

ORDINANCE V24-07
VILLAGE OF HARRISON
Calumet and Outagamie Counties

AN ORDINANCE REPEALING MUNICIPAL CODE CHAPTER 119 SMALL WIND ENERGY SYSTEMS AND RECREATING CHAPTER 119 WIND ENERGY SYSTEMS

WHEREAS, the Village desires to repeal Chapter 119 of the Harrison Municipal Code in its entirety; and

WHEREAS, the current code is limited to Small Wind Energy Systems and does not address Large Wind Energy Systems; and

WHEREAS, the Village desires to enact and approve municipal regulations for the installation and use of small and large wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission;

NOW THEREFORE, the Village Board of the Village of Harrison, Wisconsin, does hereby repeal Municipal Code Chapter 119 Small Wind Energy Systems and recreate Municipal Code as:

CHAPTER 119 WIND ENERGY SYSTEMS

119-1 Authority

This chapter is adopted pursuant to authority granted by Wis. Stats. § 66.0401 and Chapter PSC 128 of the Wisconsin Administrative Code.

119-2 Purpose and Incorporation of State Law by Reference

The purpose of this chapter is to incorporate requirements of Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code as a Village Ordinance and to establish Village regulations for the installation and use of large and small wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission. This Section is also intended to preserve and protect public health and safety, to not significantly increase the cost of the system or significantly decrease wind energy system efficiency, and to allow for an alternative system of comparable cost and efficiency. Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code are adopted and incorporated by reference, and are hereby enforceable by the Village, including but not limited to the owner requirements specified in Chapter PSC 128. An owner must comply with the provisions of this Chapter in addition to, and not in place of, any review, approval, and oversight requirements of the Public Service Commission.

119-3 Permit Required

No person, business, corporation, or other entity shall be allowed to construct, own, or operate a wind energy system or met tower within the Village of Harrison without first obtaining a wind energy system permit as required herein. Any subsequent purchaser or transferee of a wind energy system shall reapply to the Village of a permit, and such reapplication may not unreasonably be denied if the owner and/or subsequent owner remain in compliance with the requirements of this chapter.

119-4 Definitions

For the purposes of this chapter, terms used herein shall have the meaning described in Section PSC 128.01 of the Wisconsin Administrative Code in addition to the following terms which are specifically defined:

Administrator means the Village Planner or its designee.

119-5 Permit Application Requirements

- a) All applications shall be made on forms provided by the Village.
- b) The owner shall be required to reimburse the Village for all reasonable expenses relating to the review and processing of an application for a wind energy system. Upon receipt of the application, the Village will obtain an estimate from an engineer and/or consultant of its choice as to the prospective cost of reviewing and analyzing said application and related submissions. The Village may also obtain estimates from attorneys, planners, environmental specialists and other consultants or experts. Additionally, the estimate shall include a fee as set by the Village Fee & Penalty Schedule for reimbursement of time spent by Village staff associated with reviewing the application. The owner shall submit 50 percent of the total amount of the estimated fees set forth herein before the Village will consider the application complete and begin its review and consideration process. Within ten (10) days of the issuance of the Village's decision on said application, the applicant must pay the remaining balance of the actual fees associated with the review of the application.
- c) Permit applications for large wind energy systems shall include the information required by Section PSC 128.30(2) of the Wisconsin Administrative Code. The application shall also include the names and addresses of residents and property owners located within one mile of the proposed location, together with a written statement signed by the applicant that the notices required by Sections PSC 128.105 and 128.30(5) were provided.
- d) Permit applications for small wind energy systems shall include the information required by Section PSC 128.30(2) of the Wisconsin Administrative Code. The application shall also include a written statement signed by the applicant that the notices to residents and owners of adjacent lots or parcels required by Sections PSC 128.61(1) and 128.61(7) were provided.
- e) Owners of proposed large wind energy systems shall provide information about whether the owner has consulted with and received any non-binding recommendations for construction, operating, or decommissioning the wind energy system from any Federal or State agency and whether the owner has incorporated the non-binding recommendation into the design of the wind energy system.
- f) Applications for proposed wind energy systems shall be reviewed by the Administrator for a determination of completeness in accordance with the requirements of Section PSC 128.31 of the Wisconsin Administrative Code. Following a determination of completeness by the Administrator, the applicant shall provide 10 copies of the complete application to the Village. The Village Clerk shall forward one copy of a complete application to the (library serving the Village), in accordance with Section PSC 128.30(6). One copy of the application shall be made available for public review at the Village Hall during normal Village Hall business hours.
- g) As soon as possible after receiving an application for a wind energy system, the Village Clerk shall cause to be published a Class 1 notice stating that an application has been filed, in accordance with Section 66.0401(4)(a) of the Wisconsin Statutes. The notice shall include

the information required by PSC Section 128.30(5)(b) of the Wisconsin Administrative Code.

