

~~Article VI~~ Part 8
Additional Use Requirements

§8-1 Purpose.

This article provides additional regulations for uses that are generally considered to have a higher potential for incompatibility with residential or low impact commercial uses without proper mitigation measures.

§8-2 Applicability.

The following requirements are applicable to all uses, permitted (P) and specially permitted (S), as noted in the use tables of §4-x of this Zoning Chapter.

§8-3 Accessory Dwelling Units.

Where permitted as an accessory use in Article IV, an accessory dwelling unit may be constructed within any single-family detached dwelling following approval of a Special Use Permit as set forth in §10-9, subject to the following standards:

A. General Standards for Accessory Dwelling Units.

1. A maximum of one (1) accessory dwelling unit is permitted on an individual lot.
2. Accessory dwelling units shall be within or substantially attached to the principal structure that satisfy the minimum dimensional standards listed in Article 5 as amended.
3. Accessory dwelling units shall be a minimum of 500 sq. ft and the accessory dwelling unit shall not exceed 49% of the gross floor area of the principal dwelling up to 900 sq. ft., whichever is less restrictive.
4. The maximum height of an accessory dwelling unit is limited to the maximum height of the principal structure in the respective zoning district.
5. A maximum of 2 bedrooms shall be permitted for an accessory dwelling unit. A third bedroom is permitted if built within the roof portion of the structure.
6. The accessory dwelling unit shall have its own entrance, which may be shared with the principal dwelling by a common area.
7. A minimum of one (1) off street parking space shall be provided with a maximum of two (2) parking spaces permitted. Driveways shall not be expanded in the area between the front wall of the principal structure and the right-of-way line to accommodate required ADU parking.
8. The principal dwelling or accessory dwelling unit must be owner occupied. The property owner must certify that either unit is their principal place of residence and legal domicile. Both the principal structure and accessory dwelling unit must remain in common ownership.
9. Accessory dwelling units must maintain a complementary exterior finish to the principal structure.

10. Exterior lighting shall meet the standards listed in § 7-3 of this Ordinance.

- B. The Special Use Permit for an accessory dwelling unit shall be valid for a period not exceeding two years. Thereafter the Code Enforcement Officer, with concurrence from the Zoning Enforcement Officer, may renew a Special Use Permit upon satisfactory proof of compliance with the standards listed in § 6-8-2 above and any conditions placed by the Zoning Board of Appeals on the original permit.
1. A Special Use Permit renewal shall be valid for a period not exceeding two years.
 2. The original Special Use Permit or any subsequent renewal by the Code Enforcement Officer shall not be transferable. A new property owner shall seek approval from the Zoning Board of Appeals.
 3. The Code Enforcement Officer may deny the renewal of a Special Use Permit based on the following:
 - a. Failure to comply with NYS Building Code for property maintenance.
 - b. Falsification of a certification of legal residence.
 4. If a Special Use Permit renewal is denied, the property owner must seek a new Special Use Permit approval from the Zoning Board of Appeals pursuant to §10-9 of this Ordinance.

~~§ 230-45 Accessory structures.
[Amended 6-7-2016]~~

- ~~A. Every building hereafter erected shall be located on a lot as herein defined, and except as herein provided, there shall not be more than one main building and its accessory structures or buildings on one lot, except for nonresidential buildings and multifamily dwellings in districts where such uses are expressly permitted.~~
- ~~B. All accessory structures shall observe the same yard requirements as principal buildings, except that accessory buildings lying wholly within a rear yard may not be located within five feet of any residential lot line.~~
- ~~C. In any district, the distance between the main building and the accessory building shall be a minimum of 10 feet.~~
- ~~D. All accessory structures shall be located in the side or rear yard.~~
- ~~E. Accessory structures shall not exceed the lot coverage of the principal structure.~~

§8-4 Accessory Structures

- A. In any district, the distance between a principal building and an accessory building shall be a minimum of ten (10) feet.

- B. All accessory structures shall be located in the side or rear yard.**
- C. Accessory structures shall not exceed the lot coverage of the principal structure.**
- D. Accessory structures shall have a maximum height that is equal to the height of the principal structure or 20 feet, whichever is more restrictive.**

~~§ 230-46~~ **§8-5 Adult uses.**

- A. Purpose. The nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day-care centers, libraries or parks. Furthermore, the concentration of adult uses has an adverse effect upon the use and enjoyment of adjacent areas. The nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses. Special regulation of adult uses is necessary to ensure that the adverse secondary effects would not contribute to or enhance criminal activity in the area of such uses, nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value. [Amended 7-2-2007]
- B. Requirements. [Amended 7-2-2007]
 - 1. General. Adult uses, as defined in this chapter, shall be subject to the following general provisions:
 - a. Activities classified as obscene, as defined by Minnesota Statutes 617.241, are not permitted and are prohibited.
 - b. Adult uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.
 - c. Adult uses, either principal or accessory, shall be prohibited from locating in any place which is also used to dispense or consume alcoholic beverages.
 - d. An adult use which does not qualify as an accessory use shall be classified as an adult use-principal.
 - 2. Adult uses-principal.
 - a. Adult uses both principal and accessory, shall be permitted in the Industrial District and only upon site plan approval.
 - b. Adult uses-principal shall be located at least 1,000 radial feet as measured in a straight line from the closest point of the property line of the building upon which the adult use-principal is located to the property line of:
 - i. Residentially zoned property.
 - ii. A licensed day-care center.
 - iii. A public or private education facility classified as elementary, junior high or senior high.

- iv. A public library.
 - v. A public park.
 - vi. Another adult use-principal.
 - vii. An on-site liquor retail sales establishment.
 - viii. An historic or scenic resource; historic route or highway; or a civic or cultural facility.
- c. Adult uses-principal shall be located at least 500 radial feet, as measured in a straight line, from one another.
 - d. Adult use-principal activities, as defined by this chapter, shall be classified as one use. No two adult uses-principal shall be located in the same building or upon the same property, and each use shall be subject to Subsection B(1)(b) and (c), above.
 - e. Adult uses-principal shall adhere to the following signing regulations:
 - i. Sign messages shall be generic in nature and shall only identify the type of business which is being conducted; and
 - ii. Shall not contain material classified as advertising; and
 - iii. Shall comply with the size and number requirements for the district in which they are located.
 - f. Adult use-principal activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical, or other performance or exhibition presented to the general public where minors are permitted.
3. Adult uses-accessory.
- A. Adult uses-accessory shall:
 - i. Comprise no more than 10% of the floor area of the establishment in which it is located.
 - ii. Comprise no more than 20% of the gross receipts of the entire business operation.
 - iii. Not involve or include any activity except the sale or rental of merchandise.
 - B. Adult uses-accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access.
 - i. Movie rentals. Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation.
 - ii. Magazines. Publications classified or qualifying as adult uses shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

- iii. Other use. Adult uses-accessory not specifically cited shall comply with the intent of this section subject to the approval of the Zoning Administrator.
- C. Adult uses-accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.
- D. Adult use-accessory activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical or other performance or exhibition presented to the general public where minors are permitted.
- C. All building openings, including doors and windows, shall be coated, covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk or parking area.
- D. No loudspeakers or sound equipment shall be used by adult uses that can be heard by the public outside the establishment.

