

ORDINANCE NO. 5-2018

AN ORDINANCE BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO TO MODIFY CHAPTER 13 OF THE CODIFIED ORDINANCES TO INCLUDE CHAPTER 1339 WIND ENERGY FACILITIES, AND DECLARING AN EMERGENCY.

Whereas, The Council of the City of New Philadelphia Ohio has determined the need for regulating wind energy facilities within the City of New Philadelphia; and

Whereas, said regulation requires a modification of chapter 13 of the New Philadelphia codified ordinances to include **Chapter 1339 Wind Energy Facilities**.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, AS FOLLOWS:

SECTION 1. Chapter 13 of the New Philadelphia Codified Ordinances is hereby modified to include **Chapter 1339 Wind Energy Facilities**, a copy of which is attached hereto and included herein as if fully rewritten.

SECTION 5. This Ordinance is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia, Ohio.

SECTION 6. This Ordinance shall take effect and be in force immediately upon its passage and approval.

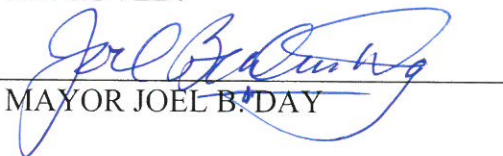
PASSED: April 23, 2018

  
SAM R. HITCHCOCK  
PRESIDENT OF COUNCIL

ATTEST:

  
JULIE COURTRIGHT  
CLERK OF COUNCIL

APPROVED:

  
MAYOR JOEL B. DAY

SPONSORED BY: ZONING AND ANNEXATION COMMITTEE

**CHAPTER 1339**  
**Wind Energy Facilities**

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- 1339.02 Definitions
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**1339.01 PURPOSE.**

This Chapter is adopted in order to provide for the construction and operation of Wind Turbine and Wind Energy Facilities now existing or hereafter acquired within the City of New Philadelphia subject to reasonable conditions that will protect the public health, safety and welfare of the residents.

**1339.02 DEFINITIONS.**

As used in this chapter:

- (a) "Applicant" means the person or entity filing an application under this Chapter.
- (b) "Facility Owner" means the person(s) or entity(ies) having an equity interest in the wind energy facility, including their respective successors and assigns.
- (c) "Hub Height" means the distance measured from the surface of the tower foundation to the height of the wind turbine hub, to which the blade is attached.
- (d) "Non-Participating Landowner" means any landowner except those on whose property all or a portion of a wind energy facility is located pursuant to an agreement with the facility owner.
- (e) "Operator" means the person or entity responsible for the day-to-day operation and maintenance of the wind energy facility.
- (f) "Occupied Building" means any structure used as a residence or other public, private or commercial building used for public gathering that is occupied or in use when the permit application is submitted.
- (g) "Shadow Flicker" means the on-and-off flickering effect of a shadow caused when the sun passes behind the rotor of a wind turbine.

- (h) "Turbine Height" means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor blade.
- (i) "Wind Turbine" means a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, and may be of the following categories:
  - (1) Commercial Wind Turbine: A wind turbine in which the total height exceeds 150 feet and generates 100 kw or more.
  - (2) Personal Wind Turbine: A wind turbine in which the total height is less than 150 feet.
  - (3) Hobbyist Wind Turbine: A wind turbine that is less than 50 feet in height and has a blade diameter less than 12 feet.
- (j) "Wind Energy Facility" means an electric generating facility, whose main purpose is to supply electricity, consisting of one wind turbine and other accessory structure and building, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

**1339.03 APPLICABILITY.**

No person shall construct, erect, maintain, extend or remove a wind energy facility in the City without compliance with the provisions of this Chapter.

**1339.04 USE REGULATIONS.**

Conditionally permitted use. A wind energy facility may only be permitted as a conditional use, and only be located within Industrial Zoned Properties. The Planning Commission may approve such use provided the applicant demonstrates compliance with the requirements of this Chapter.

