Town of Smyrna
Introductory Local Law No. 1of the Year 2023.
A Local Law Regulating Large Scale Solar Energy Systems and Wind Energy Systems and the Decommissioning of Large Scale Solar Energy Systems and Wind Energy Systems

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

Section 1.
Title and Authority. This local law shall be known as the Town of Smyrna Large Scale Solar Energy System and Wind Energy System Regulation and Decommissioning Law. It is adopted pursuant to sections 10 and 20 of the Municipal Home Rule Law.

Section 2.
Legislative Intent. Large-scale solar energy systems and wind energy systems are permitted throughout the Town of Smyrna. Applications for the installation of a large-scale solar energy system or wind energy system shall be reviewed by the Chairman of the Planning Board and referred, with comments, to the Planning Board for its review and action. The Planning Board may impose any modifications or conditions (including time limits) it deems necessary to conform to the goals and objectives of the Town's Comprehensive Plan and its principles of land use and development and to protect the health, safety or general welfare of the public.

Section 3.
Definitions. As used in this section, the following terms shall have the meanings indicated:

a. ACCESSORY STRUCTURE

A structure, the use of which is customarily incidental and subordinate to the principal building and is located on the same lot or premises as the principal structure.

b. ALTERNATE ENERGY SYSTEM

Any structure, equipment devices or construction techniques for the production of heat, light, cooling, electricity or other forms of energy for use on site and which may be attached to or separate from the principal structure.

c. BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM

A combination of photovoltaic building components integrated into any building envelope system such as vertical facades, including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

d. EAF

e. Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM

A solar energy system that is anchored to the ground or attached to a pole or other mounting system, that is detached from any other structure and that has the primary purpose of producing electricity or thermal energy for on-site consumption.

f. LARGE-SCALE SOLAR ENERGY SYSTEM

A solar energy system that is ground-mounted in excess of 1,000 square feet and produces energy primarily for the purpose of off-site sale or consumption.

g. NET METERING

A billing arrangement whereby the solar energy producer receives credit for excess electricity generated and delivered to the power grid, paying only for the power used in excess of that generated and delivered to the power grid.

h. ONSITE SOLAR PROJECT

Those projects that are designed to produce electricity that is mainly used on the premises and not produced solely for commercial sale. It does allow for excess electricity to be supplied to the energy grid. These projects are exempt from these regulations.

i. QUALIFIED SOLAR INSTALLER

A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations, and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSERDA list of eligible or NABCEP's list of certified installers shall be deemed to be qualified solar installers if the Town of Smyrna determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installations safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed, energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed life parts.

j. RESIDENCE

Means any dwelling suitable for habitation existing in the Town of Smyrna on the date an application is received, including hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps or correctional institutions. SEQRA - the New York State Environmental Quality Review Act and its implementing

k. ROOF-MOUNTED SOLAR ENERGY SYSTEM

A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for on-site or off-site consumption.

l. SETBACK

The distance from a side lot line or rear lot line of a parcel within which a free- standing or ground-mounted solar energy system is installed so solar energy systems shall be permitted on the front of any structures or within the required front yard setback.

m. SEQRA

The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

n. SITE

The parcel(s) of land where the Solar Energy Facility or 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 Solar Energy Facility or Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

o. 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.

p. SOLAR ARRAY, GROUND OR POLE-MOUNTED

Any ground or pole-mounted solar collector, controls, solar energy device, heat exchanger or solar thermal energy system that is detached from any other structure; and that has the primary purpose of producing electricity for onsite or offsite consumption

q. SOLAR COLLECTOR

A photovoltaic cell, panel or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

r. SOLAR EASMENT

A document recorded pursuant to NYS Real Property Law 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a Solar Energy System.

s. SOLAR ENERGY APPLICANT or WIND ENERGY APPLICANT

Any person, firm, corporation or other entity that submits an application to the Town of Smyrna for a Site Plan Review for a Solar Energy System or Wind Energy Facility.

