

SMALL WIND ENERGY FACILITIES ORDINANCE

Ordinance No. 070806.1

1. PURPOSE

The purpose of this Ordinance is to provide a regulatory scheme for the construction and operation of Small Wind Energy Facilities in the Town of Janesville, subject to reasonable restrictions, which will preserve the public health and safety.

2. DEFINITIONS

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

Administrator means the Town of Janesville Zoning Administrator.

Committee shall mean the Town of Janesville Planning and Zoning Committee.

FAA shall mean the Federal Aviation Administration.

Hub Height shall mean, when referring to a Wind Turbine, the distance measured from ground level to the center of the turbine hub.

MET Tower shall mean a meteorological tower used for the measurement of wind speed and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given locations.

Owner shall mean the individual or entity that intends to own and operate the Small Wind Energy Facility in accordance with this Ordinance.

Rotor Diameter means the cross sectional dimension of the circle swept by the rotating blades.

Small Wind Energy Facility shall mean an electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and/or other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s). It includes substations, MET Towers, cables and wires and other buildings accessory to such facility.

Total Height shall mean, when referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.

Tower means the monopole, freestanding, or guyed structure that supports a wind generator.

Town shall mean Town of Janesville.

Wind Access Permit shall mean a wind access permit within the meaning of Wis. Stats. §66.0403 or any successor statute.

Small Wind Energy Facility Siting Permit shall mean a construction and operating permit granted in accordance with the provisions of this Ordinance.

Wind Turbine shall mean a wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer, if any; provided that such a system shall only be a Wind Turbine for purposes of this Ordinance if it has both a Total Height less than 170 feet and nameplate capacity of 100 kilowatts or less.

3. **REGULATORY FRAMEWORK**

3.1. **ZONING AND MINIMUM ACREAGE**

Small Wind Energy Facilities (using wind turbines as defined herein) shall be a permitted use in all zoning districts subject to the regulations set forth herein. A Conditional Use Permit shall be required for any Small Wind Energy Facility located on less than ten (10) acres, regardless of zoning.

3.2. **PRINCIPAL OR ACCESSORY USE**

Small Wind Energy Facilities may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of a Small Wind Energy Facility or a part of such facility on such lot. Small Wind Energy Facilities that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

4. **APPLICABILITY**

The requirements of this Ordinance shall apply to all Small Wind Energy Facilities proposed after the effective date of this Ordinance. Small Wind Energy Facilities for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, however, that any such preexisting Small Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Ordinance prior to recommencing production of energy. However, no modification or alteration to an existing Small Wind Energy Facility shall be allowed without full compliance with this Ordinance.

5. **GENERAL REQUIREMENTS FOR SMALL WIND ENERGY FACILITIES**

5.1. **VISUAL APPEARANCE; LIGHTING; POWERLINES**

- 1) Wind Turbines shall be painted a non-reflective, non-obtrusive color.
- 2) At Small Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the Small Wind Energy Facility to the natural setting and then existing environment.

- 3) Small Wind Energy Facilities shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- 4) Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Small Wind Energy Facility.
- 5) Electrical controls and control wiring and power-lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

5.2. **SETBACKS**

The following setbacks and separation requirements shall apply to all Wind Turbines; provided, however, that the Committee may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby.

- 1) Inhabited structures: Each Wind Turbine shall be set back from the nearest residence, school, hospital, church or public library, a distance no less than the greater of (a) two (2) times its Total Height or (b) one thousand (1,000) feet.
- 2) Property lines: Each Wind Turbine shall be set back from the nearest property line a distance of no less than 1.1 times its Total Height, unless appropriate easements are secured from adjacent property owners, or other acceptable mitigation is approved by the Committee.
- 3) Public Roads: Each Wind Turbine shall be set back from the nearest public road a distance no less than 1.1 times its Total Height, determined from the existing power line or telephone line.

5.3. **NOISE**

Audible noise due to Small Wind Energy Facility operations shall not exceed fifty (50) dBA for any period of time, when measured at any residence, school, hospital, church or public library existing on the date of approval of any Small Wind Energy Facility Siting Permit.

In the event audible noise due to Small Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the

highest whole number sound pressure in dBA, which is succeeded for more than (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

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

In the event the noise levels resulting from the Small Wind Energy Facility exceed the criteria listed above, a waiver to said levels may be granted by the Committee provided that the following has been accomplished:

Written consent from the affected property owners has been obtained stating that they are aware of the Small Wind Energy Facility and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and

If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement has been recorded in the Rock County Register of Deeds' office which describes the benefitted and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

5.4. **MINIMUM GROUND CLEARANCE**

The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

5.5. **SIGNAL INTERFERENCE**

The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any Small Wind Energy Facility. (If the applicant is a public utility, s. PSC 113.0707 also applies.)