~~§ 230-47 Amusement centers.~~

~~A. Amusement centers shall be allowed in Neighborhood Commercial and Regional Commercial Districts subject to site plan review.~~

~~B. Arcades shall be closed between the hours of 12:00 midnight and 8:00 a.m.~~

~~§ 230-48 §8-6 Animal service facilities.~~

~~A. Animal service facilities shall be allowed in the Neighborhood Commercial and Regional Commercial zones subject to site plan review.~~

B. All animals shall be retained within a wholly enclosed building during the hours of 6:00 p.m. and 8:00 a.m.

~~C. Outdoor animal exercise areas shall be located at least 10 feet from adjacent property lines.~~

A. All outdoor animal exercise areas or runs shall be fully enclosed within a fenced area that meets the requirements of §6-2-4 of this chapter.

C. All outdoor animal exercise areas or runs shall be located a minimum of 25 feet from all property boundaries.

§8-7 Automotive Service Facilities.

A. An automotive service facility is permitted in accordance with the district use tables in §4-#, subject to the following standards.

1. Wheel stops or other permanent barriers shall be installed to prevent vehicles from encroaching on required setbacks or landscaping.
2. Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

3. No vehicle storage, display or parking shall be permitted between the principal structure and front lot line.
4. Overhead doors shall not face a residential district and doors must remain closed except for the entry and exit of vehicles.

§8-8 Cannabis Facilities.

All cannabis facilities and uses shall conform to the requirements of City of Lackawanna Code Chapter 93: Cannabis.

~~§ 230-49 Attached single family housing.~~

~~A.— Attached single family housing units shall be permitted in the Mixed Residential District subject to site plan approval.~~

~~B.— Attached single family housing site development plans shall feature:~~

- ~~(1) An average unit size of at least 1,000 square feet with no units less than 750 square feet in size;~~
- ~~(2) Thirty-foot front, rear and side yard setbacks;~~
- ~~(3) Sixty-foot inter-building setbacks;~~
- ~~(4) Twelve-foot setbacks between buildings and common parking areas;~~
- ~~(5) A maximum of four units per continuous structure;~~
- ~~(6) Buildings no longer than 160 feet; measured along the exterior facade of each unit of the structure;~~
- ~~(7) Independent heating, air conditioning, sewer, water, electricity, gas or other utility services for each dwelling unit;~~
- ~~(8) Rooflines varied at least once for each two dwelling units;~~
- ~~(9) Ground floor living space for all dwelling units;~~
- ~~(10) Individual patios, at least 250 square feet in size and enclosed by a wall, fence or dense hedge; and~~
- ~~(11) Five hundred square feet of common open space developed for active or passive recreation per dwelling unit.~~

~~§ 230-50 Auxiliary housing units.~~

~~A.— An auxiliary housing unit may be included within a single family detached dwelling to accommodate not more than two members of the household otherwise occupying the dwelling. At least one of the persons housed in the auxiliary housing unit must be at least~~

~~60 years of age or disabled to the extent that independent housing is not practical.~~

~~B. The auxiliary housing unit shall not exceed 50% of the floor area of the habitable space within the principal dwelling unit.~~

~~§ 230-51~~ §8-9 Cemeteries.

- A. Any cemetery must be a contiguous parcel of land containing at least 20 acres.
- B. Mausoleums shall be located at least 200 feet from any adjoining residential parcel.

§ 230-52 Unlicensed vehicles.

[Added 5-19-2014; amended 8-21-2018]

- A. No unlicensed or unregistered vehicle shall be stored outdoors for more than 30 days.
- B. The outdoor storage of more than one unlicensed or unregistered vehicle, per parcel, is prohibited.
- C. Unlicensed or unregistered vehicles shall be stored at the rear of the parcel whenever possible.
- D. Unlicensed or unregistered vehicles shall be stored so that said vehicle is not visible from the public right-of-way, whenever possible.
- E. Unlicensed or unregistered vehicles may be temporarily stored at vehicle repair shops or automotive sales businesses which are in compliance with applicable zoning and licensing requirements, pending the repair or sale of such vehicle not to exceed 30 days.
- F. Junk vehicles, for the purpose of this section, shall be defined as any vehicle, including a trailer, which is without a current inspection sticker, insurance valid license plate or plates and/or is in either a rusted, wrecked, discarded, dismantled, partly dismantled, inoperable or abandoned condition.
- G. A junk vehicle may not be parked, stored outdoors or be visible from a public right-of-way.

§8-10 Home Occupations.

Following the issuance of a Special Use Permit in accordance with Section x-x of this Chapter, a home occupation may be established. Upon demonstration of continued compliance with the conditions of the original approval, the Code Enforcement Officer shall annually renew the special use permit. Based on compliance with applicable building codes and this chapter, the Special Use Permit may be revoked by the Code Enforcement Officer. An application for a new special use permit shall be submitted to the Zoning Board of Appeals. The Code Enforcement Officer may inspect the premises without prior notice during normal business hours. Such home occupation shall meet the following standards

- A. There shall be no change in the exterior of the building or other evidence that a home occupation is being conducted within.
- B. All activities involving outside visitors, clients or deliveries shall be limited to the hours between 8 A.M. and 9 P.M.
- C. No parking spaces, other than driveways, may be located in the required front yard.
- D. A home occupation shall not be permitted within an Accessory Dwelling Unit.
- E. No more than one unlighted sign not more than two square feet in size, identifying the resident and the business, attached flat against the building, shall be permitted.
- F. One (1) sign shall be permitted with a maximum of two (2) square feet in area. The sign shall be located on the premises conducting the home occupation.
- G. The following uses are prohibited from being established as home occupations:
 - 1. Automotive Service Facilities
 - 2. Restaurants/Taverns
 - 3. Sale of Firearms and/or weapons
 - 4. Uses which require the boarding, training, raising or treatment of dogs, cats, or other animals on site
 - 5. Food handling and/or processing/ catering

~~§ 230-53 Junkyards.~~

~~Junkyards and dumps are prohibited in the City of Lackawanna.~~

~~§ 230-54 Mobile homes.~~ **§8-11 Manufactured Homes.**

No ~~mobile home~~ **Manufactured Homes** shall be parked and/or occupied in any district outside of an approved mobile home park for more than 48 hours.

