requirements of Section 3.4 of this Local Law. All owners of property upon which is situated a junkyard as defined in Section 136 of the General Municipal Law of the State of New York shall secure a license from the Town Board to permit continuance of the Junkyard. All such licenses shall be renewed annually upon application to the Town Board.

Up to two vehicles of the types described herein may be stored or parked upon the premises without complying with nor violating the provisions of this section. This section shall not apply to farm equipment on farms.

### Section 3.13 Removal of Unlawful Junkyards and Unsafe or Detrimental Condition

- a. If the Town Board determines by written resolution that a property is in violation of Section 3.13 of this Local Law or Section 136 of the New York General Municipal Law, or that the condition of the property is dangerous or detrimental to the public health, safety or welfare, it

may issue an order tot he property owner to remedy such condition upon such terms the Town Board deems reasonable and just.

- b. Such a determination may only be made by the Town Board following a public hearing, notice of which was given to the property owner at least fourteen days prior thereto by regular U.S. mail and to the public in general by publication in the official Town newspaper at least five days prior thereto.
- c. Conditions which may be deemed dangerous or detrimental tot he public health, safety or welfare shall include, but not necessarily be limited to the following:
  - i. unsafe or damaged buildings, structure, vegetation, pits or underground facilities;
  - ii. accumulation of junk, garbage or material of any sort likely to attract or harbor rodents or insects or foster disease or which hampers or obstructs the ability of fire, police, ambulances or other emergency vehicles to access any structure upon the premises or adjoining premises; and
  - iii. Conditions which may be attractive nuisance for children or others.
- d. Upon notification from the Codes Enforcement Officer that the owner of the property has failed or refused to comply with the order of the Town Board, the Town Board may direct that the Town shall cause the offending conditions to be remedied. After the work has been completed, the Town Board shall compile a verified statement of all the direct costs of same, and add thereto a charge of fifty (50%) percent of the direct costs as compensation to the Town for administering, supervising and handling said work.
- e. Upon completion of the verified statement and acceptance thereof by the Town Board, the Town Board shall direct that the amount thereof, including charges added thereto, shall constitute a lien against said premises and direct that the same shall be added to the next assessment roll of general Town taxes and shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalties, as the general Town tax and as part thereof. In addition thereto, interest shall run thereon from the date of filing the verified statement to the date of actual payment at seven and one-half (7½%) percent per annum.
- f. Notwithstanding any provision herein tot he contrary, the Town may at tits election institute suite against the owner of the said premises for the direct costs, together with a charge of fifty (50%) percent in addition thereto as compensation to the Town for administering, supervising and handling said work, and enter judgment thereon against the owner personally for the aforesaid amount. The imposition and collection of any fine or penalty herein prescribed shall not bar the right of the Town to collect the costs of the removal or repair of any unsafe structure or condition as herein prescribed.

## ARTICLE IV SUPPLEMENTARY REGULATIONS

### Section 4.1 Sanitary Facilities

- a. All residential, commercial and industrial structures shall have and maintain adequate and sanitary water supplies and sewage disposal systems in accordance with state and local regulations, to include indoor plumbing and adequate and approved septic system or connection to public sewer.
- b. On all premises, any storage or garbage, offal or other noxious domestic wastes that could create a public health nuisance by attracting, feeding or harboring rodents, insects or other animals or by creating an *offensive* odor, shall ber stored in a sanitary manner in covered containers and removed from the premises in a regular periodic basis.

## ARTICLE V PRE-EXISTING USES

### Section 5.2 Nonconforming building, structures and uses.

The use of any building, structure or land existing at the time of the enactment of this Local Law may be continued, although such use does not conform to the provisions of this Local Law, except as

hereinafter provided. However, any use of any building or land which under the provisions of prior ordinances or statutes, local or otherwise, is or was unlawful and in violation thereof, shall not operate to legalize such prior violation, nor to prevent enforcement of penalties therefore.

#### Section 5.2 Discontinuance

When a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established except in conformity with this Local Law.

#### Section 5.3 Change of Use

No nonconforming use shall be changed to other than a conforming use.

#### Section 5.4 Unsafe Structures, Restoration, Alteration and Extension

- a. Restored to a safe condition.
- b. Repaired if damaged by fire or other causes.

#### Section 5.5 Extension of Use

A non-conforming use shall not be extended without the issuance of a Special Use Permit. Extension of a lawful use of a lawful use to any part of a nonconforming building shall not be deemed extension of such nonconforming use.

### ARTICLE VI ENFORCEMENT, ADMINISTRATION AND AMENDMENTS

#### Section 6.1 Enforcement

This Local Law shall be enforced by the Code Enforcement Officer of the Town of Smithfield, who shall be appointed by the Town Board and serve at its pleasure. The duties of the Code Enforcement Officer under this Local Law shall be as follows:

- a. Enforce and administer the New York State Fire Code, Property Maintenance Code, Building Code and related State Codes (“State Codes”) as provided in Article VI-A of this Local Law.
- b. Conduct inspections in response to bona fide complaints regarding conditions or activities allegedly failing to comply with provisions of State Codes or with the provisions of this Local Law.
- c. Conduct any other inspections required by this Local Law and as otherwise directed by the Town Supervisor and/or Town Board and report to the Supervisor/Town Board for appropriate enforcement action all known violations of this Local Law.
- d. Provide forms and applications for building permits and certificates of occupancy.
- f. Maintain a record in the office of the Town Clerk of all applications, permits, certificates and permits to persons having a proprietary or tenancy interest in the subject building or structure.
- g. Prepare and serve appearance tickets directing any person or persons whom the Code Enforcement Officer has reasonable cause to believe has violated any provision(s) of this Local Law or the State Codes to appear in Town of Smithfield Justice Court, or such other court of competent jurisdiction, to be prosecuted on such charge(s).

## Section 6.2 Fees for Permits and Variances

Fees may be charged for building permits issued, and for processing of variances and Special Permits. A schedule of fees as approved from time to time by the Town Board, shall be kept and posted in the office of the Town Clerk.

## Section 6.3 Violation and Penalties

any violation of this Local Law is an offense punishable by a fine and/or imprisonment not exceeding the maximum penalties for an offense established under New York State law.

## Section 6.4 Complaints of Violations

Whenever a violation of this Local Law occurs, any person may file a complaint in regard thereto. All such complaints shall be made to the Code Enforcement Officer, who shall properly record and promptly investigate such complaint. In the case of written complaints the Code Enforcement Officer shall file a written report of the results of his investigation and send a copy of that report to the complainant with a copy of the complaint and of the report to the Town Supervisor.

## ARTICLE VI-A ADMINISTRATION AND ENFORCEMENT OF STATE CODES

### Section 6A-1 Purpose and Intent

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in the Town of Smithfield. All Local Laws and /or ordinances adopted prior to the adoption of this article which are inconsistent with the provisions of this article are hereby deemed repealed and superseded by this article. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

### Section 6A-2 Definitions

In this article:

“Building Permit” shall mean a permit issued pursuant to section 6A-4 of this article. The term “Building Permit” shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this Local Law.

“Certificate of Occupancy” / “Certificate of Compliance” shall mean a certificate issued pursuant to subdivision (b) of Section 6A-7 of this Local Law.

“Code Enforcement Officer” shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of Section 6A-3 of this Local Law.

“Code Enforcement Personnel” shall include the Code Enforcement Officer and all Inspectors.

:Compliance Order” shall mean an order issued by the Code Enforcement Officer pursuant to subdivision (a) of Section 6A-15 of this Local Law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Inspector” shall mean an inspector appointed pursuant to subdivision (d) of Section 6A-3 of this Local Law.

“Operating Permit” shall mean a permit issued pursuant to Section 6A-10 of this Local Law. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this Local Law.

“Permit Holder” shall mean the Person to whom a Building Permit has been issued.

“Person” shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

“Stop Work Order” shall mean an order issued pursuant to Section 6A-6 of this Local Law.

“Temporary Certificate” shall mean a certificate issued pursuant to Subdivision (d) of Section 6A-7 of this Local Law.

“Town” shall mean the Town of Smithfield.

“Uniform Code” shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

#### Section 6A-3 Code Enforcement Officer and Inspectors

- (a) The office of Code Enforcement Officer of the Town of Smithfield is hereby confirmed and continued. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this Local Law. In addition to such other duties and authority as may be conferred upon the Code Enforcement Officer by the Town Board, the Code Enforcement Officer shall have the following powers and duties:
  - (1) to receive, review, and approve or disapprove application for Building Permits, Certificates of Occupancy/ Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
  - (2) upon approval of such applications, to issue Building Permits, Certificates of Occupancy/Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in Building Permits/Certificates of Compliance,



Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

- (3) to conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy/Certificates of Compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this Local Law;
  - (4) to issue Stop Work Orders;
  - (5) to review and investigate complaints;
  - (6) to issue orders pursuant to subdivision (a) of Section 6A-15 (Violations) of this Local Law;
  - (7) to maintain records;
  - (8) to collect fees as set by the Town Board of this Town;
  - (9) to pursue administrative enforcement actions and proceedings;
  - (10) in consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this Local Law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this Local Law; and
  - (11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this Local Law.
- (b) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- (c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this Local Law.
- (d) One or more Inspectors may be appointed by the Town Board to act under supervision and direction of the Code Enforcement Officer and to assist the code

Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this Local Law. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

- (e) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board of this Town.

#### Section 6A-4 Building Permits

(a) **Building Permits Required.** Except as otherwise provided in subdivision (b) of this section, a Building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

- (b) **Exemptions.** No building permit shall be required for work in any of the following categories:

- (1) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);
- (2) installation of swings and other playground equipment with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- (4) installation of fences which are not part of an enclosure surrounding a swimming pool;
- (5) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (6) construction of temporary motion picture, television and theater stage sets and scenery;
- (7) installation of window awning supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);

- (8) installation of partitions or movable cases less than 5'-9" in height;
  - (9) painting, wallpapering, tiling, carpeting, or other similar fashion work;
  - (10) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
  - (11) replacement of any equipment provided the replacement does not alter the equipments listing or render it inconsistent with the equipments original specifications; or
  - (12) repairs, provided that such repairs do not involve (i) the removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.
- (c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.
- (d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:
- (1) A description of the proposed work;
  - (2) the tax map number and the street address of the premises where the work is to be performed;
  - (3) the occupancy classification of any affected building or structures;
  - (4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
  - (5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the

Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

- (e) Construction Documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by a stamp. One set of the accepted construction documents shall be retained by the code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.
- (f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and the Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- (g) Building Permits to be displayed. Building Permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- (h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.
- (i) Time Limits. Building Permits shall become invalid unless the authorized work is commenced within six (6) months following the date of issuance. Building Permits shall expire twelve (12) months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of applicably fee, and approval of the application by the Code Enforcement Officer.

