

ORDINANCE OF THE
TOWN OF MIDDLETOWN, RHODE ISLAND

**An Ordinance Amending the Town Code
OF THE TOWN OF MIDDLETOWN**

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

FIRST: The Town Code, Chapter 152, Zoning Ordinance, is amended by inserting the following new article:

ARTICLE 25A – WIND ENERGY CONVERSION FACILITIES

Section 25A00 Purpose

The purpose of this article is to provide for the construction and operation of wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning.

Section 25A01 Applicability

This article applies to all wind facilities constructed after the effective date of this article. Any physical modifications to existing wind facilities that materially alters the type or increases the size of such facilities or other equipment shall also comply with this article.

Section 25A02 Definitions

Height: The height of a wind turbine measured from pre-development grade to the tip of the rotor blade at its highest point, or blade-tip height.

Occupied Building: A residence, church, hospital, school, library or other building normally occupied. Accessory structures, and commercial buildings not normally occupied are not considered occupied buildings.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.

Wind Energy Conversion Facility or Wind Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, towers, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

- Utility-scale Wind Facility: A wind energy conversion system which has a rated capacity exceeding 100 kW.
- Small-scale Wind Facility: A wind energy conversion system that has a rated capacity of not more than 100 kW.

Wind Monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

Wind turbine: A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

25A03 General Requirements

A. Special Use Permit Granting Authority

Except as provided for in this section, no wind facility shall be erected, constructed, installed or modified as provided in this section without first obtaining a special use permit from the Zoning Board of Review. Subject to subsection E. the construction of a wind facility shall be permitted in any zoning district subject to the issuance of a Special Use Permit and provided that the use complies with all requirements set forth in this article, and applicable requirements of the Federal Aviation Administration (FAA). All such wind facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. In addition to the required findings of Zoning Ordinance Section 902, no special use permit shall be granted unless the Zoning Board of Review finds in writing that:

1. the specific site is an appropriate location for such use;
2. the use will not adversely affect the neighborhood;
3. there will not be any serious hazard to pedestrians or vehicles from the use;
4. no nuisance will be created by the use; and
5. adequate and appropriate facilities will be provided for the proper operation of the use.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

B. Temporary wind monitoring or meteorological tower

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit and subject to reasonable conditions imposed by the Building Official concerning the bulk and height, lot area, setbacks, etc. to ensure the safe installation and operation of the temporary monitoring tower. Under no circumstance shall a temporary wind monitoring or meteorological tower be allowed to remain in place for more than one year.

C. Compliance with Laws, Ordinances and Regulations

The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation (FAA) requirements.

D. Wind facilities exempted from Special Use Permit requirement

Small-scale wind facilities, whether building- or tower-mounted, may be installed without the need to secure a special use permit, subject to the granting of required building permits, and provided that all requirements of this section are met. A special use permit shall be required, however, where any element of the facility extends more than fifteen (15) feet above the maximum building height allowed for the primary use in the subject zoning district as specified in Section 603 of this ordinance.

E. Utility-scale wind facility

Utility-scale wind facilities shall not be located on parcels of less than five (5) acres, and shall be prohibited in residential zoning districts.

F. Proof of Liability Insurance

At the time of application for a building permit, or special use permit if one is required, the applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

G. Site Control

At the time of application for a building permit, or special use permit if one is required, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any occupied building within the setback areas.

25A04 General Siting Standards

A. Height

The maximum height of tower-mounted wind facilities shall generally be regulated by lot dimensions and the setback requirements of this section, as well as FAA regulations, and are subject to the granting of a special use permit.

1. Where applicable, small-scale facilities may be developed without the need for a special use permit, provided that all requirements of this section are met and the facility does not exceed the height limit of section 603 in the zoning district in which the property is located by more than fifteen (15) feet.
2. The height of building-mounted wind facilities shall extend no more than fifteen (15) feet above the highest point of the building.

