

TOWN OF MOSEL
ORDINANCE NO. 2009-01

AN ORDINANCE CREATING CHAPTER 13 OF THE MUNICIPAL CODE
OF THE TOWN OF MOSEL, SHEBOYGAN COUNTY, WISCONSIN,
REGULATING WIND ENERGY FACILITIES

WHEREAS, pursuant to Wisconsin Statute § 62.23(7), the Town of Mosel may exercise its zoning and police powers for the purpose of enacting ordinances promoting the health, safety and general welfare of the residents and visitors to the Town of Mosel; and **WHEREAS**, the Town Board of the Town of Mosel has determined that an ordinance regulating wind energy facilities within the Town would promote the health, safety and general welfare of the Town. **NOW, THEREFORE**, the Town Board of the Town of Mosel, Wisconsin, does ordain as follows:

SECTION 1. **Creating Code.** Chapter 13 of the Municipal Code of the Town of Mosel is hereby created to read as follows:

"TOWN OF MOSEL
CHAPTER 13: WIND ENERGY FACILITIES

13.01 PURPOSE

The purpose of the chapter is to provide a regulatory scheme for the construction and operation of Wind Energy Facilities in the Town of Mosel, subject to reasonable restrictions consistent with Wis. Stats § 66.0401, 60.10(2)(c), 61.34, which will preserve and protect the public health and safety.

13.02 AUTHORITY

This chapter is adopted pursuant to authority granted by Wis. Stat. §§ 60.62, 60.22(3), 61.35 and 62.23(7).

13.03 DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated:

- (1) Board: the Board of Supervisors of the Town of Mosel.
- (2) FAA: the Federal Aviation Administration.
- (3) MET Tower: a meteorological tower and all associated equipment and wiring used for the measurement and transmission of wind speed and wind flow characteristics.
- (4) Rotor Diameter: means the cross sectional dimension of the circle swept by the rotating blades.
- (5) Small Wind Energy Facility: a Wind Energy Facility that consists of no more than two (2) Wind Turbines, neither of which have a Total Height greater than 170 feet or a nameplate capacity of greater than 100 Kilowatts, and the main purpose of which is to supply electricity to the on-site owner.
- (6) Total Height: when referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.
- (7) Town: the Town of Mosel.
- (8) Wind Energy Facility: an electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and other buildings accessory to such facility.

- (9) Wind Energy Facility Siting Permit: a permit for the construction, installation, and/or operation of a Wind Energy Facility granted by the Board in accordance with the provisions of this chapter.
- (10) Wind Turbine: a wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer, if any, or other component used in the tower, base, pad transformer, and any other components used in the system.

13.04 APPLICABILITY

The requirements of this chapter shall apply to all Wind Energy Facilities proposed after the effective date of this chapter. Any preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this chapter prior to recommencing production of energy. However, no modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this chapter.

13.05 REGULATORY FRAMEWORK

(1) Violations. It is unlawful for any person to construct, install or operate a Wind Energy Facility that is not in compliance with this chapter or with any condition contained in a Wind Energy Facility Siting Permit issued pursuant to this chapter.

(2) Zoning. Wind Energy Facilities may only be located in areas that are not zoned residential on the official Town zoning map, subject to the requirements in Section 15.06, below.

(3) Principal or Accessory Use. Wind Energy Facilities 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 Facility or a part of such facility on such lot. Wind Energy Facilities that are constructed and installed in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a non-conforming use or structure.