~~§ 230-55 Mobile home parks.~~ **§8-12 Manufactured Home Parks.**

- A. ~~Mobile home~~ **Manufactured Home** parks shall be allowed in the Mixed Residential zone subject to site plan approval.
- B. The ~~mobile home~~ **Manufactured Home** park site plan shall feature the following:
 - (1) A minimum development size of five acres;
 - (2) A street system shall be provided which gives access to all ~~mobile home~~ **Manufactured Home** spaces with an adequate entrance drive from the public street at least 20 feet wide;
 - (3) ~~Mobile home~~ **Manufactured Home**-lots at least 3,000 square feet in size with a minimum width of 40 feet and a minimum depth of 75 feet;
 - (4) ~~Mobile homes~~ **Manufactured Home** shall be set back at least 100 feet from public streets, roadways and other property lines; and

~~(5) — No more than 12 mobile home lots per gross acre. The maximum allowable density shall not exceed 12 units/gross acre.~~

~~§ 230-56 Satellite receiving antennas.~~

~~Satellite receiving antennae are permitted in any zoning district as an accessory use subject to the following:~~

~~A. — Satellite receiving antenna shall be no more than 18 inches in diameter; and~~

~~B. — No more than one satellite receiving antenna is allowed per unit with a maximum of two per building.~~

~~§ 230-57 Storefront conversions.~~

~~A. — The conversion of former storefronts to residential uses shall be permitted in all residential districts subject to site plan approval.~~

~~B. — The conversion of former storefront buildings to residential uses should capitalize upon the unique nature of commercial storefronts to:~~

~~(1) — Provide unique and flexible residential unit arrangements.~~

~~(2) — Maximize accessibility for disabled individuals.~~

~~(3) — Maximize energy efficiency.~~

~~C. — Design.~~

~~(1) — The conversion shall preserve the building's original proportion of storefront window area to solid areas.~~

~~(2) — Recessed building entries shall not be converted to enclosed vestibules; this shall not preclude the construction of interior vestibules.~~

~~(3) — The use of passive solar heating systems by south or southwest facing storefronts is encouraged.~~

~~(4) — Wrought iron gates and security grills shall be restricted to recessed doorways and inter-building gaps no larger than six feet wide.~~

~~(5) — Where increased natural ventilation is required by the New York State Building Code, additional natural ventilation may be obtained through:~~

~~(a) — The replacement of fixed transom windows with awning, hopper or horizontal opening windows;~~

~~(b) — The replacement of fixed display windows with double hung or casement windows;~~

~~(c) Screened doors; or~~

~~(d) Louvered grills~~

~~D. Materials.~~

~~(1) Display window in fill construction shall utilize those materials found in the building's original design.~~

~~(2) The following materials shall be permitted as first floor display window materials and treatments:~~

~~(a) Obscured/translucent glass.~~

~~(b) Patterned glass.~~

~~(c) Spandrel glass.~~

~~(d) Laminated glass.~~

~~(e) Tempered glass.~~

~~(f) Privacy or security glass.~~

~~(g) Polycarbonate.~~

~~(3) The use of insulated glass plate windows is prohibited when windowsill is less than 18 inches from the floor or 18 inches from an entrance.~~

Typical Storefront Conversion

~~[\[Image\]](#)~~

~~Before~~

~~[\[Image\]](#)~~

~~After~~

~~*§ 230-58 Swimming pools.*~~

~~A. Private swimming pools may be erected or installed as an accessory use in all zones.~~

~~B. Swimming pools shall be located at least 10 feet from all property lines and shall not~~

occupy more than 10% of the total lot area.

- ~~C. The private swimming pool, surrounding yard or lot shall be enclosed and fenced; the wall of a principal or accessory building may be used to meet this requirement.~~
- ~~D. Pool access shall be by way of a self-closing gate that shall remain locked whenever the pool is not under the direct adult supervision; locking devices shall be located at least 3.5 feet above ground level.~~
- ~~E. Pools equipped with an integral filtration system, filter pumps, lighting or other mechanical devices shall be so located and constructed as to not interfere with the peace, comfort and repose of the occupant of any adjoining property.~~

§8-13 Neighborhood Garden.

A Neighborhood Garden is permitted in accordance with the use schedule in §#-#, subject to the following standards:

- A. Garden areas shall be setback a minimum of 10 feet from all property lines
- B. The garden area must be fully enclosed by a fence that meets the standards listed in §6-# Fences.
 - a. Fences shall not be opaque.
- C. All materials and equipment shall be stored in a fully enclosed structure when not in use.
- D. Site lighting shall not be permitted.
- E. Accessory structures are permitted and are subject to the dimensional standards set forth within the district in which the garden is located.

§8-14 Community Scale Agriculture.

A Neighborhood Garden is permitted in accordance with the use schedule in §#-#, subject to site plan review and the following standards:

- D. Garden areas shall be setback a minimum of 20 feet from all property lines
- E. The garden area must be fully enclosed by a fence that meets the standards listed in §6-# Fences.
 - a. Fences shall not be opaque.
- F. All materials and equipment shall be stored in a fully enclosed structure when not in use.
- G. Site lighting shall not be permitted.
- H. Accessory structures are permitted and are subject to the dimensional standards set forth within the district in which the garden is located.
- I. Operations shall be limited to the hours of 7am – 7pm.
- J. A maintenance plan is required as part of site plan approval and at a minimum must include:

- a. The location of refuse containers and schedule of refuse pickup
- b. An odor mitigation/control plan
- c. A pest mitigation/control plan
- d. Emergency contact information for the owner or their representative responsible for the operations of the garden.

§8-15 Solar Energy Systems.

§8-15-1 Authority.