- h) An owner shall submit a copy of all necessary State and Federal permits and approvals to the Village within 30 days of the owner's receipt of any permit or approval that was not provided with the owner's application.

119-6 Review Criteria

- a) Wind energy systems shall comply with all applicable State and Federal laws, including the provisions of Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code.
- b) Wind energy systems are exempt from other height requirements of the Village Zoning Ordinance; however, no such system shall be located so as to violate the minimum setback requirements specified in Table 2 in Section PSC 128.61(3) for a small wind energy system and Table 1 in Section PSC 128.13(1) for all other wind energy systems. The applicant may request larger setbacks for consideration by the Plan Commission in order to meet other standards contained in Chapter PSC 128 such as, but not limited to, noise and shadow flicker limitations.
- c) The Village shall deny an application if all or any part of the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. 66.1001(2)(b) and (f), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. 66.1001(2)(i).

119-7 Review Process

- a) The Plan Commission shall have 90 days from the date that the Administrator notifies the owner that the application is complete in which to approve or disapprove the application, unless the time is extended in accordance with Section 66.0401(4)(e) of the Wisconsin Statutes.
- b) The Plan Commission shall hold a public hearing on the proposed wind energy system in accordance with (cross-reference public hearing requirement section of ordinance). Any written comments submitted shall be considered at the public hearing.
- c) Following the public hearing, the Village Board shall issue a written decision to grant or deny a permit for a wind energy system and any conditions of approval. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision must specify the reason for the denial.
- d) The Village Clerk shall provide a duplicate original of the Plan Commission written decision to the applicant. 5. The Village shall maintain a record of the permit review and decision as required by Section PSC 128.34 of the Wisconsin Administrative Code.

119-8 Annual Reports and Decommissioning Review

- a) An owner of a wind energy system within the Village shall submit an annual report to the Plan Commission by January 31 of each year documenting the operation and maintenance of the wind energy system during the previous calendar year.
- b) The Plan Commission will conduct a review of the annual reports submitted, in part to determine if a wind energy system has reached the end of its useful life.

119-9 Emergency Training

An owner of a wind energy system shall provide annual training for any fire, police, or other first responder identified in the owner's emergency plans. An owner shall provide at least eight hours of training during each calendar year and is responsible for all direct training costs.

119-10 Financial Responsibility for Large Wind Energy Systems

- a) An owner with a nameplate capacity of one megawatt or larger shall provide the Village with financial assurance of the owner's ability to pay the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities.
- b) An owner shall provide the Village with three estimates of the actual and necessary cost to decommission the wind energy system. The cost estimates shall be prepared by third parties agreeable to the owner and the Village. The amount of financial assurance required by the Village will be the average of the three estimates.
- c) An owner shall establish financial assurance that is acceptable to the Village and that places the Village in a secured position. The financial assurance must provide that the secured funds may only be used for decommissioning the wind energy system until such time as the Village determines that the wind energy system has been decommissioned, as provided for in PSC 128.19(5)(b), or the Village approves the release of the funds, whichever occurs first. The financial assurance must also provide that the Village may access the funds for the purpose of decommissioning the wind energy system if the owner does not decommission the system when decommissioning is required.
- d) The Village may periodically request information from the owner regarding industry costs for decommissioning the wind energy system. If the Village finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance provided under this Section, the Village may correspondingly increase or decrease the amount of financial assurance required.
- e) The Village may require an owner to submit a substitute financial insurance of the owner's choosing if an event occurs that raises material concern regarding the viability of the existing financial assurance.

