

**COPY**NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

## Local Law Filing

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(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Leicester

A Local Law Amending the Town of Leicester Zoning Ordinance by amending Section 4 and adding a new section 13-A and a new section 13-B.

Be it enacted by the Town Board of the Town of Leicester as follows:

**Section 4 of the Town of Leicester Zoning Ordinance is amended as follows:**

### Section 4. Definitions

For the purposes of this ordinance certain words and terms are herein defined. Words used in the present tense include the future; the singular number includes the plural, the plural includes the singular; the word "person" may be interpreted as persons, associations, co-partnerships or corporations; the word "structure" includes buildings; the word "occupied" includes designed or intended to be occupied; the word "used" includes designed or intended to be used; the word "shall" is always mandatory and not directive. Other words, except when specifically defined herein, shall have the meanings determined by the Planning Board or Zoning Board of Appeals, hereinafter established.

**Accessory Use.** A use naturally and normally incidental and subordinate to the main or principal use of the premises.

**Alterations.** As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**Alterations, Structural.** Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

**Basement.** A story partly below curb level but having at least one-half its height (measured from floor to ceiling) below the average level of the adjoining ground.

**Billboard.** Any structure, or part thereof, on which lettered, figured or pictorial matter is displayed for advertising purposes, other than the name or occupation of the user of the premises, or the nature of the business conducted thereon, or the products primarily sold, possessed or manufactured thereon.

**Building.** Any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of persons, animals or chattel.

**Building, Area Of.** The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

**Building, Floor Area Of.** The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**Building, Front Line Of.** The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed but does not include steps.

**Building, Height Of.** The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to the mean height between eaves and ridge for gable hip and gambrel roofs.

**Dwelling.** A building, structure or trailer designed or occupied in whole or part as a home residence or sleeping place for one or more persons.

**Dwelling, Multiple.** A building or portion thereof, designed for or occupied by three or more families and as further defined in the Multiple Residence Law of the State of New York. Such definition is hereby made the definition of a multiple dwelling for the purpose of this ordinance.

**EAF.** Environmental Assessment Form used in the implementation of SEQRA as that term is defined in NYCRR Part 617.

**Enforcement Officer.** Any person appointed by the Town Board to represent them in particular matters pertaining to this Local Law.

**Family.** A person living alone, or two or more persons customarily living together as a single housekeeping unit in a dwelling unit, as distinguished from a group occupying a hotel, club, boarding or lodging house, a fraternity or sorority house, or a nursing home.

**Flicker Zone.** An area of shadow that will experience wind flicker.

**Home Occupation.** An occupation, profession or hobby which is carried on within a dwelling, is clearly incidental and secondary to the use of such dwelling for residential purposes, is carried on only by members of the family residing on the premises and conforms to the following additional conditions:

1. There shall be no exterior display, other than an announcement or professional sign not to exceed two square feet in area, attached to the dwelling and not illuminated.
2. There shall be no exterior storage of materials or other indication of such home occupation, or any other deviation from the residential character of the premises.
3. No offensive noise, vibration, smoke, dust, heat or glare shall be produced.
4. No equipment device or object shall be used which will cause within the neighborhood line disturbances in the electric service so as to interfere with normal reception of radio or television broadcast signals.

**Junkyard.** A place where waste, discarded or salvaged, materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, whether in connection with any business or not, including automobile wrecking yards for used or salvaged materials and equipment, as distinguished from pawn shops and establishments for the sale, purchase or storage of used cars in operable condition, used machinery, furniture and household equipment, and the processing of used or salvaged materials as a part of a manufacturing process.

**Lot, Depth Of.** A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

**Lot, Width Of.** The mean width measured at right angles to its depth.

**Nacelle.** The portion of the wind turbine that connects the rotor to the support tower and houses the generator, drive train and braking system.

**Nonconforming Use.** A building structure or use of land existing at the time of enactment of this ordinance, and which does not conform to the regulations of the district or zone in which it is situated.

**Residence.** Any dwelling suitable for habitation existing in the Town of Leicester on the date an application is received. A residence may be part of a multidwelling.

**SEORA.** The New York State Environmental Quality Review Act and its implementing regulations in NYCRR Title 6, Part 617.

**Sign, Business.** Any structure or portion thereof on which lettered, figured or pictorial matter is displayed for advertising purposes with the name of the business or industry carried on, or advertising any service or products actually and actively being offered for sale on the premises. This definition shall not include professional, announcement, real estate or institutional signs hereinafter defined.

**Sign, Professional, Announcement, Real Estate and Institutional.** Any structure, or portion thereof, used for identification purposes in connection with a

profession, home occupation, the sale or rental of real estate and the location of public and private institutions.

**Small Wind Energy Conversion System ("Small WECS")**. A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

**Sound Pressure Level**. The level which is equaled or exceeded a stated percentage of time. An L10-50dBA indicates that in any hour of the day 50dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

**Tower, Total Height**. The height of the tower and the furthest vertical extension of the WECS.

**Tower Facility**. Site where one or more wind energy-driving tower(s) or wind turbines will be located, including all accessory buildings, facilities or equipment.

**Trailer**. A vehicle:

1. Used for living or sleeping purposes; and
2. Standing on wheels or on rigid supports; and
3. Having eight hundred and forty (840) or more square feet of floor space according to manufacturer's specifications.

