

TOWN OF ALTO
FOND DU LAC COUNTY, WISCONSIN

**ORDINANCE REGULATING THE USE OF
WIND ENERGY SYSTEMS**

The Town Board of the Town of Alto, Fond du Lac County, Wisconsin, does ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to provide a regulatory scheme for the construction and operation of Wind Energy Systems in the Town of Alto, Fond du Lac County, Wisconsin. This Ordinance is adopted pursuant to Wis. Stat., § 66.0401. All regulations contained herein are adopted to preserve and protect the public health and safety.

Section 2: Definitions

Wind Energy System: Has the meaning given in Wis. Stat., § 66.0403(1)(m) and includes equipment and associated facilities used to convert and then store or transfer wind energy to electrical or other usable forms of energy. "Wind Energy System" includes Small Wind Energy Systems.

Small Wind Energy System: A Wind Energy System that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

Other Definitions: The remaining definitions set forth in proposed PSC 128.01, published in February 2011 Register, are incorporated by reference as though fully set forth herein. All references to PSC Ch. 128 of the Wisconsin Administrative Code refer to proposed regulations so published. In the event that a modified version of proposed PSC Ch. 128 or other statutes or regulations pertaining to the same subject matter as proposed PSC Ch. 128 become effective, then all references to portions of PSC Ch. 128 herein are hereby amended to refer to the corresponding effective provisions. If there are no corresponding effective provisions, this ordinance shall nevertheless in all events be construed and applied in a manner consistent with then effective provisions.

Section 3: Permit Required

No Wind Energy System may be installed, constructed or expanded in the Town without a Wind Energy System Permit granted pursuant to this ordinance.

Section 4: Application

Every application for a Wind Energy System Permit shall be made in writing and shall include the following information:

- (1) Wind Energy System description and maps showing the locations of all proposed wind energy facilities.
- (2) Technical description of wind turbines and wind turbine sites.

- (3) Timeline and process for constructing the Wind Energy System.
- (4) Information regarding anticipated impact of the Wind Energy System on local infrastructure.
- (5) Information regarding noise anticipated to be attributable to the Wind Energy System.
- (6) Information regarding shadow flicker anticipated to be attributable to the Wind Energy System.
- (7) Information regarding the anticipated effects of the Wind Energy System on existing land uses within 0.5 mile of the Wind Energy System.
- (8) Information regarding the anticipated effects of the Wind Energy System on airports and air space.
- (9) Information regarding the anticipated effects of the Wind Energy System on line-of-sight communications.
- (10) A list of all state and federal permits required to construct and operate the Wind Energy System.
- (11) Information regarding the planned use and modification of roads within the Town during the construction, operation, and decommissioning of the Wind Energy System, including a process for assessing road damage caused by Wind Energy System activities and for conducting road repairs at the owner's expense.(12) A copy of all emergency plans developed in collaboration with appropriate first responders under PSC 128.18(4)(b). An owner may file plans using confidential filing procedures as necessary.
- (13) A decommissioning and site restoration plan providing reasonable assurances that that the owner will be able to comply with PSC 128.19.
- (14) A representative copy of all notices issued under Section 7 and PSC 128.105(1)(a) and 128.42(1).
- (15) Any other information necessary to understand the construction, operation or decommissioning of the proposed Wind Energy System.

Section 5: Accuracy of Information.

The owner shall certify that the information contained in an application is accurate.

Section 6: Duplicate Copies.

The applicant shall file an original and three copies of the application with the Town. One copy shall be an electronic copy. Each copy shall include, but is not limited to, all worksheets, maps, and other attachments included in the application.

Section 7: Notice to Property Owners and Residents.

- (2) On the same day an owner files an application for a Wind Energy System, the owner shall, under s. 66.0401(4)(a)3., Stats., use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any wind energy system facility. At the same time, a copy shall be provided to the Town. The notification shall include all of the following:
 - a. A complete description of the Wind Energy System, including the number and size of the wind turbines.
 - b. A map showing the locations of all proposed Wind Energy System facilities.
 - c. The proposed timeline for construction and operation of the Wind Energy System.
 - d. Locations where the application is available for public review.
 - e. Owner contact information.
- (2) After the Town receives an application for a Wind Energy System, the Town shall publish the notice required by Wis. Stat., § 66.0401(4)(a)(1), which shall include a brief description of the proposed Wind Energy System and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the Town, and the approximate schedule for review of the application by the Town.

Section 8: Public Participation.

