

Town of Penobscot Wind Energy Systems Ordinance

Adopted **03/08/2011**

Section 1 Ordinance Administration

A. Title

This Ordinance shall be known as the “Town of Penobscot Wind Energy Systems Ordinance”.

B. Purpose

The purpose of this ordinance is to regulate the placement and construction of Wind Energy Systems as defined in Section 11 of the Ordinance, while preserving the Town’s visual character and scenic resources, minimizing environmental impacts and protecting the public health, safety and welfare of the residents of Penobscot.

C. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section § 1 of the Maine Constitution (Municipal Home Rule), the provisions of Title 30-A M.R.S.A. § 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. § 4312, etc. seq. (*Comprehensive Planning and Land Use Regulation, or “Growth Management Act”*) and 30-A M.R.S.A. § 4452 (“Enforcement of Land Use Laws and Ordinances”).

D. Conflicts with Other Ordinances, Laws and Regulations

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

E. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decisions shall not invalidate any other section or provision of the Ordinance.

F. Permitting Authority

A Wind Energy System for either residential or commercial use shall be permitted through the Planning Board.

G. Applicability

This local land use ordinance applies to all construction and expansion of new or existing Wind Energy Systems and all supporting structures in the Town of Penobscot.

H. Penalties

Any person or company that owns or controls any building or property connected with a wind energy system that violates this Ordinance shall be penalized in accordance with Title 30-A M.R.S.A. § 4452. Each day such a violation continues after notification by the CEO shall constitute a separate offense.

I. Availability

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public upon request. Copies shall be made available to the public at reasonable cost at the expense of the person making the request.

J. Effective Date

This Ordinance was adopted by the Municipal Legislative body on 03/08/2011.

Section 2 Location

- A. On lots one half (1/2) acre up to five (5) acres, one (1) Wind Energy System 10 kW or less and meeting all other criteria of this ordinance may be allowed.
- B. On lots five (5) acres or more, one (1) Wind Energy System 50 kW or less may be allowed after Planning Board review and having met all other criteria of this Ordinance.

Section 3 Setbacks

- A. All parts of a Wind Energy System shall be set back from all adjoining property lines, roads, easements, rights-of-way (ROW), and any structures a minimum distance equal to one and one-half (1 ½) times the maximum height of the tower and blade height (when blades are vertical) as measured from the ground.
- B. Setbacks from the applicant/property owner's habitable structure may be reduced on a case-by-case basis, as long as other setback requirements can be met. (example: rooftop models)
- C. Approval to build or operate a Wind Turbine or Wind Energy System applies only to that portion of the project located within the boundaries of the Town of Penobscot. However, the application must take into account the entire Wind Energy System across all the municipal boundaries, including but not limited to the total number of Wind Turbines, Turbine Height, Wind Turbine location and all other relevant facts and data that may directly or indirectly affect the operation and viability of that portion of the Wind Turbine Project located in the Town of Penobscot.

Section 4 Height

- A. No Wind Energy System shall have a maximum height in excess of 100 feet as measured from the ground to the highest point as measured from the top of the blade when vertical. This section is not subject to waiver.

Section 5 Application Fee, Yearly Renewable Bond, Escrow Account Required

A. Application Fee

An application for Planning Board approval shall include an application fee of \$20.00 per kW nameplate capacity. The application shall not be considered complete until this fee is paid.

B. Yearly Renewable Bond

A yearly renewable bond indemnifying the town for 100 % of the costs of removal of the system as determined by the Planning Board shall be submitted to the municipal authority before construction starts and maintained yearly as long as the structure exists. Should the bond not be renewed, the bonding company must give the Town sixty (60) days notice of non-renewal and advise the Town of steps required to renew the bond.

C. Escrow Account

In reviewing an application for compliance with this Ordinance, the Permitting Authority may retain professional services as necessary to assist with its review, including but not limited to those of an attorney, engineer, biologist, or land use planner. Within fourteen (14) days of filing an application the Applicant shall deposit in a joint escrow account with the Town such sums as the Town deems necessary as partial reimbursement for the appropriate Town expenses in hiring consultants and experts. The Town may require additional escrow funds as circumstances dictate. The balance of the escrow account shall be returned to the owner/operator after all Town expenses have been paid, and after a permit is granted or denied or the Applicant has withdrawn.