- (j) Revocation or Suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or the work for which the Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- (k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-12(Fees) of this local law must be paid at the time of submission of an application for a Building Permit, or for renewal of a Building Permit.

#### Section 6A-5 Construction Inspections

- (a) Work to remain accessible and exposed. Work shall remain and accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.
- (b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
  - (1) work site prior to the issuance of a Building Permit
  - (2) footing and foundation
  - (3) preparation for concrete slab
  - (4) framing
  - (5) building systems, including underground and rough-in
  - (6) fire resistant construction
  - (7) fire resistant penetrations
  - (8) solid fuel heating appliances, chimneys, flues or gas vents
  - (9) Energy Code compliance
  - (10) a final inspection after all work authorized by the Building Permit has been completed

- (c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- (d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

### Section 6A-6 Stop Work Orders

- (a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:
  - (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
  - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
  - (3) Any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.
- (b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- (c) Service of Stop Word Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by registered mail or certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally

or by registered mail or certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

- (d) Effect of Stop Work Orders. Upon the issuance of a Stop Work order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.
- (e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 6A-15 (Violations) of this local law or under any other applicable Local Law or State Law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

#### Section 6A-7 Certificates of Occupancy / Certificates of Compliance

- (a) Certificates of Occupancy / Certificates of Compliance required. A Certificate of Occupancy / Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or sub classification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy / Certificate of Compliance.
- (b) Issuance of Certificates of Occupancy / Certificates of Compliance. The Code Enforcement Officer shall issue a Certificate of Occupancy / Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code an, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another ccomplies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy / Certificate of Compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Unifrom Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy / Certificate of Compliance, shall be provided to the Code Enforcement Officer prior to it he issuance of the Certificate of Occupancy / Certificate of Compliance:
  - (1) A written statement of structural observations and/or a final report of special inspections, and
  - (2) Flood hazard certifications.

- (c) Contents of Certificates of Occupancy / Certificates of Compliance. A Certificate of Occupancy / Certificate of Compliance shall contain the following information:
- (1) The Building Permit number, if any;
  - (2) The date of issuance of the Building Permit, if any;
  - (3) The name, address and tax map number of the property;
  - (4) If the Certificate of Occupancy / Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy / Certificate of Compliance is issued;
  - (5) The use and occupancy classification of the structure;
  - (6) The type of construction of the structure;
  - (7) The assembly occupant load of the structure, if any;
  - (8) If automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
  - (9) Any special conditions imposed in connection with the issuance of the Building Permit; and
  - (10) The signature of the Codes Enforcement Officer issuing the Certificate of Occupancy / Certificate of Compliance and the date of issuance.
- (d) Temporary Certificate. The Codes Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a BP. However, in no event shall the Codes Enforcement Officer issue a Temporary Certificate unless the Codes Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Codes Enforcement Officer may include in a Temporary Certificate such items and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed six (6) months, which shall be determined by the Codes Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- (e) Revocation or Suspension of Certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy / Certificate of Compliance or a Temporary Certificate



was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

- (f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy / Certificate of Compliance or for Temporary Certificate.

#### Section 6A-8 Notification Regarding Fire or Explosion

The chief of any fire department providing fire fighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

#### Section 6A-9 Unsafe and/or Abandoned Buildings or Structures

Unsafe and/or abandoned structures and equipment in this Town shall be identified and addressed in accordance with Sections 108, 109 and 110 of the Fire Code of New York State and Section 311 of the Fire Code of New York State, and, as applicable, local laws of the Town of Smithfield.

#### Section 6A-9 Operating Permits

- (a) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:
  - (1) manufacturing, storing or handling hazardous materials in quantities exceeding this listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled “Fire Code of New York State” and incorporated by reference in 19NYCRR section 1225.1;
  - (2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
  - (3) use of pyrotechnic devices in assembly occupancies;
  - (4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
  - (5) building whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Board of this Town.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

- (b) Applications for Operating Permits. An application for an Operation Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- (c) Inspections. The Code Enforcement Officer or and Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.
- (d) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a sing Operating Permit to apply to all such activities.
- (e) Duration of Operating Permits. Operating Permits shall be issued for such periods of time, not to exceed one year in the case of any Operation Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- (f) Revocation or Suspension of Operation Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

#### Section 6A-10 Fire Safety and Property Maintenance Inspections

- (a) Inspections Required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer pr an Inspector designated by the Code Enforcement Officer at the following intervals:
  - (1) Fire Safety and Property Maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

- (2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.
  - (3) Fire safety and property maintenance inspection of all multiple dwellings not included in paragraphs (1) r (2) of this subdivision, and ll non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every 24 months.
- (b) Inspections permitted. In addition tot he inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:
- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
  - (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
  - (3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or the Energy Code exist; provided, however, that nothing in this subdivision shall be constructed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.
- (c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (“OFPC”) and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b.
- (d) Buildings Inspected by OFPC. Notwithstanding any other provision of this section to the contrary:
- (1) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;
  - (2) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;

- (3) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section; and
  - (4) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section.
- (e) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this Local Law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

#### Section 6A-11 Complaints

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this Local Law, or any other Local Law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate;

- (a) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (b) If a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 6A-15 (Violations) of this Local Law;
- (c) If appropriate, issuing a Stop Work Order;
- (d) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

#### Section 6A-12 Record Keeping

- (a) The Code Enforcement Officer shall keep a permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:
  - (1) All applications received, reviewed and approved or denied;

- (2) All plans, specifications and construction documents approved;
  - (3) All Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
  - (4) All inspections and tests performed;
  - (5) All statements and reports issued;
  - (6) All complaints received;
  - (7) All investigations conducted;
  - (8) All other features and activities specified in or contemplated by sections 6A-4 through 6A-12, inclusive, of this Local Law, including; and
  - (9) All fees charged and collected.
- (b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State Law and regulation.

#### Section 6A-13 Program Review and Reporting

- (a) The Code Enforcement Officer shall annually submit to the Town Board of this Town, a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in Section 6A-13 (Record Keeping) of this Local Law and a report and summary of all appeals and litigation pending or concluded.
- (b) The Code Enforcement Officer shall annually submit to the Secretary of the State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.
- (c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code.

#### Section 6A-14 Violations

- (a) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this Local

Law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) Be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this Local Law; (4) specify the provision or provisions of the Uniform Code, The Energy Code, or this Local Law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

- (b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- (c) Civil Penalties. In addition to those penalties proscribed by State Law, any Person who violates any provision of the Uniform Code, the Energy Code or this Local Law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Local Law, shall be liable to a civil penalty of not more than \$250 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Town.
- (d) Injunctive Relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this Local Law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Local Law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this Local Law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, The Energy Code or this Local Law, and action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board of this Town.

- (e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6A-6 (Stop Work Orders) of this Local Law, in any other section of this Local Law, or in any other applicable law. Any remedy to penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6A-6 (Stop Work Orders) of this Local Law, in any other section of this Local Law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of the p[enalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

### Section 6A-15 Fees

A fee schedule shall be established by resolution of the Town Board of the Town,. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this Local Law.

- III. This local law shall take effect immediately upon filing with the Office of the Secretary of State.

## ARTICLE VII: APPEALS

### Section 7.1 Creation, Appointment and Organization of the Board of Appeals.

The Board of Appeals of the Town of Smithfield is hereby created in accordance with the provisions of Article 16 of the Town Law of the State of New York.

### Section 7.2 Powers and Duties

The Board of Appeals shall have all the following power and duties:

- a. Interpretation: Upon appeal from a decision of the Codes Enforcement Officer, to decide questions involving interpretation of any provision of this Local Law.
- b. Variances: To vary strict application of the requirements of this Local Law in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved. In granting any variance, the Board shall prescribe conditions that it deems to be necessary or desirable.
- c. Decisions of the Board of Appeals shall be made within ninety days from the time that the application has been filed with the Board; decisions shall be by resolution, shall contain a full statement of findings of fact in the case, and shall be recorded in the minutes of the Board.

### Section 7.3 Granting of Variances.

No variance in the strict application of any provision of this Local Law shall be granted by the Board unless it finds:

- a. Strict application of the Local Law would produce undue hardship and that the hardship is not self-created.
- b. The hardship is unique and it not shared by all properties alike in the immediate vicinity of the property.



- c. The variance would observe the spirit of the Local Law and would not change the character of the neighborhood, be injurious to the neighborhood or otherwise detrimental to public welfare.
- d. The variance is the minimum necessary to grant relief.

#### Section 7.4 Procedure for Interpretation or Variance.

- a. The Board of Appeals shall act in strict accordance with the procedure specified by the Town Law and by this Local Law. All applications made shall be in writing, on forms prescribed by the Board. Every application shall refer to the specific provision of the Local Law involved, and shall set forth the interpretation claimed, or details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.

### ARTICLE VIII PLANNING BOARD

#### Section 8.1

The existence of the Planning Board of the Town of Smithfield is hereby affirmed and continues. The Planning Board shall continue to consist of seven (7) members to be appointed by the Town Board and it shall have all the powers and duties bestowed by this Local Law and by Article 16 of the Town Law of the State of New York, including the power to review and approve applications for Special Use Permits and Subdivision approval.

#### Section 8.2 Issue of Special Use Permits.

In every case where a Special Use Permit is required by this Local Law, the Planning Board shall action a request for such a permit only after:

- a. Owners of property within 200 feet of the property on which the Special Use Permit is required shall be notified by mail at the Same time the public hearing notice is given to the newspaper prior to public hearing.
- b. A public hearing has been held pursuant to the Town Law of the State of New York.
- c. In certain Special Use Permit cases, until the County Planning Board referral requirements of Article 12-8, Section 239-M of the General Municipal Law have been met.

