

**TOWN OF SHERMAN
SHEBOYGAN COUNTY, WISCONSIN**

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

The Town Board of the Town of Sherman, Sheboygan 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 Small Wind Energy Systems in the Town of Sherman, Sheboygan 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.

Section 2: Definitions

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.

Section 3: Permit Required

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

Section 4: Application

Every application for a Small Wind Energy System Permit shall be made in writing accompanied by the fees required by this Ordinance and shall include the following information:

- (1) A description of the Small Wind Energy System and maps showing the locations of all proposed wind energy facilities.
- (2) A technical description of the proposed wind turbines and wind turbine sites.
- (3) A proposed timeline and process for constructing the Small Wind Energy System.
- (4) Information regarding the anticipated impact of the Small Wind Energy System on local infrastructure.
- (5) Information regarding noise anticipated to be attributable to the Small Wind Energy System.
- (6) Information regarding shadow flicker anticipated to be attributable to the Small Wind Energy System.
- (7) Information regarding the anticipated effects of the Small Wind Energy System on existing land uses on parcels adjacent to the location of the proposed Small Wind Energy System.
- (8) Information regarding the anticipated effects of the Small Wind Energy System on airports and airspace.
- (9) Information regarding the anticipated effects of the Small Wind Energy System on line-of-sight communications.
- (10) A list of all state and federal permits required to construct and operate the Small Wind Energy System.
- (11) Information regarding the planned use and modification of roads within the Town during the construction, operation, and decommissioning of the Small 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 representative copy of all notices issued under Section 17(A).
- (13) Any other information necessary to understand the construction, operation, or decommissioning of the proposed Small Wind Energy System.

Section 5: 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.

Section 6: Duplicate Copies

The applicant shall file an original and three copies of the application with the Town. 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

- (1) On the same day an owner files an application for a Small Wind Energy System, the owner shall, under Wis. Stat. § 66.0401(4)(a)3, use commercially reasonable methods to provide written notice of the filing of the application to property owners adjacent to the location of the proposed Small Wind Energy System. The notification shall include all of the following:
 - a. A complete description of the Small Wind Energy System, including the number and size of the wind turbines.
 - b. A map showing the locations of all proposed Small Wind Energy System facilities.
 - c. The proposed timeline for construction and operation of the Small 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 Small 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 Small 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 Small Wind Energy System available for public review at a local library and at the Town Hall or some other publicly-accessible location. The Town may also publish a copy of the application on the Town's website.
- (2) The Town shall accept written public comments on an application for a Small Wind Energy System filed with the Town Clerk and shall make them a part of the record at any public meeting held by the Town.
- (3) The Town may hold one or more public meetings to obtain comments on and to inform the public about the proposed Small Wind Energy System.

Section 9: Joint Application Review Process

If a Small Wind Energy System is proposed to be located in the Town and at least one other municipality with jurisdiction over the Small 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, unless the application was filed prior to the adoption of this Ordinance, in which case the Town shall notify the owner in writing of the completeness determination no later than 45 days after the day this Ordinance is adopted. 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 Small 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: Written Decision

- (1) The Town shall issue a written decision to grant or deny an application for a Small Wind Energy System. 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 Small 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 Sheboygan County, Wisconsin.
- (3) The Town shall keep a complete written record of its decision-making relating to an application for a Small Wind Energy System. The record of 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 Section 17(A) and Section 7.
 - c. A copy of any notice or correspondence that the Town issues related to the application.
 - d. A record of any public meeting under Section 8(3) 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 Section 8(2).
 - 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 Section 11(1).
 - 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 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 years after the year in which the Small Wind Energy System is decommissioned.

Section 12: Effect of Ownership Change on Approval

Approval of a Small Wind Energy System remains in effect if there is a change in ownership of the Small Wind Energy System. However, a Small Wind Energy System owner must provide notice within 30 days to the Town of any change of ownership of the Small Wind Energy System.

Section 13: Fees

- (1) The applicant shall deposit an application fee with the Town at the time the application is filed. The amount shall be as follows:
 - a. For a Small Wind Energy System with a total estimated project cost of \$5,000 or less the application fee shall be \$200.
 - b. For a Small Wind Energy System with a total estimated project cost of \$5,001 to \$25,000 the application fee shall be \$2,000.
 - c. For a Small Wind Energy System with a total estimated project cost greater than \$25,000 the application fee shall be \$5,000
- (2) 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 application fee. If the total cost of such services exceeds the amount of the application fee, the applicant shall make an additional payment to the Town in an amount equal to the amount by which the total cost exceeds the application fee. This additional payment shall be made prior to the Town's issuance of a Small Wind Energy System Permit or within 30 days of completion of the Town's application review, whichever occurs first. If the total cost of review services is less than the application fee, the Town shall refund the excess within 60 days of final inspection of the installed Small Wind Energy System if the Small Wind Energy System Permit is granted or within 60 days of completion of the Town's application review if the Small Wind Energy System Permit is not granted.
- (3) For a Small Wind Energy System with a total estimated project cost greater than \$25,000 the applicant shall maintain an application fee balance of at least \$1,000 at all times. If through the Town's billing of review services costs against the initial \$5,000 application fee the application fee balance drops below \$1,000, the applicant shall deposit additional money to bring the application fee balance to \$5,000 within five business days.
- (4) The Town reserves the right to refuse review of an application or issue a Small Wind Energy System Permit if an applicant fails to comply with this Section.