B. Setbacks

1. Except for building mounted facilities, small-scale wind facilities shall be set back a distance equal to at least the height of the highest point of the wind turbine plus ten (10) feet from the nearest property line. A tower or structure supporting a utility-scale wind turbine shall be set back a distance equal to at least 1.5 times the height of the highest point of the wind turbine from the nearest occupied building or property line.
2. The special use permit granting authority may waive the property line setback requirement, provided that the applicant secures an easement across the portion of the abutting property(ies) within the required setback area. Said easement shall be obtained from the affected property owner, and shall be subject to the approval of the town. Said easement shall prohibit the construction of an occupied building as defined in this article.
3. All equipment, guy wires, and other components of the wind facility shall be setback at least ten (10) feet from all property lines and structures on the subject property.

25A05 Design Standards

A. Color and Finish

All components of the wind facility shall be painted a neutral, non-reflective exterior color designed to blend with the surrounding environment, such as white, light gray or light blue.

B. Lighting and Signage

1. Lighting

Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety, security, and operational purposes, and shall be reasonably shielded from abutting properties. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

2. Signage

No signage shall be permitted on the wind facility, except for the following:

- (a) Those signs necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- (b) Educational signs providing information about the facility and the benefits of renewable energy.

3. Advertising

Wind turbines shall not be used for displaying any advertising.

4. Utility Connections

Utility connections from the wind facility shall be installed underground. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

C. Appurtenant Structures

All appurtenant structures to such wind facilities shall be subject to regulations of this ordinance concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower or other existing structures on the property whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

D. Support Towers

Monopole towers, rather than lattice or cable-supported towers, are the preferred type of support for wind facilities, and shall be used when a support tower is proposed. Lattice or cable-supported towers may only be permitted if it is demonstrated to the satisfaction of the Zoning Board of Review that the use of a monopole tower is impractical.

25A06 Safety, Aesthetic and Environmental Standards

A. Emergency Services

The applicant shall provide a copy of the project summary and site plan to the Middletown Fire Department. For utility scale facilities, upon request of the Fire Department, the applicant shall cooperate with local emergency services in developing an emergency response plan.

B. Unauthorized Access

Wind turbines, towers, and other structures that are part of a wind facility shall be designed to prevent unauthorized access.

C. Appropriate warning signage shall be placed on towers and electrical equipment.

D. All wind turbines shall have an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

E. Shadow/Flicker

Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses, and that whatever impact it has can not be reduced through either siting or mitigation.

F. Noise

The wind facility and associated equipment shall conform with the provisions of the Middletown noise ordinance, Town Code of Ordinances, Sections 130.75-130.91, as amended.

G. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and ordinances. Design and construction of the facility shall provide for required construction site runoff control and storm water management as provided for in Chapter 151 and Chapter 153 of the Town Code of Ordinances, as amended.

H. Wildlife

The potential adverse impacts on wildlife shall be minimized through appropriate facility siting and design.

I. Electromagnetic interference

Any interference with electromagnetic communications, such as radio, television and telephone, including satellite communications, shall be minimized and mitigated.

25A07 Monitoring and Maintenance

A. Facility Conditions

The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief . The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public road, and the cost of repairing any damage occurring as a result of operation and construction.

B. Modifications

All material modifications to a wind facility made after issuance of the special use permit shall require approval by the Zoning Board of Review.

C. Operation

If noise, electronic interference, or other adverse impacts resulting from the operation of the wind facility have exceeded allowable limits, the Zoning Enforcement Officer shall notify the owner in writing of the violation. If the violation is not remedied within 30days the facility shall remain inactive until the violation is remedied.

25A08 Abandonment or Decommissioning

A. Removal Requirements

Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When a utility-scale wind facility is scheduled to be decommissioned, the owner shall notify the Building Official by certified mail of the proposed date of discontinued operations and plans for removal. The owner is responsible for securing any necessary state and local permits prior to dismantling the facility.

The owner/operator of any wind facility shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed. More specifically, decommissioning shall consist of:

1. Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
2. Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
3. Stabilization or re-vegetation of the site as necessary to minimize erosion.

B. Abandonment

Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the Building/Zoning Official. The Building/Zoning Official shall determine what proportion of the facility is inoperable for the facility to be considered abandoned. If the owner fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town shall have the authority to enter the property and physically remove the facility. The owner of the facility would be responsible for any costs incurred by the Town related to the removal of the facility.

