

WIND ENERGY DEVICE ORDINANCE
CHEROKEE COUNTY, IOWA

AN ORDINANCE ADDRESSING STANDARDS, CONDITIONS, APPLICATION, REVIEW AND APPROVAL FOR THE CONSTRUCTION AND MAINTENANCE OF WIND ENERGY DEVICES WITHIN CHEROKEE COUNTY, IOWA.

WHEREAS, it is deemed advisable and recommended by the Cherokee County Board of Supervisors to create and enforce an ordinance in Cherokee County addressing the construction and maintenance of wind energy devices proposed to be erected within Cherokee County.

WHEREAS, the Cherokee County Board of Supervisors wishes to adopt and enforce the following wind energy ordinance to better promote the health, safety and welfare of the county's residents and businesses.

NOW, THEREFORE, BE IT ORDAINED that the Wind Energy Device Ordinance is hereby adopted with Cherokee County, Iowa and includes the following provisions:

Section 1. Purpose. The purpose of this ordinance is to provide for the regulation of owners/developers engaged in the construction, erection, placement, location and maintenance of wind energy devices in Cherokee County; and to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of wind energy devices and associated structures.

Section 2. Jurisdiction. This ordinance is adopted by the Cherokee County Board of Supervisors governing all lands with the unincorporated areas of Cherokee County, Iowa. This ordinance and its provisions shall not apply to those properties or projects occurring within the incorporated cities in Cherokee County.

The ordinance will apply to the filing of a conditional use permit for the following zoning districts within the unincorporated areas of Cherokee County and they are as follows: Agricultural Conservation, Agricultural Residential, Residential, Floodplain, Commercial, Light and Heavy Industrial and HUD.

Section 3. Definitions.

- a. *Administrator*-Any person or firm appointed by Cherokee County Board of Supervisors to oversee the permitting and compliance of the Wind Energy Device Ordinance.
- b. *Commercial Wind Energy Device*-any wind energy device with a nameplate capacity of more than 100 kW of which its primary intent is to generate electrical power to be sold to utility or power companies.
- c. *Owner/Developer*-shall mean the individual or entity that intends to own and operate the wind energy system in accordance with this ordinance.
- d. *Rotor Diameter*-means the cross sectional dimension of the circle swept by the rotating blades.
- e. *Total Height*-means the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.
- f. *Tower*-means the monopole, freestanding, or guyed structure that supports a wind generator.
- g. *Wind Energy Device*-means equipment that converts and then stores or transfers energy from the wind into usable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, wire, inverter, batteries or other components used in the system. The term wind energy device often refers to and includes wind towers, wind turbines, wind generators, windmills or other wind energy conversion systems.
- h. *Meteorological Tower (or Met Tower)*-Any meteorological, measuring or surveying equipment erected on or attached to any tower, monopole, or guyed structure to verify the wind and weather resources found within a

certain area. Meteorological towers are also subject to permitting on both temporary and permanent structures.

- i. *Small Wind Energy Device*-A wind energy system that is used to generate electricity and has a nameplate capacity of 100kW or less. Wind energy devices with a generating capacity of 20kW or less may be used for residential or personal use. A wind energy device with a generating capacity between 20kW and 100kW is considered small wind energy for commercial/industrial applications. A wind energy device is considered "small" only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supply by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with Section 199, chapter 15.11 (5) of the Iowa Administrative Code.

Section 4. Wind Energy Requirements

- a. Location and Height

Commercial wind energy devices shall not be permitted within any defined residential zoned district. Commercial Wind energy devices shall be limited to not less than 1,250 feet separation distance from any residential zoned district. No height limitations shall apply in all other zoning districts, except that no wind energy device, meteorological tower or other associated structures shall be permitted to extend into approach zones, clear zones, or other restricted air space required for the protection of any airport.

- b. Setbacks.

Commercial wind energy devices -shall be set back a distance equal to 110 % its total height from any public right of way, overhead utility lines or adjacent property lines not under the same ownership unless written consent is granted by the property owner or entity with jurisdiction over the street, utilities or adjacent properties. With that stated, those wind energy devices that are located on land adjacent to property under the same ownership may have the property line setback requirement waived; however, the setbacks still apply to overhead utility lines and public right-of-ways. Commercial wind energy devices shall be setback a distance of no less than 1,250 feet from any human occupied dwelling. A human occupied dwelling is defined as one that is currently occupies or capable of being occupied for residential purposes. A greater setback may be required to minimize shadow flicker, nuisance noise, and other possible documented effects to humans living in these dwellings.

