

## CHAPTER 13: WIND ENERGY SYSTEMS

### 13.01 PURPOSE AND AUTHORITY

The purpose of this Ordinance is to provide a regulatory scheme for the construction and operation of Wind Energy Systems in the Town of Mosel, Sheboygan County, Wisconsin. This Ordinance is adopted pursuant to 66.0401, Wis. Stats. and Chapter PSC 128 of the Wisconsin Administrative Code and pursuant to the Town's general police powers. All regulations contained herein are adopted to preserve and protect the public health and safety.

### 13.02 DEFINITIONS

- A. WIND ENERGY SYSTEM:** has the meaning given in 66.0403(1)(m), Wis. Stats. and is used to convert wind energy to electrical energy.
- B. 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.
- C. MET TOWER:** a meteorological tower and all associated equipment and wiring used for the measurement and transmission of wind speed and wind flow characteristics.
- D. TOWN:** the Town of Mosel.
- E. OTHER DEFINITIONS:** the remaining definitions set forth in PSC 128.01 are incorporated by reference as though fully set forth herein.

### 13.03 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.

### 13.04 APPLICATION

Every application for a Wind Energy System Permit shall be made in writing accompanied by any fees required by this Ordinance and shall include the information specified in PSC 128.30(2).

### 13.05 ACCURACY OF INFORMATION

The applicant/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.

### **13.06 DUPLICATE COPIES**

The applicant/owner 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.

### **13.07 NOTICE TO PROPERTY OWNERS AND RESIDENTS**

On the same day an applicant/owner files an application for a Wind Energy System, the applicant/owner shall, under 66.0401(4)(a)3., Wis. 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 those items specified in PSC 128.30(5)1. through 5.

Further, after the Town receives an application for a Wind Energy System, the Town shall publish the notice required by 66.0401(4)(a)(1), Wis. Stats., 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.

### **13.08 PUBLIC PARTICIPATION**

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

### **13.09 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).

### **13.10 APPLICATION COMPLETENESS**

The Town incorporates PSC 128.31 into this Ordinance by reference.

### **13.11 APPLICANT/OWNER REQUIREMENTS**

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

### **13.12 WRITTEN DECISION AND RECORD OF DECISION**

The Town incorporates PSC 128.32(3); PSC 128.34(1); and PSC 128.34(2) into this Ordinance by reference.

### **13.13 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.

### **13.14 DENIAL BASED ON LAND USE MAP DESIGNATIONS**

The Town may deny without a hearing an application for approval of a Wind Energy System with a nominal capacity of at least one (1) 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 the map adopted as part of the Town's comprehensive plan on June 9, 2009 or on subsequent such maps adopted by the Town under 66.1001(2)(I), Wis. Stats.

### **13.15 FEES**

- A.** The applicant shall deposit an application fee of \$5,000 with the Town at the time the application is filed. All costs incurred by the Town relating to the review and process of the application, including the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, 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. The Town will refund any remaining balance in the account within 60 days after the final inspection of the constructed wind energy system.
- B.** The Town's fee or reimbursement requirement under subsection A. 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.

### **13.16 ADDITIONAL REQUIREMENTS**

The requirements in PSC 128.33(1) to (5) are incorporated into this Ordinance as conditions for approval of an application to construct a Wind Energy System.

### **13.17 POST-CONSTRUCTION FILING REQUIREMENT**

The Town incorporates PSC 128.34(3) into this Ordinance by reference.

### **13.18 MODIFICATIONS TO AN APPROVED WIND ENERGY SYSTEM**

The Town incorporates PSC 128.35(1) allowing “material changes” into this Ordinance by reference. Such changes are subject to the following:

- A. The Town, upon notice of receiving an application for a material change to a Wind Energy System shall not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.
- B. An application for a material change is subject to 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 energysystem.

### **13.19 MONITORING COMPLIANCE**

- A. **MONITORING PROCEDURE.** The Town may establish a procedure to monitor compliance by the applicant/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 applicant/owner shall cooperate with the Town during its monitoring.
- B. **THIRD-PARTY INSPECTOR DURING CONSTRUCTION.** The Town may require an applicant/owner to pay a reasonable fee for a third-party inspector to monitor and report to the Town regarding the applicant/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.

### **13.20 NOTICE OF COMPLAINT PROCESS**

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

### **13.21 SMALL WIND ENERGY SYSTEMS**

- A.** 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.
- B.** The standards in this Ordinance applicable to Wind Energy Systems are modified for Small Wind Energy Systems as follows:
- (1)** The pre-application notice shall be filed at least sixty (60) days before an applicant/owner files an application to construct a Small Wind Energy System, and the notice shall be provided only to adjacent landowners and the Town.
  - (2)** Setback distances for Small Wind Energy Systems are as set forth in PSC 128.61(3).
  - (3)** An applicant/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.
  - (4)** 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.
  - (5)** For purposes of PSC 128.30(2)(g), the information regarding the anticipated effects of the Small Wind Energy System on existing land use shall only be for parcels adjacent to the Small Wind Energy System.

- (6) 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.
- (7) 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.
- (8) MET Towers shall be permitted under the same standards, permit requirements and procedures, and restoration requirements as a Small Wind Energy System.

### **13.22 PRINCIPAL OR ACCESSORY USE**

Wind Energy Systems may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of a Wind Energy System or a part of such system on such lot. Wind Energy Systems that are constructed and installed in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

### **13.23 ADMINISTRATION AND ENFORCEMENT**

- A. The Mosel Town Board or its designated official will administer this chapter.
- B. At reasonable times and upon reasonable notice, the Mosel Town Board or its designee may enter any property for which a siting permit has been issued under this chapter to conduct an inspection to determine whether the conditions stated in the permit have been met.
- C. The Mosel Town Board may refer any violation of this chapter to legal counsel for enforcement.

### **13.24 REVOCATION**

Any permit granted under this Ordinance may be revoked by the Town if the permit holder, its heirs, or assigns, violates a provision of this Ordinance or a provision of a permit granted pursuant to this Ordinance.

### **13.25 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.

### **13.26 RELATIONSHIP OF PARTIES**

By filing an application, the applicant/owner agree that neither the applicant/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 any application or permit does not create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Town and the applicant/owner.

### **13.27 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.

### **13.28 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.