

# WIND TURBINE SAFETY ORDINANCE

## Town of Industry

**A. Title** - This Ordinance shall be known as the “Wind Turbine Safety Ordinance” of the Town of Industry, Maine, and shall be referred to as “this Ordinance.”

**B. Purpose** - The purpose of this Ordinance is to provide for the construction, operation and maintenance of wind turbines in the Town of Industry subject to reasonable conditions that will protect the safety, health and welfare of its citizens and the general public.

**C. Authority** - This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution and the provisions of Title 30-A MRSA Section 3001 (Home Rule).

**D. Validity and Severability** - If any paragraph or provision of this Ordinance is declared by the courts to be invalid, that court decision shall not invalidate any other section or provision of the Ordinance.

**E. Applicability** – This Ordinance shall apply to any wind turbine sited in the Town of Industry.

**F. Permit Requirement** - No new wind turbine shall be constructed, installed or placed and no existing wind turbine shall be altered, expanded or reconstructed until a permit has been obtained from the Planning Board pursuant to this Ordinance.

**G. Safety Buffer Standards** - Any wind turbine or combination of wind turbines shall maintain, throughout the life of the project, a safety buffer as specified below. The safety buffer shall be from: any property line not under direct control of the wind turbine project developer; any structure not under direct control of the wind turbine project developer; any private roadway not under direct control of the wind turbine project developer; and any other wind turbines not under direct control of the wind turbine project developer:

1. Wind turbine projects that require review under the Maine Department of Environmental Protection (DEP) Site Location of Development Law shall maintain a safety buffer of 7000 feet.

2. Wind turbine projects that do not require review under the DEP Site Location of Development Law shall maintain a safety buffer based on the height of the turbine as follows:

200-300 feet in height - a safety buffer of 5000 feet

100-199 feet in height - a safety buffer of 2000 feet

Less than 100 feet in height – a safety buffer of 1000 feet

3. Roof-mounted wind turbines with an output of less than .5 kw and with a manufacturer's rating of less than 30 DbA shall maintain a safety buffer equal to 1.5 times the height of the wind turbine

**H. Provision of Insurance** – A-wind turbine project requiring a permit by the DEP under the Site Location of Development Law shall provide to the Town an insurance policy for \$3,000,000 for the life of the project naming the Town as beneficiary to cover the catastrophic destruction of the turbine(s) or the failure of the project to produce electricity for six or more months. This amount of insurance may be adjusted by the Legislative Body to reflect changes in the Consumer Price Index (CPI).

A wind turbine that does not require a permit from the DEP shall show proof that liability insurance is in effect to cover the catastrophic failure of the turbine(s).

Any insurance coverage that is required shall be maintained by the wind power project developer for the duration of the wind power project. A certificate of such insurance coverage shall be made available to the CEO upon request.

**I. Application Process and Procedure - Pre-Application Conference:** All persons seeking approval of the Planning Board under this ordinance shall meet with the Code Enforcement Officer (CEO) no less than thirty (30) days before filing an application with the Town. If a project is seeking approval from the DEP under the Site Location of Development Law the pre-application meeting will take place before any filing takes place with the DEP. At this meeting the CEO shall explain to the applicant the ordinance provisions as well as the application forms and submissions that will be required under this ordinance and discuss whether any of the submission requirements may be waived.

**Application Submission Requirements:** All persons seeking approval of the Planning Board under this ordinance shall submit an application which includes the following information:

1. Written documentation of the applicant's right, title or interest in the property on which the wind turbine project is to be sited through either ownership or perpetual easement, including the name and address of the property owner(s) and the applicant.
2. A list of names, addresses, tax map and lot number of all property owners abutting the applicant's property.
3. A USGS quadrangle map, sized to 8½"x 11", of the property on which the wind turbine(s) is proposed, with the general area cross-hatched or otherwise demarcated.
4. A project description, which includes specific information on the type, size, supporting structure type and height, rotor material and diameter, the rated power output,

performance, safety and noise, and the manufacturer and model number of the wind energy system.