t. SOLAR ENERGY EQUIPMENT

Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

u. SOLAR ENERGY SYSTEM

An electrical generating system composed of a combination of both solar panels and solar energy equipment.

v. SOLAR PANEL

A photovoltaic device capable of collecting and converting solar energy into electrical energy.

w. SOLAR STORAGE BATTERY

A device that stores energy from the sun and makes it available in electrical form.

x. SOLAR THERMAL SYSTEM

A system in which water or other liquid is directly heated by sunlight. The heated liquid is then used for purposes such as space heating and cooling, domestic hot water, and the heating of swimming pools.

y. SOUND PRESSURE LEVEL

Means the level which is equaled or exceeded a stated percentage of time. An L10 - 50 dBA indicates that in any hour of the day 50 dBA 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. 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 an agreement for said Facility or a setback agreement shall not be considered off-site.

z. TOTAL HEIGHT

The height of the tower and the furthest vertical extension of the WECS.

aa. 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").

bb. WIND ENERGY SYSTEM

An arrangement of wind energy equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of wind energy and its conversion, storage, protection and distribution.

cc. WIND ENERGY EQUIPMENT

Collectors, turbines, mills, controls, energy storage devices, that pumps and pumps, and other materials, hardware or equipment necessary to the process by which wind is (1) collected, (2) converted into another form of energy such as thermal, electrical, mechanical or chemical, (3) stored, (4) protected from unnecessary dissipation, and (5) distributed.

dd. WIND ENERGY FACILITY

Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

ee. WIND MEASUREMENT TOWER

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

Section 4.

Applicability. The requirements of this section shall apply to all Solar Energy Systems and Wind Energy Systems installed or modified after its effective date, excluding general maintenance and repair and building-integrated photovoltaic systems.

Section 5.

Requirements – Solar Energy Systems

The Town of Smyrna Planning Board shall review and determine the correct path for all permitting requirements. Ground-Mounted Large-Scale Solar Energy Systems/Solar Facilities.

1. Ground-Mounted Large-Scale Solar Energy Systems are permitted as principal and accessory uses through the issuance of a Site plan review and building permit as approved by the Town Board with prior review and recommendations of the Site Plan by the Planning Board and referred, with comments, to the Town Board for its review and action, which can include approval, approval on conditions, or denial.

    a. Ground-Mounted Large-Scale Solar Energy Systems that produce electricity or thermal energy primarily for active farming or agricultural uses, where the generation is less than one hundred and ten percent (110%) shall be exempt from the requirement to obtain a site plan review.

2. Ground-Mounted Large-Scale Solar Energy Systems shall not be located in the following areas unless otherwise approved by the Town Board in conjunction with the Site Plan Review approval process as provided in this section:

    a. Areas of potential environmental sensitivity, including Unique Natural Area flood plains, historic sites, airports, state-owned lands, conservation easements, trails, parkland and wetlands as identified by Chenango County Planning Department mapping services, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.

    b. On slopes of greater than fifteen percent (15%) unless the Solar Energy Applicant can demonstrate through engineering studies and to the satisfaction of the Town Planning Board that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.

3. No Large-Scale Solar permit or renewal thereof or amendment of a current building permit relating to the Ground-Mounted Large-Scale Solar Energy System shall be granted by the Town Board unless the Solar Energy Applicant demonstrates that such Ground-Mounted Large-Scale Solar Energy System:

    a. Conforms to all federal and state laws and all applicable rules or regulations promulgated by any federal or state agencies having jurisdiction.

    b. Is designed and constructed in a manner which minimizes visual impact to the extent practical.

    c. Complies with all other requirements of the Town of Smyrna and the Commercial Design Guidelines, unless expressly superseded herein.

    d. Is located on a single lot.

    e. There shall be a minimum 100-foot buffer between any component of the utility scale solar energy system and the parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of site conditions and adjacent land users. A waiver may be granted if the neighboring property owner agrees.

    f. Does not exceed fifteen (15) in height.

    g. The project sponsors are required to notify all abutting property owners at the time applications are submitted. This notification should include the project type, scope and contact information for questions or comments.

