

SEWRPC Model Zoning Ordinance ZONING REGULATIONS FOR WIND ENERGY SYSTEMS

These regulations have not been reviewed by an attorney. Review by the municipal attorney is strongly recommended before adopting these regulations as part of a town, village, city, or county zoning ordinance.

Under Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code, county and local governments may adopt ordinances regulating wind energy systems. Importantly, a county or local government must specifically adopt an ordinance to implement the regulations included in Chapter PSC 128 in order for most of the regulations to apply within the county or local government.

County and local ordinances may regulate the following within the limits established by State law and Public Service Commission (PSC) regulations:

- Siting of wind energy systems, including:
 - Setbacks for small and large wind energy systems.
 - Noise limits.
 - Limits on shadow flicker.
 - Limits on stray voltage.
 - Limits on signal interference with devices that existed at the time the wind energy system is established; and mitigation for signal interference with commercial or personal devices put into service after the wind energy system is established.
 - Requirements for construction and operation of a wind energy system, including lighting, finish, electrical requirements, prohibition of commercial signs, requirements for emergency signs, and safety measures to prevent unauthorized tower access.
- Establish a decommissioning process for systems smaller than one megawatt, including financial assurance for decommissioning wind energy systems.
- Prohibit systems of one megawatt or larger in commercial and residential areas if the county or local comprehensive plan was adopted prior to June 2, 2009 or is updated after December 31, 2015.
- Require compensation to nearby property owners.
- Require annual training for emergency first-responders.
- Establish a monitoring committee.

The pre-application notification requirements in Chapter PSC 128 to land owners within one mile of a proposed large wind energy system or to landowners of property adjacent to a proposed small wind energy system apply regardless of whether a county or local ordinance has been adopted. The PSC complaint, appeal, and decommissioning procedures (the latter only for systems of one megawatt or larger) also apply regardless of whether a county or local ordinance has been adopted. In some cases, different requirements are or must be applied to large and small wind energy systems. Small systems are defined as systems with a capacity of 300 kilowatts or less that consist of individual wind turbines that have a capacity of no more than 100 kilowatts.

The attached model ordinance for local regulation of wind energy systems is intended to be incorporated as a section in an existing Town zoning ordinance, and would require issuance of a conditional use permit to establish a wind energy system. The attached regulations do not include provision for appeals, variances, severability, nonconforming uses and structures, and similar considerations which would typically be addressed in other sections of a full zoning ordinance. Please contact SEWRPC if you would like examples of other zoning ordinance sections. In the following model ordinance, where the word “Town” appears in italics, the word “Village,” “City,” or “County” may be substituted.

Please contact SEWRPC at (262) 547-6721 or sewrpc@sewrpc.org if you have any questions or would like a Word version of the model ordinance.

[The following Section is intended to be inserted in the “Conditional Uses” Section of Zoning Ordinance]

4.08. **Wind Energy Systems**

- A. Purpose. The purpose of this Section is to incorporate requirements of Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code as a *Town* ordinance and to establish *Town* regulations for the installation and use of large and small wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission. This Section is also intended to preserve and protect public health and safety, to not significantly increase the cost of the system or significantly decrease wind energy system efficiency, and to allow for an alternative system of comparable cost and efficiency.
- B. State Requirements. Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code are adopted and incorporated by reference, including but not limited to the owner requirements specified in Chapter PSC 128.
- C. Definitions. Terms used herein shall have the meaning described in Section PSC 128.01 of the Wisconsin Administrative Code.
- D. Application.
 - 1. Conditional use permit applications for large wind energy systems shall include the information required by Section PSC 128.30(2) of the Wisconsin Administrative Code. The application shall also include the names and addresses of residents and property owners located within one mile of the proposed location, together with a written statement signed by the applicant that the notices required by Sections PSC 128.105 and 128.30(5) were provided.
 - 2. Conditional use permit applications for small wind energy systems shall include the information required by Section PSC 128.30(2) of the Wisconsin Administrative Code. The application shall also include a written statement signed by the applicant that the notices to residents and owners of adjacent lots or parcels required by Sections PSC 128.61(1) and 128.61(7) were provided.
 - 3. Owners of proposed large wind energy systems shall provide information about whether the owner has consulted with and received any non-binding recommendations for construction, operating, or decommissioning the wind energy system from any Federal or State agency and whether the owner has incorporated the non-binding recommendation into the design of the wind energy system.
 - 4. Applications for proposed wind energy systems shall be reviewed by the Zoning Administrator for a determination of completeness in accordance with the requirements of Section PSC 128.31 of the Wisconsin Administrative Code. Following a determination of completeness by the Zoning Administrator, the applicant shall provide 10 copies of the complete application to the *Town*. The *Town* Clerk shall forward one copy of a complete application to the (*library serving the Town*), in accordance with Section PSC 128.30(6). One copy of the application shall be made available for public review at the *Town* Hall during normal *Town* Hall business hours.
 - 5. As soon as possible after receiving an application for a wind energy system, the *Town* Clerk shall cause to be published a Class 1 notice stating that an application has been filed, in accordance with Section 66.0401(4)(a) of the Wisconsin Statutes. The notice shall include the information required by PSC Section 128.30(5)(b) of the Wisconsin Administrative Code.
 - 6. An owner shall submit a copy of all necessary State and Federal permits and approvals to the *Town* within 30 days of the owner’s receipt of any permit or approval that was not provided with the owner’s application.