#### Section 8.3 Required Plan.

An application for a Special Use Permit shall be accompanied by three sets of preliminary site plans, and other descriptive matter to portray clearly the intentions of the applicant. These documents shall become a part of the record. Such plans shall show location of all buildings, parking, access and circulation, open space, landscaping, and other information necessary to determine if the proposed special use meets the requirements of this Local Law.

#### Section 8.4 Standards Applicable to All Special Uses.

The Planning Board may issue a Special Use permit only after it has found that all the following standards and conditions have been satisfied.

- a. Location, size of use and structure, nature and intensity of operations involved, size of site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with orderly development of the area and will not alter the essential character of the area.
- b. Location, nature and height of building, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, or impair their value.
- c. Proposed parking and traffic circulation facilities shall be adequate for present and future needs to insure the orderly development of the district.
- d. The proposed use will not create a hazard to public health, safety, morals or the general welfare.
- e. Sufficient and appropriate landscaping or other screening is provided to ensure compatibility with adjoining and nearby uses.
- f. Proposed sanitation facilities (IE. sewage facilities, garbage storage, etc.) shall be sufficient and adequate for all proposed uses to protect health and property values in the area.

### Section 8.5 Performance Bonds

The Planning Board may require as a condition for the approval of an application for a special use permit that the owner file a performance bonds, in such amount as it determines to be in the public interest, to ensure that the proposed development will be built in compliance with the accepted plans.

### ARTICLE IX: MOBILE HOMES

#### Section 9.1 – General Regulation of Mobile Homes

- a. It shall be unlawful, within the limits of the Town of Smithfield, to park or place a mobile home except upon compliance with the provisions of this Local Law and the Sanitary Law of the Town of Smithfield.
- b. Except to the extent particular provisions of this Article conflict with or are more specific than other provisions of this Local Law, all provisions of this Local Law pertaining to residence structures and placement of structures upon any lot shall also be deemed applicable to mobile home residences. No mobile home shall be parked or placed within the Town of Smithfield except upon a farm or in a duly licensed mobile home park and upon the prior issuance of a permit therefore by the Town Code Enforcement Office. No mobile home shall be occupied, either as a residence or as a place of business, except upon the prior issuance of a certificate of occupancy by the Code Enforcement Officer.
- c. No more than one mobile home shall be parked or placed on any farm parcel within the Town unless a Special Use Permit has been issued pursuant to the provisions of section 3.5 of this Local Law.
- d. No mobile home shall be parked or placed on any parcel within the Town for any purpose other than use as a principle residence structure. Use of a mobile home on any parcel for any purpose other than as a principle residence, including, but not limited to, storage or animal housing, is hereby prohibited. Junked mobile homes shall not be permitted only in licensed junkyards.
- e. No permit for the placement of a mobile home within the Town shall be issued until all of the following performance standards have been met to the satisfaction of the Codes Enforcement Officer:

- i. The mobile home site must be graded to allow the safe placement of the mobile home. The mobile home site shall have one of the following in place to accommodate the placement of the mobile home
  - a. a six inch thick, steel mesh reinforced concrete pad with dimensions at least as large as the exterior dimensions of the mobile home to be placed upon it, or;
  - b. Concrete piers at least 12" in diameter or width, placed no more than 10 feet apart (or to manufacturer's recommendations if available) around the perimeter of the mobile home, and also placed to a depth of 4 feet below the ground surface or to bedrock, whichever is less.
- ii. Driveway, septic system and water supply must be installed and approved by the Code Enforcement Officer prior to placement of the mobile home on the mobile home site.
- f. All mobile homes shall be skirted prior to the issuance of a certificate of occupancy.
- g. All ground within 25 feet of the mobile home, or to the property line, whichever is less, shall be graded and seeded or paved to allow sufficient access by emergency vehicles and personnel. In addition any ground disturbed during site preparation or placement of the mobile home shall be regarded and seeded or otherwise appropriately landscaped. This provision shall not be construed to require the removal of any trees which the owner otherwise desires to remain for landscaping purposes.
- h. No travel trailer or motor home shall be used as a residence within the Town of Smithfield.
- i. No mobile home may be enlarged or otherwise altered by any construction which penetrates in any way the exterior of the mobile home.

#### Section 9.2 – Residences

No mobile home shall be parked or placed in the Town of Smithfield for use as a residence unless it has affixed to it its original manufacturer's data plate indicating a year of manufacture of 1976 or later.

#### Section 9.3 – Temporary Residences

- a. Upon the issuance of a Special Use Permit, a mobile home may be parked or placed within the Town of Smithfield for use as a temporary residence while the owner of the subject parcel constructs a permanent residence structure.
- b. No mobile home shall be parked or placed in the Town of Smithfield- as a temporary residence for a period longer than two years from the date of issuance of the permit therefore. Upon the expiration of such two year period, one (but no more than one) six month provisional extension of the permit to use a mobile home as a temporary residence maybe obtained from the Code Enforcement Officer upon the Codes Enforcement Officer's determination that the applicant is proceeding in good faith toward the completion of the permanent residence structure, and proof that at least the foundation of the permanent residence structure has been completed.
- c. The permanent residence structure shall consist of either a home of conventional construction or modular construction.

#### Section 9.4 – Used Mobile Homes

- a. No used mobile home shall be parked or placed within the Town (either as a permanent or temporary residence), except upon the issuance of a permit by the Code Enforcement Officer for the placement of a used mobile home.

- b. Upon application for a permit for the placement of a used mobile home for a residence structure, the burden of proof shall be upon the Applicant to demonstrated to the Code Enforcement Officer, through the use of documents, photographs or such other appropriate evidence, that each of the following conditions are met:
  - 1. That the mobile home meets all requirements of the New York State Building and Energy Conservation Codes pertaining to mobile homes;
  - 2. The mobile home must be free of detectable defects in the plumbing, heating and electrical systems;
  - 3. No exterior rust shall be visible on the mobile home;
  - 4. The factory or replacement siding and roof shall be intact;
  - 5. All windows shall be intact and functional
  - 6. The mobile home must be identifiable by make, model and year of manufacture and must be accompanied by a manufacturer's data plate indicating a date of manufacture after 1975; and
  - 7. All smoke detectors shall be in place and functional in accordance with applicable state and federal codes and guidelines.

#### Section 9.5 Existing Mobile Homes

- a. Any mobile home situate within the Town and being used as a principle residence pursuant to a valid mobile home permit and/or certificate of occupancy issued by the Code Enforcement Officer as of the effective date of this Article shall be considered a nonconforming use and structure, the occupancy of which may be continued subject to the provisions of this Article and Article V of this Local Law. In the event of any conflict in the provisions of this Article and Article V pertaining to the non-conforming status of mobile homes, the provisions of this Article shall control.
- b. Notwithstanding the provisions of paragraph (a) of this section, or any other provision of this Local Law, any mobile home situate on any parcel within the Town as of the effective date of this Article which is not being used as a principle residence structure as of the effective date of the Article (other than junked mobile homes within a licensed junkyard) shall be permitted to remain on such parcel for a period not to exceed two years from the effective date of this Article. Upon the expiration of such two year period, all properties within the Town shall be in compliance with Section 9.1, paragraph (d) of this Article.
- c. The nonconforming status of any use, structure or parcel grandfathered under the provisions of paragraph (a) of this section 9.5 shall terminate upon cessation of use of the nonconforming mobile home as a principle residence structure upon the parcel for a period of twelve (12) consecutive months.
- d. A mobile home which has a legal nonconforming status as a residence structure under the provisions of paragraphs (a) and (c) of this section may be replaced on the same lot with a newer mobile home upon satisfaction of the following conditions.:
  - i. issuance of a Special Use Permit;
  - ii. all other provisions of this Article are satisfied to the same extent as if it were the initial placement of a mobile home upon the lot;
  - iii. Square footage of the replacement mobile home must equal to or greater than that of the existing mobile home;
  - iv. the replacement mobile home must be of a model year that is newer than that of the mobile home being replaced.

- v. the mobile home being replaced must be removed from the site within thirty days of the completion of the installation of the newer mobile home. No artificer of occupancy for the newer mobile home may be issued until the mobile home being replaced has been removed from the site.

#### Section 9.6 License to Operate Mobile Home Park

- a. It shall be unlawful, within the limits of the Town of Smithfield, to operate a mobile home park without first having obtained a mobile home park license from the Town Code Enforcement Officer and the Madison County Department of Health.
- b. Such mobile home park license shall be issued by the Town Code Enforcement Officer upon the payment of an application fee to be determined from time to time by resolution of Town Board, and upon the review and approval of the Planning board, which approval shall be granted only after inspection of the premises by the Town Code Enforcement Officer, and certification by such inspector (or a New York State licensed professional engineer) that said mobile home park location was found to be in conformance with the requirements of this Local Law and the requirements of the New York State Department of Health.
- c. No mobile home park license shall be issued unless the applicant therefore has complied with the following requirements:
  - 1. The applicant shall submit a scale drawing by a New York State licensed surveyor or engineer of his proposed mobile home park, which plan shall show in detail the exact location of said mobile home park, the number of units for which said park shall be licensed, the distance between the mobile homes, the location of roadways, recreational

facilities, and the proposed plan for water supply and sewage disposal facilities and electrical power.