C. Financial Surety

The Zoning Board of Review may require the applicant for a wind facility to provide surety, either through escrow account, bond or otherwise, subject to the approval of the Finance Director, to cover the cost of removal in the event the town must remove the facility. The amount and form of surety is to be determined by the Zoning Board of Review, but in no event shall the amount exceed 125 percent of the estimated cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant and approved by the Town. Such surety shall not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The cost estimate shall include a mechanism for estimating the anticipated increased costs over the lifespan of the facility. The amount of surety shall be based on the estimated cost of removal at the end of the useful life of the facility.

25A09 Term of Special Use Permit

A special use permit issued for a wind facility shall be valid for 25 years. At the end of that period the wind facility shall be removed as required by this section, unless a new special use permit is issued pursuant to the provisions of this article. The applicant or facility owner shall ensure that the Building/Zoning Official has a current phone number and name of a responsible person to allow for contact with inquiries and complaints throughout the life of the project.

25A10 Special Use Permit Application Process & Requirements

A. Application Procedures

1. General

The application for a wind facility requiring a special use permit shall be filed in accordance with the rules and regulations of the Zoning Board of Review concerning special permits.

An application for a wind facility which requires the granting of a special use permit under this article is subject to the provisions of Development Plan Review, Zoning Ordinance Section 305.

2. Application

Each application for a special use permit shall be filed by the applicant with the Building Inspection Department consistent with the requirements of this ordinance.

B. Required Documents

1. All application materials required by this ordinance for Special Use Permit and Development Plan Review applications must be provided.
2. Impact Statement - Applicants for utility-scale facilities shall provide an impact statement prepared by a qualified individual or firm which identifies the potential adverse impacts to the community, neighborhood, and the natural environment, including but not necessarily limited to those areas identified in section 25A06, Safety, Aesthetic and Environmental Standards of this ordinance. Measures for mitigating any potential adverse impacts shall be identified.

C. Siting and Design

The applicant shall provide the Zoning Board of Review with a description of the property which shall include:

1. Location Map

Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, or other similar topographic map showing the proposed facility site, including turbine location(s), and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.

2. Site Plan

A one inch equals 20 feet plan of the proposed wind facility site, with contour intervals of no more than 2 feet, showing the following:

- (a) Property lines for the site parcel and adjacent parcels within 200 feet.
- (b) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 200 feet. Include distances from the wind facility to each building shown.
- (c) Location of all roads, public and private on the site parcel and adjacent parcels within 200 feet, and proposed roads or driveways, either temporary or permanent.
- (d) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 200 feet.

(e) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.

(f) Location of viewpoints referenced below in 25A10.C.3 of this section.

3. Visualizations

For utility-scale and tower mounted small-scale facilities, the applicant shall provide photo representations of the proposed facility, including three to six sight lines, including from the nearest occupied building with a view of the wind facility. Visualizations shall include pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

(a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).

(b) All view representations shall include existing, or proposed, buildings or tree coverage.

(c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc...).

D. Wind Facility Description and Specifications

The applicant for a special use permit shall provide a written description, manufacturer specifications, and engineered drawings of all components of the proposed wind facility. Documentation shall include information on the anticipated performance of the facility, including anticipated power generation, noise output, rotation speed, and other relevant operational data.

E. Landscape Plan

A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures.

F. Operation & Maintenance Plan

The applicant shall submit a plan for maintenance of access roads and storm water controls, if applicable, as well as general procedures for operational maintenance of the wind facility. The approved maintenance plan shall be recorded in the land evidence records of the Town of Middletown.

G. Compliance Documents

If applicable, or required under previous sections of this ordinance, the applicant shall provide with the application:

1. a description of financial surety that satisfies this section,
2. proof of liability insurance that satisfies this section,
3. certification of height approval from the FAA,
4. a statement and documentation indicating that the facility will meet town standards regarding noise emissions.

H. Independent Consultants –

- Upon submission of an application for a special use permit, the Zoning Board of Review be authorized to hire outside consultants, at the applicant's expense, as necessary to fully evaluate the design and potential impacts of the proposed facility.

SECOND: This ordinance shall take effect upon adoption and its provisions shall supersede any inconsistent or contrary provisions in any other ordinance.