

AMENDED ORDINANCE NO. 08-07-1

EMMONS COUNTY ZONING ORDINANCE
PERTAINING TO WIND ENERGY FACILITY.

BE IT ORDAINED BY THE EMMONS COUNTY COMMISSION, EMMONS COUNTY, NORTH DAKOTA:

Section 1. Addition: Article XIII shall be added to the Emmons County Zoning Ordinance, and is hereby enacted to include the following:

ARTICLE XIII.

Wind Energy Facility

It is the purpose of this Ordinance to provide a regulatory framework for the siting, construction and operation of Wind Energy Facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of Wind Energy Facilities.

A. Regulatory Framework

1. Zoning

- a. Wind Energy Facilities may be constructed within the County, subject to the restrictions and conditions of this Ordinance.

2. Principal or Accessory Use

- a. A different existing use or an existing structure on the same parcel shall not preclude the installation of a Wind Energy Facility or a part of such facility on such parcel. Wind Energy Facilities that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.

3. Applicability

- a. The requirements of this Ordinance shall apply to all Wind Energy Facilities with one or more Wind Turbines rated at one hundred (100) kilowatts nameplate capacity or larger constructed after the effective date of this Ordinance. No operation of an existing Wind Energy Facility shall be allowed without full compliance with this Ordinance and its Wind Energy Facility Siting Permit, and no modification or alteration of an existing Wind Energy Facility shall be allowed without issuance of a new Wind Energy Facility Siting Permit pursuant to Section B.

B. Wind Energy Facility Siting Permit

1. Application for Permit

- a. No work, except for wind monitoring, soil testing and other survey work, may commence to construct a Wind Energy Facility until a County Wind Energy Facility Siting Permit ("Permit") has been issued by the County Commission. The prospective Permittee shall submit an application for said Permit to the County Zoning Commission. The application shall be signed by an authorized representative of the prospective Permittee, include a fee of \$1,000 plus \$250 for each proposed Wind Turbine up to a total amount of no more than \$10,000, and the following information:
- 1) The complete name, legal address and phone number of the prospective Permittee and responsible contact person.
 - 2) A USGS topographical map of the Wind Energy Facility and 500 feet of all Adjoining Properties along the Wind Energy Facility Perimeter, which map shall show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map shall also show location of all proposed improvements for the Wind Energy Facility, including Wind Turbines, Met Towers, electrical lines and roads. Each proposed Wind Turbine shall be numbered and fully described in technical details, including Rotor Diameter, model, and manufacturer, and distances, measured in feet, from property lines and from existing improvements for each proposed Wind Turbine.
 - 3) Details as to how the prospective Permittee will comply with each item required.
 - 4) A schedule for the proposed start and completion of construction of the Wind Energy Facility.
 - 5) Copies or signed summaries of all leases and easements for Wind Turbines and associated equipment and infrastructure to be sited within the County and any written agreements between the prospective Permittee and affected parties holding associated wind rights on Adjoining Properties established for the purpose of seeking a setback Variance(s) pursuant to law.

2. Public Hearings

- a. Upon receipt of the application, the Zoning Commission and any experts it may retain, shall review the application and, in its discretion, may hold a public hearing on the application within no more than forty-five (45) days from receipt of the application, providing at least fifteen (15) days' notice prior to the hearing in the official newspaper of Emmons County and mailing written notice to property owners within **1 mile or five thousand two hundred eighty (5,280) feet** of the proposed Wind Energy Facility.

3. Deliberation and Decision

- a. If the Zoning Commission finds that the prospective Permittee will comply with all requirements, it may, within no more than 30 (thirty) days after the hearing, issue a Permit.

4. Demonstration of Compliance

- a. The Permit issued pursuant to this chapter shall be contingent upon the Permittee's final demonstration of compliance with the requirements of the Permit following completion of construction of the Wind Energy Facility. Within 90 (ninety) days of Wind Energy Facility construction, the Permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to this **chapter** and demonstrating actual compliance with the requirements and conditions of the Permit.

C. General Requirements for Wind Energy Facilities

1. Appearance, Lighting, Facility Footprint, Agricultural Operations, Roads and Power Lines

- a. Wind Turbines shall be painted a non-reflective, non-obtrusive color.
- b. Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.
- c. Each Wind Turbine shall be marked with a visible identification number to assist with provision of emergency services, and the Permittee shall file with local fire departments, law enforcement and the county emergency management coordinator a Wind Energy Facility map identifying Wind Turbine locations and numbers.

- d. Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- e. At Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the Wind Energy Facility to the natural setting and existing environment.
- f. At Wind Energy Facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the County.
- g. The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.
- h. The Permittee shall ensure that, following completion of construction of a Wind Energy Facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such Facility.
- i. The Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for Wind Turbine access roads, unless otherwise negotiated with the affected landowner. [This paragraph does not apply to feeder lines.]
- j. The Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

2. Setbacks

- a. The following setbacks and separation requirements shall apply to all Wind Turbines in a Wind Energy Facility.
 - 1) **Structures and Facilities:** Each Wind Turbine shall be set back from the nearest **dwelling, whether such dwelling is occupied or unoccupied**, commercial building or publicly-used structure or

facility at a distance not less than **one thousand eight hundred (1,800) feet.**

- 2) Public Roads and Above Ground Communication and Electrical Lines: Each Wind Turbine shall be set back from the nearest public road or above ground communication and electrical lines at a distance not less than two hundred (200) feet, determined at the center of the existing right-of-way.
 - 3) Non-Participating Landowner: Each Wind Turbine shall be set back from the **Non-Participating Landowner's Property Line** at a distance not less than **one and one half (1.5) times the Total Height of the Wind Turbine**. A Variance may be granted if an authorized representative or agent of the Permittee and those affected parties on Adjoining Properties with associated wind rights sign a formal and legally-binding agreement expressing all parties' support for a Variance that waives or reduces the setback requirement. **Total Height of Turbine means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.**
3. Minimum Ground Clearance
 - a. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.
 4. Restoration of Property
 - a. Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a Wind Energy Facility in the County, the Permittee shall cause, at its expense, removal of all structures to a depth of four feet below pre-construction grade.
 5. Transfer of Wind Energy Facility Siting Permit
 - a. In the event of a change in ownership or controlling interest in a Wind Energy Facility and the transfer of the Permit, any successors and assigns of the original Permittee shall comply with the requirements and conditions of such Permit for the duration of operation of a Wind Energy Facility permitted in the County. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a Wind Energy Facility, the parties to the transaction shall notify the Commission by letter and provide information pursuant to this chapter. The letter shall be signed by the authorized representatives or agents of both the original Permittee and the entity to which the Permit is being transferred.

Section 2. Penalty: In the event that any person violates any provision of this ordinance, they are guilty of a Class B Misdemeanor and will be subject to a fine not to exceed \$1,000.00, thirty (30) days in jail or both fine and imprisonment.

Section 3. Repeal: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Taking Effect. This ordinance shall be in full force and effect according to law.

Approved by the Emmons County Commissioners, Emmons County, North Dakota, this

2nd day of May, 2019.

APPROVED:



Leonard Weichel
Chairman

ATTEST:



Marlys Ohlhauser
Auditor