This Solar Energy Local Law is adopted pursuant to Sections 19 and 20 of the City Law and Section 20 of the Municipal Home Rule Law of the State of New York, which authorize the City of Lackawanna to adopt land use regulations and zoning provisions that advance and protect the health, safety, and welfare of the community, and, in accordance with the City law of New York State, “to make provision for, so far as conditions may permit, the accommodation of Solar Energy Systems and equipment and access to sunlight necessary therefor.”

§8-15-2 Statement of Purpose.

This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the City of Lackawanna by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

- A. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
- B. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
- C. To increase employment and business development in the City of Lackawanna, to the extent reasonably practical, by furthering the installation of Solar Energy Systems; and
- D. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources.

§8-15-3 Definitions.

Active Agricultural Land: Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years.

Battery Energy Storage System: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle).

Building-Integrated Solar Energy System: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

Facility Area: The cumulative land area occupied during the commercial operation of the solar

energy generating facility. This shall include all areas and equipment within the facility's perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment – as well as any site improvements beyond the facility's perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

Farm Operation: Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11]).

Glare: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

Ground-Mounted Solar Energy System: A Solar Energy System which is secured to the ground via a pole, ballast system, or other mounting system; is detached from any other structure; and which generates electricity for onsite or offsite consumption.

Kilowatt (kW): A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial solar energy systems may be described in terms of kW.

Megawatt (MW): A unit of power equal to 1,000 kW. The nameplate capacity of larger solar energy systems may be described in terms of MW.

Mineral Soil Groups 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

Nameplate Capacity: A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

Native Perennial Vegetation: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for Pollinators and shall not include any prohibited or regulated invasive species as determined by the NYS Department of Environmental Conservation.

On-Farm Solar Energy System: A Solar Energy System located on a farm which is a "farm operation" (as defined by Article 25-AA of the Agriculture and Markets Law, which may

include one or multiple contiguous or non-contiguous parcels) in an agricultural district, which is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed by the farm operation.

Pollinator: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

Roof-Mounted Solar Energy System: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

Solar Access: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

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

Solar Energy System: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or Tier 4 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted Solar Energy Systems.
 - 2. Building-Integrated Solar Energy Systems.
 - 3. Ground-Mounted Solar Energy Systems with a total solar panel surface area of up to 4,000 square feet.
- B. Tier 2 Solar Energy Systems include the following:
 - 1. Ground-Mounted Solar Energy Systems not included under Tier 1 Solar Energy Systems with a Facility Area of up to 8 acres in size and which generate up to 110 % of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 Solar Energy Systems include the following:
 - 1. Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Facility Area of up to 40 acres in size.
- D. Tier 4 Solar Energy Systems are Solar Energy Systems which are not included under Tier 1, Tier 2, or Tier 3 Solar Energy Systems.

Solar Panel: A photovoltaic device capable of collecting and converting solar energy into electricity.

§8-15-4. Applicability

- A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the City of Lackawanna after the effective date of this Local Law, excluding general maintenance and repair.**
- B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.**
- C. Modifications to an existing Solar Energy System that increase the Facility Area by more than 5 % of the original Facility Area (exclusive of moving any fencing) shall be subject to this Local Law.**

§8-15-5. General Requirements

- A. A Building permit shall be required for installation of all Solar Energy Systems.**
- B. Prior to the issuance of the building permit or final approval by the Code Enforcement Officer, construction and/or site plan documents must be signed and stamped by a NYS Licensed Professional Engineer or NYS Registered Architect.**
- C. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.**
- D. Issuance of permits and approvals by the City of Lackawanna Planning and Development Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].**
- E. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Uniform Code”), the NYS Energy Conservation Code (“Energy Code”), and the City of Lackawanna Code.**
- F. For Solar Energy Systems subject to site plan review, the City of Lackawanna shall impose, and may update as appropriate, a schedule of fees to recover expenses associated with engineering, environmental, or legal services determined to be reasonably necessary in the processing of an application under this law.**

§8-15-6. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

- A. Roof-Mounted Solar Energy Systems.**
 - 1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements (exceptions may be approved by the Code Enforcement Official):**

- a. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
 - b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
2. Glare. All Solar Panels shall have anti-reflective coating(s).
 3. Height. All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.
- B. Building-Integrated Solar Energy Systems.**
1. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.
- C. Ground-Mounted Solar Energy Systems**
1. Glare. All Solar Panels shall have anti-reflective coating(s).
 2. Setbacks. Tier 1 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.
 3. Height. Tier 1 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the underlying zoning district.
 4. Lot Size. Tier 1 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.
 5. Lot coverage. Tier 1 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.
 6. Screening and Visibility.
 - a. All Tier 1 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 - b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate Solar Access.

§8-15-7. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Ground-Mounted Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall be subject to site plan approval. Tier 2 Solar Energy Systems

shall adhere to the standards and requirements established for Tier 1 Ground-Mounted Systems in Section **[6(C)]**, in addition to (or in some cases amended by) the following requirements:

- A. Application & Site Plan Review Requirements. Applications for Tier 2 Solar Energy Systems, including materials for site plan review, shall include the following:**
 - 1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.**
 - 2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.**
 - 3. Nameplate Capacity of the Solar Energy System (as expressed in kW or MW).**
 - 4. Zoning district designation for the parcel(s) of land comprising the Facility Area.**
 - 5. Property lines and physical features, including roads, for the project site.**
 - 6. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.**
 - 7. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.**
 - 8. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.**
 - 9. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.**
- B. Standards. Tier 2 Systems shall adhere to the following standards.**
 - 1. Lot coverage. Tier 2 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.**
 - 2. Screening/Visibility. Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.**

3. Environmental Resources

- a. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
- b. To the extent practicable, Tier 2 Solar Energy System Owners shall utilize and maintain native perennial vegetation to provide foraging habitat for pollinators in all appropriate areas within the Facility Area.
- c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.

§8-15-8. Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a Special Use Permit within the BRA and Enterprise zoning districts, and subject to site plan application requirements set forth in this Section.

A. Applications for the installation of Tier 3 Solar Energy System shall be:

1. Reviewed by the Zoning Enforcement Officer for completeness. Applicants shall be advised within 30 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Subject to a public hearing to hear all comments for and against the application. This hearing shall be in compliance with all existing public hearing requirements established under law by the City of Lackawanna.
3. Referred to the Erie County Department of Planning pursuant to General Municipal Law § 239-m if required.
4. Upon closing of the public hearing, the Planning and Development Board shall take action on the application within 60-days of the public hearing, which can include approval, approval with conditions, or denial. The 60-day period may be extended upon consent by both the Planning and Development Board and applicant.