2. No mobile home park shall be located except in a well drained site suitable for such purpose, and having adequate room for the number of mobile homes authorized in said license.
  3. No mobile home shall be placed in a mobile home park within 100 feet of any adjoining public street line.
  4. No mobile home shall be placed or parked closer than 50 feet from any permanent structure or closer than 50 feet from any property line.
  5. No mobile home shall be placed in a mobile home park closer than 50 feet from an adjoining mobile home or structure attached thereto.
  6. No drains from toilets, lavatories, showers or sinks shall be permitted to flow onto the surface of the ground or into any ditch, but must be connected to a sewer line emptying into a septic tank and draining into an adequate seepage field, or such with other approved sanitary systems.
  7. All mobile homes located within a mobile home park shall be provided with a connection to a private or public water system providing a steady flow of clear and pure water, found safe to drink after being tested by approved standards.
  8. All mobile home parks shall be adequately equipped with sanitary covered receptacles for all garbage and refuse and covered receptacles shall be furnished for the use of the occupants. No uncovered refuse or other unsanitary conditions shall be permitted in any mobile home park.
  9. No mobile home park license shall be issued unless the applicant has filed with the Town Clerk a certificate from the Madison County Health Department that the proposed mobile home park has been inspected by the County Health Department, and has been approved and found to be in compliance with New York State Sanitary Code.
  10. All mobile homes within a mobile home park shall access the public highway via an internal drive. No mobile home site shall have direct access to the public highway.
- d. All mobile home sites and mobile homes located in any mobile home park shall meet all performance standards and other requirements of this Article.
- e. The owners of a licensed mobile home park shall keep a registry of all occupants which shall include the occupants name, address, and mobile home license or serial number, the make, model and year of the mobile home and the number of persons occupying same, which registry shall be available at all time for inspection by the Code Enforcement officer or other Town official.

## ARTICLE X DRIVEWAYS

### Section 10.1 Purposes

The purpose of this article is to establish regulations for the construction of driveways allowing access to own roads within the Town of Smithfield. This article is adopted with the understanding that the Town highway system serves two major purposes: it must provide safe and efficient movement of people and goods and reasonably convenient access to the abutting property owner. The intent of this article is to balance these two roles without allowing one to become a serious detriment to the other.

### Section 10.2 Permits

Any person, institution or corporation desiring to construct a residential driveway or commercial driveway (as such terms are defined in this Article) for permanent or temporary vehicular access to a town highway shall obtain a driveway permit prior to the commencement of construction from the

Town Codes Enforcement Officer upon the advice and recommendation of the Town Highway Superintendent. Farm driveways (as defined in this Article) and in-home occupations using existing residential driveways and not involving regular motor vehicle traffic by someone other than a resident of an existing residence shall not be subjected to the provisions of this Article.

- a. Application:
  - i. Application for a driveway permit shall be on such forms as determined and supplied by the Town codes Enforcement Officer and shall include such information as may be necessary to determine compliance with this article and any other applicable codes, rules and regulations.
  - ii. The applicant shall furnish with the application maps detailing the location of the property and the specific location of the proposed driveway for which approval is requested. The Town Code Enforcement Officer and/or Town Highway Superintendent may require such other additional documentation including but not limited to photographs, surveys or reports sole discretion shall deem appropriate.
- b. Issuance. Within a reasonable time after the submission of a completed application, appropriate fee, and additional documentation, if necessary, the Codes Enforcement Officer shall cause a copy of the application to be delivered to the Town Highway Superintendent for review. Should compliance be determined, the Code Enforcement Officer shall issue a permit for the construction of the driveway as specified on the application. An incomplete application or lack of sufficient information shall be cause for denial of the permit.

### Section 10.3 Classifications

Driveways shall be classified as to the most prominent use of the driveway. All driveways entering town roads shall be classified as follows:

- a. Farm Driveways: a driveway servicing a farm yard, cultivated or uncultivated field, timberland, or undeveloped land not used for a non agricultural purpose, and utilized primarily by farm vehicles such as tractors, and other off-road agricultural vehicles.
- b. Residential Driveways: a driveway servicing a private home or other single or multiple family residence.
- c. Commercial Driveway: a driveway servicing a commercial establishment, industry, governmental or educational institution, private utility, hospital, church, apartment building or other comparable traffic generating facility.

### Section 10.4 Design regulations for Residential and Commercial Driveways.

- a. The maximum number of driveway entrances onto a town road shall be one per building lot having 200 feet of frontage or less, which restriction shall not be deemed to prohibit circular or u-shaped driveways where they are necessary for save ingress and egress to and from the public road. If the lot frontage is greater than 200 feet, two or more driveway entrances may be allowed if all other standards of the Article are met and there is no detrimental effect on public safety.
- b. No driveway shall be constructed within 100 feet of a road intersection measured from the nearest intersection of the right-of-way lines.



- c. The angle of all driveways with town roads shall be as close to 90 degrees as practicable, but in no event less than 45 degrees.
- d. The minimum driveway width shall be 10 feet.
- e. The minimum return radius at the intersection of driveways and the road surface shall be 10 feet and in no case shall the radius extend beyond the intersection of the pavement edge and the side property line as projected.
- f. Driveways shall slope down from the road surface to the drainage line at grades of  $\frac{3}{4}$  inch per foot or existing shoulder pitch, whichever is greater.
- g. The sizes and slopes of driveway storm drains and culverts within the town road right-of-way shall be as specified by the Town Highway Superintendent. The owner shall bear all costs for pipe, grating, paving, etc., required within such right-of-way.
- h. No driveway shall be constructed where the sight distance is less than 10 times the legal posted maximum limit. The applicant shall also trim brush and maintain his/her property in such a manner as to maintain optimal sight distance.
  - i. Driveways and parking areas shall be designed so that no parking, loading or servicing of vehicles will take place within the town road right-of-way and so no vehicles will be required to back onto the town road to gain ingress or egress to the abutting property.

#### Section 10.5 Drainage Regulations

- a. All existing and proposed drainage conditions shall be indicated on the plans submitted by the applicant.
- b. Facilities to carry water through and/or off the owners' property shall be designed and constructed so that no damage or surface ponding will occur to, or on, existing and proposed buildings, driveways, adjacent properties, drainage facilities and public improvements.
- c. In no case shall a driveway be constructed so as to convey water onto the road surface.

#### Section 10.6 Location and layout

- a. A driveway system shall be so located as to provide:
  - i. The most favorable vision, grade and alignment conditions for motorists using the proposed driveway and highway
  - ii. The least interference with the free and safe movement of highway traffic, and
  - iii. The maximum safety and convenience for pedestrians and other users of the highway right-of-way.
- b. Placement. In the interest of public safety and convenience, the Town Codes Enforcement Officer may restrict the placement of a driveway to a particular location along the owner's road frontage or require the relocation of existing driveways subject to this Article.
- c. Restrictions. Driveway for new subdivisions shall, where necessary for safe ingress and egress to and from the individual lots and the public road, utilize one or more shared private drives for common access to the highway in order to minimize, to the maximum extent practicable, the number of new driveway access points to town roads. The Code Enforcement Officer shall impose such other restrictions and conditions on the issuance of a driveway permit as, in his discretion, maybe required to implement the purposes of this Article. Such other conditions and restrictions may include, but are not limited to, traffic control devices, pavement markings, turn restrictions or other conditions deemed necessary.

## Section 10.7 Liability

The adoption of this Article is to provide a minimum procedure for the regulation of access to Town highways. Its adoption and enforcement is not intended to relieve the property owner and the individuals constructing driveways in the Town from any obligation or responsibility to avoid the creation of dangerous conditions. Additionally, the adoption, administration or enforcement of this Article shall not act as the basis for any claim of any nature against the Town of Smithfield concerning the locations, existence, maintenance, construction, regulation or design of driveways.

## Section 10.8 Maintenance Responsibility

- a. Property owners having access to a Town highway shall be fully responsible for maintenance of their driveway and channelization, including the portion from the highway right-of-way line to the outside edge of the highway shoulder or curb line. The maintenance responsibility includes removal of snow and ice and keeping the portion within the highway right-of-way in a safe condition for the general public.
- b. The property owner shall be responsible for the maintenance of ditches, pipes, catch basins, grates and other drainage structures constructed in connection with providing access to his/her property. All traffic control devices, such as stop and yield signs, etc., installed by the property owner in the highway right-of-way with the permission of the town, shall conform to the Manual of Uniform Traffic Control Devices and be maintained, and replaced by the property owner. The property owner shall also trim brush and maintain his property in such a manner as to maintain optimal sight distance.

## Section 10.9 Performance Bonds and Deposits

A performance bond and/or deposit may be required for a permit issued for construction or reconstruction of a commercial driveway to protect the town against the cost of completing construction or correcting deficiencies. The deposit shall be returned when the work is satisfactorily completed. The performance bond amount or deposit will be prescribed by the Town Highway Superintendent, consistent with the scope and magnitude of the work involved.

## Section 10.10 Fees/Modification of Approvals

The fees charged for driveway permits shall be determined from time to time by the Town Board. Any driveway permit and/or site plan approval or special use permit may be revoked or modified by the Code Enforcement Officer (with respect to driveway permits) and the Planning Board (with respect to site plan approval and special use permits) if the classification or use of the driveway(s) serving the premises is changed or other hazard(s) becomes apparent after construction and use of the driveway begins. All costs for any warning devices and/or signs shall be borne by the applicant.

## Section 10.11 Construction standards and regulations

- a. accepted materials for drainage structures.
  - i. Driveway pipe shall be either reinforced concrete, corrugated steel pipe, corrugated polyethylene storm drain pipe meeting NYSDOT Material Standards and shall be of a size and type as determined by the Highway Superintendent.

- ii. Back fill around driveway pipes shall consist of gravel or crushed stone containing no stone greater than four inches in diameter and shall extend at least 12 inches above the driveway pipe. The back fill shall be thoroughly compacted with particular attention given to the proper placing and compaction of the back fill under the pipe haunches.
  - iii. No head walls may be built on ends of driveway pipes, Flared end section may be required.
  - iv. Catch basins, if required, shall conform with such specifications as determined by the Code Enforcement officer and /or Highway Superintendent.
- b. Sub base and surface materials.
- i. The driveway sub base shall consist of 12 inches of gravel.
  - ii. The driveway surface shall be consolidated in such a manner so to prevent loose material from being scattered onto the town road surface.
- c. Excavation for drainage structures. Roadside ditches shall be excavated to the width and depths specified by the Highway Superintendent.

*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.

FILED  
STATE RECORDS

JUL 24 2023

County  
City  
of Smithfield  
Town  
Village

DEPARTMENT OF STATE

Local Law No. 2 of the year 2023

A local law to Amend the Town of Smithfield Building and Development Control Law to Enact a New  
(Insert Title)  
Article Regulating Wind Energy Facilities Within the Town of Smithfield

Be it enacted by the Town Board of the

County  
City  
of Smithfield as follows:  
Town  
Village

**BE IT ENACTED** by the Town Board of the Town of Smithfield as follows:

**SECTION 1. PURPOSE AND INTENT.**

The purpose of this Local Law is to amend the Town of Smithfield Land Use Regulations to permit and regulate the construct of wind energy facilities in the Town of Smithfield in a manner that preserves the health, safety and welfare of the Town while also facilitating the production of renewable energy.