Small wind energy devices- located on a freestanding pole or other tower structure must maintain a setback distance equal to 110% of its total height (limited to a height of 200 feet) from any public street or road right-of-way, overhead utility lines or adjacent property lines not under the same ownership unless written permission is granted by the property owner or entity with jurisdiction over the street, utilities or adjacent properties.

- c. Placement or Spacing

Commercial wind energy device spacing will vary depending on common industry practice and manufacturer specifications. The owner/developer shall consider the 'public interest and the natural environment, and maintain the intent and purpose of this ordinance.

Small wind energy devices designed for residential or personal use shall be erected on either a freestanding pole or tower. In all residential zoned districts, no small wind energy device or accessory structures shall be permitted within the front yard.

- d. Public Lands and Waterways. It is required that the owner/developer of commercial wind energy devices have a preliminary review with the Iowa Department of Natural Resources (IDNR) and the Cherokee County Conservation Board early in the planning stages of all wind energy device projects located in Cherokee County. This review will allow the IDNR and/or County Conservation Board to comment and offer suggestions regarding the siting of wind energy devices near wildlife habitats. The review will also allow IDNR staff or the County Conservation board to identify sensitive environmental concerns near public lands or waters, and to work with the owner/developer to voluntarily identify alternative siting options that minimize negative impacts to environmentally sensitive areas.
- e. Access. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- f. Electrical Wires. All electrical wires associated with any wind energy device, other than wires necessary to the operation of the wind turbine itself shall be located underground. In the instance of commercial wind energy projects, transmission lines or high capacity electrical lines from substations transferring cumulative energy resources from a wind energy project shall not be required to be placed underground.
- g. Lighting. Any wind energy device shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- h. Appearance, Color, and finish. Any wind energy device shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the special exception permit.
- i. Signs. All signs shall be prohibited other than the manufacture or installer's identification sign and appropriate warning signs. Documentation showing any signage is required with the application. Signs indicating the 911 rural addressing of each commercial wind energy device or grouping of multiple wind energy devices shall be placed at each wind energy device site and/or the entry points of access roads as per the Cherokee County 911 - rural addressing signage requirements.
- j. Code Compliance. Any wind energy device shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- k. Utility notification and interconnection.
Commercial wind energy devices that connect to the electric utility shall comply with all local, State of Iowa and Federal regulations regarding the connection of energy generation facilities.

Small wind energy device shall not be installed until evidence has been given that the utility company has authorized interconnection of the small wind device to its electric distribution or transmission, under an agreement approved by and subject to regulation adopted by the Iowa Utilities Board, small wind energy device not connected to a public utility system shall be exempt from this requirement.

- l. Sound. Sound produced by any wind energy devices under normal operating conditions, as measured at the property line shall not produce sound at a level that would constitute a nuisance. Industry standards support that wind energy noise should not exceed 50dba at a distance of 1,250 feet, the setback distance required in Cherokee County to a human occupied dwelling. Sound levels, however, may be exceeded during short term events out of anyone's control, such as utility outages and/or severe wind storms.
- m. Climbing Apparatus. Any commercial wind energy device tower must be designed to prevent climbing within the first ten feet. (10').
- n. Change of Ownership. Any commercial wind energy device, whether singularly or within a group of multiple wind energy devices, shall submit to the Cherokee County Zoning Administrator notification upon change of ownership of commercial wind energy devices.
- o. Electromagnetic Interference. Any wind energy device shall be designed and constructed so as not to cause radio and television interference. If it is determined that the wind energy device is causing electromagnetic interference, the owner shall take the necessary corrective action to eliminate that interference including relocation or removal of facilities, subject to the approval of the appropriate county authority. A zoning

compliance permit granting a wind energy device may be revoked if electromagnetic interference from such device becomes evident.

Section 5. Special Exception Permit

Commercial wind energy devices, wind energy towers or meteorological towers erected in any zoning district may be granted as a special exception and approved by the board of adjustment after a public hearing. The Cherokee County Zoning Administrator shall perform an assessment of the issues raised as a result of erecting any action by the Board of Adjustment. Any conditions or requirements issued as part of the special exception permit shall be clearly stated in the special exception permit.

Small wind energy devices designed, marketed and sold explicitly for personal or private residential or business applications, which has a nameplate capacity of 100kw or less shall be considered a special exception in all zoning districts. For small wind energy devices only, if such device is used expressly for agricultural purposes or to supply power for agricultural buildings or for agricultural purposes, then the wind energy device is determined to be farm exempt, and not subject to these regulations.