B. Application & Site Plan Review Requirements. Applications for Tier 3 Solar Energy Systems, including materials for site plan review, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
3. Nameplate Capacity of the Solar Energy System (as expressed in MW).
4. Zoning district designation for the parcel(s) of land comprising the Facility Area.
5. Property lines and physical features, including roads, for the project site.
6. Map(s) of MSG 1-4 soils and Active Agriculture Lands on the parcel(s) comprising the Facility Area and adjacent parcels.

- 7. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.**
- 8. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.**
- 9. Erosion and sediment control and storm water management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.**
- 10. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.**
- 11. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.**
- 12. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.**
- 13. A Decommissioning Plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant. The decommissioning plan shall address the following:**
 - a. The time required to decommission and remove the Solar Energy System and any ancillary structures.**
 - b. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.**
 - c. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.**
 - d. The provision of a decommissioning security which shall adhere to the following requirements:**
 - i. The deposit, executions, or filing with the City Clerk of cash, bond, or other form of security reasonably acceptable to the City attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.**

by an individual or multiple participating landowners), the combined lots may be treated a single lot for the purposes of applying specific standards and requirements.

7. **Lot size.** The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements of the underlying zoning district.
8. **Setbacks.** The Tier 3 Solar Energy Systems shall have a minimum setback of 100 feet from all property boundaries. Fencing, collection lines, access roads and landscaping may occur within the setback.
9. **Height.** The Tier 3 Solar Energy Systems shall have a maximum height of 20 feet to the apex of the panel at its maximum tilt.
 - a. This height requirement can be waived by the Planning and Development Board if the panels are being raised to accommodate continued or new agricultural purposes.
10. **Lot coverage.** Tier 3 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.
11. **Fencing Requirements.** All mechanical equipment, including any structure for Battery Energy Storage System components, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
12. **Screening and Visibility.**
 - a. Solar Energy Systems smaller than 1 acre shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - b. Solar Energy Systems larger than 1 acre shall be required to:
 - i. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to submitted by the applicant.
 - ii. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.
 - iii. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or

mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the City of Lackawanna.

- iv. The Planning and Development Board may elect to waive certain screening and landscaping requirements in select locations based on an applicant's demonstration of non-impact or impact mitigation on adjacent parcels.

13. Environmental Resources

- a. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
 - b. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing Native Perennial Vegetation and foraging habitat beneficial to game birds, songbirds, and Pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes and seed all appropriate areas within the Facility Area. Any project which is designed to incorporate agricultural or farm-related activities or uses within the Facility Area may be excluded from this requirement based on the amount of space actually occupied by the agricultural use(s). This exclusion will only be allowed based on the Planning and Development Board determination that these lands are being used for actual agricultural uses.
 - c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.
- D. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

§8-15-9. Permitting Requirements for Tier 4 Solar Energy Systems

All Tier 4 Solar Energy Systems are permitted through the issuance of a Special Use Permit within BRA-HI zoning district, and are subject to the site plan and special use permit application requirements established for Tier 3 Solar Energy Systems in **Section [8]**, in addition to (or in some cases amended by) the following requirements:

- A. Applications for Tier 4 Solar Energy Systems shall:
 - 1. Be reviewed by the Zoning Enforcement Officer for completeness. Applicants shall be advised within 60 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

B. Pre-Application Meeting.

1. At least 60 days prior to the submission of an application, the Applicant shall conduct a pre-application meeting with the City staff to ensure all parties have clear expectations regarding any City requirements applicable to the proposed Solar Energy System. A written request for this purpose shall be sent to the Chairperson of the City Council. Submission and review of the application shall not be delayed based on the failure of the Chairperson to respond in a timely manner to a properly filed meeting request.
2. At the pre-application meeting, the Applicant must provide
 - a. a brief description of the proposed facility and its environmental setting,
 - b. a map of the proposed facility showing project components,
 - c. the proposed facility's anticipated impacts,
 - d. a designated contact person with telephone number, email address, and mailing address from whom information will be available going-forward basis, and
 - e. an anticipated application submission date.

C. Special Use Permit Standards

1. **Setbacks:** Tier 4 Solar Energy Systems shall have a setback of 100 feet from all property boundaries. Fencing, collection lines, access roads and landscaping may occur within the setback.

§8-15-10. Safety

- A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
- C. If a Battery Energy Storage System is included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the City of Lackawanna and any applicable federal, state, or county laws or regulations.
- D. Where deemed necessary by the Planning and Development Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the City of Lackawanna Fire Department.

§8-15-11. Permit Timeframe and Abandonment

- A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 36 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final site plan – as may have been amended and approved – as required by the Planning and Development Board, within 36 months, the applicant may request to extend the time to complete construction for 12 months. Approval of a request to extend the time to complete construction shall not be unreasonably withheld by the City of Lackawanna. If the owner and/or operator fails to perform substantial construction within 48 months, the approvals shall expire.**
- B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the City of Lackawanna may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.**
- C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the City of Lackawanna may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.**

§8-15-12. Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of City of Lackawanna.

§8-15-13. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

§8-16 Short-Term Rentals

Short Term Rentals are permitted in the R-1, R-2, R-3, NC, and CBD zoning districts, subject to the following standards:

- A. A Special Use Permit is required prior to the establishment of a Short Term Rental in accordance with the requirements set forth in §11-9 of this Zoning Chapter.**
 - 1. Before such special use permit may be granted, the premises must be inspected by the Code Enforcement Officer or his/her designee to ensure that the premises is in substantial compliance with these regulations and the New York State Uniform Fire Prevention and Building Codes. By applying for a special use permit, the owner consents to biennial inspections of the premises for the duration of the**

permit, unless more frequent inspections are deemed necessary by the Code Enforcement Officer or his/her designee.

2. **Special Use Permits granted for a Short-Term Rental are non-transferable and may be revoked by the Code Enforcement Officer in any instance of non-compliance with this Zoning Chapter or any other applicable law of the City of Lackawanna.**
- B. **No fewer than two off-street parking spaces shall be provided for the premises in which the short-term rental dwelling unit is located.**
- C. **No exterior display or signage related to the use of the premises for short-term rental shall be permitted.**

§8-17. Wind Energy Conservation Systems (WECS)

§8-17-1 Purpose.

The City of Lackawanna has determined that a comprehensive local law regulating the development of WECS is necessary to protect the interests of the City and its residents. The City adopts this article to promote the effective and efficient use of the City's wind energy resource through WECS and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized and that the WECS will not have a significant adverse impact on the aesthetic qualities of the City.