13.06 GENERAL REQUIREMENTS FOR WIND ENERGY FACILITIES

- (1) Visual Appearance: Lightning; Power Lines
 - a. Any visible component of a Wind Turbine must be a non-reflective, non-obtrusive color. Components of a Small Wind Energy Facility may retain the color/finish applied by the manufacturer.
 - b. At Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the Wind Energy Facility to the natural setting and then existing environment.
 - c. Wind Energy Facilities shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
 - d. Wind Turbines shall not be used for displaying advertising except for reasonable identification of the manufacturer or operator.
 - e. Electrical controls, wiring and power-lines shall be wireless or underground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.
- (2) Setbacks. The following setbacks and separation requirements shall apply; however, the Board may reduce the standard setbacks and separation requirements if the intent of this chapter would be better served thereby.
 - a. Inhabited Structures: Wind Turbines shall be set back from each residence, school, hospital, church or public library, a distance no less than the greater

of: (i) two (2) times its Total Height; or, (ii) one thousand (1,000) feet. For a Small Wind Energy Facility, the setback shall be no less than 1.1 times the Wind Turbine's Total Height, but no setback is required from any structure occupied solely by the owner and his or her immediate family.

- b. Property Lines: Each Wind Turbine shall be set back from property lines a distance no less than 1.1 times its Total Height, unless appropriate easements are secured from adjacent property owners, or other acceptable mitigation is approved by the Board.
- c. Public Roads: Each Wind Turbine shall be set back from public road right-of-way a distance no less than 1.1 times its Total Height.
- d. Communication and Electrical Lines: Each Wind Turbine shall be set back from above-ground public electric, telephone or other utility lines a distance no less than 1.1 times its Total Height.
- e. Other: Related accessory structures (including but not limited to guy wires, guy anchors, electrical controls and buildings) shall meet the usual setback requirements applicable to the zoning district in which the Wind Energy Facility is located.

(3) Noise

- a. Audible noise due to Wind Energy Facility operations shall not exceed fifty (50) dBA for any period of time, when measured at any residence, school, hospital, church or public library existing on the date of approval of any Wind Energy Facility Siting Permit.
- b. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph a., above, shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- c. Should the ambient noise level (exclusive of the development in question) exceed the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
- d. Any noise level falling between two whole decibels shall be the lower of the two.

- e. In the event the noise levels resulting from the Wind Energy Facility exceed the criteria listed above, a waiver to said levels may be granted by the Board provided that the following has been accomplished:
 - i. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise limitations imposed by this chapter, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
 - ii. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement has been recorded in the Office of the Sheboygan County Register of Deeds which describes the benefitted and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this chapter may exist on or at the burdened property.

(4) Minimum Ground Clearance. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet, except that Small Wind Energy Facilities only require twenty-five (25) feet.

(5) Signal Interference. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, microwave, telephone or television signals caused by any Wind Energy Facility. If the applicant is a public utility, Wis. Admin. Code § PSC 113.0707 also applies.

(6) Safety

- a. All wiring shall be underground, except as necessary to connect the Wind Turbine to its base, disconnect junction box or substation and grounding wires.
- b. Wind Turbine towers shall not be climbable less than 15 feet above ground level (10 feet for Small Wind Energy Facilities).
- c. All access doors to Wind Turbines and electrical equipment shall be lockable.
- d. Appropriate warning signage shall be placed on Wind Turbines' electrical equipment, and Wind Energy Facility entrances.

(7) Code Compliance. A Wind Energy Facility must comply with all applicable state construction and electrical codes, and the National Electrical Code.

(8) Utility Notification and Interconnection. Any Wind Energy Facility that connects to the electric utility must comply with Wis. Admin. Code §PSC 119 "Rules for Interconnecting Distributed Generation Facilities."

(9) MET Towers. MET Towers shall be permitted under the same standards, permit requirements and procedures, and restoration requirements as a Small Wind Energy Facility.

13.07 PERMIT REQUIREMENTS AND PROCEDURE

(1) Permit Required. A Wind Energy Facility Siting Permit shall be required for the construction, installation or operation of any Wind Energy Facility.

(2) Application. Permit applications shall be submitted to the Town Clerk on a form approved by the Board.

