CHAPTER 25

SMALL WIND ENERGY SYSTEMS

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I. GENERAL PROVISIONS

25.01 Title.

This ordinance may be referred to as the Small Wind Energy System Ordinance, the Small Wind Ordinance, or the SWES Ordinance.

25.02 Authority.

This ordinance is adopted pursuant to Wis. Stat. § 66.0401 and Wis. Admin. Code § PSC 128.

25.03 Purpose.

The purpose of this ordinance is to adopt and incorporate the requirements of Wis. Stat. § 66.0401 and Wis. Admin. Code Ch. PSC 128 as a local ordinance and to establish local regulations on the installation and use of small wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission and that serve to preserve or protect the public health or safety, do not significantly increase the cost of the system or significantly decrease its efficiency, or allow for an alternative system of comparable cost and efficiency.

25.04 Applicability.

This ordinance applies to all lands within the boundaries of the county lying outside the limits of incorporated cities and villages.

25.05 Statutes, Regulations, and Rules.

(1) This ordinance is subject to the provisions of the Wisconsin Statutes and all regulations and rules promulgated thereunder.

(2) Wis. Stat. § 66.0401 and Wis. Admin. Code Ch. PSC 128 are adopted and incorporated by reference.

25.06 Severability.

The provisions of this ordinance are severable and the invalidity of any part of this ordinance will not affect the validity of the remainder of the ordinance.

25.07 Effective Date.

The effective date of this ordinance is March 31, 2013.

II. DEFINITIONS.

25.08 Definitions.

In this ordinance:

"Department" means the Manitowoc County Planning and Zoning Department.

"Department director" or "director" means the director of the Manitowoc County Planning and Zoning Department or the department director's designee.

"MCC" means Manitowoc County Code.

"Permit" means a zoning permit issued by the Manitowoc County Planning and Zoning Department pursuant to this ordinance.

"Planning commission" means the Manitowoc County Planning and Park Commission.

"PSC 128" means Wis. Admin. Code Ch. PSC 128, Wind Energy Systems.

III. PERMIT, APPLICATION, AND FILING REQUIREMENTS.

25.09 Zoning Permit Requirements.

(1) Permit Requirement. The owner must apply for and receive a zoning permit from the department before installing, constructing, or expanding any small wind energy system.

(2) Permit Fee. The owner must pay an application fee at the time the application for a small wind energy system is filed with the department.

(3) Permit Expiration. A zoning permit issued by the department expires if construction of the small wind energy system is not commenced within 24 months from the date

of the permit or if the small wind energy system is not installed and functioning within 12 months from the date construction begins.

25.10 Application Requirements.

(1) The owner must file an application that contains the information specified in PSC 128.30, except as amended by PSC 128.61(6).

(2) A plan must be submitted that includes information specified in MCC § 8.50(2). The owner must also provide the following additional information on the plan or as part of the permit application:

(a) Location of any overhead utility lines on or adjacent to the property;

(b) Description and specifications of the components of the small wind energy system, including the manufacturer, model, capacity, blade length, and total height of the small wind energy system; and

(c) Blueprints or drawings which have been approved by a registered professional engineer for any tower and tower foundation.

25.11 Filing Requirements.

(1) Any document or paper required to be filed with the county pursuant to PSC 128 or this ordinance must be filed at or delivered to the department's office.

(2) Any document, paper, or other material submitted to the county that relates to an application must be delivered to the department's office.

(3) Any document or paper filed or otherwise submitted by an owner or any other interested party that relates to an application must be 8-1/2 x 11 inches in size. A person who wishes to submit a paper that is larger than 8-1/2 x 11 inches in size shall also submit a reduced copy that is 8-1/2 x 11-inches in size.

25.12 Conditions Required for Approval.

(1) An owner shall provide information showing that it has complied with the notification requirements of PSC 128.105(1), as amended by PSC 128.61(1).

(2) An owner shall provide information showing that it has complied with the notification requirements specified in PSC 128.14(6)(b), as amended by PSC 128.61(4).

