

AN ORDINANCE CREATING SECTION 3.13,  
SMALL WIND ENERGY SYSTEMS, OF THE ZONING  
CODE OF THE TOWN OF SHEBOYGAN,  
SHEBOYGAN COUNTY, WISCONSIN

**WHEREAS**, pursuant to Wis. Stat. § 60.10(2), 60.22(3), 61.34, 62.23 and 66.0401, the Town of Sheboygan Town Board has authority to enact regulations in the installation or use of a wind energy system that are no more restrictive than the regulations established by the Wisconsin Public Service Commission (PSC) under the authority of Wis. Stat. § 196.378; and

**WHEREAS**, the PSC established rules for wind energy systems in Wisconsin Administration Code PSC Chapter 128; and

**WHEREAS**, on July 10 2012 the Plan Commission reviewed the herein proposed ordinance and recommended its approval; and

**WHEREAS**, the Town Board held a public hearing, after publication of a Class 1 notice under Wis. Stat. § ch. 985; and

**WHEREAS**, the Town Board has determined that the regulations set forth herein serve to preserve or protect the public health or safety, and do not significantly increase the cost of the wind energy system or decrease its efficiency in accordance with Wis. Stat. § 66.0401(1m).

**NOW, THEREFORE**, the Town Board of the Town of Sheboygan does hereby ordain as follows:

Section 1. Creating Code. Section 3.13 of the Town of Sheboygan Zoning Code shall be created to read as follows:

**“3.13 Small Wind Energy Systems**

- a. Applicability. This Ordinance applies to small wind energy systems, as defined by Wis. Admin. Code 128.01(20), to be 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. This Ordinance applies to the construction of a wind energy system or the expansion of an existing or previously approved wind energy system.
- b. Definitions. The definitions set forth in Wis. Admin. Code Chapter PSC 128 are incorporated herein.
- c. Permitted Uses. Small Wind Energy Systems are permitted uses in all zoning districts provided all requirements of this Ordinance are met.

SMALL WIND

d. Owner Requirements. The owner requirements specified in Wis. Admin. Code PSC 128.13-128.19 related to the following are hereby incorporated in their entirety:

- (1) siting criteria, including setback and height requirements;
- (2) noise criteria;
- (3) shadow flicker;
- (4) signal interference;
- (5) stray voltage;
- (6) construction and operation, including physical characteristics; and
- (7) decommissioning.

Small wind energy systems shall be subject to the exemptions and modifications required by Wis. Admin. Code §§ PSC 128.60 and 128.61.

e. Application and Notice Requirements.

- (1) At least 60 days before an owner files an application to construct a small wind energy system, the owner shall file a notice of the proposed construction to adjacent landowners and the Town Clerk.
- (2) An owner shall file with the Town Clerk twelve (12) copies of an application to construct a small wind energy system. Such application shall include the information specified in Wis. Admin. Code § PSC 128.30(2), except the emergency plan and decommissioning and site restoration plan, and shall include all worksheets, maps, and other attachments included in the application. The owner shall ensure that all information contained in the application is correct. The owner shall also provide the following:
  - (a) documentation showing that the real property owners consent to the installation of the proposed small wind energy system on their property;
  - (b) copies of any wind energy system easements that have been executed and/or recorded in the Register of Deeds Office;
  - (c) copies of all necessary state and federal permits and approvals.
- (3) On the same day an owner files an application with the Town Clerk, the owner shall provide written notice of the filing to property owners and residents located within one (1) mile of the proposed location of the wind energy system facility. Such notification shall meet the requirements of Wis. Admin. Code § PSC 128.30(5)(a). An application is considered "filed" the day the owner notifies the Town in writing that all application materials have been filed.

- (4) Within 45 days of the filing of an application, the Plan Commission shall determine whether the application is complete and notify the applicant as to the determination. An application is complete if it meets the requirements of Paragraph 2, above. If the Plan Commission determines that the application is incomplete, it shall provide notice to the owner stating the reason for the determination, and the owner shall provide the information necessary to complete and re-file the application. There is no limit on the number of times an applicant may supplement and re-file an application. If the Town fails to make a determination as to the completeness within 45 days after the application is filed, it shall be deemed complete. Each time an owner supplements an incomplete application, an additional 45-day completeness review period shall begin the day after the Town receives responses to the items identified in the notice.
- (5) As soon as possible after receiving the application for approval of a small wind energy system, the Town Clerk shall publish a Class 1 Notice, under Wis. Stat. Chapter 985, stating that an application for a wind energy system has been filed with the Town. The notice shall include the following:
  - (a) brief description of the proposed wind energy system and its proposed location;
  - (b) the locations where the application is available for public review;
  - (c) the method and time period for public comments; and
  - (d) the approximate schedule for review of the application by the Town.
- (6) The Town Clerk shall make an application for a wind energy system available for public inspection at the Town Hall and at the Mead Public Library, 710 North 8<sup>th</sup> Street, Sheboygan, Wisconsin 53081.
- (7) The Plan Commission shall review and make a recommendation as to the approval of the application. At the Town Board's option, the public meeting may be held by the Town Plan Commission.
- (8) The Town Board or Plan Commission shall hold at least one public meeting prior to making a decision on the application to inform the public about the proposed small wind energy system and to obtain public comments thereon. At least one business day prior to the public meeting, the public may submit written comments to the Town Clerk during the Clerk's regular office hours, by mail, or at the drop-box at the Town Hall.