4. The site plan application is to be used as supplemented by the following provisions and shall include but not be limited to the following:

    a. A completed project application form in such detail and containing such information as the Town Planning Board would require.

    b. In fulfilling the requirements of the State Environmental Quality Review Act (SEQRA), the Town Planning Board may require a Full Environmental Assessment Form (EAF) for the proposed Ground-Mounted Large-Scale Solar Energy System. The Town Planning Board may require submittal of a more detailed visual analysis based on the information in, or analysis of the EAF.

    c. Site Plan in accordance with the requirements of Article XI and this section including, without limitation:

i. Name, address, email address and phone number of the person preparing the reports.

ii. Postal address and Tax Map parcel number of the property.

iii. The exact location including geographic coordinates of the proposed Ground-Mounted Large-Scale Energy System including any solar arrays, equipment and anchors, if applicable. iv. Identification on site plans of areas of potential environmental sensitivity, including onsite or nearby Unique Natural Areas, slopes greater than 15%, flood plains, historic sites, airports, other government lands, conservation easements, trails, parkland and wetlands as identified by Chenango County Planning Department mapping services, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.

v. The maximum height of the proposed Solar Energy System, including all appurtenances.

vi. A detail of solar collector type including but not limited to equipment specification sheets for all photovoltaic panels and collectors, significant components, mounting systems, and inverters that are to be installed; and proposed solar energy production capacity design level proposed for the Solar Energy System and the basis for the calculations of the area of the Solar Energy System's capacity.

vii. The location, type, and intensity of any lighting on the site.

viii. Property boundaries and the names of all the adjacent landowners.

ix. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements shall be submitted. The lease document must clearly delineate the party responsibility and the procedure for decommissioning at the end of the life of the system and in the event the owner of the system abandons the system for any reason.

x. The location of all other structures on the property.

xi. The system shall be designed to accommodate emergency vehicle access. The design may include but not limited to items such as the height, access ways for the vehicles, firefighting capabilities and other prominent features.

xii. Blueprints and a site plan showing the layout of the Ground-Mounted Large-Scale Solar Energy System, which must bear the seal of a design professional who is licensed to practice in the State of New York.
xiii. The location, nature and extent of any proposed fencing, landscaping and screening.

xiv. The location and nature of any proposed utility easements and access roads or drives.

xv. A glare assessment survey and any mitigation efforts that may be utilized to minimize glare on contiguous parcels of land.

xvi. A decommissioning plan as set forth in the below provisions titled, "Abandonment and Decommissioning.

d. The application should include a list of any potentially hazardous materials included in the infrastructure (e.g. heavy metals) as well as any potentially hazardous materials (e.g. herbicides) that may be used during construction, maintenance and decommissioning of the project.

e. Soil sampling for common contaminates should be conducted prior to construction in order to establish a baseline and then periodically, to be determined during the application review process, based on expert recommendations. Decommissioning soil sampling will also be required.

5. Site Plan Review Standards

a. Appearance and Buffering

i. The Ground-Mounted Large Scale Solar Energy System shall have the least visual effect practical on the environment, as determined by the Town Planning Board. Based on site specific conditions including topography, adjacent structures, and roadways, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, and

providing landscape screening to abutting residential properties and rods, but screening should minimize the shading of solar collectors.

ii. Any glare produced by the solar array shall not impair or make unsafe the use of contiguous structures, any vehicles on or off the road, any airplanes, or uses by other possible impacted entities as determined by the Town Planning Board.

iii. Any exterior lighting installed shall have the least visual effect practical on the neighboring properties and shall be approved by the Town Planning Board.

iv. The Town Planning board may require additional information, such as line-of-sight drawings, detailed elevation maps, visual simulations, before and after renderings, and alternate designs to more clearly identify adverse impacts for the purpose of their mitigation.

v. Equipment and vehicles not used in direct support, renovations, additions or repair of any Ground-Mounted Large-Scale Solar Energy System shall not be stored or parked on the facility site.