§8-17-2 Definitions.

COMMERCIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of one wind turbine, one tower and associated control or conversion electronics which has a rated capacity greater than 250 kilowatts and a total height of more than 150 feet and is intended to solely supply electrical power into a power grid for sale.

NONCOMMERCIAL WIND ENERGY SYSTEM - A wind energy conversion system consisting of one wind turbine, one tower and associated control or conversion electronics which has a rated capacity of not more than 250 kilowatts and a total height of less than 150 feet.

TOTAL HEIGHT or MAXIMUM OVERALL HEIGHT- The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.

TOWER - The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.

TOWER HEIGHT - The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

WIND ENERGY CONVERSION SYSTEMS (WECS)

One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for use on site to reduce power costs for sale or redistribution to others. WECS include both commercial and noncommercial systems.

WIND ENERGY FACILITY - Any wind energy conversion system or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY SYSTEM - The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.

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

§8-17-3 Applicability.
[Amended 3-5-2008]

The requirements of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article except for those which began operation shall to the effective date of this article and also except for wind energy facilities within the Bethlehem Redevelopment Area (BRA) where the requirements of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article unless the Planning Board has issued final approval for such wind energy facilities prior to December 31, 2007.

§8-17-4 Permits required; allowable zoning districts.
[Amended 10-1-2007; 3-5-2008]

- A. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the City of Lackawanna except in compliance with this article.
- B. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the City of Lackawanna except in Industrial (I), Bethlehem Redevelopment Area (BRA) or Mixed Commercial and Industrial (MCI) Districts, and with the issuance of a special use permit approved pursuant to this article, the completion of SEQR, and upon issuance of a building permit.
- C. Any future construction of wind energy facilities shall be located in an area west of the canal but in no event shall be closer than 2,000 feet west of the westerly line of Hamburg Turnpike.

- D. No wind measurement tower shall be constructed in the City of Lackawanna except in the allowable districts pursuant to a special use permit and this article.

§8-17-5 Applications for wind energy facilities.

[Amended 3-5-2008]

- A. Applications for a special use permit for WECS will follow the general process for the issuance of a special use permit as described in Article XIV of the City Code and this article, and shall be made as follows:
 - i. Applicants for a special use permit for wind energy conversion systems within the City of Lackawanna shall submit the following information to the City for its referral to a professional engineer or consultant and to the Planning Board of the City for review and recommendation to the City Council:
 - (a) Name and address of the applicant.
 - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
 - (c) Visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF or by the City of Lackawanna, existing tree lines and proposed elevations. The visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures.
 - (d) A SEQR full environmental assessment form (EAF).
 - (e) A site plan drawn in sufficient detail to show the following:
 - 1) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - 2) Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
 - 3) Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the wind energy conversion systems.
 - 4) Surrounding land use and all structures within 1,500 feet of the wind energy conversion systems.
 - 5) Dimensional representation of the various structural components of

the tower construction, including the base and footing.

- 6) Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
- 7) Existing topography.
- 8) Proposed plan for grading and removal of natural vegetation.
- 9) Proposed plan for restoration after construction according to City of Lackawanna and NYS Department of Environmental Conservation guidelines.
- 10) Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
- 11) Plan for ingress and egress to the proposed project site, including:
 - a. A description of the access route from the nearest state, county, and/or City-maintained roads to include
 - i. Road surface material, stating the type and amount of surface cover.
 - ii. Width and length of access route.
 - iii. Dust control procedures.
 - b. A road maintenance schedule or program.
 - c. Review of railroad accessibility for deliveries.
- 12) Detailed construction plan, including but not limited to a construction schedule; hours of operation; designation of heavy haul routes; a list of material equipment and loads to be transported; identification of temporary facilities intended to be constructed; and a contact representative in the field with a name and phone number.
- 13) Tree removal. All groves of trees shall be located on the site plan at the time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board, excluding the BRA area.

(f) Turbine information: must contain specific information on the type, size,

height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.

- (g) Turbine drawings: must contain photographs or detailed drawings of each wind turbine model, including the tower and foundation.
- (h) Noise report. A noise report shall be furnished which shall include the following:
 - 1) A description and map of the projects noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
 - 2) A description and map of the noise-sensitive environment, including any sensitive noise receptors (i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important) within two miles of the proposed facilities.
 - 3) A survey and report prepared by a qualified engineer that analyzes the preexisting ambient noise regime, including seasonal variation, including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds, including near cut-in, turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction and analyses at affected sensitive receptors, located within two miles of the proposed project site.
 - 4) A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers and estimates of expected noise levels at sensitive receptor locations.
 - 5) A description and map of the cumulative noise impacts.
 - 6) A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this article.
 - 7) Identification of any problem areas.
 - 8) Manufacturers' noise design and field testing data, both audible dB(A) and low frequency (deep bass vibration), for all proposed structures.

- 9) A report that outlines issues and considerations for individuals that use hearing aids.
- (i) A geotechnical report shall be furnished which shall, at a minimum, include the following:
 - 1) Soils engineering and engineering geologic characteristics of the site based on oil-site sampling and testing.
 - 2) Foundation design criteria for all proposed structures.
 - 3) Slope stability analysis.
 - 4) Grading criteria for ground preparation, cuts and fills, and soil compaction.
- (j) Ice throw calculations: a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. The basis of the calculation and all assumptions must be disclosed.
- (k) Blade throw calculations: a report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. The basis of the calculation and all assumptions must be disclosed.
- (l) Catastrophic tower failure: a report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand, including all assumptions.
- (m) FAA notification: a copy of written notification to the Federal Aviation Administration.
- (n) Utility notification: utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (o) Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (p) Floodplain. An application that includes any wind turbine which is located within a one-hundred-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for

such impacts.

- (q) Other information: such additional information as may be reasonably requested by the Technical Support Department, Code Enforcement Officer, Planning Board, or City Council.

B. Special use permits issued for wind energy conversion systems shall be subject to the following conditions:

i. Setbacks. The applicant shall adhere to the following setbacks:

- (a) No commercial wind energy systems shall be allowed in any residential district.
- (b) One thousand feet from any residential district boundary line (R-1, R-2, and R-3).
- (c) A minimum of 1.5 times the total WECS height from any building located outside the applicant's property line.
- (d) A minimum of 1,500 feet from any dwelling.
- (e) From property lines (excluding residential zones and the BRA):
 - 1) A minimum of 1.5 times the total WECS height from any property line, excluding adjoining lot lines of project participants.
- (f) A minimum of 1.5 times the total WECS height from any public road and highway.
- (g) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the center line of such right-of-way.
- (h) From aboveground transmission lines greater than 12 kilovolts:
 - 1) A minimum of 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD Zones and those transmission lines associated with the WECS and in the BRA.
- (i) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.

