

CHAPTER 13. WIND ENERGY SYSTEMS LICENSE AND REGULATIONS.

(created 2011-005)

I. PURPOSE AND INTENT.

It is the intended purpose of the Town to regulate Wind Energy Systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these Systems on the community, pursuant to the authority granted by Wisconsin Statutes Sections 66.0401, 66.0403 and other applicable laws.

II. DEFINITIONS.

The following terms have the meanings indicated:

"Applicant" means the individual or business entity that seeks to secure a license under this Chapter 43 of the Town Code.

"Board" means the Town Board for the Town of Delafield, Waukesha County, Wisconsin.

"Employee" means any and all Persons, including but not limited to "Operators", who work in or at, or render any services directly related to operation of Wind Energy Systems.

"Good Utility Practice" means any of the practices, methods and acts with respect to the safe operation of the Wind Energy System Facility engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

"Non-Participating Resident" means all residences which are not subject to an agreement, authorization or lease with the Wind Energy System Facility developer.

"Operator" means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Wind Energy Systems contact Person for the municipality.

"Person" means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

"Small Wind Energy System" means a Wind Energy System that has a nameplate capacity of 100 kilowatts or less, and a total height of 170 feet or less.

"Stray Voltage" means neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

“Wind Energy Systems” means equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

“Wind Energy Systems Facility” or “Facility” means all of the land and equipment used by the wind energy system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.

“Wind Energy System Tower” means any structure that is designed and constructed primarily for the purpose of supporting the Wind Turbine.

“Wind Energy System Tower Site” means the land area encompassing a tower and all related equipment, structures paved or graveled areas, safe clearance areas, fencing and other items used in connection with said tower.

“Wind Turbine” means a mechanical device which captures the kinetic energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator and tower.

III. LICENSING.

A. Licenses Required.

From and after the effective date of this ordinance, no Wind Energy System shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town.

B. Effect of Other Licenses.

The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining a Wind Energy Systems license under this Section.

C. Non-transferability of Licenses.

The license is not assignable or transferable to any other Person, without the express prior written consent of the Town, such consent not to be unreasonably withheld, provided, however, the Licensee may assign the License once to a new entity, upon notice to the Town, if the Licensee submits an affidavit demonstrating the following:

- (1) The new entity is wholly owned by the Licensee;
- (2) The new entity is properly formed and authorized to do business in Wisconsin; and
- (3) The written assignment requires the new entity to assume all of the Licensee’s rights, duties and obligations under the License including but not limited to the letter of credit requirements and the certificate of insurance requirements.

IV. LICENSE APPLICATION PROCEDURE FOR WIND ENERGY SYSTEMS.

- A.** Any Person desiring to secure a Wind Energy Systems license shall file an application together with two additional copies of the application with the Town Clerk.
- B.** The application shall be on a form provided by the Town Clerk.
- C.** The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - (1) Name, address, and phone number.
 - (2) If the Applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and phone numbers of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; managing members or managers, whichever is applicable for the particular form of business entity.
 - (3) Name and address of any other current or past Wind Energy Systems operated by the Applicant whether in this State or any other State or District within the United States.
 - (4) Name, address and phone number of an individual who is responsible for the day-to-day operation of the facility, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
 - (5) A statement that the Applicant is familiar and in compliance with the provisions of this section of the Town's municipal code, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination and analysis of the proposed facility.
- D.** Each application shall be accompanied by:
 - (1) A site plan which meets all the requirements of this Section, as well as any additional site specific requirements of the Town Board and/or the Town engineers in accordance with the technical requirements in this ordinance. Each application shall be accompanied by a site plan of the Wind Energy System Tower Site(s), including total acreage occupied by the facility.
 - (2) Each application shall be signed by the Applicant.
 - (3) Each application shall be accompanied by payment of nonrefundable application fee to be determined from time to time by separate resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
 - (4) The Town Clerk shall date the filing of the application on the face of the application.