Section 14: Other Permits

A Small Wind Energy System owner shall submit to the Town copies of all necessary state and federal permits and approvals

Section 15: Modifications to an Approved Small Wind Energy System

(A) MATERIAL CHANGE

- (1) An owner may not make a material change in the approved design, location, or construction of a Small 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 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 Small Wind Energy System.

(B) REVIEW LIMITED

- (1) The Town, upon receipt of an application for a material change to a Small Wind Energy System may not reopen the merits of the earlier approval but may consider only those issues relevant to the proposed change.
- (2) An application for a material change is subject to PSC 128.35(2)(b).
- (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 Small Wind Energy System.

Section 16: Complaint Process

- (1) An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this Ordinance.
- (2) A complaint must be made first to the owner of the Small Wind Energy System before it can be made to the Town.

- (3) A complainant may petition the Town for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.
- (4) An owner must use reasonable efforts to resolve complaints regarding a Small Wind Energy System and shall investigate complaints regarding a Small Wind Energy System at the owner's expense.

Section 17: Owner Requirements

(A) PRE –APPLICATION NOTICE

- (1) At least 60 days before an owner files an application to construct a Small Wind Energy System, the owner shall use commercially reasonable methods to provide written notice of the planned Small Wind Energy System to all landowners adjacent to the proposed location of the Small Wind Energy System and to the Town. The written notice shall include all of the following information:
 - a. A complete description of the Small Wind Energy System, including the number and size of the planned wind turbines.
 - b. A map showing the planned location of all Small Wind Energy System facilities.
 - c. Contact information for the owner.
 - d. A list of all potential permits or approvals the owner anticipates may be necessary for construction of the Small Wind Energy System.
 - e. Whether the owner is requesting a joint application process under Section 9 and the name of each political subdivision that may participate in the joint review process.

(B) REAL PROPERTY PROVISIONS

- (1) A Small Wind Energy System easement or wind access easement shall be recorded under Chapter 706 of the Wisconsin Statutes. A Small Wind Energy System or a wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.

- (2) A Small Wind Energy System lease and any waivers under PSC 128.14(5) or 128.15(4) shall hold harmless and indemnify the real property owner for any violation of federal, state, or local law by the owner of the Small Wind Energy System and for any damages or bodily injury caused by the construction, operation, or decommissioning of the Small Wind Energy System.

(C) LAND USE AND COMMERCIAL ENTERPRISES

- (1) An owner shall make reasonable efforts to ascertain and accommodate any existing land use or commercial enterprise located on a nonparticipating property adjacent to the location of the proposed Small Wind Energy System.
- (2) An owner shall design a Small Wind Energy System to reasonably minimize the conversion of land from agricultural use.

(D) SETBACK DISTANCES

- (1) An owner shall design and construct a Small Wind Energy System using the following wind turbine setback distances:
 - a. 1.0 times the maximum blade tip height from occupied community buildings.
 - b. No minimum setback from participating residences.
 - c. 1.0 times the maximum blade tip height from nonparticipating residences.
 - d. No minimum setback from participating property lines.
 - e. 1.0 times the maximum blade tip height from nonparticipating property lines.
 - f. No minimum setback from public road right-of-way.
 - g. 1.0 times the maximum blade tip height from overhead communication and electric transmission or distribution lines other than utility service lines to individual houses or buildings.
 - h. No minimum setback from overhead utility service lines to individual houses or outbuildings.

- (2) An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.
- (3) An owner shall work with the Town and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.
- (4) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable wind turbine setback distances.

(E) NOISE CRITERIA

- (1) In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.
- (2) The noise limits in this section apply at the outside wall of a nonparticipating residence or occupied community building that exists when the owner gives notice under Section 17(A) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under Section 17(A).
- (3) An owner shall design the proposed Small Wind Energy System to minimize noise at a residence or occupied community building to the extent reasonably practicable and to meet the standards in (5).
- (4) An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.
- (5) An owner shall operate the Small Wind Energy System so that the noise attributable to it does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours. In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate the noise, unless the sound is produced by normal operating conditions. Methods available for the owner to comply with these standards shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about an audible noise containing a steady pure tone, the owner shall use operational

curtailment to eliminate the noise until the owner permanently corrects the problem.