(3) Documents. The permit application shall be accompanied by a plot plan which includes the following:

- a. Property lines and physical dimensions of the property

- b. Location, dimensions and types of structures on the property, and any within 1,000 feet of a proposed Wind Turbine
- c. Location of each component of the proposed Wind Energy Facility
- d. The right of way of any public road that is contiguous with the property, or that is within 1,000 feet of any proposed Wind Turbine
- e. Any overhead utility lines within 1,000 feet of any proposed Wind Turbine
- f. Wind Turbine specifications, including manufacturer and model, rotor diameter, tower height, tower type (monopole, freestanding or guyed)

(4) Fees. The same fee as required for a conditional use permit must accompany the application, which will be considered incomplete and will not be accepted for filing unless the fee is paid. In addition, the applicant is responsible for the reasonable and necessary charges for engineering, legal, and other professional or technical services and fees incurred by the Town for the review, administration, investigation, processing, implementation, and enforcement of the application and any permits that may be issued.

(5) Review Process. The Town Board shall consider the application within sixty (60) days after its receipt and after a public hearing preceded by a Class 2 Notice. The Board shall determine whether the requirements of this chapter are met and whether issuance would unreasonably interfere with the orderly land use and development plans of the Town. The Board may include conditions in the permit if they:

- a. preserve or protect the public health and safety;
- b. do not significantly increase the cost of the system or significantly decrease its efficiency; or
- c. allow for an alternative system of comparable cost and efficiency.

Conditions should include provisions for protection of Town roads and other infrastructure as well as financial responsibility for road restoration, Wind Energy Facility removal, and site reclamation. The Board may reduce the burden on the applicant by waiving one or more requirements if it concludes that the purpose of this chapter would still be met. The installation and continued operation of a Wind Energy Facility is contingent upon compliance with any permit conditions.

(6) Decision. The Board will issue a Wind Energy Facility Siting Permit or inform the applicant the permit has been denied

(7) Expiration. A Wind Energy Facility Siting Permit shall expire if:

- a. The Wind Energy Facility is not installed and functioning within 12 months from the date the permit is issued; or,
- b. The Wind Energy Facility is out of service or otherwise unused for a continuous 12 month period.

13.08 ABANDONMENT

(1) A Wind Energy Facility that is out of service for a continuous 12 month period will be deemed to have been abandoned. The Board may issue a notice to the owner of a Wind Energy Facility appears to be or is deemed to have been abandoned. The owner shall have the right to respond to the notice within thirty (30) days from receipt. The Board shall withdraw the notice and notify the owner of the withdrawal if the owner provides information that demonstrates the Wind Energy Facility has not been abandoned.

(2) If the Wind Energy Facility is determined to be abandoned, the owner or landowner, at their expense, shall remove the entire Wind Energy Facility within three (3) months of receipt of the notice of abandonment, otherwise, the Board may pursue a legal action to have it removed at the owner's or landowner's expense.

(3) Should the Wind Energy Facility not be timely removed then the Town shall have the right to enter upon the property and remove the Wind Energy Facility. Any and all costs for the removal shall be charged to the real estate pursuant to Wis. Stat. § 66.0627.

13.09 PENALTIES

Any person who fails to comply with any provision of this chapter or a permit issued hereunder shall be subject to the penalties described in Municipal Code Section 11.04. Each day a violation exists constitutes a separate offense.

13.10 ADMINISTRATION AND ENFORCEMENT

- (1) The Board or its designated official shall administer this chapter.
- (2) At reasonable times and upon reasonable notice, the 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.
- (3) The Board may refer any violation of this chapter to legal counsel for enforcement."

SECTION 2. Severability. Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

SECTION 3. Effective Date. This ordinance shall take effect upon enactment and posting as required by law.

Enacted this 13th day of January, 2009.

TOWN OF MOSEL

By _____
Dirk J. Zylman, Town Chair

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the Town Board of the Town of Mosel on the 13th day of January, 2009.

Rachel Rehbein, Clerk-Treasurer