(3) An owner shall provide information showing that it has complied with the notification requirements specified in PSC 128.15(5)(b).

IV. LOCAL REGULATIONS.

25.13 Airport Approach Protection.

An owner may not construct small wind energy system facilities that exceed the height or setback limitations, or both, contained in Chapter 11, Airport Operations, Minimum Standards, and Approach Protection.

25.14 Abandonment and Decommissioning.

(1) A small wind energy system that does not generate electricity for a continuous period of 540 days will be deemed abandoned and the department may issue a Notice of Abandonment to the owner.

(2) If, within 30 days of receipt of a Notice of Abandonment, the owner provides the department with information showing that the small wind energy system has not been abandoned, the department will withdraw the Notice.

(3) Unless the department withdraws the Notice of Abandonment, a small wind energy system tower must be decommissioned as prescribed by PSC 128.19. If the owner fails to remove a small wind energy system and reclaim the site, the county may remove or cause the removal of the small wind energy system and arrange for the reclamation of the site. The cost of removal and reclamation will become a lien upon the property and may be collected in the same manner as property taxes.

25.15 Code Compliance.

A small wind energy system must comply with the National Electrical Code and all applicable state construction and electrical codes. The owner must provide certification from a state licensed inspector showing that the small wind energy system complies with all applicable codes before placing the small wind energy system into operation.

25.16 Electrical Wires.

All electrical wires associated with a small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, must be located underground.

25.165 Emergency Communications Corridors.

(1) An owner may not construct wind energy systems facilities within an emergency communication corridor, which is defined as the area within an existing line-of-sight communication path that is used by a government or military entity to provide services essential to protect public safety.

(2) An owner shall provide information showing that wind energy systems facilities will be in compliance with sub. (1).

(3) Manitowoc County provides emergency communication services that are essential to protect public safety using facilities at the following locations:

MANITOWOC COUNTY COMMUNICATIONS FACILITIES			
SITE	ELEVATION (FEET AT BASE)	NAD 83 LATITUDE DEG/MIN/SEC	NAD 83 LONGITUDE DEG/MIN/SEC
Cato	933.63	44°06'59.7200"N	87°51'33.6926"W
Cleveland	709.50	43°54'43.6021"N	87°45'35.7555"W
Franklin	891.84	44°10'52.0009"N	87°50'25.9638"W
Kiel	920.46	43°44'47.4850"N	88°02'18.2792"W
Liberty	964.98	44°00'35.6622"N	87°53'28.5993"W
Maribel	865.00	44°16'36.3979"N	87°48'21.9014"W
Manitowoc	607.00	44°05'15.7699"N	87°39'34.6892"W
Two Creeks	654.66	44°16'12.6567"N	87°33'08.4903"W
Two Rivers	633.32	44°11'16.1745"N	87°35'32.8609"W

(4) Each of the following pairs of communication facilities delineate a protected county emergency communication corridor:

(a) Franklin and Cato

(b) Franklin and Liberty;

(c) Franklin and Maribel;

(d) Franklin and Two Creeks;

(e) Franklin and Two Rivers;

(f) Liberty and Cato

(g) Liberty and Cleveland;

(h) Liberty and Kiel;

(i) Manitowoc and Cato;

(j) Manitowoc and Cleveland;

(k) Manitowoc and Franklin;

(l) Manitowoc and Liberty;

(m) Manitowoc and Two Creeks

(n) Manitowoc and Two Rivers;

(o) Two Creeks and Maribel; and

(p) Two Creeks and Two Rivers.

25.17 Equipment Access.

All ground-mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.

25.18 Lighting.

(1) A small wind energy system may be artificially lighted only if lighting is required by the Federal Aviation Administration.

(2) An owner shall use shielding or control systems approved by the federal aviation administration to reduce visibility of light to individuals on the ground.