b. Access and Parking

i. Ground-Mounted Large-Scale Solar Energy Systems may be enclosed by fencing to prevent unauthorized access. Warning Signs with the owner's name and emergency contact information shall be placed on any access point to the system and on the perimeter of the fencing. The fencing and the system shall be further screened by any landscaping or decorative fencing needed to avoid adverse aesthetic impacts as approved by the Town Planning Board.

ii. Motion-activated or staff-activated security lighting around the equipment area of a Ground-Mounted Large-Scale Solar Energy System or accessory structure entrance shall be installed provided that such lighting does not project off the site. Such lighting should only be activated when the area within the fenced perimeters has been entered.

iii. A locked gate at the intersection of the access way and a public road shall be required to obstruct entry by unauthorized vehicles. Such a gate must be located entirely upon the lot and not on the public right-of-way.

c. Engineering and Maintenance

i. Every Solar Energy System shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers. (IEEE) and the American National Standards Institute (ANSI).

ii. The Town, at the expense of the Solar Energy Applicant, shall employ its own consultant(s) to examine the application and related documentation and make recommendations as to whether the criteria for granting the building permit have been met, including whether the Applicant's conclusions regarding safety analysis, visual analysis, structural inspection, and stormwater management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.

d. The Town Planning Board may impose conditions on its approval of any Large-Scale Solar Permit under this section in order to enforce the standards referred to in this section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA). The Town of Smyrna Planning Board may waive requirements on a case-by-case basis.

6. Any application under this section shall also meet all provisions contained in current or future Site Plan Review Laws.

Section 6
<u>Fees and Deposits for Solar Energy Systems</u>

1. The fees for a Site Plan Review and a Large-Scale Solar Permit for a Solar Energy System shall be set from time to time by Town Board Resolution.

2. The Solar Energy Applicant shall deliver with its application an amount equal to one percent (1% of the estimated cost of the project. This sum shall be held by the town in a non-interest-bearing account and these funds shall be available to the Town to pay consultants engaged by the town to assist in any review of the application. Following grant or denial of the application, the town shall return to the Applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the Applicant shall deposit such funds as are then necessary to pay any outstanding fees.

Section 7
Small Wind Energy Conversion Systems

1. Purpose and Intent

The purpose of this portion of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Code is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

2. Permitted Areas

Small Wind energy systems may be permitted in the RA or RU districts, or any zoning district on a Site of at least 5 acres, upon issuance of a Special Use Permit.

3. Applications

a. Applications for Small WECS special use permits shall include:

i. 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.

ii. 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 (1) the property owner is familiar with the proposed applications and (2) authorizing the submission of the application.

iii Address of each proposed tower Site, including Tax Map section, block and lot number.

iv. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.

v. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

vi. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

vii. 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 so in the application, to connect the system to the electricity grid.

viii. A visual analysis of the Small WECS 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.

4. Development Standards

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section:

a. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.

b. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.

c. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.

d. Tower heights may be allowed as follows:

i. 65 feet or less on parcels between one and five acres.

ii. 80 feet or less on parcels of five or more acres.

iii. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

e. The maximum turbine power output is limited to 10 KW.

f. 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.

g. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:

i. Shall not project above the top of ridgelines.

ii. If visible from public viewing areas. shall use natural landforms and existing vegetation for screening.

iii. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

h. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

i. 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 decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

j. The system shall be operated such that no disruptive electromagnetic interference is caused. 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.

k. At least one sign shall be posted on the tower at a height of five 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 vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

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

i. Tower-climbing apparatus located no closer than 12 feet from the ground.

ii. A locked anti-climb device installed on the tower.

iii. A locked, protective fence at least six feet in height that encloses the tower.

m. Anchor points for any guide 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 feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

n. 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.

o. 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 30 feet above the highest structure or tree within a 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.

p. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric 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 manufacture.