**1339.05 CONDITIONAL USE PERMIT.**

- (a) No wind energy facility, or wind turbine shall be constructed or located within the City unless a conditional use permit has been issued by the Planning Commission to the facility owner or operator approving construction of the facility for compliance with the applicable sections of this Chapter and all other applicable provisions of the Code.
- (b) Any physical modification to an existing conditionally permitted wind energy facility or wind turbine that materially alters its size, type or function, shall require conditional use approval by the Planning Commission. Like-kind replacements as determined by the Director of Public Service shall not require review by Planning Commission.
- (c) Submission Requirements.
  - (1) All requests for permits shall be accompanied by a completed application, all required information, and a twenty-five hundred dollar (2500.00) fee for each wind turbine. No refund of any part of a permit application fee shall be made to an applicant in cases of a denial of a permit by the City. Permit shall be on a form approved by the Director of Public Service, and shall contain at least the following information:
    - A. The name, address, and telephone number of the applicant.
    - B. The address and zoning district of the subject property.
    - C. A narrative description of the existing use.
    - D. A narrative describing the proposed wind energy facility or wind turbine, including an overview of the project; the project location, the approximate generating capacity of the wind energy facility or wind turbine; the representative type and height or range of height of the wind turbine to be constructed, including its generating capacity, dimensions and respective manufacturer, and a description of ancillary facilities.
    - E. An affidavit or similar evidence of agreement between the property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for construction and operation of the wind energy facility or wind turbine.
    - F. Identification of the properties on which the proposed wind energy facility or wind turbine will be located, and all the properties adjacent to

where the wind energy facility will be located, and all other properties that are within two (2) times the hub height.

- G. A site plan showing the planned location of the wind energy facility or wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback, a lighting plan, a plan showing areas impacted by shadow flicker.
  - H. Documents related to decommissioning.
  - I. Aesthetics impact study. A visual simulation showing 360 degree view points around the wind energy facility or wind turbine.
  - J. Environmental impact study.
  - K. Sound study set forth in Section 1339.12.
  - L. Proof of Insurance as set forth in Section 1339.16.
  - M. Other relevant documents, information, studies, reports, certifications and approval as may be reasonably requested by the Director of Public Service or Planning Commission to ensure compliance with this Chapter and the Code. Costs associated with obtaining any of the above information will be the sole responsibility of the applicant.
- (2) Upon receipt of a complete application for a Conditional Use Permit, the Director of Public Service shall, no later than sixty (60) business days, make a preliminary review of the application to determine compliance with the requirements of subsection (c)(1) hereof. If the Director of Public Service determines that the application is not complete, the Director of Public Service shall immediately notify the applicant; otherwise, the Director of Public Service shall forward the application to the Planning Commission for review at its next regularly scheduled meeting.
  - (3) The Planning Commission shall schedule a public hearing. The applicant shall participate in the hearing and be afforded an opportunity to present the project to the public and municipal officials, and answer questions about the project. The public shall be afforded an opportunity to ask questions and provide commitment on the proposed project.
  - (4) After the close of any public hearing, the Planning Commission shall make a determination whether to issue or deny the conditional use permit at its next regular meeting, unless the applicant requests for the decision to be postponed by the Planning Commission to a mutually agreeable date.
  - (5) Throughout the permit process, the applicant shall promptly notify the City of any changes to the information contained in the permit application.
  - (6) Changes to the pending application that do not materially alter the initial site plan may be adopted without a renewed public hearing as determined by the Director of Public Service.

#### **1339.06 DESIGN AND INSTALLATION.**

- (a) Design Safety Certification. The design of the wind energy facility shall conform to applicable industry standards, including those of the American National Standards Institute. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.
- (b) Uniform Construction Code. To the extent applicable, the wind energy facility shall comply with the Ohio Uniform Construction Code.
- (c) Controls and Brakes. All wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.  
Wind turbines shall have an automatic safety mechanism that will shut down wind turbine



when icing of the wind turbine blades occurs.

- (d) Electrical Components. All electrical components of the wind energy facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.
- (e) Visual Appearance.
  - (1) Wind turbines shall be a non-reflective painted steel finish with non-obtrusive color such as white, off-white or gray as determined by the Director of Public Service.
  - (2) Wind energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
  - (3) Wind turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner and operator. Wind Turbines shall be erected on monopoles only.
- (f) Power Lines. On-site transmission and power lines between wind turbines shall, to the maximum extent practicable, be placed underground.
- (g) Warnings.
  - (1) Clearly visible warning signs concerning voltage must be placed at the base of all transformers and substations.
  - (2) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor
- (h) Climb Prevention/Locks:
  - (1) Wind turbines shall not be climbable up to fifteen (15) feet above ground surface.
  - (2) All access doors to wind turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