25.19 Noise.

(1) The noise generated by the operation of a small wind energy system may not exceed 50 dB(A) during the daytime hours and 45 dB(A) during the nighttime hours as measured at the outside wall of a nonparticipating residence or occupied community building that existed when the owner gave notice pursuant to PSC 128.105(1) or for which complete publicly available plans for construction were on file with a political subdivision within 30 days of the date when the owner gave notice pursuant to PSC 128.105(1).

(2) The owner of an adjacent nonparticipating residence or adjacent occupied community building may relieve the owner of the small wind energy system of the requirement to meet any of the noise limits in this section by written contract as provide in PSC 128.14(5) and (6).

(3) The owner shall provide the notice as prescribed by PSC 128.61(4).

(4) If an owner receives a complaint of a violation of the noise standards contained in PSC 128.14 and the owner has not provided the department with the results of an accurate test conducted within 2 years of the date of the complaint showing that the small wind energy system is in compliance with the noise standard at the location relating to the complaint, the owner shall promptly conduct a noise study to evaluate compliance with the noise standards at that location using the most current version of the noise measurement protocol as described in PSC 128.50(2).

25.20 Ownership Change.

An owner shall provide the county with notice of any change in ownership of the small wind energy system on or before the effective date of the change.

25.21 Permits.

An owner shall submit a copy of all necessary state and federal permits and approvals to the department.

25.22 Setbacks.

(1) A small wind energy system must be set back at least 1.0 times the maximum blade tip height from any nonparticipating property line, nonparticipating residence, occupied community building, or overhead communication and electrical transmission line, not including utility service lines to individual houses or outbuildings.

(2) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the required setback distance.

25.23 Signal Interference.

(1) An owner shall use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the small wind energy system began operation if the small wind energy system is causing the interference and the interference occurs at a location at least one-half mile from a

wind turbine. Except as provided in sub. (4), an owner shall mitigate personal communications interference caused by the small wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the small wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(2) An owner shall, under a protocol established by PSC 128.50(2), implement a new technology solution that becomes commercially available before the small wind energy system is decommissioned to address interference for which mitigation is required under PSC § 128.16(2) and (3) and for which the original mitigation solution is only partially effective.

25.24 Utility Interconnection.

A small wind energy system that connects to the electric utility must comply with Wis. Admin. Code § PSC 119, Rules for Interconnecting Distributed Generation Facilities.

V. LOCAL PROCEDURE.

25.25 Application Processing.

(1) The application for a zoning permit will be processed following the procedures set forth in MCC § 8.50.

(2) An owner shall, on the same day that it files an application for a small wind energy system, use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located adjacent to the small wind energy system. The notice shall contain the information specified in PSC 128.30(5).

(3) Upon receipt of an application, the department shall publish the notice required by Wis. Stat. § 66.0401(4)(a)(1) and PSC 128.30(5)(b).

(4) The department will accept written comments on the application for a period of 10 days following the date of the published notice.

(5) If the permit application is denied, the department will notify the owner in writing and provide a written statement of the reason why the application was denied. The owner may appeal the department's decision to the Board of Adjustment as provided by MCC § 8.19(7).

25.26 Completeness Review.

(1) An application is complete if it complies with the filing requirements of this ordinance and of PSC 128.30(2) and 128.50(1).

(2) An application is considered filed the day the owner notifies the department in writing that all the application materials have been filed.

(3) The department 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.

(4) If the department determines that the application is incomplete, it shall provide the owner with written notice stating the reasons for the determination. The owner shall provide additional information specified in the notice, and an additional 45-day completeness review period will begin the day after the department receives responses to all items identified in the notice.

(5) If the owner fails to provide additional information specified in the notice of an incomplete application within 90 days, the application will be deemed abandoned. The owner may refile the application at a later date, subject to payment of a new application fee. There is no limit to the number of times that an owner may refile an application.

(6) If the county does not make a completeness determination within the applicable review period, the application is considered to be complete.

25.27 Requests for Additional Information.

(1) The department may request additional information necessary to understand the small wind energy system after determining that an application is complete.

(2) An owner shall provide additional information in response to all reasonable requests.