Section 6 Noise

- A.** Wind Energy System sounds shall not exceed 35dBA for any contiguous five (5) minute period as measured anywhere beyond the property boundaries of the Wind Energy System's owner/operator or on the adjoining properties including the adjoining property lines and habitable structures, except during short-term (12-hours or less) weather events, even if mitigation waivers are in effect for these adjoining properties.
- B.** There shall be no additional dBC (low level) Wind Energy System sounds emitted beyond the property boundaries of the Wind Energy System's owner/operator at any time as established by pre-construction ambient low-level sound measurements performed by a properly credentialed professional approved by the CEO/Planning Board and paid for by the applicant.
- C.** Upon complaint of any neighboring resident affected by the Wind Energy System sounds, ambient and maximum permitted sound measurements shall be performed by an agent designated by the CEO/Planning Board. The agent's report shall be submitted to the Planning Board for review. The fee for this service shall be paid by the complainant unless the maximum permitted decibel level has been exceeded, in which case, the Town shall pay the fee. The current owner of the system shall correct the violation and reimburse the Town for the fee for the noise level measurements within thirty (30) days of notice by the Code Enforcement Officer.
- D.** If the maximum decibel reading anywhere on the complainant's property is exceeded, the installation shall be considered a nuisance and must be corrected within ninety (90) days from notification of the violation and, if the violation cannot be corrected, the Wind Energy System shall be removed or re-located.
- E.** No part of the above Section 6 is subject to waiver.

Section 7 Scenic/Visual Impact

- A. The Wind Energy System shall not have a negative visual impact on any habitable structures on abutting or adjacent properties. This also applies to all habitable structures located in the surrounding municipalities.
- B. There shall be no negative visual impact allowed in or on scenic or natural areas as identified in the Penobscot Comprehensive Plan or any other town Ordinances.
- C. Shadow Flicker and Ice Throw shall be limited to the turbine owner's property at all times. Violations of this section shall be considered a nuisance.

Section 8. Submission Requirements

For all Wind Energy Systems the following submissions shall be required unless waived:

- A. **Completed Application (provided by the Code Enforcement Officer).**
- B. **Site Location Map** A USGS quadrangle map, sized to 8 ½"x 11", of the property on which the Wind Energy System is proposed, with the General area cross-hatched or otherwise demarcated.
- C. **Tax Map** Town of Penobscot Property Tax Map (8 ½" x 11") on which the Wind Energy System is proposed, with the property cross-hatched or otherwise demarcated. Copies of these maps are available at the Town Office.
- D. **Project Description** This includes specific information on the type, size, tower type and height, rotor material and diameter, rated Power output, performance, safety and noise, manufacturer, model and serial number of the Wind Energy System.
- E. **Site Plan** On the subject property show the planned location of the Wind Energy System as well as the location of and distance in feet to:
 - a) setback lines
 - b) adjacent property lines
 - c) all roads and driveways
 - d) easements
 - e) Right of Ways
 - f) habitable structures
 - g) utility lines
 - h) great ponds, streams and all wetlands
 - i) proposed access roads
 - j) significant wildlife habitat
 - k) erosion control BMP's as outlined in the Maine Erosion and Sediment Control Law (Title 38 M.R.S.A. Section 420-C)
 - l) migratory flyways
 - m) all other structures
- F. **Description of Normal and Emergency Shutdown Procedures and Braking System**
 - a.) An automatic braking, governing or feathering system shall be required to prevent uncontrolled rotation.
- G. **Utility Contract**

- a.) If connecting to the publicly regulated utility grid is proposed, a copy of the contract between applicant and 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.

H. Photographs

- a.) Aerial photographs of the proposed site.

I. Scenic Assessment

The Planning Board may require a scenic assessment for a Wind Energy System consisting of one or more of the following:

- a.) A visual analysis composed of elevation drawings of the proposed Wind Energy System and any other proposed structures, showing height above ground level. The analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the site that is intended to lessen the system's visual prominence.
- b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing trees and other significant site features; and the method of fencing, if any.
- c.) A narrative discussing the extent to which the Wind Energy System would be visible from a designated scenic resource, the tree line elevation of vegetation within two thousand (2000) feet and the distance to the proposed facility from the designated scenic resource's noted viewpoints as identified in the Penobscot Comprehensive Plan or other Ordinances.
- d.) A graphic mock-up of the proposed system from the 4 directions, North, South, East, West.