#### 1339.07 **SETBACKS.**

- (a) Occupied Buildings:
  - (1) Wind turbines shall be set back from the nearest occupied building, a distance not less than the normal setback requirements for that zoning classification or one and one-half (1.5) times the turbine height plus blade diameter; whichever is greater. The setback distance shall be measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
  - (2) Wind turbines shall be set back from the nearest occupied building located on a nonparticipating landowner's property a distance of not less than one and one-half (1.5) times the turbine height plus blade diameter, as measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
- (b) Property Lines: All wind turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for that zoning classification or one and one-half (1.5) times the turbine height plus blade diameter, whichever is greater. The setback distance shall be measured to the center of the wind turbine base to the nearest property line.
- (c) Public Roads: All wind turbines shall be set back from the nearest public road a distance not less than one and one-half (1.5) times the turbine height plus blade diameter, as measured from the right-of-way line of the nearest public road to the center of the wind turbine base.  
No Wind Turbine or Wind Energy Facility shall be erected in the front yard or side yards of any property or within 20 feet of any lot line.
- (d) Waiver of Setbacks:
  - (1) Non-participating landowners may waive the setback requirements in subsection (a)(2) and subsection (b) above by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.
  - (2) The written waiver shall be in a form approved by the City's Law Director and shall notify the property owner(s) of the setback requirement by this Chapter, describe how the proposed wind energy facility or wind turbine is not in compliance, and state that consent is granted for the wind energy facility to not be set back as required by this Chapter.
  - (3) Any such waiver shall be recorded in the Recorder of Deeds Office for the County where the property is located at applicant's sole cost. The waiver, in a form approved by the Law Director, shall describe the properties benefited and burdened, and advise

all subsequent purchasers of the burdened property that the waiver of setback shall run with the land and may forever burden the subject property.

- (4) Upon application, the City may waive the setback requirement for public roads for good cause.

**1339.08 HEIGHT RESTRICTIONS.**

- (a) Excluding the wind turbine, wind energy facilities' height shall be limited to the extent permitted by the Zoning District where the wind generation facility is located.
- (b) The turbine height shall be further limited by the provisions set forth in 1339.07 Setbacks

**1339.09 USE OF PUBLIC ROADS.**

- (a) The applicant shall identify all state and local public roads to be used within the City to transport equipment and parts for construction, operation or maintenance of the wind energy facility.
- (b) The City Engineer or a qualified third party engineer hired by the City and paid for solely by the applicant, shall document road conditions prior to construction. The City Engineer, or the qualified third party engineer, shall document road conditions again thirty (30) days after construction is complete or as weather permits.
- (c) The City may request a bond for the road in compliance with the City's Code, and in an amount as determined by the City's Engineer.
- (d) Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense.
- (e) The applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

**1339.10 LOCAL EMERGENCY SERVICES.**

- (a) The applicant shall provide a copy of the project summary and site plan to local emergency services, including the City Fire Department and Police Department.
- (b) Upon request, the applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the wind energy facility.
- (c) Any cost for training associated with safety procedure at the wind facility or wind turbines shall be paid solely by applicant.

**1339.11 SHADOW FLICKER.**

- (a) The facility owner and operator shall make reasonable efforts to minimize shadow flicker to any occupied building on a non-participating landowner's property.
- (b) The applicant shall provide a reasonable analysis of potential shadow flicker impacts for the entire site and the adjacent properties, as requested by the Planning Commission.

**1339.12 NOISE.**

- (a) Audible sound from a wind energy facility or wind turbine shall not exceed limits set forth by Chapter 531 of the Codified Ordinances.
- (b) Audible sound due to wind turbine or wind energy facility operations shall not exceed 5dba increase over existing background noise level (L90) or exceed 40dba for any period of time, when measured at any structure used as a residence, school, church, place of employment, or public library existing on the date of application for a wind turbine or a wind energy facility. All measurements should be taken using American National Standard Procedures. Measurements must be taken with qualified acoustical testing instruments meeting ANSI 1 standards.
- (c) A Pre-construction Background Noise Survey shall be conducted at the applicant's sole expense by an independent noise consultant contractor approved by the City. Measurements shall be sampled for each residence, school, church, place of employment, or public library within 1 mile of proposed siting.
- (d) A Sound Impact Study shall be made available prior to approval of a wind turbine or wind energy facility. The Sound Impact Study could be made by a computer modeling using data specific to the wind turbine make and model. The Sound Impact Study will be conducted at

the Applicant's expense by an independent noise consultant contractor approved by the City. The Planning Commission may evaluate noise studies when ruling on applications for conditional use of wind generation facilities.