(3) An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

(4) If the owner fails to provide additional information requested within 90 days, the application will be deemed abandoned. The owner may refile the application at a later date, subject to the payment of a new application fee. There is no limit to the number of times that an owner may refile an application.

25.28 Approval Review.

(1) The department shall have 90 days from the date that it notifies the owner that the application is complete in which to approve or disapprove the application.

(2) The review period may be extended upon written notice to the applicant for one or more of the following reasons; but the total time for all extensions may not exceed 90 days:

(a) Up to 45 days if additional information is needed.

(b) Up to 90 days if the applicant makes a material modification to the application.

(c) Up to 90 days for other good cause specified in writing.

(3) If the department fails to act within the 90 days, or within any extended time period, the application will be considered approved.

25.29 Written Decision.

(1) The department shall issue a written decision to grant or deny an application for a small wind energy system. The written decision must include findings of fact supported by evidence in the record. If an application is denied, the decision must specify the reason for the denial.

(2) The department shall provide a duplicate original of its written decision to the owner and the commission.

(3) The owner shall record the duplicate original of a decision approving an application with the register of deeds.

25.30 Modifications.

(1) An owner shall comply with PSC 128.35 before making any material change to a small wind energy system.

(2) The department will conduct a review of any application for a material change in a small wind energy system as provided for in PSC 128.35(2).

25.31 Postconstruction Filing Requirement.

(1) Within 90 days of the date a small wind energy system commences operation, the owner shall file with the department and the commission an as-built description of the small wind energy system, an accurate map of the small wind energy system showing the location of all small wind energy system facilities, geographic information system information showing the location of all small wind energy system facilities, and current information identifying the owner of the small wind energy system.

(2) An owner shall label each wind turbine location described in its filing and shown on the map of the small wind energy system with a unique identifier consistent with the information posted at the wind turbine location under PSC 128.18 (1).

25.32 Decommissioning Review.

(1) An owner shall file a notice of decommissioning completion with the county and any political subdivision within which its small wind energy systems facilities are located when a small wind energy system approved by the county has been decommissioned and removed.

(2) The department shall conduct a decommissioning review to determine whether the owner has decommissioned and removed the small wind energy system as required by PSC 128.29(1)(a) and whether the owner has complied with its site restoration obligation under PSC 128.29(4).

(3) The owner shall cooperate with the county by participating in the decommissioning review process.

25.33 Appeals.

(1) A decision by the department that the application is incomplete, to approve or disapprove the application, or to impose a restriction on a small wind energy system may be appealed to the commission.

(2) Any action by the county to enforce a restriction on a small wind energy system may be appealed to the commission.

(3) An appeal must be filed with the commission within 30 days after the date of the decision or the start of the enforcement action that is being appealed.

PART VI. COMPLAINTS.

25.34 Complaint Process.

(1) An aggrieved person who has made a complaint to an owner in accordance with PSC 128.40 may petition the county for review of the complaint if it has not been resolved within 45 days of the day the owner received the original complaint.

(2) The petition for review must be filed with the department within 90 days of the date of the original complaint.

(3) The petition must include the following:

(a) name, address, and telephone number of the person filing the petition.

(b) copy of the original complaint to the owner.

(c) copy of the owner's initial response.

(d) statement describing the unresolved complaint.

(e) statement describing the desired remedy.

(f) any other information the complainant deems relevant to the complaint.

(g) notarized signature of the person filing the petition.

(4) The department shall forward a copy of the petition to the owner by certified mail within 10 days of the department's receipt of the petition.

(5) The owner shall file an answer to the petition with the department and provide a copy of its answer to the complainant within 30 days of its receipt of the petition.

(6) The answer must include the following:

(a) name, address, and telephone number of the person filing the answer.

(b) statement describing the actions taken by the owner in response to the complaint.

(c) statement of the reasons why the owner believes that the complaint has been resolved or why the complaint remains unresolved.

(d) statement describing any additional action the owner plans or is willing to take to resolve the complaint.

(e) any other information the owner deems relevant to the complaint.