Section 6. Permit Requirements

A zoning compliance permit shall be required for the installation of any wind energy device.

The application for zoning permit will be accompanied by a detailed site plan for the wind energy device. A site plan and other such plans and manufacturers specifications shall show the dimensions, arrangements, descriptive data, site layout and other information essential to an understanding of the use and construction of the proposed wind energy device. The permit application shall also be accompanied by an application fee of \$1000 for commercial per site and \$100 per site for small wind energy. A site plan shall include the following at a minimum:

Small Wind Energy

- Location of the proposed wind energy device(s)
- Wind energy device specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)
- Tower foundation blueprints or drawings and tower blueprint or drawing.
- Site layout, including location of property lines, wind turbines, electrical wires, connection points with electrical grid, and related accessory structures.
- FAA Permit Application, if applicable

Large Wind Energy

- Location of the proposed wind energy device(s)
- Wind energy device specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)
- Tower foundation blueprints or drawings and tower blueprint or drawing.
- Site layout, including location of property lines, wind turbines, electrical wires, connection points with electrical grid, and related accessory structures.
- The site plan shall be drawn to scale.
- Documentation of land ownership or legal control of the property.
- FAA Permit Application, if applicable.
- GPS coordinates for wind energy device locations on final/approved site plan
- Applicable for commercial wind energy; the leaseholder or ownership details of the building site.

- Applicable for commercial wind energy; the distances to any human occupied dwellings and the distances to other wind energy devices or other tower structures within 1,250 feet.
- Bond required for a commercial application. Proof of bond shall be provided to the Zoning Administrator before any work is to be started.

Section 7. Notification

The owner/developer shall be responsible for obtaining and submitting to CHEROKEE County an abstractor's or attorney's certificate, at the time the application is made, showing the names and last known addresses of the owners of all property within 2,640 feet (1/2 mile) of the parameter of the total project development site containing wind energy devices). Prior to the public hearing for such special exception permit, notice shall be given by ordinary mail to all adjacent property owners and owners of property within 2,640 feet (1/2 mile) of the proposed site(s) for which the special exception is requested.

Section 8. Review and Approval

A zoning compliance permit shall not be granted for a commercial wind energy device or commercial wind energy project unless and until the following procedures have been fulfilled.

- Pre-application meeting. Whenever a commercial wind energy device, whether singularly or within a group of multiple wind energy devices, is proposed in the jurisdiction of Cherokee County the owner/developer is required to hold a public informational meeting on the proposed development within 90 days prior to submitting an application. A public notice of the meeting shall be published in a newspaper of general circulation within the vicinity of the proposed project site as well as published within the official publications(s) of Cherokee County no less than 4 days and no more than 20 days prior to the meeting. The public notice shall include at a minimum the name of the proposed project, a contact person for the project, the location of the project, the time and place of the meeting and description of the project activities. The owner/developer is responsible in meeting all of the requirements and shall provide documentation to the county that these requirements have been satisfied prior to making application for a building permit.
- Agency notice/review. Prior to submitting an application for a commercial wind energy device, whether singularly or within a group of multiple wind energy devices, the project owner/developer of such structure shall be responsible for notifying applicable the governmental and community agencies and allowing each agency 60 days advance notice to do a preliminary review. Documentation of notification of these agencies, and any reports from the agencies are to be provided to the county when the application is submitted. If any agency does not act with 60 days, the plan may be deemed approved by the agency that filed to act upon proof of notice. It is recommended that any issues be addressed prior to the public hearing. Cherokee County staff and the project application will agree to list of applicable agencies (identified below) to which the applicant will solicit comment from prior to Cherokee County considering an application for wind energy project.
 - Federal Aviation Administration
 - US. Fish and Wildlife
 - Environmental Protection Agency
 - Federal Communications Commission
 - Iowa Department of Transportation
 - Iowa Department of Natural Resources
 - Iowa Utilities Board
 - Office of State Archaeologist
 - Cherokee County Engineer's Office
 - Cherokee County Conservation Board

- Zoning Administrator and Zoning Board

d. The Board of Adjustment may prescribe additional appropriate conditions and safeguards in conformity with the ordinance and other ordinances of the county.

e. Approval of the special exception permit for a wind energy device shall be valid for a period no longer than two (2) years from the date of such permit, unless construction has commenced or the Board of Adjustment specially grants a longer period of time for the building permit.

f. The approval and issuance of a special exception permit for the construction or installation of a commercial wind energy device, whether singularly or within a group of multiple wind energy devices, under this ordinance shall not relieve any permitted, applicant or owner from compliance with all legal requirements, nor relieve the permitted, applicant or owner of any liability for damage or loss resulting from the placement, construction or maintenance of such wind energy device. Cherokee County assumes no liability whatsoever by virtue of the issuance of a special exception permit for wind energy devices.