- (5) Upon receipt of the application, the Town Clerk shall distribute a copy of the application to the Town Board and Building Inspector, with copy to the Town Zoning Administrator and Town Engineer.
- (6) The Town Board may refer the application to the Town engineer or a qualified consulting engineer for further review. The reasonably necessary costs associated with the engineering review shall be the responsibility of the applicant, in accord with the terms of this ordinance.
- (7) The application shall be referred to the Plan Commission for review and recommendation.
- (8) The Town Board shall conduct a public hearing for purposes of receiving public comment regarding the application, upon Class 2 notice per Chapter 985, Wis. Stats.
- (9) Following review, the Town Board shall grant the license, grant the license subject to specified conditions, or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance and under State law.
- (10) If the license is granted by the Town Board, then the Town Clerk shall issue the license as soon as practicable. If the license is granted subject to specified conditions, the conditions shall be described in writing and provided to the Applicant.
- (11) If the Town Board decides to deny the application for a license, the Board shall notify the Applicant in writing of the reasons for denial.
- (12) Any Applicant aggrieved by such a decision of the Town Board, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, in this regard and instead review shall be as described in this section.
- (13) Each license issued for a Wind Energy System shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

V. TECHNICAL REQUIREMENTS FOR LICENSING.

Design, construction and operation of Wind Energy Systems shall be subject to the requirements of this Chapter. It is recognized that the restrictions herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a Wind Energy System, additional and/or more restrictive conditions may be included in the license to address such concerns.

A. Aircraft Protection.

The wind turbine generator tower shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than what is

required by the FAA or other applicable authority or as otherwise agreed in connection with the issuance of the License. Notwithstanding the foregoing, this restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The tower shall be connected to an uninterruptible back-up power source to ensure continuous compliance with FAA regulations. To the extent consistent with FAA regulations, shrouding for the lights shall direct reflection of light up.

B. Blasting.

Licensee shall not undertake any blasting in connection with the construction of the Facility unless Applicant shall have notified the Town and submitted a blasting plan consistent with applicable laws and regulations.

C. Color.

Except as may be required by the FAA, the coloration of the exterior components and each wind turbine tower shall be off white, light gray or other neutral color, including the blades. The finish shall be flat or matte. Licensee throughout the Term of this License shall maintain the required coloration and finish.

D. Electromagnetic Interference.

Licensee shall not operate the Facility so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission regulations or other law.

E. Emergency Shutdown.

Licensee shall be required to immediately cease operations for the duration of any Emergency. Emergency shall mean a proven condition or situation caused by the Facility that presents an imminent physical threat of danger to life or significant threat to property.

F. Groundwater Protection

Licensee shall operate the Facility so as not to cause groundwater contamination in violation of applicable law.

G. Noise

The noise design limit for each Wind Turbine shall not exceed 50 dBA as measured as the average dBA at the neighboring property lines, or outside of boundary lines of any noise attenuation easement obtained and recorded by Licensee, whichever distance is greatest.

H. Public Roads

At Licensee's expense, Licensee shall provide the Town Director of Public Works a videotape documenting the condition of all haul roads in the Town prior to beginning and after completing construction of the Facility. At Licensee's expense, the Licensee shall contract

with qualified contractors to repair any damage to the haul roads due to transportation of equipment and Facility components (“Road Repair Obligations”). In the event a hazardous road condition exists that is not promptly corrected by Licensee, the Town Director of Public Works may order emergency road repairs be performed by qualified contractors, and Licensee shall promptly reimburse the Town for reasonable emergency road repair costs. Licensee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty from a contractor of Applicant. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the Town Director of Public Works within six (6) months after completion of construction of the Facility, or as soon thereafter as weather conditions permit. The Town Director of Public Works may waive the requirements of this Section for a Small Wind Energy System, upon the Applicant demonstrating to the satisfaction of the Director of Public Works that there will be no adverse impact upon Town Roads in the transport or construction of the Small Wind Energy System.

I. Screening

Licensee shall design the Facility so as to minimize visual impacts such as glare, reflection or shadow flicker. Complaint of such visual impacts occurring inside any residence exceeding 5 hours per year shall be dealt with in accordance with the Reporting and Complaint Resolution procedures herein.

J. Set Back.

- (1) Wind Turbines shall be setback a distance of 1.1 times their height from the nearest property line, unless appropriate waivers or easements in a recordable form are secured from adjacent property owners or other acceptable mitigation is approved by the Town Board.
- (2) Wind Turbines shall be setback a distance of no less than three times their total height from the nearest residence, school, hospital or church unless waived in a recordable form by the affected property owner or owners. In no event shall the setback distance be less than 1.1 times the total height of the Wind Turbine.
- (3) Wind Turbines shall be setback a distance of no less than a distance of 1.1 times their total height from the nearest above-ground public electric power line or telephone line, unless waived in a recordable form by the affected property owner and utility company.

K. Signage and Fencing.

Except for Small Wind Energy Systems, Licensee shall provide reasonable signage at the Facility, identifying the Premises as being part of the Facility and providing appropriate safety notices and warnings against trespassing. The no trespassing signs shall be posted around the entire premises at an appropriate distance for posting but no less than 2 conspicuous places for every 40 acres within the Facility.