**SECTION 2. AUTHORITY.**

The Town Board of the Town of Smithfield hereby enacts this Local Law under the authority granted by: Article IX of the New York State Constitution, Section 2(c) (6) and (10); New York Statute of Local Governments, Section 10 (1) and (7); New York Municipal Home Rule Law, Section 10(I)(i) and (ii) and Section 10(1)(a)(6), (11), (12), and (14); New York Town Law

Section 130(1) (Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7) Use of Streets and Highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25) (Building lines); New York Town Law Section 64(7-a) (protection of aesthetic interests), 23 (General powers); The State Environmental Quality Review Act (“SEQRA”); New York Agricultural and Markets Law; New York Real Property Tax Law; New York Executive Law.

**SECTION 3. REPEAL OF CERTAIN PROVISIONS OF LOCAL LAW NO. 1 OF 2009**

Sections 3.3-B through 3.3-D of the Town of Smithfield Building and Development Control Law are hereby repealed in their entirety.

**SECTION 4. AMENDMENT OF THE TOWN OF SMITHFIELD BUILDING AND DEVELOPMENT CONTROL LAW TO ADD A NEW ARTICLE 11 TITLED WIND ENERGY FACILITIES**

The Town of Smithfield Building and Development Control Law is hereby amended to add a new Article 11 entitled “**Wind Energy Facilities**” as follows:

**Section 1100-1. Purpose and Intent.**

The Town of Smithfield recognizes that wind energy is a clean, perpetually available renewable energy source. Development of wind energy facilities offers an energy source that may reduce fossil fuel emissions. The Town of Smithfield has determined that comprehensive regulations regarding the development of wind energy facilities are necessary to protect the interests of the Town, its residents, and businesses. This Article is intended to promote the effective and efficient use of wind energy facilities; establish provisions for the placement, design, construction, operation and removal of such facilities in order to uphold the public health, safety and welfare, allow for the co-location of wind energy facilities within active farming and agricultural lands in a manner that preserves the rural character of the Town of Smithfield; to ensure that such facilities will not have a significant adverse impact on the aesthetic qualities and maintain the rural character of the Town. The Town, when appropriate, will promote the location of smaller wind energy facilities in multiple locations to further mitigate impacts from such larger projects. Further, the Town of Smithfield wishes to enhance agricultural viability within the Town and preserve productive agricultural land resources, mitigate the impacts of wind energy facilities on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources. The Town of Smithfield through this Article recognizes that such uses in the Town may, in some instances, represent large disturbances of lands, the hosting of complex equipment and the need to assure that such projects and property are removed or disposed of at the time of the discontinuance, while minimizing impacts to local roads and nearby property values and avoiding financial burdens on taxpayers.

**Section 1100-2. Findings.**

- A. The Town hereby finds wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that result from the use of conventional energy sources.

- B. The generation of electricity from properly sited wind turbines supported by governmental subsidies, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at that location can be reduced.
- C. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
- D. Wind Energy Facilities may present significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.
- E. If not properly regulated, installation of Wind Energy Facilities may create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
- F. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
- G. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
- H. Wind Energy Facilities can be a significant sources of noise, which, if unregulated, may negatively impact adjoining properties.
- I. Without proper planning, construction of Wind Energy Facilities may create traffic problems and damage local roads.
- J. If improperly sited, Wind Energy Facilities may interfere with various types of communications.
- K. The Town of Smithfield is a rural community located with significant quantities of open lands with varying elevation and topography.
- L. The Town of Smithfield is an agricultural community supporting varied agricultural, forestry and recreational uses. Town of Smithfield residents and visitors enjoy outdoor activities, including hunting, fishing, trapping, hiking, cycling, horseback riding, snowmobiling, skiing, jogging, and other motorized and non-motorized recreational pursuits.
- M. The Town of Smithfield has very few tall structures.
- N. The Town of Smithfield is bounded in all directions by Towns which share similar agricultural, forested, and rural residential character, with similar hilly topography.
- O. As a matter of public policy, Wind Energy Facilities must be removed and the sites remediated when the facilities are no longer utilized.

**Section 1100-3. Applicability.**

This Article shall apply to all wind energy facilities in the Town of Smithfield which are installed or modified after the effective date of this Article including any Wind Energy Conversion System or Small Wind Energy Conversion System, applied for but not yet approved prior to the date of this Section. All wind energy facilities which are installed or modified after the effective date of this Section shall be in compliance with all of the provisions hereof. Any proposed wind energy facility subject to review by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the New York State Executive Law or any subsequent law, shall be subject to all substantive provisions of this Article 11 and any other applicable provisions of the Town of Smithfield Land Use Regulations and applicable local laws.

**Section 1100-4. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

**APPLICANT** - The person or entity filing an application and seeking a special use permit or site plan approval or other approval required by the Town under this Section.

**A-WEIGHTED (dBA)** - The unit of measure for the human response to noise using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

**BACKGROUND NOISE** - The noise level represented without the wind turbine(s) operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude noise level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds that are not present year-round.

**BLADE GLINT** - The intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbines.

**BUILDING** - Any structure used or intended for supporting any use or occupancy.

**C-WEIGHTED (dBC)** - An electronic filter with a band-pass frequency response 20Hz to 20kHz.

**DAYTIME** - Hours from 7:00 AM to 7:00 PM, unless otherwise noted.

**DEBRIS HAZARD** - Hazard owing to the possibility that the parts of a Wind Turbine, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

**EXCESSIVE NOISE** - Any noise that causes a nuisance or disturbance or degrades health or well-being.

**FAA** - The Federal Aviation Administration.

**FREQUENCY** - The number of occurrences of a repeating event per unit time; in cycles per second, expressed in Hz (Hertz).

**HERTZ (Hz)** - A unit of frequency equal to one cycle per second.

**LDN** - The day/night level is the 24-hour average of continuous "A-weighted" sound energy having a 10 decibel penalty added to the nighttime hours of 10 p.m. to 7 a.m.

**LEQ** - The equivalent continuous sound level that has the same acoustic energy for a constant sound level as for a fluctuating or intermittent level in the same period of time.

**NIGHTTIME** - Hours from 7:00 PM to 7:00 AM, unless otherwise noted.

**NOISE** - Unwanted or any sound that is not part of the natural environment.

**NOISE EMITTER** - Any man-made piece of WECS equipment that is audible beyond the property line of a Participant Landowner.

**NOISE LEVEL** - Energy-equivalent sound pressure level (Leq) over a minimum of a ten-minute interval.

**NON-PARTICIPANT** - Any and all Smithfield landowners having no contractual relationship with a wind developer.

**OCTAVE BAND** - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

**ONE-THIRD OCTAVE BAND** - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

**PARTICIPANT** - Any and all Smithfield landowners having a signed lease, or easement with a wind developer.

**PROJECT BOUNDARY** - A continuous line, which encompasses all Wind Turbines and related equipment to be used in association with a Wind Energy System.

**PROPERTY LINE** - Means the recognized and survey or tax mapped property parcel boundary line.

**PURE TONE** - Sinusoidal sound energy for a single frequency or pitch.

**QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT** - A person who is qualified by education and experience in acoustics and regularly engaged in community noise testing with demonstrated competence in the specialty of community noise testing who is contracted by the Town for purposes of noise measurement or evaluation of noise analysis or noise complaints. The Qualified Independent Acoustical Consultant can have no financial relationship with the Wind developer or related entity.

**RESIDENCE** - means any dwelling suitable for habitation existing in the Town of Smithfield on the date an application is received. For purpose of this definition, "suitable for habitation" shall mean that its primary purpose is for private occupancy.



**SEQRA** - the New York State Environmental Quality Review Act, as codified in Article 8 of the New York State Environmental Conservation Law and its implementing regulations in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 617 et seq. (6 NYCRR Section 617).

**SETBACKS** - a distance measured from edge of a rural right-of-way, property lines, wetlands, or closest point of residence foundation to the base of the turbine or measurement tower.

**SHADOW FLICKER** - the visual effect of viewing the moving shadow of the Wind Energy Conversion System (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by the receptor whether directly or indirectly (as in a reflection off a light-colored wall).

**SOUND LEVEL** - The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in ANSI specifications for sound level meters (ANSI S1.4-1971, or the latest revision).

**SOUND POWER LEVEL** -  $L_w$ . Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

**SOUND PRESSURE LEVEL** -  $L_p$ . Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

**TOTAL HEIGHT** - The height of the Tower from the finished ground elevation at the base of the Tower to the furthest vertical/extension of the Turbine Rotor Plane.

**TOWER HEIGHT** - The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for Turbine Blades.

**UN-WEIGHTED (dBL)** - A sound pressure level obtained without a weighting filter.

**USEFUL LIFE** - The period during which an individual Wind Turbine(s) will be presumed to be at the end of its economic life.

**WIND ENERGY CONVERSION SYSTEMS (WECS)** - An electricity generating facility, with a generating capacity of over 100 kilowatts, consisting of one or more wind turbines, including any substations, cables/wires, and other buildings accessory to such system. Sometimes referred to as a facility.

**WIND ENERGY CONVERSION SYSTEMS, SMALL (SWECS)** - An electricity generating facility, with a generating capacity of up to but not exceeding 100 kilowatts, consisting of one Wind Turbine, including any cables/wires, foundations and other buildings accessory to such system, and designed to produce power primarily for on-site use or consumption.

**WIND SHEAR** - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

**WIND TURBINE** – Any tower, pole, or other structure, whether attached to a building, guyed, or freestanding designed to be used for the support of a rotor that consists of blades and a hub, as well as nacelle and generator for producing electricity.