5. Proof of adequate liability insurance.

6. A site plan of the subject property with a north arrow and drawn at scale of not less than 100' to the inch showing the planned location of the wind turbine(s) as well as the location of and distance in feet to:

- (a) Safety buffer setback line
- (b) Adjacent property lines
- (c) All roads and driveways
- (d) Easements
- (e) Rights of way
- (f) All structures
- (g) Utility lines
- (h) Great ponds, streams and all wetlands
- (i) Proposed access roads

For wind turbines requiring a permit from the DEP the site plan shall be prepared by a Maine licensed engineer or land surveyor and the following additional submissions shall be required:

- (j) A copy of the DEP approval, with any conditions.
- (k) Certification by a qualified professional that the wind turbine is at or less than ninety decibels within fifty feet of the base of the support tower.

7. If a connection to the publicly regulated utility grid is proposed, a letter of agreement between the applicant and the utility verifying that the proposed connection is acceptable, and/or other evidence making clear that the utility is aware of the proposed connection and finds it acceptable.

**J. Submission Waiver** - The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application the information is not required to determine compliance with the standards of this ordinance.

Only those items in Para I. that the Board finds would be unduly burdensome for the applicant to provide may be waived. Items I.6 (j), I.6 (k) and any insurance requirements for DEP-scale projects, may never be waived.

**K. Hearing Requirement** - The Planning Board shall hold a public hearing within thirty (30) days of the date on the notice to the applicant that the application was deemed complete. The Planning Board shall publish the time, date and place of the hearing at least one (1) time at least seven (7) days prior to the hearing in a local newspaper with area-wide circulation. Abutting property owners shall be notified by registered mail by the Town of the hearing. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

**L. Application Review** - The following procedures and requirements shall apply to all applications for wind turbine projects in the Town of Industry.

1. Application shall be made in writing and delivered to the Code Enforcement Officer (CEO) by the wind turbine project developer and the owner of the property, or the owner's agent as designated in writing by the owner, and the application shall be accompanied by the payment of the required application fee.
2. The completed application, together with the submissions required by Para. I of this Ordinance, shall be placed on the Planning Board's agenda for consideration within thirty (30) days of its receipt. Any application which is determined by the Code Enforcement Officer to be incomplete shall not be placed on the agenda, but shall be returned to the applicant by the Code Enforcement Officer with an indication of the additional submissions or other information required.
3. Within sixty (60) days of the receipt of a completed application or in the case of a DEP Project, within one hundred twenty (120) days of the receipt of a completed application, or within another time limit as may be otherwise mutually agreed upon by the Planning Board and the applicant, the Board shall act to approve, approve with conditions, or disapprove the wind turbine project as submitted or amended.
4. The Applicant has the burden of proving that the application is in compliance with the requirements of this Ordinance and all other applicable provisions of law.
5. Prior to taking final action on any application the Planning Board shall hold a hearing to afford the public the opportunity to comment on the application.
6. After the close of the public hearing held on the application, the Planning Board shall review the completed application and submissions, and make a determination as to whether the proposed wind turbine project will meet the standards contained in this Ordinance. The Planning Board shall issue specific written findings and conclusions as well as the reasons or basis thereof, as to each standard, and either approve, approve with conditions, or disapprove the application.

**M. Fees** - The payment of the Application Fee required by this paragraph must accompany the application at the time it is submitted.

DEP Project Application Fee: \$1,000  
DEP Project Annual Administrative Fee: \$50,000

. (This amount may be adjusted by the Legislative Body to reflect changes in the CPI.)

Non-DEP Project Application Fee: \$100

**N. Prevention of Blight** - If the Selectmen determine that the assessed property value within five miles of any wind turbine(s) approved by the DEP and subsequently permitted by the Planning Board has, because of the project, been devalued to the point that a blighted area exists, they are authorized to seek by all means both legal and equitable the elimination of the blighted area.

Before making a determination under this paragraph, the Selectmen shall hold a public hearing on the question and make specific findings and conclusions, following the procedures set forth in 30-A M.R.S.A. §2691 (3).

**O. Enforcement and Penalties** - Failure to comply with the standards set forth in this Ordinance or with any conditions of approval specified by the Planning Board shall be considered a violation of this ordinance and shall be deemed to be a nuisance.

The CEO, as appointed by the Board of Selectmen, shall enforce this Ordinance. The CEO is authorized to access any project site approved by the DEP and subsequently permitted by the Planning Board at any time to inspect wind turbine(s) and to inspect any other wind turbines during normal working hours. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The CEO may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith and/or that the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Any person or company that owns or controls any building or property connected with a wind turbine project that violates this ordinance shall be liable for civil penalties in accordance with Title 30-A MRSA §4452. Each day such a violation continues after notification by the CEO shall constitute a separate offense. Each offense shall be subject to civil penalties, orders to correct violations and attorney and expert witness fees.