E. Review Criteria.

1. Wind energy systems shall comply with all applicable State and Federal laws, including the provisions of Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code.
2. Wind energy systems are exempt from the height requirements of this Ordinance; however, no such system shall be located closer to a lot line than the setback, if any, specified in Table 2 in Section PSC 128.61(3) for a small wind energy system and Table 1 in Section PSC 128.13(1) for all other wind energy systems. The applicant may request larger setbacks for consideration by the Plan Commission in order to meet other standards contained in Chapter PSC 128 such as, but not limited to, noise and shadow flicker limitations.

F. Review Process.

1. The Plan Commission shall have 90 days from the date that the Zoning Administrator notifies the owner that the application is complete in which to approve or disapprove the application, unless the time is extended in accordance with Section 66.0401(4)(e) of the Wisconsin Statutes.
2. The Plan Commission shall hold a public hearing on the proposed wind energy system in accordance with (*cross-reference public hearing requirement section of ordinance*). Any written comments submitted shall be considered at the public hearing.
3. Following the public hearing, the *Town* Board shall issue a written decision to grant or deny a conditional use permit for a wind energy system and any conditions of approval. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision must specify the reason for the denial.
4. The *Town* Clerk shall provide a duplicate original of the Plan Commission written decision to the applicant.
5. The *Town* shall maintain a record of the permit review and decision as required by Section PSC 128.34 of the Wisconsin Administrative Code.

G. Annual Reports and Decommissioning Review.

1. An owner of a wind energy system within the *Town* shall submit an annual report to the Plan Commission by January 31 of each year documenting the operation and maintenance of the wind energy system during the previous calendar year.
2. The Plan Commission will conduct a review of the annual reports submitted, in part to determine if a wind energy system has reached the end of its useful life.

H. Emergency Training.

An owner of a wind energy system shall provide annual training for any fire, police, or other first responder identified in the owner's emergency plans. An owner shall provide at least eight hours of training during each calendar year and is responsible for all direct training costs.

I. Financial Responsibility for Large Wind Energy Systems.

1. An owner with a nameplate capacity of one megawatt or larger shall provide the *Town* with financial assurance of the owner's ability to pay the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities.
2. An owner shall provide the *Town* with three estimates of the actual and necessary cost to decommission the wind energy system. The cost estimates shall be prepared by third parties agreeable to the owner and the *Town*. The amount of financial assurance required by the *Town* will be the average of the three estimates.
3. An owner shall establish financial assurance that is acceptable to the *Town* and that places the *Town* in a secured position. The financial assurance must provide that the secured funds may only be used for decommissioning the wind energy system until such

time as the *Town* determines that the wind energy system has been decommissioned, as provided for in PSC 128.19(5)(b), or the *Town* approves the release of the funds, whichever occurs first. The financial assurance must also provide that the *Town* may access the funds for the purpose of decommissioning the wind energy system if the owner does not decommission the system when decommissioning is required.

4. The *Town* may periodically request information from the owner regarding industry costs for decommissioning the wind energy system. If the *Town* finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance provided under this Section, the *Town* may correspondingly increase or decrease the amount of financial assurance required.
5. The *Town* may require an owner to submit a substitute financial insurance of the owner's choosing if an event occurs that raises material concern regarding the viability of the existing financial assurance.

J. Aerial Spraying.

An owner shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within one-half mile of a constructed wind turbine if the farm operator demonstrates all of the following:

1. Substantial evidence of a history, before the wind energy system owner gives notice under PSC 128.105(1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans, or sweet corn on all or part of the farm field located within one-half mile of a constructed wind turbine.
2. A material reduction in potato, pea, snap bean, or sweet corn production or a material increase in application costs on all or part of a farm field located within one-half mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

K. Monetary Compensation for Nonparticipating Residences within One-Half Mile of a Large Wind Energy System.

1. An owner shall offer an agreement to the owner of a nonparticipating residence, if the residence is located within one-half mile of a constructed wind turbine, that includes an initial annual monetary compensation of \$600 for one turbine located within one-half mile of a nonparticipating residence, \$800 for two turbines located within one-half mile of a nonparticipating residence, and \$1,000 for three or more turbines located within one-half mile of a nonparticipating residence.
2. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2017. For agreements entered into in 2018 and thereafter, the initial annual amounts shall increase each year by the greater of 2 percent or the increase in the Consumer Price Index from the previous year, as described in Section 196.374(5)(bm)2 of the Wisconsin Statutes.
3. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under PSC 128 and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under PSC 128.

L. Signal Interference Caused by Large Wind Energy Systems.

1. An owner shall use reasonable efforts to avoid causing interference with commercial and personal communications in use when the wind energy system begins operation to the extent practicable.
2. An owner shall use reasonable and commercially available technology to mitigate interference with personal communications that were in use when the wind energy system began commercial operations. An owner shall also use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operations, if the wind energy

system is causing the interference and the interference occurs at a location at least one-half mile from a wind turbine.

3. An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation.
4. Before implementing mitigation measures, the owner shall consult with the affected parties regarding the preferred mitigation solution for personal and commercial communications interference problems. Except as provided in the following paragraph L.5, an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.
5. An owner shall, under a protocol established by Section PSC 128.50(2), implement a new technology solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under Section PSC 128.16(2) and (3) and for which the original mitigation solution is only partially effective.