- ii. Maximum overall height. The maximum overall height of any wind energy conversion system shall be 450 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
 - iii. Signage. No advertising sign shall be placed or painted on any commercial wind energy facility.
 - iv. Color and finish. Wind turbines shall be painted a nonobtrusive (e.g., light environmental color such as white, gray, or beige) color that is nonreflective. The design of commercial wind energy facility buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.
 - v. Lighting. The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- C. Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the wind energy conversion system.
- D. Safety and security requirements. The applicant shall adhere to the following safety and security requirements:
- i. Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
 - ii. Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
 - iii. Wiring. All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.

- iv. All transmission lines from wind energy conversion systems to oil-site substations shall be underground. The City Council shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the City Council has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
 - v. Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have a ground clearance of not less than 50 feet.
 - vi. Climb ability. Wind turbine towers shall not be climbable up to 15 feet above ground level.
 - vii. Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
 - viii. Self-supporting structures. All wind energy conversion system structures shall be of monopole construction (single pole). No lattice structures or guy-wire-supported structures shall be permitted.
 - ix. Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
 - x. Ice throw. The permit shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- E. Noise requirements. The applicant shall adhere to the following noise requirements:
- i. Compliance with noise regulations required. A WECS permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
 - ii. Noise study required. The applicant shall submit a noise study based on the requirements set out in Subsection B of this section. The Planning Board and Technical Support Department shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
 - (a) Low-frequency noise.
 - (b) Infrasound noise.
 - (c) Pure tone.

- (d) Repetitive/impulsive sound.
 - iii. Noise setbacks. The City Council may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
 - iv. Audible noise standard. The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed the greater of 45 dB(A) for more than five minutes out of any one-hour time period or 6 dB(A) greater than the prevailing background noise.
 - v. Operations, low-frequency noise. A WECS facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
 - vi. Noise complaint and investigation process required. The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- F. Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
- i. Fireproof or fire-resistant building materials.
 - ii. Buffers or fire-retardant landscaping.
 - iii. Availability of water.
 - iv. An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment without regular human occupancy.
 - v. Provision of training and fire-fighting equipment for local fire protection personnel.
- G. Impact on wildlife species and habitat. The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
- i. Endangered or threatened species. Development and operation of a WECS facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the City of Lackawanna Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria

established by federal or state regulatory agencies.

- ii. Migratory birds. Development and operation of a commercial wind energy facility shall be evaluated based on SEQRA findings.

H. Unsafe and inoperable wind energy facilities; site reclamation. The applicant shall adhere to the following:

- i. Removal and site restoration. Unsafe WECS facilities, inoperable WECS facilities and WECS facilities for which the permit has expired shall be removed by the owner at his or her expense. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible as per Subsection B(11)(b) of this section. A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration at the time of building permit application. The bond shall be payable to the City of Lackawanna for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the City for the period of the life of the facility. Any fund established may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.
- ii. Removal and site restoration plan required. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Code Enforcement Officer and City Council for review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
- iii. Public nuisance. Every unsafe WECS facility and every inoperable WECS facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable WECS facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
- iv. "Inoperable" defined. A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.

- v. Interference with residential television, microwave and radio reception. The applicant must submit proof that the proposed construction of the wind energy conversion system will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
 - vi. Compliance with FAA regulations. All commercial wind energy siting shall comply with Federal Aviation Administration (FAA) regulations.
 - (a) Locking mechanisms to limit radar interference required. All WECS facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or "clutter." This provision does not apply while the WECS is "free-wheeling" during startup and shutdown. The City Council may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or "clutter" will be caused by the WECS facility.
- I. Erosion control. The applicant shall adhere to the following:
- i. Erosion control plan required. Before the City of Lackawanna shall issue a grading or building permit for the WECS facility, the applicant shall submit an erosion control plan to the Technical Support Department for review and approval. The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
 - ii. If the proposed project disturbs over one acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the notice of intent (N.O.I.) and stormwater pollution prevention plan (SWPPP), as required by the general permit, must be filed with the City of Lackawanna prior to construction. Per the general permit, construction cannot begin until the required time period for NYSDEC review has passed.
- J. Certification. The applicant shall provide the following certifications:
- i. Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer licensed and registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Building and Construction Code that have been adopted in New York State.

- ii. Certification of post construction. After completion of the wind energy conversion system, the applicant shall provide a postconstruction certification from a licensed professional engineer licensed and registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
 - iii. Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
 - iv. Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer licensed and registered in New York State. The engineer shall certify compliance with good engineering practices.
 - v. Certification of project. A certificate of completion must be supplied by the applicant and approved by the City of Lackawanna Code Enforcement Officer.
- K. Monitoring requirements for wind energy conversion systems.
- i. Right to enter premises for monitoring. Upon reasonable notice, City of Lackawanna officials or their designated representatives may enter a lot on which a WECS facility permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
 - ii. Avian/bat impact study plan. The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.
 - iii. Periodic reporting required. The applicant shall agree to submit periodic monitoring reports to the City. The report shall contain data on the operations and environmental impacts and shall be in the form prescribed by the Code Enforcement Officer.
 - iv. Power production report required. The applicant shall agree to submit as requested by the City Council a power production report to the City. The power production report shall include actual power production in kilowatt hours for each WECS facility.

- v. Inspections. Unless waived by the City Council, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State licensed professional engineer that has been approved by the City or at any other time upon a determination by the City's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the City Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- vi. General complaint process.
 - (a) During construction, the City of Lackawanna Code Enforcement Officer can issue a stop-work order at any time for any violations of the permit.
 - (b) Postconstruction. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of a complaint from the City of Lackawanna Code Enforcement Officer, the permit holder contact person shall have seven working days to reply to the City in writing.

L. Application and development fees and costs.

- i. Application fee. The applicant shall pay a fee of \$5,000 per wind energy system associated with the City of Lackawanna's review and processing of the application. The applicant shall submit a deposit with the application in the amount as set forth above. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- ii. Development fees to be paid. A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a commercial wind energy system permit. Such fees must be related to the public need created by the wind energy development. The purposes for which the permit fee may be used include, but are not limited to, providing roads required by the wind development, providing fire protection services, and establishing and operating a monitoring system.
- iii. Proof of insurance. Prior to the issuance of a building permit, the applicant shall provide the City Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with the construction and operation thereof.