119-11 Aerial Spraying

An owner shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within one-half 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 PSC 128.105(1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans, or sweet corn on all or part of the farm field located within one-half mile of a constructed wind turbine.
- b) A material reduction in potato, pea, snap bean, or sweet corn production or a material increase in application costs on all or part of a farm field located within one-half mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

119-12 Monetary Compensation for Nonparticipating Residences within One-Half Mile of a Large Wind Energy System

- a) An owner shall offer an agreement to the owner of a nonparticipating residence, if the residence is located within one-half mile of a constructed wind turbine, that includes an initial annual monetary compensation of \$600 for one turbine located within one-half mile of a nonparticipating residence, \$800 for two turbines located within one-half mile of a nonparticipating residence, and \$1,000 for three or more turbines located within one half mile of a nonparticipating residence.
- b) The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2017. For agreements entered into in 2018 and thereafter, the initial annual amounts shall increase each year by the greater of 2 percent or the increase in the Consumer Price Index from the previous year, as described in Section 196.374(5)(bm)2 of the Wisconsin Statutes.
- c) 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.

119-13 Signal Interference Caused by Large Wind Energy Systems

- a) An owner shall use reasonable efforts to avoid causing interference with commercial and personal communications in use when the wind energy system begins operation to the extent practicable.
- b) An owner shall use reasonable and commercially available technology to mitigate interference with personal communications that were in use when the wind energy system began commercial operations. An owner shall also use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operations, if the wind energy system is causing the interference and the interference occurs at a location at least one half mile from a wind turbine.
- c) An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation.
- d) Before implementing mitigation measures, the owner shall consult with the affected parties regarding the preferred mitigation solution for personal and commercial communications interference problems. Except as provided in the following paragraph L.5, an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.
- e) An owner shall, under a protocol established by Section PSC 128.50(2), implement a new technology solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under Section PSC 128.16(2) and (3) and for which the original mitigation solution is only partially effective.

119-14 Miscellaneous Requirements

A wind energy system shall be subject to the following standards:

- a) *Access.* All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. A tower shall not have step bolts or a ladder within eight feet of the ground that is readily accessible to the public.
- b) *Blade clearance.* The vertical distance from ground level to the tip of a wind generator blade when the blade is at its lowest point shall be at least 30 feet.
- c) *Electrical wires.* All electrical wires associated with a 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 shall be located underground.
- d) *Lighting.* A wind tower and generator shall not use artificial lighting unless such lighting is required by the Federal Aviation Administration.
- e) *Appearance, color, and finish.* The exterior surface of any visible component of a wind energy system shall be of a color and finish as originally applied by the manufacturer. The design of the building or related structures of the wind energy system site shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that are compatible with the surrounding area or natural environment.
- f) *Signs.* No sign, except appropriate warning signs, installer, manufacturer, or owner identification signs, may be placed on any component of a wind energy system.
- g) *Code compliance.* A wind energy system shall comply with all applicable federal, state, and/or local construction and electrical codes. The owner shall provide certification from an electrical inspector licensed in the state showing that the small wind energy system complies with all applicable codes before placing the wind energy system into operation.
- h) *Utility notification and interconnection.* Wind energy systems that connect to the electric utility shall comply with the Public Service Commission of Wisconsin's Rule 119, "Rules for Interconnecting Distributed Generation Facilities."
- i) *Interference.* The wind energy system shall be located so as to not interfere with the efficiency of an existing wind energy system on an adjacent property or under separate ownership.

119-15 Violations and Enforcement

It is unlawful for any person to construct, install, or operate a wind energy system that is not in compliance with this chapter or with any condition contained in a wind energy system permit issued pursuant to this chapter. The Village may order any person who has constructed, installed, or operated a wind energy system not in compliance with this chapter to refrain from any such further construction, installation, or operation, the Village may require removal of any such structures, and the Village may obtain an injunction or restraining order in the event that said order is not immediately followed. The Administrator may enter any property for which a permit has been issued under this chapter to conduct an inspection to determine whether the conditions stated in the permit have been met. In addition, the administrator may issue a citation for any violation of this chapter, with each day of a continuing violation constituting a separate offense.

SEVERABILITY

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given

effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

EFFECTIVE DATE

This ordinance shall be in force and effect upon passage and publication or posting by the Village Clerk as required under Wis. Stat. § 66.0103 and 61.50(1).

Introduced, Approved, and Adopted by the Village Board of the Village of Harrison, Wisconsin this 28th day of May, 2024.


Allison Blackmer, Village President


Attest: Vicki L. Tessen, Village Clerk

Recorded Vote: 7 For 0 Against