- (1) The Town shall make a copy of an application for a Wind Energy System available for public review at a local library and at the Town Hall and the Town website.
- (2) The Town shall accept written public comments on an application for a Wind Energy System filed with the Town Clerk and shall make them part of the record at the public hearing held pursuant to subsection (3).

- (3) The Town shall hold at least one public meeting to obtain comments on and to inform the public about a proposed Wind Energy System.

Section 9: Joint Application Review Process.

If a Wind Energy System is proposed to be located in the Town and at least one other municipality with jurisdiction over the Wind Energy System, the Town may participate in the joint application review process set forth in PSC 128.30(7).

Section 10: Application Completeness:

(1) COMPLETE APPLICATIONS.

- a. An application is complete if it meets the filing requirements set by this ordinance and PSC 128.50(1).
- b. The Town shall determine the completeness of an application, and shall notify the owner in writing of the completeness determination, no later than 45 days after the day the application is filed. An application is considered filed the day the owner notifies the Town in writing that all the application materials have been filed. If the Town determines that the application is incomplete, the notice provided to the owner shall state the reasons for the determination.
- c. The owner may file a supplement to an application that the Town has determined to be incomplete. There is no limit to the number of times that an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under par. b.
- d. An additional 45-day completeness review period shall begin the day after the Town receives responses to all items identified in the notice under par. b.
- e. If the Town does not make a completeness determination within the applicable review period, the application is considered to be complete.

(2) REQUESTS FOR ADDITIONAL INFORMATION.

The Town may request additional information necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete and accurate manner.

Section 11: Owner Requirements

Pursuant to PSC 128.10(1), the Town incorporates by reference all owner requirements set forth in Subchapter II of PSC 128.

Section 12: Written Decision.

- (1) The Town shall issue a written decision to grant or deny an application. The Town shall provide its written decision to the owner and to the Public Service Commission of Wisconsin. If the Town approves an application for a wind energy system, the Town shall provide the owner with a duplicate original of the decision.
- (2) The owner shall record the duplicate original of a decision approving an application with the register of deeds for Fond du Lac County, Wisconsin.
- (3) The Town shall keep a complete written record of its decision-making relating to an application for a Wind Energy System. The record of a decision shall include all of the following:
 - a. The approved application and all additions or amendments to the application.
 - b. A representative copy of all notices issued under ss. PSC 128.105(1)(a), 128.30(5) and 128.42(1).
 - c. A copy of any notice or correspondence that the Town issues related to the application.
 - d. A record of any public meeting under s. PSC 128.30(6)(c) and any hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by meeting or hearing participants.
 - e. Copies of any correspondence or evidentiary material that the Town considered in relation to the application, including copies of all written public comments filed under s. PSC 128.30(6)(b).
 - f. Minutes of any Town board, council or committee meetings held to consider or act on the application.
 - g. A copy of the written decision under s. PSC 128.32(3)(a).
 - h. Other materials that the Town prepared to document its decision-making process.

- i. A copy of any Town ordinance cited in or applicable to the decision.
- (4) If the Town denies an application, the Town shall keep the record for at least seven (7) years following the year in which it issues the decision.
- (5) If the Town approves an application, the Town shall keep the record for at least seven (7) years after the year in which the Wind Energy System is decommissioned.
- (6) In no event shall in defect in record-keeping under this Section 12 be grounds for reopening, reconsideration or reversal of any decision of the Town.

Section 13: Effect of Ownership Change on Approval

Approval of a Wind Energy System remains in effect if there is a change in ownership of the Wind Energy System. However, a Wind Energy System owner must provide timely notice to the Town of any change of ownership of the Wind Energy System.

Section 14: Fees

- (1) The Town requires at the time of the application a deposit of \$5,000. All costs incurred by the Town relating to the review and processing of the application shall be billed against the deposit and a minimum of \$2,000 shall remain in the account until the review process and construction (if approved) is completed. The Town will refund any remaining balance in the account within 60 days after final inspection of the constructed wind energy system.
- (2) The Town's fee or reimbursement requirement under par. (1) is based on the actual and necessary cost of the review of the Wind Energy System application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts.

Section 15: Additional Requirements

The Town requires the following as conditions for approval of an application to construct a Wind Energy System:

- (1) **INFORMATION.** The owner shall inform the Town in writing whether the owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the Wind Energy System from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the Wind Energy System.