**P. Expiration** - A Permit secured under the provisions of this Ordinance shall expire if the work is not commenced within one year of the date on which the permit is granted.

**Q. Appeals** – Any appeal by any aggrieved party with standing from any decision of the Planning Board to approve, approve with conditions or deny any application made or failure to take action on an application, shall be to the Superior Court in accordance with Rule 80(B) of the Maine Rules of Civil Procedure, said appeal to be filed within thirty (30) days of the written decision, action or failure or refusal to take action complained of.

**R. Amendments** - This Ordinance may be amended by a majority vote of the Legislative Body.

1. An amendment to this Ordinance may be initiated by:
  - (1) the Planning Board provided a majority of the Board has so voted;
  - (2) request of a majority of the Selectmen; or
  - (3) written petition of a number of voters equal to at least 10% of the number of votes cast in the Town of Industry in the last gubernatorial election.
2. The Planning Board shall hold a public hearing on the proposed amendment at least 15 days prior to the Town Meeting at which the proposed amendment is to be considered. Notice of the public hearing shall be posted in the municipal office at least 14 days before the public hearing and published at least twice in a newspaper that has general circulation in the Town of Industry. The date of the first publication must be at least 14 days before the hearing and the date of second publication must be at least 7 days before the hearing.
3. Adoption of Amendment. An amendment to the Ordinance may be adopted by a majority vote of a special Town Meeting attended by at least 25 Industry residents over 18 years or by a majority vote of the Annual Town Meeting.
4. Unless otherwise specifically indicated, all amendments to the Ordinance apply retroactively to applications pending at the time of amendment.

**S. Conflicts with other Ordinances** - Whenever this Ordinance conflicts with any other ordinance, regulation or statute, the more restrictive provision shall apply.

**T. Definitions** – Any words in this Ordinance not defined below shall have their common and ordinary meaning.

1. *Annual Administrative Fee* – A fee paid annually by January 15 to the Town to cover the cost of providing additional administrative, enforcement and public safety services.

2. *Blighted area* – A. An area in which there are a substantial number of buildings or improvements that are detrimental to the public health, safety or welfare because of:

- (1) Dilapidation, deterioration, age or obsolescence;
  - (2) Inadequate provision for ventilation, light, air, sanitation or open spaces;
  - (3) High density of population and overcrowding;
  - (4) The existence of conditions that endanger life or property by fire and other causes;
- or
- (5) Any combination of these factors; or

B. An area that is a threat to the public health, safety or welfare in its present condition and use because of:

- (1) Inadequate street layout, unsanitary or unsafe conditions;
  - (2) Tax or special assessment delinquency exceeding the fair value of the land;
  - (3) The existence of conditions that endanger life or property by fire and other causes;
- or
- (4) Any combination of these factors.

3. *Catastrophic destruction* - The destruction of a wind turbine by an act of man or natural causes.

4. *Under direct control of the wind turbine project developer* - Any and all components of a wind turbine project that are directly controlled by the wind turbine project developer through fee simple ownership of the land and everything thereon, or through a perpetual easement with another property owner.

5. *Nuisance* - The unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.

6. *Perpetual Easement* – A legally binding easement that gives the wind turbine project developer, for a fee, perpetual rights to property not owned by the wind turbine project developer throughout the life of the project. A perpetual easement can be no less restrictive than any requirement established by the DEP as part of approval of the wind turbine project under the Site Location of Development Law.

7. *Turbine height* - The distance measured from the surface of the ground at the base of any supporting structure to the highest point of any turbine rotor blade measured at the highest arc of the blade.

8. *Wind turbine* - An electromotive device including the blades, rotor, and associated mechanical and electrical components and supporting structure intended to convert wind energy to electricity.

9. *Wind turbine project* - Any wind turbine(s) and any associated support structures, monitoring devices, buildings, transmission networks, roads, erosion control (both temporary and permanent) under the direct control of the wind turbine project developer.

10. *Wind turbine project developer* – The individual, or other legal entity, that is responsible for the planning, construction and maintenance of any wind turbine project in the Town of Industry. The wind turbine project developer shall also be the applicant for any permits necessary under his Ordinance.

**U. Effective Date** – This Ordinance shall become effective immediately upon approval by the Legislative Body of the Town of Industry or earlier as permitted or provided by law.

Adopted: March 9, 2013