**Section 1100-5. Wind Energy Conversions Systems (WECS)**

A. Permits Required; Transfer; Modifications.

- (1) Districts where allowed. Subject to the issuance of site plan approval and a special use permit and other requirements as set forth herein, WECS shall be a permitted use in all areas of the Town of Smithfield except within the Peterboro Hamlet district and the Hamlet Buffer District. WECS is a prohibited use in the Peterboro Hamlet District and the Hamlet Buffer District.
- (2) No WECS shall be constructed, reconstructed, modified, or operated in the Town except in compliance with this Article. In the case of any conflict between this Article and any other Town of Smithfield law, rule or regulation, this Article shall supersede any conflicting provision.
- (3) Permits required. No person, firm or corporation, or other entity being the owner, occupant, or lessee of any land or premises within the Town of Smithfield shall use or permit the use of land or premises for the construction or installation of a WECS without obtaining a building permit, a special use permit and site plan approval as hereinafter provided. The Planning Board is hereby authorized to review and either approve, approve with conditions, or disapprove applications special permits and site plan approvals for WECS.
- (4) No Wind Measurement Tower a/k/a Met Tower or LIDAR System shall be constructed, reconstructed, modified, or operated in the Town except pursuant to a special use permit pursuant to this Article.
- (5) Exemptions. No permit or other approval shall be required under this Section for mechanical, non-electrical WECS utilized solely for agricultural operations, commonly referred to as “windmills”.
- (6) Transfer. No transfer of any WECS or a special use permit granted pursuant to this Article, nor sale of the entity owning such WECS including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), may occur unless the transferee provides to the Town Board written certification that such transferee assumes all obligations of the transferor under any permit issued pursuant to this Article and any other applicable law or ordinance. Notwithstanding the requirements of this Section, replacement in kind or modification of a WECS may occur without Town Board approval when (1) there will, be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or

change in facility color; and (4) no increase in the noise produced by the WECS.

B. Required Submissions for an Application.

- (1) All applications for WECS are required to provide reports and supporting information based on the studies, evaluations, and analyses set forth herein. All studies, evaluations and analysis shall be submitted to and meet the reasonable requirements of the Planning Board before any application shall be deemed complete.
- (2) An application for a special use permit and site plan approval shall include the following, presented in the following order, unless waived by the Planning Board:
  - (a) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - (b) Name, address, and telephone number of the owners of properties on which the WECS will be located. If the property owner is not the Applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed application and (ii) authorizing the submission of the application.
  - (c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block, and lot number.
  - (d) A description of the project, including the number and maximum rated capacity of each WECS.
  - (e) A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
    - i. Property lines and physical dimensions of the project site.
    - ii. Location, approximate dimensions, and types of major existing structures and uses on the project site, public roads, and adjoining properties within the setback distances specified in Section 1100-5(G) of the boundaries of the proposed WECS Site.
    - iii. Location and elevation of each proposed WECS.
    - iv. Location of all above ground utility lines on the project site or within one radius of the Total Height of the WECS,

transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

- v. Location and size of structures above 35 feet within the setback distances specified in Section 1100-5(G) of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
  - vi. To demonstrate compliance with the setback requirements, circles drawn around each proposed tower location equal to the setback distances specified in this Article.
  - vii. Location of the nearest residential structure located off the proposed site, and the distance from the proposed WECS.
  - viii. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- (f) Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
  - (g) Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
  - (h) Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
  - (i) List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed project site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
  - (j) Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and

restoration in compliance with these regulations; 5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the project site restored, which shall include removal of all structures and debris to a depth of three (3) feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

- (k) Complaint Resolution. The application will include a complaint resolution process to address potential complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The Applicant shall make every reasonable effort to resolve any complaint.
- (l) An application shall include information relating to the construction/installation of the WECS as follows:
  - i. A construction schedule describing expected commencement and completion dates; and
  - ii. A description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
- (m) Completed Part 1 of the Full Environmental Assessment Form.
- (n) Applications for Wind Measurement Towers under Section 1100-6 may be jointly submitted with the WECS application.
- (o) For each proposed WECS, include make, model, picture, and manufacturers' specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
- (p) The following studies shall be submitted with the application:
  - i. Shadow Flicker. The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

- ii. Visual Impact. Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed project site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - iii. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed project site.
  - iv. Noise Analysis. A noise analysis shall be provided by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the project site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
  - v. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.
  - vi. A soil analysis shall be provided by an independent third-party professional.
- (q) The Applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
  - (r) A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

C. Application Review Process.

- (1) Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for application review.

- (2) Six (6) copies of the application and a complete digital version shall be submitted to the Town Code Enforcement Officer; Payment of all application fees and other fees including engineering, legal and other professional fees shall be made at the time of application submission. In addition, the applicant shall provide the Planning Board with a reasonable number of additional copies necessary to coordinate review with involved agencies and interested parties, pursuant to SEQRA.
- (3) Upon submission of a complete application, the Town Code Enforcement Officer shall transmit the application to the Planning Board. The Planning Board shall hold at least one (1) public hearing on the application. Notice shall be provided by the first-class mail to property owners within one (1) mile of a turbine, and published in the Town's official newspaper, no less than five (5) before any hearing, but where any hearing is adjourned by the Planning Board to hear additional comments, no further publications or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- (4) Referral shall also be made, when applicable, to the Madison County Planning Department, pursuant to General Municipal Law Sections 239-l and 239-m.
- (5) SEQRA review. Applications for WECS shall be deemed Type 1 projects under SEQRA.
- (6) The Planning Board shall be responsible for the review of the proposed project under SEQRA, and shall where appropriate, act as lead agency under SEQRA, and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project.
- (7) The Planning Board shall require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- (8) Upon receipt of the recommendations of the Madison County Planning Department (where applicable), the holding of a public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the application, in accordance with the standards in this Section and applicable Town Laws.
- (9) If approved, the Town Planning Board will issue, to the applicant only, a special use permit/site plan approval for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said Permit. This authorizes the Code Enforcement Officer to issue a permit for each WECS, upon compliance with any conditions of this Section or approval by the Planning Board.

- (10) If construction of any approved WECS is not substantially commenced within one (1) year of issuance of the permit, the permit shall expire.

D. Standards for WECS.

In addition to all other applicable criteria, the following criteria are hereby established for purposes of granting a special use permit/site plan approval for a WECS:

- (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- (2) No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
- (3) In order to minimize any visual impacts associated with WECS, no advertising signs are allowed on any part of the WECS, including fencing and support structures.
- (4) Lighting of tower. No tower shall be lit except to comply with FAA requirements.
- (5) Minimum downward directed security lighting for ground level facilities shall be allowed as approved on the site plan.
- (6) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished white or gray in color. WECS within multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- (7) The use of guy wires is permitted in connection with small WECS and wind measurement towers only.
- (8) All solid waste and hazardous waste and construction debris shall be removed from the project site and managed in a manner consistent with all appropriate rules and regulations.
- (9) Sign-off from First Responders/Emergency Medical Service providers shall be provided.
- (10) WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall



be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

- (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered and those listed as threatened, endangered, and species of concern by the NYS officials.
- (12) Wind energy conversion systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site. The SWPPP shall be filed and recorded in the Madison County Clerk's Office (indexed against the property) by the applicant following Planning Board approval (prior to commencement of construction) and shall provide for access to the Town of Smithfield in the event of a default of the operator's obligations under the SWPPP. The SWPPP shall include a security amount approved by the Town's Consulting Engineer and shall remain in place until decommissioning is complete.
- (13) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
- (14) The maximum Total Height of any WECS shall be Six Hundred Eighty (680) feet. However, in all instances, the Applicant shall be required to demonstrate that the requested height of the WECS is necessary to achieve the project's objectives.
- (15) Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a manner to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Section and the Town's Comprehensive Plan.
- (16) Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday.
- (17) In processing any application for a WECS or in reviewing such project under SEQRA, the Planning Board may consider any applicable policy or guidelines issued by the New York State DEC (i.e., visual impacts, noise impact).
- (18) Following construction/installation of the WECS, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust and demonstrating established growth. The Applicant shall provide an

Operations and Maintenance Plan which shall include provisions for reseeded and established growth.

- (19) Post-construction/installation certification. Following the construction/installation of the WECS, the Applicant shall provide a post-construction/installation certification from a professional engineer registered in New York State that the project complies with any and all applicable codes and industry practices and has been constructed and operating according to the drawings and development plan(s) submitted to the Town.
- (20) Any WECS project shall meet and comply with the latest version of the National Electric Code for the life of the project. If it is determined that a WECS is causing stray voltage issues, the operator shall immediately take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Special Use Permit for the specific WECS causing the problems. Fines for non-compliance will be set by the Town Board and assessed accordingly.
- (21) To the greatest extent possible WECS, together with all above ground facilities, underground cables and wires, and all permanent access roads shall be positioned along existing fence lines, hedge rows or tree rows and/or as near the edge of any fields as possible to minimize the disruption to pastureland or tillable land unless, otherwise allowed by the property owner(s). Following construction, the site shall be graded and seeded and restored to its preconstruction condition or better unless, otherwise allowed by the property owner(s). During construction, the developer shall be required to act consistent with Agricultural Consistency Review under Agriculture and Markets Law, and best agricultural and forestry practices to ensure construction integrity of the site.

E. Required Safety Measures.

- (1) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (2) Appropriate warning signs shall be posted. At least one (1) sign shall be posted at least 100 feet from the base of the tower on the tower access road/route warning of electrical shock or high voltage. A sign shall be posted on the entry area fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Planning Board may require additional signage based on safety needs.

- (3) No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- (4) The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
- (5) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
- (6) Existing snowmobile and/or ATV trails shall be posted, where reasonably necessary, to warn of potential ice throw dangers from the WECS.

F. Traffic Routes.

- (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:
  - (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas;
  - (b) minimizing WECS related traffic during times of school bus activity;
  - (c) minimizing wear and tear on local roads; and
  - (d) minimizing impacts on local business operations.
  - (e) Special use permit conditions may limit WECS-related traffic to specific routes, and include a plan for disseminating traffic route information to the public.
- (2) The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.

G. Setbacks and Noise Standards for WECS.

- (1) **Setback Requirements.** No WECS shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.
  - (a) From property lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any non-participant's property line, excluding adjoining lot lines of the project participants.
  - (b) From public road and highways. A minimum distance of 2.0 times the Total Height of turbine (including blades), from any public road and highway.
  - (c) From public above-ground transmission lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any above-ground transmission line greater than 12 kilovolts.
  - (d) From another WECS turbine. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any other turbine. All power transmission lines from the tower to any building or other structure shall be located underground.
  