Section 9. Mitigation of Damages.

In the event there are any damage that occurs during construction or maintenance of any wind energy device, the owner/developer shall be fully responsible to mitigate and correct any damage to public or private infrastructure.

a. Roads and Bridges. Costs of replacement, maintenance, restoration, and/or damage to and/or damage to county bridges or county roads, rights-of-way, or any county infrastructure resulting from modifications, adjustments, heavy or frequent use during construction and operation of the wind energy devices shall be the responsibility of the owner/developer of such project. A separate roads agreement that clearly and specifically lays out the rights and obligations of Cherokee County and the owner/developer with respect to the construction, maintenance and use of roads in connection with the development project will be required as a condition of the permit.

a. Drainage system. The owner/developer of the wind energy device shall remedy any adverse effect on any duly established drainage tile caused by construction or repair of such project.

Section 10. Discontinuance or Abandonment.

Each application for a commercial wind energy device shall have a decommissioning plan outlining the anticipated means and proposed financing methods adequate to remove such structure(s) upon becoming a discontinued use. Any commercial wind energy device that is out-of-service for a continuous one (1) year period will be deemed to have been abandoned and discontinued for use. At such time the wind energy device is determined to be abandoned, the owner shall remove the complete wind energy device at the owner's expense with one (1) Year of receipt of notice. If the owner fails to remove the wind energy device, the zoning administrator may pursue legal action against the owner of such wind energy devices. The bond that has been required will be used to cleanup and abandoned property after the one year period. If the property is sold the bond and the easement has to be transferred to the new owner. The new owner/developer will have to show proof of a performance bond between the landowner and the developer/owner.

Section 11. Penalty

It shall be unlawful for any person, firm or corporation to construct, install, or operate a wind energy device that is not in compliance with this ordinance or with any special conditions contained in the special exception permit. Wind energy devices installed prior to the adoption of this ordinance are exempt. The zoning administrator may enter any property for which a permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

Any person who fails to comply with any provision of this ordinance or an approved special exception permit for any wind energy device shall be deemed a county infraction and punishable by a civil penalty of not less than \$100 but not to exceed \$750.00 plus court costs for the first offense and not less the \$100 but not to exceed \$1,000.00 plus court cost for each repeat offense. Cherokee County may seek all relief prescribed by State law for county infractions. The Chairman of the Board of Supervisors is authorized to enforce this ordinance by issuance of civil citations for county infractions. Each wind energy device determined to be in violation will be considered a separate infraction. Each day that a violation occurs or continues to exist constitutes a separate offense.

Interpretation of Regulations

In their interpretation and application, the provisions of this ordinance, and any amendments and permits pursuant thereto, shall be held to be minimum requirements. Where this ordinance imposes a greater restriction than is imposed or required by other provisions of law, other rules, regulations, or ordinances, the provisions of this ordinance shall govern. This ordinance is not intended to abrogate or annul any easement, covenant or other private agreement provided that where any provision of this ordinance is more restrictive or imposes a higher standard or requirement than such easement, covenant or other private agreement, the provision of this ordinance shall govern.

REPEAL AND SAVINGS CLAUSE.

Effective on the effective date of this ordinance, all ordinances or parts of ordinances previously adopted by Cherokee County which are in conflict with the provisions of this ordinance, or amendments thereto, are hereby repealed. The repeal of said ordinance shall not have the effect to release or relinquish any penalty, forfeiture or liability incurred under said ordinance or any part thereof, and such ordinance and all part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

Validity and severability clause.

Should any section, provision or any part of this ordinance, or amendments thereto, be declared by a court of competent jurisdiction to be invalid or unconstitutional, such ruling shall not affect the validity of the ordinance as a whole or provision or part thereof not specifically included in said ruling.

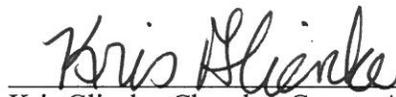
EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its adoption and publication as required by law and as provided for in the Code of Iowa or amendments thereto.

First Reading: 7-25-2017
Second Reading: waived
Third Reading: waived
Adopted? 7-25-2017



Chairman of the Board of Supervisors



Kris Glienke, Cherokee County Auditor