**1339.13 WAIVER OF NOISE AND SHADOW FLICKER.**

- (a) Non-participating landowners may waive the noise and shadow flicker provisions of this Chapter by signing a waiver of their rights.
- (b) The written waiver shall notify the property owner(s) of the sound or flicker limits in this Chapter, describe the impact on the property owner(s), and state that the consent is granted for the wind energy facility to not comply with the sound or flicker limit in this Chapter. The form shall be approved by the City's Law Director.
- (c) Any such waiver shall be recorded in the Recorder of Deeds Office of the County where the property is located at applicant's expense. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property. The form shall be approved by the City's Law Director.

**1339.14 ENVIRONMENTAL IMPACT.**

The applicant, within five (5) days of filing the application with the City, shall notify state and federal agencies in writing of possible environmental impacts.

**1339.15 SIGNAL INTERFERENCE.**

The applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the wind energy facility.

**1339.16 LIABILITY INSURANCE.**

There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate for all personal and hobbyist wind turbines and three million dollars (\$3,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate for commercial wind turbines. Certificates shall be made annually to the Director of public service without request.

**1339.17 DECOMMISSIONING.**

- (a) The facility owner and operator shall, at its sole expense, complete decommissioning of the wind energy facility, or individual wind turbines, within three (3) months after the end of the useful life of the facility or individual wind turbines.
- (b) The wind energy facility or wind turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of three (3) months.
- (c) Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, foundations to a below grade depth of thirty-six (36) inches, and any other associated facilities.
- (d) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- (e) At the sole cost of the facility owner, an independent and Ohio certified - SEII structural engineer shall certify the total cost of decommissioning without regard to the salvage value of the equipment ("Decommissioning Costs").
- (f) The facility owner or operator shall post and maintain with the City an amount equal to one hundred fifteen percent (115 %) of the original Decommissioning costs. In the alternative, the one hundred fifteen percent (115 %) of the Decommissioning Costs may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the City Law Director.
- (g) If the facility owner or operator fails to complete decommissioning within the period prescribed by subsection (a) above, then the landowner shall have three (3) months to complete decommissioning.
- (h) If neither the facility owner or operator, nor the landowner complete decommissioning within

the periods prescribed by subsection (a) and (g) above, then the City may take such measures as necessary to complete decommissioning and use the posted funds for such purpose. The entry into and submission of evidence of a participating landowner agreement to the City shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the City may take such action as necessary to implement the decommissioning plan as set forth herein, including upon the property and removal of all decommissioned structures.

- (i) The City shall release the Decommissioning Funds when the facility owner or operator has demonstrated and the City concurs that decommissioning has been satisfactorily completed, or upon written approval of the Municipality in order to implement the decommissioning plan.

**1339.18 PUBLIC INQUIRIES AND REMEDIES.**

- (a) The facility owner and operator shall maintain a telephone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project
- (b) The facility owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.

**1339.19 PROHIBITIONS.**

- (a) There shall be no co-location on any wind turbine or wind energy facility for any other use.
- (b) There shall be permitted only one wind turbine or wind energy facility on any property.

**1339.20 SUPPLEMENTAL REGULATIONS FOR SPECIFIC USES.**

Nothing in this Section shall prohibit the Planning Commission from prescribing supplementary conditions and safeguards in addition to these requirements, or where no specific conditions are stated herein.

**1339.21 VARIANCES.**

The Planning Commission may, in specific cases, vary or permit exceptions to any of the provisions of this chapter if it finds the applicant presents evidence of practical difficulties and that such variances will not violate the spirit or intent of this chapter and that a more harmonious and useful development will result.

**1339.99 PENALTY.**

In addition to the express provisions and remedies set forth in this chapter and Zoning Code, whoever violates or fails to comply with any provision of the chapter shall be guilty of a third degree misdemeanor which shall be punishable by not more than sixty (60) days in jail and a fine of not more than seven hundred fifty dollars (\$750.00) per offense. Each day of violation shall constitute a separate offense.