- (2) **Noise Level Limits and Measurement.**
  - (a) The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence located off the Site. Sites can include more than one parcel of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
  - (b) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in §14(B)(1) shall be reduced by five 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 the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight 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 shall 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 dBA, which is

exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.

- (d) Any noise level falling between two whole decibels shall be the lower of the two.

H. Issuance of Special Use Permit/Site Plan.

- (1) Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this Section, the Town's Comprehensive Plan, and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- (2) If any approved WECS is not substantially commenced within one (1) year of issuance of the special use permit, the special use permit shall expire.

I. Decommissioning.

- (1) If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense as per paragraph (3) below. This provision shall not apply if the applicant demonstrates to the reasonable satisfaction of the Town Board that it has been making good faith efforts to restore the WECS to an operable condition. Nothing in this provision shall limit the Town Board's ability to order a remedial action plan.
- (2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available to a designee (*i.e.* town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.
- (3) Decommissioning and Site Restoration Plan and Requirements. An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

- (a) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 36 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to farmland or forest land of similar condition to that which existed before construction of the WECS.
- (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the abandonment of the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months. The operator of the facility shall provide a report no later than the 31<sup>st</sup> day of January each year providing a summary report of the operation of the facility during the prior calendar year and its operational status as the immediately preceding 31<sup>st</sup> day of December.
- (c) The Plan shall include: (a) the estimated decommissioning cost in current dollars (such amount being subject to the approval of the Town Board); (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; (d) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the "Engineering News Report Construction Costs Index" unless the wind developer supplies evidence to the reasonable satisfaction of the Town Board that market conditions have changed.
- (d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town of Smithfield, in a form approved by the Town Attorney, and in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 150% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.
- (e) The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to

implement the plan. The written authorization shall be in a form approved by the Town.

(f) Use of Decommissioning Fund

- i. Any non-functional or inoperative WECS, or any WECS for which the Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 120 days of the date on which the facility becomes non-functional or inoperative, as defined above, and weather permitting, or of the revocation of the permit.
- ii. If removal of the WECS is required and the applicant, permittee, or successor fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to Contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.
- iii. If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.

J. Insurance.

- (1) Insurance. The applicant, owner, lessee or assignee shall at all times during construction and operation maintain a current insurance policy which will cover installation and operation of the commercial solar project and shall be increased annually per industry standards. Said policy shall provide a minimum of \$5,000,000 property and personal liability coverage. Proof of such policy shall be provided to the Town on an annual basis.' Notwithstanding any terms, conditions, or provisions in any other writing between the parties, the applicant shall agree to effectuate the naming of the Town as an additional insured on the applicant's insurance policies, with the exception of workers' compensation and NYS disability insurance. The policy naming the Town as an additional insured shall:
  - (a) Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York State licensed insurer is preferred.
  - (b) State that the applicant's insurance coverage shall be primary and noncontributory coverage for the Town, its Board, employees, agents, and volunteers.

- (c) Additional insured status shall be provided by standard or other endorsements that extend coverage to the Town for both on-going and completed operations. A completed copy of the endorsements shall be attached to the certificate of insurance.
- (d) The applicant shall provide a copy of the declaration page of the liability policies with a list of endorsements and forms. If so requested, the applicant will provide a copy of the policy endorsements and forms.
- (e) The certificate of insurance shall contain a provision that coverage afforded under the applicable policy shall not be cancelled or terminated until at least 30 days' prior notice has been provided to the Town. In the event of a termination, cancellation, or lapse of the required insurance coverage, the special use permit to operate the solar energy system shall be immediately suspended and operation of the system shall cease. Upon restoration of the required insurance coverage, to the satisfaction of the Town, permission to operate the commercial solar project may be restored.

K. Limitations on Approvals.

- (1) Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Conversion System. It shall be the sole responsibility of the Facility operator, or owner, to acquire any necessary wind flow or turbulence easements, or right to remove vegetation.

L. Permit Revocation.

- (1) Testing fund. A permit shall contain a requirement that the applicant fund periodic noise testing by qualified independent third-party acoustical measurement consultant, which permittee shall include in the annual Operation Maintenance and Compliance report required by this Section. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Permit and this Section and shall include an evaluation of any complaints received by the Town. A non-compliant WECS shall be shut down immediately. The applicant shall have 90 days after written notice from the Zoning Officer to cure any deficiency. An extension of the 90-day period may be considered by the Zoning Enforcement Officer, but the total period may not exceed 180 days.
- (2) Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational conditions include meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, it shall be shut down immediately. The owner or operator shall remedy the situation



within ninety (90) days after written notice from the Town Zoning Enforcement Officer. The applicant shall have ninety (90) days after written notice from the Town Zoning Enforcement Officer, to cure any deficiency. The Planning Board may extend the ninety (90) days cure period for good cause shown.

- (3) Notwithstanding any other abatement provision under this Section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town 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, (1) order either remedial action within a particular timeframe, or (2) order revocation of the special use permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommissioning Plan to remove the WECS.

M. Miscellaneous.

- (1) WECS Escrow Account. The Applicant shall pay to the Town a non-refundable Application Fee as set by Town Board resolution, but in any event not less than \$35,000.00. The Town Board and Planning Board reserve the right to obtain engineering, economic impact, environmental impact, or reasonable charges of other reasonable professional services to aid it in the review of any submitted WECS application. These costs are solely the responsibility of the Applicant and (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.
  - (a) The Applicant shall reimburse the Town for all reasonable oversight expenses incurred relating to the WECS, from application through decommissioning.
  - (b) These WECS-related reasonable oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning - *e.g.* administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for the Town if the Town has to sue the Applicant.
  - (c) The Escrow Account will be established at the time of the WECS Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Board (or designee). The Applicant will make an initial deposit of \$35,000. A WECS Application will not

be processed until the deposit is complete. A WECS Application determination will not be made until all costs incurred by the Town to date have been reimbursed by the Applicant.

- (d) If the WECS Application is denied or withdrawn, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The funds will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. Application and Permit Fees are non-refundable.
- (e) This Escrow Account will be funded during the life of the WECS by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of authorized withdrawals. Failure to maintain the Escrow Account at \$35,000 (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the WECS Permit.
- (f) Once the Owner believes that they have satisfactorily complied with the decommissioning conditions specified herein, they will send the Town written notification. The Town then has ninety (90) days to verify to their satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will notify the Owner and the process will start over. Otherwise, the Town will return all Escrow Account funds to the Owner, less related expenses incurred by the Town, along with explanatory statements/invoices.

- (2) Road remediation. The applicant shall be responsible for remediation of any public roads or other public property damaged, during the construction of and/or completion of the installation (or removal) of any WECS projects approved pursuant to this Article. The Code Enforcement Officer is hereby authorized and directed to ensure a public improvement (road repairs) bond (subject to the same bond ratings and financial surety requirements as the decommissioning bond described in §1201.7(O)(5)) be posted prior to the issuance of any building permit in an amount sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant. The Highway Superintendent or Town Engineer is authorized to consult with any necessary professional to determine or confirm the bond amount all at the sole cost and expense of the applicant. Applicant shall, upon authorization by the Town Code Enforcement Officer, file and record the original performance bond in the Town Clerk's Office.

N. Application Fees, Professional Fees, PILOT and Host Community Benefit Agreement.

- (1) Non-refundable Application Fees shall be established and amended by resolution of the Town Board.
- (3) Special Use Permits/Site Plan. The review of permits for WECS require expertise and will require the Town to engage the services of professional consultants such as attorneys and engineers, the expenses for which cannot be accurately established in advance. Therefore, in addition to the above, the applicant shall be responsible for all of the Town's reasonable expenses incurred in the permit review process including the review required by SEQRA, and the costs of decommissioning the WECS and such expenses include, but are not limited to, all administrative costs, attorney's fees and engineering fees, and the applicant shall be required to enter into an escrow agreement with the Town in advance of such review to provide for the payment of such costs and expenses of review as agreed by the parties.
- (4) In every instance of a WECS application, the Applicant shall be required to propose a Payment in Lieu of Tax ("PILOT") Agreement. The Applicant shall also comply with the notice requirements of NYS Real Property Tax Law Section 487. The Applicant will then contact the Town's legal counsel to negotiate the terms of said Agreement.
- (5) In addition to a PILOT Agreement, the Applicant shall propose to the Town, on WECS projects involving 1 megawatt and above of rated energy output capacity, a Host Community Agreement benefit package for consideration by the Town Board as part of the approval process. Once the application package materials are deemed complete and while the Planning Board is completing its review, the project/application shall be referred to the Town Board to decide on the completion and terms of a Host Community Agreement. This Agreement shall be in addition to a PILOT Agreement.

O. Inspections.

- (1) WECS shall not begin operation until all approvals required under this Section are obtained and all required certifications are provided.
- (2) Following the issuance of any approval required under this Section, the Planning Board or its designee shall have the right to enter onto the Site upon which a WECS has been placed, at reasonable times in order to inspect such facility and its compliance with this Section 1100 and any approval and included conditions.
- (3) After undertaking such inspection, the Planning Board or its designated representative shall provide notice of any non-compliance with the terms of this Section or the conditions of approval of any permit issued hereunder, and shall provide the owner or applicant with a reasonable time frame to cure such violation, such timeframe to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon residents of the Town.

P. Construction Related Damage.

The owner of every WECS constructed pursuant to this Section shall repair or replace all real or personal property, public or private, damaged during the construction of such facility attributable to the Applicant or its designee, employee or agent.

Q. Fiscal Responsibility.

No transfer of any WECS or permit, or sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Section and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

R. Certification.

Prior to operation of any approved and constructed WECS, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

S. Made in America Requirements.

All WECS shall be required to utilize components and materials made and manufactured in the United States of America.

**Section 1100-6. Wind Measurement Towers.**

- A. Wind Site Assessments. As a wind site assessment is typically conducted to determine the wind speeds and the feasibility of using particular Sites, installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted in accordance with this Section and the provisions of Section 1100-5 and subject to approval by the Planning Board.
- B. Applications for Wind Measurement Towers. An application for a Wind Measurement Tower shall include, unless waived by the Planning Board:
- (1) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - (2) Name, address, telephone number of the property owner.
  - (3) If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed application(s) and authorizing the submission of the application.