- (2) **STUDIES.** The owner shall cooperate with any study of the effects of Wind Energy System coordinated by a state agency.
- (3) **MONETARY COMPENSATION.** The owner of a Wind Energy System shall offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation shall be \$600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation shall be \$800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation shall be \$1,000. The initial monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in Wis. Stat., § 196.374(5)(bm)2.b, from the previous year. 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.
- (4) **AERIAL SPRAYING.** The owner of a Wind Energy System shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:
 - a. Substantial evidence of a history, before the wind energy system owner gives notice under s. 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 a farm field located within 0.5 mile of a constructed wind turbine.
 - b. 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 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.
- (5) **PERMITS.** The owner shall submit to the Town copies of all necessary county, state, and federal permits and approvals.
- (6) **ANNUAL REPORTS.** The owner shall file an annual report with the Town documenting the operation and maintenance of the Wind Energy System during the previous calendar year.
- (7) It is the property owners' obligation to notify the Town of any recalls or safety notices that have been issued by the manufacturer.

Section 16: Post-Construction Filing Requirement

Within 90 days of the date a Wind Energy System commences operation, the owner shall file with the Town an as-built description of the Wind Energy System, an accurate map of the Wind Energy System showing the location of all Wind Energy System facilities, geographic information system information showing the location of all Wind Energy System facilities and current information identifying the owner of the Wind Energy System. An owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under s. PSC 128.18(1)(g).

Section 17: Modifications to an Approved Wind Energy System

MATERIAL CHANGE.

- (1) An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town, unless the Town automatically approves the material change by taking either of the steps specified in s. PSC 128.32(2)(b)1. or 2.
- (2) An owner shall submit to the Town an application for a material change to an approved Wind Energy System.

REVIEW LIMITED.

- (1) The Town, upon notice of receiving an application for a material change to a Wind Energy System under Section 17(2), shall not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.
- (2) An application for a material change is subject to ss. PSC 128.30(1), (3) to (5), (6)(a) and (b) and (7) and 128.31 to 128.34.
- (3) An application for a material change shall contain information necessary to understand the material change as determined by the Town.
- (4) The Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

Section 18: Monitoring Compliance

- (1) **MONITORING PROCEDURE.** The Town may establish a procedure to monitor compliance by the owner with any condition on an approved Wind Energy System or to assess when Wind Energy System facilities are not maintained in good repair and operating condition. The procedure may include timelines,

provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public. Such procedures shall be included in the permits granted under this ordinance.

- (2) **THIRD-PARTY INSPECTOR DURING CONSTRUCTION.** The Town may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Town regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

Section 19: Notice of Complaint Process

- (1) **NOTICE OF PROCESS FOR MAKING COMPLAINTS.** Before construction of a Wind Energy System begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any Wind Energy System facility. An owner shall include in the notice the requirements under PSC 128.40(1) for submitting a complaint to the owner, a petition for review to the Town, and an appeal to the Commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance, and decommissioning.
- (2) **NOTICE TO TOWN.** An owner shall provide a copy of the notice provided under subsection (1) to the Town, and the owner shall keep the contact person and telephone number current and on file with the Town.

Section 20: Small Wind Energy Systems

The provisions of Subchapter VI of PSC 128 are incorporated by reference and shall apply to Small Wind Energy Systems.

Section 21: Restricted Districts

Notwithstanding anything to the contrary herein, no Wind Energy System having a nominal capacity of at least one megawatt may be located in an area primarily designated for future residential or commercial development by the Town's Comprehensive Plan except upon the granting of a conditional use permit under the procedures set forth in the Town's Zoning Ordinance.

Section 22: Enforcement

Violations of any provision of this ordinance shall be enforceable by means of the imposition of a forfeiture upon the owner of the Wind Energy System, the owner of the lands upon which such system is or is to be located, the persons responsible for the installation of such system or other persons found to be in violation in an amount of not less than \$100 nor more than \$1,000 for

each violation. Each day of the continuation of any violation shall constitute a separate offense which shall be subject to a separate forfeiture. The Town reserves all other remedies, including but not limited to injunctive relief.

Section 23: Revocation

Any permit granted for the installation, construction or expansion of a Wind Energy System may be revoked by the Town if the permit holder, its heirs, successors or assigns, violates the provision of this ordinance or the provisions of a Wind Energy System Permit granted pursuant to this ordinance.

Section 24: Effective Date

This ordinance shall take effect and be in force upon its passage and publication as required by law.

Section 25: Directive to Town Clerk and Town Attorney

The Town Clerk and the Town Attorney are directed to make all changes necessary in the current Code of Ordinances to implement the terms of this ordinance.

Adopted this 8th day of April, 2013.

TOWN OF ALTO

By: Duane Bille chair.
Duane Bille, Town Chairperson

Attest:

Roger Kausten
Roger Kausten, Town Clerk