- (9) The Town Board or Plan Commission may request additional information necessary to understand the small wind energy system after the Plan Commission has determined the application is complete. An owner shall provide additional information in response to all reasonable requests in a timely, complete and accurate manner.
- (10) The Town Board shall approve or disapprove an application no later than 90 days after the day on which the Plan Commission notifies the applicant that the application is complete. If the Town Board fails to act within the 90 days, or within the extended review period, the application is considered approved. The review period may be extended if within the initial 90-day review period, the Town Board authorizes in writing any combination of the following extensions, except that the total amount of time for all extensions granted hereunder may not exceed 90 days:
  - (a) up to 45 days if the Town Board needs additional information to determine whether to approve or deny the application;
  - (b) up to 90 days if the owner makes a material change to the application for approval;
  - (c) up to 90 days for other good cause specified in writing by the Town Board.
- (11) If the wind energy system is proposed to be located in more than one political subdivision, the Town may conduct a joint application review process in accordance with Wis. Admin. Code § PSC 128.30(7).

f. Written Decision.

- (1) The Town Board shall issue a written decision to grant or deny an application for a small wind energy system. The decision shall include findings of fact supported by evidence in the record. Any denial shall specify the reason for denial.
- (2) The Town Clerk shall provide a copy of the written decision to the owner and to the Public Service Commission. If approved, the Town shall provide the owner with a duplicate original of the decision, and the owner shall record such original with the Sheboygan County Register of Deeds Office.
- (3) Change in ownership does not affect the approval of a small wind energy system. The owner shall provide not less than 90 days prior written notice to the Town Clerk advising of the transfer of ownership.

g. Modifications. An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town. The owner shall submit an application for the material change, along with the appropriate fee, to the Town Clerk. The application and notice requirements, except the pre-application notice, and written decision requirements of this Ordinance shall apply to any application for a material change.

h. Complaint Process. The complaint process and notice requirements set forth in Wis. Admin. Code § PSC 128.40 are incorporated herein, except as exempted under Wis. Admin. Code § PSC 128.60.

i. Fees.

(1) An owner shall submit a non-refundable application fee as set forth in the Town of Sheboygan Zoning Fee Resolution, which may be amended from time to time by Town Board Resolution.

(2) An owner shall be responsible for all reasonable fees and costs incurred by the Town Board for any services necessary to review an application, which may include the costs of services provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts of the Town's choosing. The owner shall be responsible for third-party inspection fees regarding compliance with approved construction requirements.

(3) An owner shall deposit 2% of the total estimated project cost, or an amount as otherwise determined by the Town Board, with the Town Clerk. Such deposit represents 50% of the total estimated amount of reimbursement for the Town's review of the application. Such amount shall be paid before the Town issues a written decision on the application. The owner shall be responsible for the difference between the deposited amount and the Town's actual fees. The Town shall hold the estimated fees in a non-interest bearing account and shall refund any overpayment of estimated fees to the owner one year after the wind energy system commences operation. Any fees or costs that remain unpaid for more than 30 days after written demand by the Town shall result in the application being denied. Any fees that remain unpaid after 30 days shall accrue interest at a rate of 12% per annum and may be assessed against the property as a special charge.

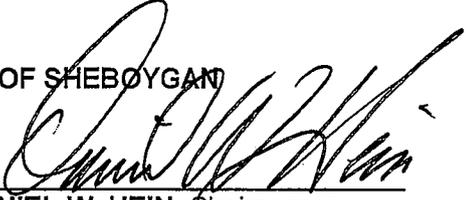
j. Administrative Code References. All references to the Wis. Admin. Code Chapter 128 are to the 2011 version. Any amendments to Chapter 128 shall be incorporated herein."

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

Section 3. Effective Date. This Ordinance shall take effect the day after publication or posting.

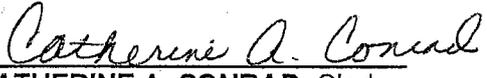
Enacted this 17<sup>th</sup> day of July, 2012.

TOWN OF SHEBOYGAN

By:   
DANIEL W. HEIN, Chairperson

**CERTIFICATE OF ENACTMENT**

I hereby certify that the foregoing Ordinance was duly enacted by the Town Board of the Town of Sheboygan on the 17<sup>th</sup> day of July, 2012.

  
CATHERINE A. CONRAD, Clerk

Published/Posted this 21<sup>st</sup> day of July, 2012.

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