



Preserving Yesterday's Heritage for Tomorrow.

IN THE NAME AND BY THE AUTHORITY OF THE TOWN OF CEDARBURG, WISCONSIN

ORDINANCE NO. 2014-14

AN ORDINANCE TO REPEAL §§ 320-103, 3201-104, 320-105 AND 320-106, AND TO RECREATE § 320-103 and §320-104 REGARDING WIND ENERGY SYSTEMS OF THE ZONING CODE OF THE TOWN OF CEDARBURG, OZAUKEE COUNTY, WISCONSIN

BE IT ORDAINED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, that §§ 320-103, 3201-104, 320-105 and 320-106 are hereby repealed, and § 320-103 and §320-104 of the Zoning Code of the Town of Cedarburg, regulating Wind Energy Systems, are hereby created to read as follows:

§ 320-103. Wind Energy Systems

A. **Statement of 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 Cedarburg, Ozaukee County, Wisconsin. This Ordinance is adopted pursuant to Wis. Stat., § 66.0401 and PSC 128 and pursuant to the Town's general police powers. All regulations contained herein are adopted to preserve and protect the public health and safety.

B. **Definitions.** The following definitions shall be used for the purpose of this section:

WIND ENERGY SYSTEM- Has the meaning given in Wis. Stat., § 66.0403(1)(m) and is used to convert wind energy to electrical energy.

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 PSC 128.01 are incorporated by reference as though fully set forth herein.

C. **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.

D. **Application.** Every application for a Wind Energy System Permit shall be made in writing accompanied by the fees required by this Ordinance 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 including options considered to eliminate noise, GIS maps showing noise levels surrounding wind turbines, computer modeling of noise impacts, information on ground absorption coefficients used to model noise, measures used to address low frequency noise and infrasound, and any other information necessary for the Town to assess noise impacts.
- (6) Information regarding shadow flicker anticipated to be attributable to the Wind Energy System including alternate turbine locations considered by the applicant that would eliminate shadow flicker, GIS maps showing shadow flicker zones for each turbine, shadow flicker computer monitoring results, and any other information necessary for the Town to assess shadow flicker impacts.
- (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, copies of all correspondence with state and federal agencies, statements as to whether each permit has been approved or denied, and, for those permits that have not yet been obtained, the anticipated timeline for obtaining the permit.
- (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 § 323-7 of this Chapter and PSC 128.105(1)(a) and 128.42(1).
- (15) Certification that the pre-application notice requirements of PSC 128.105(1) were met, including a list of all landowners who received pre-application notices under PSC 128.105(1)(a) and the date that the landowners were provided pre-application notices.
- (16) Information regarding any additional turbines that may be added to the project in the future.
- (17) Copies of all correspondence to or from Town residents.
- (18) Any other information necessary to understand the construction, operation or decommissioning of the proposed Wind Energy System.

E. Accuracy of Information. The owner shall certify that the information contained in an application is accurate. The Town may reject or deny the application if it contains false, misleading, or inaccurate information.

F. 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.

G. Notice to Property Owners and Residents.

- (1) On the same day an owner files an application for a Wind Energy System, the owner shall, under § 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 of the written notice 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.

H. 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 or location where the Town maintains records for public access, and it may make an application available on 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 C.
- (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.

I. 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).

J. 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 Subsection (1)(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 Subsection (1)(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.

K. Owner Requirements. Pursuant to PSC 128.10(1), the Town incorporates by reference all owner requirements set forth in Subchapter II of PSC 128 (and all subsequent amendments thereto) to their fullest extent. (For example all permissive provisions are mandatory and all quantifiable standards are adopted in their most stringent form.)

L. Written Decision.

- (1) The Town shall issue a written decision to grant or deny an application. The written decision shall include findings of fact, supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. 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. If an application is approved, the Town will issue a written permit with conditions.
- (2) The owner shall record the duplicate original of a decision approving an application with the Register of Deeds for Ozaukee 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 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 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) The Town may deny without a hearing an application for approval of a Wind Energy System with a nominal capacity of at least one megawatt if the proposed site of the Wind Energy System is in an area primarily designed for future residential or commercial development as shown on a map adopted as part of the Town's comprehensive plan or on such maps adopted by the Town under Wis. Stat., § 66.1001(2)(i).

M. 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 notice within 30 days to the Town of any change of ownership of the Wind Energy System.

N. Fees.

- (1) The applicant shall deposit an application fee of \$15,000 with the Town at the time the application is filed. All costs incurred by the Town relating to the review and processing of the application, including the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, acousticians, and other consultants or experts shall be billed against the deposit. The applicant shall maintain a minimum of \$ 2,000 in the account until the review process and construction (if approved) is completed. If the balance in the account drops below \$2,000 the applicant shall deposit additional money to bring the account balance to \$ 5,000 within five (5) business days. The Town will refund any remaining balance in the account within 60 days after the final inspection of the constructed wind energy system. The Town reserves the right to refuse review of an application in the event an applicant fails to comply with this subsection.
- (2) The Town's fee or reimbursement requirement under Subsection (1) is based on the actual and necessary cost of the review and processing 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.

O. 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 the year 2014. For agreements entered into in the year of 2015 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, sweet corn or other crops 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, sweet corn or other crop 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. The annual report must be filed on or before the anniversary date of the issuance of the owner's permit.