5.6. **SAFETY**

- 1) All wiring between Wind Turbines and the Small Wind Energy Facility substation shall be underground.
- 2) Wind Turbine towers shall not be climbable up to 15 feet above ground level.
- 3) All access doors to Wind Turbine towers and electrical equipment shall be lockable.
- 4) Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and Small Wind Energy Facility entrances.

5.7 **CODE COMPLIANCE**

All Small Wind Energy Facilities, including tower, shall comply with all applicable state construction and electrical codes, and the National Electrical Code.

5.8 **UTILITY NOTIFICATION AND INTERCONNECTION**

Small Wind Energy Facilities that connect to the electric utility shall comply with the Public Service Commission of Wisconsin's Rule 119, "Rules for Interconnecting Distributed Generation Facilities."

5.9 **MET TOWERS**

MET Towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as Small Wind Energy Facilities.

6. **PERMIT REQUIREMENTS**

6.1 **BUILDING PERMIT**

A building permit shall be required for the installation of a Small Wind Energy Facility.

6.2 **DOCUMENTS**

The building permit application shall be accompanied by a plot plan which includes the following:

- 1) Property lines and physical dimensions of the property;
- 2) Location, dimensions, and types of existing major structures on the property;
- 3) Location of the proposed wind system tower;
- 4) The right-of-way of any public road that is contiguous with the property;
- 5) Any overhead utility lines;
- 6) Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed);
- 7) Tower foundation blueprints or drawings; and
- 8) Tower blueprint or drawing.

6.3 **FEES**

The application for building permit for a Small Wind Energy Facility must be accompanied by a \$250.00 filing fee.

6.4 **EXPIRATION**

A permit issued pursuant to this Ordinance shall expire if:

- 1) The Small Wind Energy Facility is not installed and functioning within 24 months from the date the permit is issued; or,
- 2) The Small Wind Energy Facility is out of service or otherwise unused for a continuous 12 month period.

7. **ABANDONMENT**

- 1) A Small Wind Energy Facility that is out of service for a continuous 12 month period will be deemed abandoned. The Administrator may issue a Notice of Abandonment to the owner of a Small Wind Energy Facility that is deemed to have been abandoned. The Owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Administrator shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the Small Wind Energy Facility has not been abandoned.
- 2) If the Small Wind Energy Facility is determined to be abandoned, the Owner of the Small Wind Energy Facility shall remove the wind generator from the tower at the Owner's sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Administrator may pursue a legal action to have the wind generator removed at the Owner's expense.

8. **BUILDING PERMIT PROCEDURE**

- 1) An Owner shall submit an application to the Administrator for a building permit for a Small Wind Energy Facility. The application must be on a form approved the Administrator and must be accompanied by two copies of the plot plan identified in Section 6.2 above.
- 2) The Administrator shall issue or deny the application within one month of the date on which the application is received.
- 3) The Administrator shall issue a building permit for a Small Wind Energy Facility if the application materials show that the proposed Small Wind Energy Facility meets the requirements of this Ordinance.
- 4) If the application is approved, the Administrator will return one signed copy of the application with the permit and retain the other copy.
- 5) If the application is rejected, the Administrator will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may appeal the Administrator's decision pursuant to Chapter 68, Wisconsin Statutes. The applicant may reapply if the deficiencies specified by the Administrator are resolved.

- 6) The Owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the Small Wind Energy Facility is complete.

9. **VIOLATIONS**

It is unlawful for any person to construct, install, or operate a Small Wind Energy Facility that is not in compliance with this Ordinance or with any condition contained in a building permit issued pursuant to this Ordinance.

10. **ADMINISTRATION AND ENFORCEMENT**

This Ordinance shall be administered by the Administrator or other official as designated.

The Administrator may enter any property for which a building permit has been issued under this Ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

The Administrator may issue orders to abate any violation of this Ordinance.

The Administrator may issue a citation for any violation of this Ordinance.

The Administrator may refer any violation of this Ordinance to legal counsel for enforcement.

11. **PENALTIES**

- 1) Any person who fails to comply with any provision of this Ordinance or a building permit issued pursuant to this Ordinance shall be subject to enforcement and penalties as set forth in Section 2 of the Town of Janesville Zoning Ordinance.
- 2) Nothing in this section shall be construed to prevent the Town Board from using any other lawful means to enforce this Ordinance.
- 3) The provisions of this Ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Ordinance shall not affect the validity or effectiveness of the remainder of the Ordinance.

TOWN OF JANESVILLE

By: /s/ Edward Marshall
Edward Marshall, Chairman

ATTEST:

/s/ Andrea Peabody
Andrea Peabody, Clerk

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