5.Standards.

a. A Small Wind Energy System shall comply with the following standards:

i. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

b. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

6. Abandonment of Use.

a. Small WECS 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 City.

b. All Small WECS shall be maintained in good condition and in accordance with all the requirements of this section. Miscellaneous

7. Fees.

a. Non-refundable Application Fees shall be as follows:

i. WECS Special Use Permit: $50 per megawatt of rated maximum capacity.
ii. Wind Measurement Towers: $200 per tower.
iii. Small WECS: $150 per WECS
iv. Wind Measurement Tower Special Use Permit renewals: $50 per Wind Measurement Tower.

8. Building Permits.

The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be $25 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or

certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties

9.Agreements

Nothing in this Article shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

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

10.Setbacks for Wind Energy Conversion Systems.

a. The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence existing at the time of application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

b. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (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 (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (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 (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the

effect of wind 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 thirty (30) mph at the ambient noise measurement location.

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

e. Each WECS shall be setback from Site boundaries, measured from the center of the WECS:

i. 500 feet from the nearest Site boundary property line.

ii. 500 feet from the nearest public road.

iii. 1,200 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.

iv. One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.

v. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

11. Noise and Setback Easements.

a. In the event the noise levels resulting from a Wind Energy Facility exceed the criteria established in this Article, or setback requirement is not met, a waiver will be granted from such requirement by the Town Board in the following circumstances:

i. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Article, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) all setbacks less than required; and

ii. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties.

Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

b. The waiver granted under this Section differs from variances under Local Law No. 1 of 2004 in that no variance is required if a waiver is given under this Section, but a variance from the Zoning Board of Appeals must be sought rather than a waiver if the adjoining property owner will not grant an easement pursuant to this section.

Section 8
Right to Inspect

1. In order to verify that the Solar or Wind Energy System's owners and any and all lessees, renters and/or operators of the Solar Energy System place, construct, modify and maintain such Systems, including solar collectors and solar inverts, in accordance with all applicable technical, safety, fire, building codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all faces of said System's placement, construction, modification and maintenance.

2. Any inspections required by the Town of Smyrna Planning Board or Town Board that are beyond its scope or ability shall be at the expense of the Solar Energy Applicant.

Section 9.
Decommissioning plan and Bond

1. To ensure the proper removal of large-scale solar energy systems and wind energy systems, a decommissioning plan shall be submitted to the Town of Smyrna prior to beginning construction of any large-scale solar energy system or wind energy system. A bond shall be required by the Town of Smyrna, hereinafter referred to as a "decommissioning bond", based on the cost estimate established in the decommissioning plan or otherwise established by the Town of Smyrna. The owner of the large-scale energy system or wind energy system will be responsible for premium payments on the decommissioning bond and shall renew the bond as often as necessary to ensure the bond is in place at all times until decommissioning is complete. Compliance with this plan shall be a condition precedent to the site-plan approval of any large-scale solar energy system or wind energy system.

The decommissioning plan must specify that after the large-scale Solar Energy System or Wind Energy System is scheduled to be taken out of service due to functional,

economic, physical, or any other reason, the entire large-scale Solar Energy System or Wind Energy System shall be removed by the applicant or any successor in interest. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected time line for execution of the decommissioning plan. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimations shall take into account inflation. Removal of large-scale solar energy systems and/or wind energy systems must be completed in accordance with the decommissioning plan. If the large-scale solar energy system or wind energy system is not timely decommissioned after being considered abandoned, the Town may remove the system and restore the property. If the Town removes or otherwise decommissions the large-scale solar energy system or wind energy system, it may impose a lien on the property to cover the removal and remediation costs actually expended by the Town.

2. Abandonment - Solar Energy Systems and Wind Energy Systems are considered abandoned after 12 months without electrical energy generation as initially approved and must be removed from the property within 90 days. Applications for extensions are reviewed by the Code Enforcement Officer. A ninety-day extension may be granted.

Section 10.
Severability. Should any section or provision of this Local Law be declared invalid, such decision shall not affect the validity of the remaining portions hereof.

Section 11.
Effective Date. This Local Law shall become effective upon filing with the Secretary of State of the State of New York as provided by the Municipal Home Rule Law Section.