J. Design Standards

- a.) None of the individual components of a Wind Energy System used to generate electricity including blades and all necessary parts shall have a diameter of more than 50 feet.
- b.) No wind turbine blades of a Wind Energy System shall be lower than twenty-five (25) feet from the ground as measured at the lowest arc of the blades.
- c.) A Wind Energy System shall be equipped with both manual and automatic over-speed controls.
- d.) The Wind Energy System shall be operated and located such that no disruptive electromagnetic interference with signal transmission or reception is caused beyond the site. If it is demonstrated that the system is causing disruptive interference beyond the site, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.
- e.) The Wind Energy System shall be designed and installed such that unauthorized public access via step bolts or a ladder is prevented for a minimum of fifteen (15) feet above the ground.
- f.) The Wind Energy System shall incorporate a non-visually reflective surface to minimize any visual disruptions subject to Planning Board Approval.
- g.) All on-site electrical wires associated with the Wind Energy System shall be installed underground except for 'tie-ins' to any public utility company transmission poles, towers and lines. This standard may be modified by the

permitting authority if the project terrain is determined to be unsuitable for underground installation.

- h.) The Wind Energy System shall not be lighted unless required by the FAA.
- i.) The Wind energy System shall not display any permanent or temporary signs, writing, symbols, logos or any graphic representation of any kind except appropriate manufacturer's or installer's identification and warning signs.
- j.) The documentation of the pre-construction ambient low-level sound (dbC) measurements at the Wind Energy System owner's property boundaries performed by a properly credentialed professional approved by the CEO/Planning Board and paid for by the applicant must be presented. This item may not be waived.
- k.) The Town of Penobscot shall have majority ownership (at least 51%) and control of any community wind project and all (100%) of the direct financial benefits shall accrue to benefit all of the residents of the municipality. All payments shall be directed to the Town of Penobscot and will be used for municipal expenses as directed by the Selectmen.

Section 9 Abandonment

- A. A Wind Energy System which is not generating electricity for twelve (12) consecutive months shall be deemed abandoned and shall be dismantled and removed from the property by the owner within 120 days of receipt of notice from the town. Failure to remove the system within 120 days of receipt of notice from the town will result in immediate forfeiture of the entire bond posted by said owner.
- B. A Wind Energy System owner may request in writing to the Code Enforcement Officer a one-time extension of up to one (1) year if the owner is actively pursuing the repair of the Wind Energy System for future use.

Section 10 Enforcement

- A. **Nuisances.** Any violation of this Ordinance shall be deemed to be a nuisance.
- B. **Code Enforcement Officer:**
 - a.) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
 - b.) The Code Enforcement Officer shall conduct on-site Inspections to ensure compliance with all applicable laws and Conditions attached to permit approvals. The Code Enforcement officer shall also investigate all complaints of alleged violations of this Ordinance.
 - c.) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and

fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality with the Department of Environmental Protection.

C. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby 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 an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

Section 11 Definitions

Applicant - The legal entity, including successors and assigns that file an application under this Ordinance.

Lot– A single parcel of land as defined by current state laws.

Mitigation Waiver- A legally enforceable, written agreement between the applicant and a non-participating landowner or the town in which the non-participating landowner or the town waive certain setback, noise or other protections afforded in the Ordinance. Mitigation waivers do not apply to Section 4, Section 6 or Section 8(J) (j) in this ordinance.

Scenic Resource - Either a Scenic Resource of state or national significance, as defined in 35-A M.R.S.A. § 3451(9) or a scenic resource of local significance located within the municipality and identified as such in a comprehensive plan, open space plan or scenic inventory adopted by the municipal legislative body.

Shadow Flicker - means alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object.

Short-Term Weather Event- Any storm lasting twelve (12) hours or less.

Wind Energy System – A wind energy generation system consisting of a wind turbine, a tower, and associated control or conversion electronics.

Wind Turbine – The blades, rotor, and associated mechanical and electrical conversion components including the supporting towers.