P. 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 section 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).

Q. Modifications to an Approved Wind Energy System.

(1) Material change.

- (a) 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.
- (b) An owner shall submit to the Town an application for a material change to an approved Wind Energy System.

(2) Review limited.

- (a) The Town, upon receipt of an application for a material change to a Wind Energy System may not reopen the merits of the earlier approval but may consider only those issues relevant to the proposed change.
- (b) 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.
- (c) An application for a material change shall contain information necessary to understand the material change as determined by the Town.
- (d) 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.

R. 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. The Owner shall cooperate with the Town during its monitoring.
- (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.

S. 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.

T. Small Wind Energy Systems.

- (1) All of the provisions of this Ordinance apply to Small Wind Energy Systems except for provisions adopted under the following subsections of PSC 128: PSC 128.14(4)(d), 128.15(1)(c), (3)(b) to (e), and (5), 128.16(2) to (4), 128.18(1)(g), (2)(b) and (c), (3)(am), (b) and (c), and (4)(b) to (f), 128.19(1)(c) to (e), (3), and (4), 128.30(2)(L) and (m), 128.33(1) to (3m) and (5), 128.34(3), 128.36, 128.40(2)(b) to (e), 128.41, and 128.42.
- (2) The standards in this Ordinance applicable to Wind Energy Systems are modified for Small Wind Energy Systems as follows:
 - (a) The pre-application notice shall be filed at least sixty (60) days before an Owner files an application to construct a Small Wind Energy System and the notice shall be provided only to adjacent landowners and the Town.
 - (b) Setback distances for Small Wind Energy Systems are as set forth in PSC 128.61(3).
 - (c) An Owner shall provide notice of the requirements of PSC 128.14 only to each adjacent nonparticipating residence or occupied community building before the initial operation of the Small Wind Energy System.
 - (d) For purposes of PSC 128.19(1) a Small Wind Energy System is presumed to be at the end of its useful life if it generates no electricity for a continuous 540-day period.
 - (e) For purposes of PSC 128.30(2)(g), the information regarding the anticipated effects of the Small Wind Energy System on existing land uses shall be only for parcels adjacent to the Wind Energy System.

- (f) Written notice of the filing of an application shall be provided only to property owners and residents located adjacent to the Small Wind Energy System.
- (g) Under PSC 128.30(6)(c) the Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed Small Wind Energy System.

(3) The applicant of a Small Wind Energy System shall deposit an application fee of \$2,000 with the Town at the time the application is filed. All costs incurred by the Town relating to the review and processing of the application, including the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, acousticians, and other consultants or experts shall be billed against the deposit. The applicant shall maintain a minimum of \$500 in the account until the review process and construction (if approved) is completed. If the balance in the account drops below \$500, the applicant shall deposit additional money to bring the account balance to \$1,000 within five (5) business days. The Town will refund any remaining balance in the account within sixty (60) days after the final inspection of the constructed wind energy system. The Town reserves the right to refuse review of an application in the event an applicant fails to comply with this subsection.

U. Revocation and Enforcement. 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, or assigns, violates the provision of this Ordinance or the provisions of a Wind Energy System Permit granted pursuant to this Ordinance. Violations of this Ordinance are also punishable by forfeitures of not less than \$200 and not more than \$500 per violation plus costs and attorneys' fees. Each day a violation exists constitutes a separate offense. The Town may also seek equitable and injunctive relief in the event of a violation. Further, the Town may deny a pending application in the event of the applicant's failure to comply with the provisions of this Ordinance.

V. Severability. If any section, subsection, sentence or phrase of this Ordinance shall be held invalid, illegal, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance; and there shall be substituted for the provision at issue a valid and enforceable provision as similar as possible to the provision at issue.

W. Relationship of Parties. By filing an application, the owner agrees that neither the owner nor the Town is an agent, employee, contractor, vendor, representative, or partner of the other and that neither shall owe a fiduciary duty to the other or hold itself out to third parties that it is capable of binding the other party to any obligation or liability. The Town's approval of an application does not create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Town and the owner.

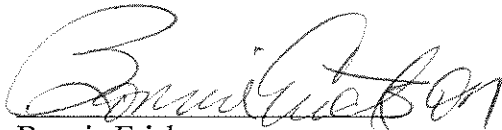
X. Interpretation. In their interpretation and application, the provisions of this Ordinance shall be considered minimum requirements. Where the provisions of this Ordinance impose greater restrictions than any statute, other regulation, Ordinance or covenant, to the extent allowed by law the provisions of this Ordinance shall prevail. Where the provisions of any statute, other

regulation, Ordinance, or covenant impose greater restrictions than the provisions of this Ordinance, to the extent allowed by law the provisions of such statute, other regulation, Ordinance or covenant shall prevail. All references to statutes and regulations in this Ordinance refer to the current version of the statute or regulation referenced, as amended from time to time.


Y. Guaranty/Warranty. Nothing in this Ordinance may be interpreted as guaranteeing or warranting that any method, construction, product, service, building, or structure is free from risk. No issuance of a license or permit, approval, inspection, or other action by any Town official, employee, or agent shall constitute a warranty or guaranty that any method, construction, product, service, building, or structure is free from risk.

This Ordinance shall be in full force and effect upon its passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 5th day of Nov., 2014.



Bonnie Erickson
Deputy Town Clerk



David M. Valentine
Town Chairman