- (6) If an owner uses sound level measurements to evaluate compliance with these noise restrictions at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community building. The owner may take additional measurements to evaluate compliance in addition to those specified by this Ordinance.
- (7) Upon receipt of a complaint regarding a violation of these noise standards, an owner shall test for compliance and provide the results to the Town.
- (8) Upon request by an owner of a Small Wind Energy System, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the Small Wind Energy System of the requirement to meet any of the above noise limits at the affected residence or occupied community building by written contract. Unless otherwise provided in a contract signed by an owner of a nonparticipating residence or occupied community building, a waiver by an owner is an encumbrance on the real property, runs with the land until the Small Wind Energy System is decommissioned, and shall be recorded under Chapter 706 of the Wisconsin Statutes. Before entering into such a contract, the owner shall provide written notice of these requirements to the owner of the affected nonparticipating residence or community building.
- (9) Before the initial operation of the Small Wind Energy System, an owner of a Small Wind Energy System shall provide notice of these noise criteria to each adjacent nonparticipating residence or occupied community building.

(F) SHADOW FLICKER

- (1) These shadow flicker requirements apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under Section 17(A) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under Section 17(A).

- (2) An owner shall design the proposed Small Wind Energy System to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable and to meet the standards in (3).
- (3) An owner shall operate the Small Wind Energy System in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or community building experiences more than 30 hours per year of shadow flicker under the Small Wind Energy System's normal operating conditions, the owner shall use operational curtailment to comply with this requirement.
- (4) An owner of a Small Wind Energy System shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.
- (5) Upon request by an owner of a Small Wind Energy System, an owner of an affected nonparticipating residence or occupied community building may relieve the Small Wind Energy System owner of a requirement under (3) at the affected nonparticipating residence or occupied community building by written contract with the Small Wind Energy System owner. Unless otherwise provided in a contract signed by an owner of the affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the Small Wind Energy System is decommissioned, and shall be recorded under Chapter 706 of the Wisconsin Statutes.

(G) SIGNAL INTERFERENCE

- (1) An owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications in use when the Small Wind Energy System begins operation to the extent practicable.
- (2) An owner may not construct Small Wind Energy System facilities within the existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety.

(H) STRAY VOLTAGE

- (1) An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a Small

Wind Energy System facility pursuant to the stray voltage protocol established by the Public Service Commission of Wisconsin before any Small Wind Energy System construction activity that may interfere with testing commences and again after construction of the Small Wind Energy System is completed, except as otherwise specified by Public Service Commission of Wisconsin Staff.

- (2) Before conducting signal interference testing, an owner shall work with Public Service Commission of Wisconsin staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under (1) shall conduct or arrange to conduct all required testing at the expense of the owner.
- (3) An owner and the electric distribution company shall provide the Public Service Commission of Wisconsin staff the results of all stray voltage testing in writing.
- (4) An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the Small Wind Energy System, in compliance with the Public Service Commission of Wisconsin's stray voltage protocol.

(I) PHYSICAL CHARACTERISTICS

- (1) An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.
- (2) An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.
- (3) An owner shall install lighting at a Small Wind Energy System that complies with standards established by the federal aviation administration. An owner shall also use shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.
- (4) An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

- (5) An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.
- (6) An owner shall place appropriate warning signage on or at the base of each wind turbine.
- (7) An owner shall clearly mark guy wires and supports for a Small Wind Energy System, meteorological tower, or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

(J) ELECTRICAL STANDARDS

An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and PSC 114 and shall construct, maintain, and operate all Small Wind Energy System facilities in a manner that complies with the national electrical code.

(K) CONSTRUCTION, OPERATION, AND MAINTENANCE

An owner shall construction, operate, repair, maintain, and replace Small Wind Energy System facilities as needed to keep the Small Wind Energy System in good repair and operating condition and in a manner that protects individuals from injury.

(L) EMERGENCY PROCEDURES

An owner shall notify the Town of the occurrence and nature of a Small Wind Energy System emergency within 24 hours of the Small Wind Energy System emergency.

(M) DECOMMISSIONING

- (1) An owner of a Small Wind Energy System shall decommission and remove the Small Wind Energy System at the end of its useful life. A Small Wind Energy System is presumed to be at the end of its useful life if the Small Wind Energy System generates no electricity for a continuous 540-day period.
- (2) When decommissioning is required, the owner shall begin decommissioning within 360 days after the Small Wind Energy System has reached the end of its useful life. The owner shall complete decommissioning and the removal of the

Small Wind Energy System within 540 days after the Small Wind Energy System has reached the end of its useful life.

- (3) An owner shall file a notice of decommissioning completion with the Town and the Public Service Commission of Wisconsin when a Small Wind Energy System approved by the Town has been decommissioned and removed.

Section 18: Revocation and Enforcement

Any permit granted for the installation, construction, or expansion of a Small Wind Energy System may be revoked by the Town if the permit holder, its heirs, or assigns, violates the provisions of this Ordinance or the provisions of a Small 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.

Section 19: 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.

Section 20: 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.

Section 21: 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.

Section 22: 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.

Section 23: Effective Date

This Ordinance shall take effect upon its adoption and publication or posting as required by law.

Section 24: Directive to Town Clerk and Town Attorney

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

Adopted this 7th day of January, 2014.

TOWN OF SHERMAN

William Goehring, Town Chairperson

Attest:

Rhonda Klatt, Town Clerk