(f) notarized signature of the person filing the answer.

(7) The complainant and the owner may, within 30 days following the owner's filing of its answer, file such additional information with the department as each deems appropriate.

(8) The department may request such additional information from the complainant and the owner as it deems necessary to complete its review.

(9) The department may retain such consultants or experts as it deems necessary to complete its review.

(10) The department shall issue a written decision and may take such enforcement action as it deems appropriate with respect to the complaint.

(11) The department's decision and enforcement action is subject to review under Wis. Stat. § 66.0401(5).

PART VII. VIOLATIONS, ENFORCEMENT, AND PENALTIES.

25.35 Violations.

(1) It is unlawful for any person to violate any provision of this ordinance.

(2) It is unlawful for any person to knowingly provide false information, make a false statement, fail to provide, or misrepresent any material fact to a county agent, board, commission, committee, department, employee, official, or officer acting in an official capacity under this ordinance.

(3) It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist a permit or order issued pursuant to this ordinance.

(4) A separate offense is deemed committed on each day that a violation occurs or continues.

25.36 Enforcement.

(1) Department Authority. The department shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.

(2) Inspection Authority. The department may request permission to inspect, at a reasonable time and date, any premises or structure for which a permit has been

applied for or granted to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If permission is not given, the department may apply for, obtain, and execute a special inspection warrant pursuant to Wis. Stat. § 66.0119.

(3) Notice of Noncompliance. If the department finds a violation of any provision of this ordinance, the department may issue a written notice to the owner stating the conditions of non-compliance, specifying the action required to come into compliance, and providing a reasonable amount of time within which compliance is required.

(4) Permit Revocation Authority. The department may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of small wind energy systems facilities for which a permit has been granted, or failure to comply with the action requirement contained in a notice of noncompliance.

(5) Citation Authority. The department may issue a citation for any violation of this ordinance. The department is not required to issue a notice of noncompliance or take any other action prior to issuing a citation.

(6) Legal Referral. The department may refer a violation of this ordinance to corporation counsel for legal action, including an action seeking injunctive relief. The department is not required to issue a notice of noncompliance or take any other action prior to referring a violation to corporation counsel.

(7) Other Enforcement Means. Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

25.37 Penalties.

(1) A person will, upon conviction for any violation of this ordinance, forfeit not less than $100 nor more than $1,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(2) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 12 month period.

(3) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.

(4) The failure of a county employee, official, or officer to perform an official duty imposed by a section of this code will not subject the employee, official, or officer to a penalty unless the section imposing the duty also specifies the penalty.

HISTORY

12/20/2005: Created by Ord. No. 2005/2006-140 effective January 1, 2006.

02/13/2007: Sec. 25.06(10) amended by Ord. No. 2006/2007-123 effective February 21, 2007.

10/07/2008: Sec. 25.06(1)(c) repealed and sec. 25.08(2) amended by Ord. No. 2008/2009-79 effective October 15, 2008.

10/18/2001: Sec. 25.06(10)(b) amended by Ord. No. 2011/2012-59 effective October 24, 2011.

03/13/2012: Appendix A added showing the date each town adopted Chapter 25.

09/18/2012: Repealed by Ord. No. 2012/2013-48 effective September 30, 2012.

03/19/2013: Recreated by Ord. No. 2012/2013-102 effective March 31, 2013.

05/21/2013: Sec. 25.09(2) amended by Ord. No. 2013/2014-25 effective August 1, 2013.

07/16/2013: Sec. 25.065 created by Ord. No. 2013/2014-37 and renumbered as sec. 25.165 pursuant to MCC § 16.04(3) effective August 1, 2013. NOTE: Sec. 25.165 effectively supercedes secs. 25.23(1) and (2).

09/17/2013: Secs. 25.23 (1) and (2) repealed; sec. 25.23(3) renumbered as sec. 25.23(1); and sec. 25.23(4) renumbered as sec. 25.23(2) by Ord. No. 2013/2014-46 effective October 1, 2013.