M. Findings.

- i. Findings necessary to grant a WECS facility permit. In order to grant a WECS facility permit, the City of Lackawanna shall review the application and all filings by any other party and conduct a public hearing. A commercial wind energy facility permit shall not be granted unless the City of Lackawanna makes the following findings based on substantial evidence:
 - ii. Consistent with the Comprehensive Plan. The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the City of Lackawanna.
 - iii. Will not unreasonably interfere with the orderly land use and development plans. The proposed WECS facility will not unreasonably interfere with the orderly land use and development plans of the City of Lackawanna.
 - iv. Benefits to the applicant and public will exceed any burdens. The benefits of the proposed WECS facility project to the applicant and the public will exceed any burdens.
 - v. Not detrimental to the public health, safety and general welfare of the community. The proposed WECS facility will not be detrimental to the public health, safety or general welfare of the community.
 - vi. Complies with all required provisions of the Zoning Ordinance. The proposed WECS facility shall comply with all required provisions of the Zoning Ordinance, unless variances have been properly applied for and granted pursuant to §§ 230-68 through 230-72 of the Code of the City of Lackawanna.
- N. The City Council may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for each tower.
- O. WECS permits approved by the City Council of the City of Lackawanna shall be renewed annually. The permit holder shall make renewal application to the Supervising Building Inspector 60 days prior to expiration to allow for inspection and full compliance with all applicable laws and regulations. The renewal application will include a fee as set by the City Council of no more than \$500 per wind energy system.
- P. The special use permit shall not be assignable or transferable without the approval of the City Council.
- Q. Amendments to special use permit. Any changes or alterations postconstruction to the WECS shall be done only by amendment to the special use permit and subject to all requirements of this article.

- R. The applicant licensee shall agree to indemnify and hold the City, its City Council, officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the construction, operation or maintenance of the WECS.
- S. The applicant shall certify to the City that appropriate security will be in place to restrict access to the WECS and facilities following completion of construction.

§8-17-6 Wind measurement towers.
[Amended 3-5-2008]

The City Council acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and feasibility of using particular sites. Installation of wind measurement towers, also known as "anemometer ("met") towers," shall be permitted as a special use in the same zoning districts as the WECS.

- A. An application for a wind measurement tower shall include:
 - i. 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.
 - ii. Name, address and 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.
 - iii. Address of each proposed tower site, including Tax Map section, block and lot number.
 - iv. Site plan.
 - v. Decommissioning plan, including a security bond or cash for removal.
- B. The City Council may attach such conditions as it deems appropriate to variance approvals as it deems necessary to minimize the impact of the variance.
- C. The "Met" towers installed prior to February 1, 2008 shall be exempt from the requirements set forth in this section.

§8-17-7 Permit revocation.

- A. Testing fund. A special use permit shall contain a requirement that the application fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years or more frequently upon

request of the City Council in response to complaints by residents. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article and shall also include an evaluation of any complaints received by the City. The applicant shall have 90 days after written notice from the City Council to cure any deficiency. An extension of the ninety-day period may be considered by the City Council, but the total period may not exceed 180 days.

- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate permit conditions, the owner or operator shall remedy the situation within 90 days after written notice from the City Council. The applicant shall have 90 days after written notice from the City Council to cure any deficiency. An extension of the ninety-day period may be considered by the City Council, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the City may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, either order remedial action within a particular timeframe or order revocation of the wind energy permit or the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the City Council shall have the right to use the security posted as part of the decommission plan to remove the WECS.

§8-17-8 Fees and costs.
[Amended 3-5-2008]

All fees required under this article shall be approved by the City Council by resolution. Nothing in this article shall be read as limiting the ability of the City to enter into host community agreements with any applicant to compensate the City for expenses or impacts on the community. The City 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.

§8-17-9 Enforcement; penalties for offenses; remedies.

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a WECS or wind measurement tower 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 subjected to a fine of not more than \$250 or to imprisonment for a period of not more than six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The City may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate

violation.

- B. 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 City 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.

§8-18 Telecommunications tower facilities.

- A. Telecommunications tower facilities shall be ~~permitted in the Regional Commercial and Industrial Districts~~ subject to site plan review approval.
- B. Telecommunication tower site plans shall comply with the following standards:
 - (1) Height.
 - (a) Telecommunications towers shall be no higher than necessary to ensure effective service for the relevant market area.
 - (b) Telecommunications towers which are visible from any public road or publicly owned property within a half-mile radius shall not exceed 60 feet in height.
 - (c) Telecommunications towers which are not visible from any public road or publicly owned property within a half-mile radius of the proposed site may be up to 200 feet high.
 - (2) Telecommunications towers shall be set back a minimum of the height of the tower and a minimum of 500 feet from any residential, school or historic structure.
 - (3) Telecommunications towers shall be painted a noncontrasting gray or similar color, minimizing its visibility, unless otherwise required by the Federal Communications Commission.
 - (4) Telecommunications towers shall be screened to minimize visibility from residential areas and the Seaway Trail.
 - (5) The use of "stealth" technology to make towers resemble common structures such as church steeples, light poles, bell towers, clock towers, gateway elements or monuments is encouraged.
 - (6) When attached to an existing structure, telecommunications tower construction and equipment shall complement that of the existing structure.
 - (7) Security fencing shall surround the tower, equipment shelter, and any guy wires.

- (8) Towers exceeding 175 feet in height shall be classified as Type I Actions under the State Environmental Quality Review Act and shall require the submission of a long form Environmental Assessment Form, including but not limited to a Visual EAF Addendum for site plan approval.
- (9) A communications tower or facility which is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such facility, or the City of Lackawanna at the owner's expense, shall remove the same within 90 days of a receipt of notice from the Zoning Officer.
- (10) Towers shall have a designed "failure" point built within the structure at a point not less than mid-height of the tower from ground level.

§8-19 Temporary structures.

- A. Only temporary structures and uses incidental to construction work shall be permitted in the City of Lackawanna. All other temporary structures, including seasonal produce stands, are prohibited.
- B. All temporary construction structures shall be removed within seven days of the completion or abandonment of the construction work. No temporary construction structure shall be permitted for more than six months unless otherwise approved by the Planning and Development Board.