No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the Wind Energy System Tower or Turbine. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

L. Stray Voltage

Licensee shall utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage caused by the Facility.

M. Reporting and Complaint Resolution Procedure.

Licensee shall report to the Town as follows:

- (1) Extraordinary Events. Within 24 hours of any extraordinary event, Licensee shall notify the Town. “Extraordinary events” shall include tower collapse, catastrophic turbine failure, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that in Licensee’s opinion reasonably impacts the public health and safety of the Town.
- (2) Complaints. The Licensee of the Wind Energy System Facility shall, at the Licensee’s expense and in coordination with the Town develop a system for logging and investigating all complaints related to the operational standards set forth in Sections V B, D, E, F, G, I, L and VII B. If the Town determines that it is reasonably necessary, it may undertake an investigation of the alleged operational violation by a qualified individual mutually acceptable to the Town and the owner of the Wind Energy System Facility. The reasonable cost and fees incurred by the Town in retaining said qualified individual shall be reimbursed by the owner of the Wind Energy System Facility. After the investigation, if the Town Board reasonably concludes that operational violations are shown to be caused by the Wind Energy System Facility, the Licensee shall use reasonable efforts to mitigate such problems on a case by case basis including measures such as planting trees and installing awnings.

VI. INSURANCE AND INDEMNIFICATION.

A. Insurance.

All licensees shall maintain the following insurance coverages commencing upon construction of the facility, unless reduced or waived in writing by the Town Board.

- (1) Licensee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Applicant and Participating Landowners against loss or liability caused by Applicant’s occupation and use of the Property, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The Town shall be named as an additional insured on the policy.
- (2) Worker’s compensation coverage in an amount required by Wisconsin law. Applicant shall require subcontractors and others not protected under its insurance to obtain and maintain worker’s compensation and employers’ liability insurance.
- (3) Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the Town. The insurer will provide notice to the Town in the

event there is a lapse in coverage exceeding thirty (30) days. All policies other than worker's compensation shall be written on an occurrence and not on a claim made basis.

B. Defense of Land Use Decision and Indemnity.

(1) Defense of Land Use Decision.

In addition to the indemnification described below, Licensee shall reimburse the Town its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this Ordinance or any portion thereof, or the issuance of a License by the Town pursuant to this Ordinance. If the Town seeks reimbursement, it shall notify Licensee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 120 days after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it which may give rise to a claim for a land use defense reimbursement. Licensee shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify Licensee thereof in accordance with the provisions of this section in sufficient time including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify Licensee has actually resulted in prejudice or damage to Licensee. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, Licensee shall be entitled to assume and control (with counsel of its choice) the defense of such action, lawsuit, proceeding, investigation or other claim at Licensee's expense; provided, however, that the Town shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third party any and all cross claims and counterclaims the Town may have, subject to Licensee's consent, which consent shall not be unreasonably withheld. If Licensee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either (i) such settlement provides an unconditional release of the Town, or (ii) Licensee shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld). If Licensee elects to assume the defense of any claim, the Town shall fully cooperate with Licensee and its counsel in such defense.

(2) Indemnification.

Licensee shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "Liability") arising out of Licensee's selection, construction, operation and removal of the Wind Turbines and affiliated equipment including, without limitation, Liability for property or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

VII. STANDARDS.

A. Construction Standards.

Wind Turbines shall be constructed in compliance with Good Utility Practice for Wind Turbines. In the event after inspection by a qualified expert in Good Utility Practice, the Town concludes that a Wind Turbine is not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Licensee shall have 90 days to bring the non-compliant Wind Turbine(s) into compliance with such standards or if 90 days is insufficient time to cure the non-compliance, Licensee shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in place. Failure to bring such non-compliant Wind Turbine(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the Town to demand removal of said Wind Turbine(s) at Licensee's expense.

B. Performance Standards.

Any Wind Energy System or Wind Energy System Facility shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

C. State and Federal Standards.

Construction of Wind Turbines shall meet or exceed current standards and regulations, if any, of any other agency of the State or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Licensee shall bring the Wind Turbine(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling State or federal agency or approved by the Town. A Determination of No Hazard for each Wind Turbine must be obtained from the FAA as a condition precedent for the installation of each turbine, when required.