**Viewshed**. An area within range of vision in any direction from a particular site.

**Wind Energy Conversion System ("WECS")**. A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

**Wind Energy Facility**. Any WECS, small WECS or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**Wind Energy Facility, Site**. The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered into an agreement for said Facility or a setback agreement shall not be considered off-site.

**Wind Measurement Tower**. A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**Yard, Front.** An open unoccupied space on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot.

**Yard, Rear.** An open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

**Yard, Side.** An open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

**A new Section 13-A and 13-B are added as follows:**

**Section 13-A. Wind Overlay Zones.**

1. Wind Overlay Zone.

A wind overlay zone is a district that encompasses one or more underlying districts and that imposes additional requirements above that required by the underlying district.

2. Underlying District.

Wind Overlay Zones may be created in all underlying zoning districts except the "B-2" business and "T" industrial use districts.

3. Allowable Uses.

Wind Overlay Zones are for Wind Energy Facilities as provided by local laws and ordinances.

4. Permits.

Initial requests for Wind Overlay Zones shall be submitted with applications for WECS special use permits and are subject to site plan review. No Wind Overlay Zones may be initially created without specific requests for WECS. Once a Wind Overlay Zone has been created, new WECS or accessory structures or facilities may be added in that zone by grant of a special use permit pursuant to the requirements of local law and ordinances.

**Section 13-B. Incentive Zoning**

1. Purpose and Intent

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to implement specific physical, cultural and social policies in the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.

## 2. Districts Designated for Incentives

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

## 3. Amenities for Which Incentives May Be Offered

a. The following amenities may be either on or off the subject application:

- (i) Affordable Housing
- (ii) Passive and active open space and related improvements.
- (iii) Parks.
- (iv) Child-care or elder-care facilities.
- (v) Utilities.
- (vi) Road improvements.
- (vii) Health or other human-service facilities.
- (viii) Cultural or historical facilities.
- (ix) Other facilities or benefits to the residents of the community.
- (x) Any combination of amenities and/or cash in lieu of any amenity(ies).

b. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Ordinance.

## 4. Incentives Permitted

The following incentives may be granted by the Town Board to the applicant on a specific site:

- a. Decreases in required minimum lot sizes.
- b. Changes of use or zoning classifications.
- c. Changes in setbacks or height.
- d. Reduction to open space.
- e. Any other changes in the provisions of the Zoning Ordinance.

## 5. Criteria and Procedure for Approval

a. Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- i. The requested incentive.

- ii. The proposed amenity.
  - iii. The cash value of the proposed amenity.
  - iv. A narrative which:
    - (A) Describes the benefits to be provided to the community by the proposed amenity.
    - (B) Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.
    - (C) Explains how the amenity helps implement the physical, social or cultural policies of the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.
- b. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board:
- i. The first sketch plan.
    - (A) The first sketch shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of the Zoning Ordinance, the plan shall also show existing development, property owners' names and tax account numbers for all property within two hundred (200) feet of the property lines of the proposed project or such other distance as specified by the Town Board.
    - (B) If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.
  - ii. The second sketch should meet the requirements of the Zoning Ordinance; show existing development, property owners' names and tax account numbers for all properties within two hundred (200) feet of the property lines of the project site or such other distance as specified by the Town Board; but shall only show how the site would be developed exclusive of any amenity or incentive.
  - iii. The applicant shall also submit such additional information and plans as may be required by the Planning Board, including such additional information and plans as may be required under the

Zoning Ordinance, which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.

- c. The Planning Board will review the proposal and report of the Town Board with its evaluation of adequacy with which the amenity(ies)/incentive(s) fit the site and relate to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within seventy (70) days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be exceeded/suspended upon the consent of the applicant or for good cause by the Town Board.
- d. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold a public hearing thereon. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.
- e. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:
  - i. First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal; and
  - ii. Then serve the on-site amenity and incentive, given the development scenario in subsection e.i. above.
- f. Following the hearing and in addition to compliance with all SEQR requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other town boards and official for review and comment.
- g. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstances, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may

deny any such proposal in its sole and absolute discretion. The Town Board may also impose such conditions upon its approval as it may deem appropriate to promote the health, safety and welfare of the community.

- h. Following the approval by the Town Board, the applicant may proceed to apply for any additional permits or approvals as may be required by the Zoning Ordinance or any other law or regulation, including, where appropriate, site plan approval by any board or agency of the Town shall materially alter any condition imposed by the Town Board under Paragraph g. thereof and, in the event that any permit or approval by any agency outside the Town materially alters any such condition, the project may not proceed until and unless the Town Board approves of the modification.

6. Cash Payment In Lieu of Amenity

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.

Dated: June 12, 2006  
Leicester, New York  
Introduced May 8, 2006

(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 amendments to Town of Leicester Zoning Ordinance annexed hereto, designated as "Amendments to Town of Leicester Zoning Ordinance" was duly passed by the Town Board on June 12, 2006 in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of 20\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted 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)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. 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 electors 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)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. 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.

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

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

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

I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of 20\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_, 20\_\_ pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the 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 amendments 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.

**COPY**  
\_\_\_\_\_  
Mary Yasso, Town Clerk  
Town of Leicester  
Date: June 12, 2006

(Seal)

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

STATE OF NEW YORK )  
COUNTY OF LIVINGSTON ) SS.:  
TOWN OF LEICESTER )

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.

**COPY**

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Michael W. Stivers, Esq.  
Town Attorney  
Town of Leicester  
Date: June 12, 2006