- (4) Address of each proposed tower location, including Tax Map section, block, and lot number.
  - (5) Proposed Development Plan and Map.
  - (6) Decommissioning Plan, including a cash security for removal.
- C. Standards for Wind Measurement Towers
- (1) The distance between a Wind Measurement Tower and the property line shall be at least one point five (1.5) times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
  - (2) Special use permits for Wind Measurement Towers may be issued for a period of up to two (2) years. Permits shall be renewable upon application to the Planning Board in accordance with the procedure of this Section.

**Section 1100-7. Small Wind Energy Conversion Systems.**

- A. Purpose and Intent. The purpose of this Section is to provide standards for small wind energy conversion systems (hereinafter referred to as "SWECS") designed to produce electrical power for home, farm, and small commercial use on the same parcel the SWECS is installed on, and that are primarily used to reduce consumption of utility power at that location. Such SWECS shall have a generated capacity of up to but not exceeding 100 kilowatts. The intent of this Section is to provide for the development of small wind energy systems while also protecting the public health, safety, and community welfare.
- B. Permits Required. No person, firm or corporation, or other entity being the owner or occupant of any land or premises within the Town of Smithfield shall use or permit the use of land or premises for the construction of a SWECS without obtaining a special use permit issued by the Planning Board as hereinafter provided.
- C. Districts Where Allowed. Subject to the issuance of a special use permit and a building permit, SWECS are allowed in all zoning districts in the Town except within the Peterboro Hamlet District. SWECS is a prohibited use in the Peterboro Hamlet District.
- D. Applications. Applications for Small WECS Permits shall include, unless waived by the Planning Board:
  - (1) Name, address, 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.

- (2) Name, address, 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 confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
- (3) A description of the project, including address of each proposed tower location, including Tax Map section, block, and lot number and the maximum rated capacity of each SWECS.
- (4) Documentation from the manufacturer that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- (5) 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 Building Code of the State of New York and sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
- (6) A site plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe and depict the SWECS components relative to all other existing and proposed structures and property lines.
- (7) Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
- (8) A visual analysis of the SWECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components, and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

E. Development Standards. All SWECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other provisions of this Article that are not in conflict with the requirements contained in this Section.

- (1) Only one (1) small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which case their joint lots shall be treated as one lot for the purposes of this Section.
- (2) SWECS shall be used primarily to reduce the on-site consumption of electricity.

- (3) Tower heights may be allowed as follows:
  - (a) Sixty-five (65) feet or less on parcels between one (1) and five (5) acres,
  - (b) Eighty (80) feet or less on parcels of five (5) or more acres.
- (4) The maximum turbine power output is limited to 100 KW.
- (5) The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
- (6) The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- (7) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) 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. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors."
- (9) The system shall be operated such that no disruptive electromagnetic interference is caused.
- (10) If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (11) At least one (1) sign shall be posted on the tower at a height of five (5) feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower rotor, generator or tail vain where it would be visible from the ground, except that a system or motor's manufacturer's logo may be displayed on system generator housing in an unobtrusive manner.
- (12) Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - (a) Tower-climbing apparatus located no closer than twelve (12) feet from the ground.

- (b) A locked anti-climb device installed on the tower.
  - (c) A locked, protective fence at least six (6) feet in height that encloses the tower.
- (13) 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 enclosed by a fence six (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.
  - (14) Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
  - (15) To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least thirty (30) feet above the highest structure or tree within a two hundred and fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure,
  - (16) All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
  - (17) All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer. The Applicant shall post an emergency telephone number so that the appropriate entities may be contacted should the SWECS need immediate repair or attention. This telephone number should be clearly visible on a permanent structure or post located outside of the fall zone of the tower. Location should be convenient and readily noticeable to someone likely to detect a problem.
  - (18) Ownership. Ownership of the SWECS must be the same as the owner of the fee interest in the real property upon which it is situated. In the event of transfer of ownership of the premises, the ownership of the wind energy conversion system must also be transferred to same owner or the tower must be decommissioned.
  - (19) Setback requirements. A SWECS shall not be located closer to a property line, dwelling, or structure occupied by humans or animals, than one point five (1.5) times the Total Height of the facility.



- (20) Noise. Except during short-term events including utility outages and severe wind storms, a SWECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than 6 dBA at the nearest property line to any proposed SWECS. Sites can include more than one piece of property and the requirement shall apply to the combined properties. In the event the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus a maximum of 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- F. Inspections. The Building Inspector and/or Town Engineer shall have the right at any reasonable time to enter, in the company of the owner or his agent, the premises on which a wind energy conversion system is being or is constructed, to inspect all parts of said wind energy conversion system installation and require that repairs or alterations be made if in his judgment, there exists a deficiency in the operation or the structural stability of the system. If necessary, the Building Inspector or Town Engineer may order the system secured or to otherwise cease operation. It shall not be required that the owner or agent be present in the event of an emergency situation involving danger to life, limb or property.
- G. Insurance. The Applicant, owner, lessee or assignee shall maintain a current insurance policy which will cover installation and operation of the on-site use wind energy conversion system at all times. Said policy shall provide a minimum of \$2,000,000.00 property and personal liability coverage.
- H. Fees. Fees for applications and permits under this Section shall be established by resolution of the Town Board of the Town of Smithfield. It shall be the applicant's responsibility to reimburse the Town for any and all reasonable and necessary legal, engineering and other professional fees incurred by the Town in reviewing and administering an application under this Section.
- I. Abandonment of Use
- (1) A SWECS which is not used for twelve (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 building permit shall constitute grounds for the revocation of the permit by the Planning Board. If not removed within 90 days from revocation, weather permitting, the Town shall have the right to remove the SWECS at the owner's expense. A decommissioning bond in a form acceptable to the Town shall be filed with the Town Clerk to cover the costs of the complete removal of the SWECS and shall not be allowed to lapse or terminate. Such bond shall be in place prior to the issuance of a building permit.

- (2) All SWECS shall be maintained in good condition and in accordance with all requirements of this section.

**Section 1100-8. Enforcement; Penalties and remedies for violations.**

- A. The Town Board, Town Code Enforcement Officer and such Town staff or outside consultants as appointed by the Town Board shall administer and enforce this Article.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Article or in noncompliance with the terms and conditions of any permit issued pursuant to this Article, or any order of the 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 \$250.00. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250.00 for each violation and each day 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 Article, including the terms and conditions imposed by any permit issued pursuant to this Article, 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.
- D. An Applicant/Owner/Operator not responding to the following condition in the manner specified shall be considered to be in violation of this Article.
  - (1) Unsafe Operation/Condition. If a Wind Turbine, WECS/SWECS presents an imminent physical threat of damage to life or significant threat to property, as determined by the Code Enforcement Officer, Town Board, or one of their designated agents, it shall be deemed unsafe and immediately shut down and repaired or otherwise made safe and certified so by a New York licensed Professional Engineer approved by the Town Board prior to resumption of operation. The Code Enforcement Officer, or their agent/designee, shall have the right to access the WECS/SWECS to verify conditions and/or progress of repair.
  - (2) Serious Violations. The Applicant/Owner/Operator of the WECS/SWECS is responsible for mitigating any serious violations of standards within ten (10) business days upon receipt of written notification of determination of any cause attributed to operation of the WECS/SWECS. A serious violation is defined as any of the following:
    - (a) Any measured Noise Level which exceeds the standard specified herein or an approval where the Wind Turbine(s) or ancillary facility is the dominant and controlling source.

- (b) The occurrence of Shadow Flicker, Tower Shadowing or Blade Glint exceeds the standards specified in this Section 1100 or an approval.
  - (c) Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. (in the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant/Owner/Applicant immediately provides the affected well owner with a potable emergency water supply and within thirty (30) days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.
  - (d) Any hazardous substance spill.
  - (e) Communication/electromagnetic interference (other than emergency communication).
- (3) Emergency Communications. Interference with emergency communications must be mitigated within 24 hours.
- (4) Other Violations. If the Code Enforcement Officer or Town Board determines that a violation of this Article has occurred, and the violation is determined neither to be unsafe, nor a serious violation, nor interferes with emergency communication, the Officer or Town Board shall provide written notice to the Applicant/Owner/Operator, and the Applicant/Owner/Operator is responsible for mitigating the problem within thirty (30) days.
- E. An Applicant/Owner/Operator failing to comply with any provision of this Article0 by failing to resolve a violation may be subject to:
- (1) Revocation of WECS/SWECS permits, shut down and removal of any Wind Turbine(s);
  - (2) Fines pursuant to this Section;
  - (3) Any other remedies the Town Board deems necessary to assure the safe operation of the WECS/SWECS and protection of residents; and
  - (4) Reimbursement to the Town for expenses incurred in obtaining relief, including, but not limited to, court costs and reasonable attorney fees.

## **SECTION 5. SEVERABILITY.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Local Law shall be judged invalid by a court of competent jurisdiction, such order of judgment

shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law.

**SECTION 6. EFFECTIVE DATE.**

This Local Law shall be effective upon filing with 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. 2 of 2023 of the  
(County)(City)(Town)(Village) of Smithfield was duly passed  
by the Town Board on 7/11, 2023 in accordance with the applicable  
(Name of Legislative Body)  
provisions of law.

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

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

**3. (Final adoption by referendum.)**

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

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

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

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

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of  
\_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

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

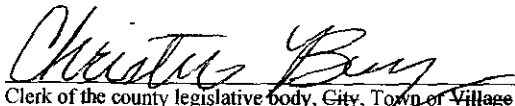
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of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

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to electors of 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 such cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in Paragraph \_\_1\_\_, above.

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

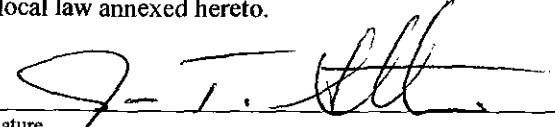
(Seal)

Date: 7/15/2023

**(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 MADISON

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

County \_\_\_\_\_  
City \_\_\_\_\_  
of Smithfield  
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date: 7-15-2023