D. Wind Turbine Safety Standards.

Licensee shall comply with the following safety standards:

- (1) All wiring between the Wind Energy System Tower, the Turbine, and the substation shall be underground;
- (2) The outside of Wind Energy System Towers shall not be climbable;
- (3) All access doors to the towers and electrical equipment shall be locked; and
- (4) Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

VIII. REPAIR AND REPLACEMENT.

Licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice during the Term of the License as needed to keep the Facility in good repair and operating condition. However, no such repair or replacement shall entitle Licensee to any extension of the Term of the License, even if it extends the useful life of the Facility. If Licensee desires to extend the term of the License in the future, Licensee shall be required to apply for such extension or amendment of the License in accordance with the terms of this Ordinance.

IX. WIND TURBINE GENERATOR REMOVAL.

A. Cessation of Operation.

Upon expiration of the License or should removal of all or part of the Wind Energy Systems Facility otherwise be required under this Ordinance, Licensee shall effectuate the removal of the Wind Energy System affected. Further, if Licensee ceases operation of the Facility for a continuous period of one year, Licensee shall take all measures necessary to accomplish such removal. Unless otherwise agreed to with landowners in a recordable form, said removal shall be to a depth of 48 inches beneath the soil surface and Licensee shall restore the Premises to substantially the same physical condition which existed immediately before the construction of the Facility (the "Removal Obligations"). Any agreement for removal of a foundation to a lesser depth or for no removal of the foundation shall be recorded with the Waukesha County Register of Deeds and shall show the locations of all such foundations.

B. Financial Assurance.

Licensee shall assure funding of the Removal Obligations by a letter of credit, cash or the equivalent held in trust in favor of the Town, in a form to be approved by the Town Attorney in an amount to be determined by the Town Board using the following procedure. Licensee shall submit an estimate of the Removal Obligations by a qualified engineer, approval of which shall not be unreasonably withheld. The Town Board may waive this requirement for a financial guarantee in the case of a Small Wind Energy System.

The amount of the required financial guarantee may be adjusted by the Town Board on an annual basis in accord with the Consumer Price Index as published by the United States Department of Labor Bureau of Labor Statistics, in which circumstance Licensee shall be required to submit new surety in the adjusted amount. Further, and notwithstanding the surety, in the event that Licensee has failed, refused or neglected to comply with the removal requirements herein within twelve (12) months of the Town's written notice, the Town and/or its agents shall be allowed to enter onto the premises for purposes of razing and removing the subject structures. All costs associated with the Town's efforts in this regard shall be placed upon the real estate tax bill of the site as a special charge.

X. PROCEDURES FOR ALTERATION OR REVOCATION OF LICENSED PREMISES.

A. Amendment.

Following the granting of a license any Licensee who wishes to materially alter any aspect of

the licensed premises which was required to be described in the building plan or site plan required under this Chapter shall apply to the Town Board for an amendment to the license. The application shall explain the nature of the alteration and the reasons therefore and include a non-refundable application fee. The Applicant shall pay the reasonably necessary engineering expenses, if any, associated with the review. The Town Board shall act on the amendment application consistent with the terms of this ordinance.

B. Revocation of License.

Each of the following occurrences shall constitute a violation of the terms and conditions of this License (a “Violation”) and any such Violation shall be grounds for revocation of the License (whatever the reason for such an event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, order or regulation) after the expiration of the notice and cure period and revocation hearing as set forth below:

- (1) if Licensee abandons the wind turbine generators located on the Premises for a period of one year or more; or
- (2) if Licensee fails to observe or perform any material condition or provision of the License or this Chapter for a period of 30 days after it has received written notice of such failure from the Town; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance; or
- (3) if there is a material failure by Licensee to comply with any statute, regulation, rule, or license administered by any federal, state or county department, agency, or commission directly related to the operation of the wind turbine generator, and if Licensee fails to cure the material failure to comply for a period of 30 days after the date Licensee receives written notice of such failure from the Town or the federal, state or local governmental body or agency with jurisdiction; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

C. Hearing.

The Town shall not revoke any License without first providing Licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances (such as Applicant’s prompt commencement of remedial measures that cannot reasonably be concluded within 30 days) regarding the alleged Violations.

D. Judicial Review.

Licensee shall have the right to appeal any revocation to Circuit Court within 30 days of the date of the revocation.

XI. LICENSE EXPIRATION.

Unless the Town Board authorizes a different term based upon analysis of the useful life of the Wind Energy Systems Facility, every license issued pursuant to this Chapter will terminate upon the expiration of thirty years from the date of issuance.

XII. FEES AND EXPENSES.

Licensee shall reimburse the Town as required by Section 3.08 of the Town Code, for all costs and expenses incurred by the Town in relation to the Application and the Facility, both at the time of the Application at throughout the term of the license.

XIII. SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 2: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.