Ordinance No. 400.17

SECTION I – GENERAL PROVISIONS

1.0 Title

This ordinance is entitled the Iowa County Wind Energy System Siting Ordinance.

2.0 Purpose

The purpose of this ordinance is to adopt and incorporate the requirements of Wis. Stat. § 66.0401 and Wis. Admin. Code Ch. PSC 128 as a local ordinance and to establish local regulations on the installation and use of wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission and that serve to preserve or protect the public health or safety, do not significantly increase the cost of the system or significantly decrease its efficiency, or allow for an alternative system of comparable cost and efficiency.

3.0 Authority

This ordinance is adopted pursuant to Wis. Stat. § 66.0401 and Wis. Admin. Code § PSC 128.

4.0 Applicability

This ordinance applies to all lands within the boundaries of the county lying outside the limits of incorporated cities and villages.

5.0 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

6.0 Administration

This ordinance shall be administered by the Iowa County Office of Planning & Development.

SECTION II – DEFINITIONS

"Committee" means the Iowa County Planning and Zoning Committee.

"Department director" or "director" means the director of the Iowa County Office of Planning and Development or the department director's designee.

"Office" means the Iowa County Office of Planning and Development.

"Large wind energy system" or "large wind" means a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts.

"Permit" means a zoning permit issued by the Iowa County Office of Planning and Development.

"PSC 128" means Wis. Admin. Code Ch. PSC 128, Wind Energy Systems.

"Small wind energy system" or "small wind" means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

"Wind energy system" means equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy.

SECTION III – PERMIT, APPLICATION, AND FILING REQUIREMENTS

1.0 Permit Requirement and Fee

The owner, or his agent, of the property on which a wind energy system is proposed to be installed, constructed, or expanded must apply for and receive a zoning permit from the Office before any such work can commence. The applicant shall pay an application review fee, which is applied to the cost of reviewing the application. The applicant shall pay a separate permit fee before any permit is issued by the director. All fees shall be established by the resolution by the Iowa County Board of Supervisors.

For large wind energy systems:

a.) The applicant is responsible for paying all costs incurred by the county in connection with the review and processing of the application, including the cost for services provided by outside attorneys, engineers, environmental specialists, planners, and other consultants and experts deemed necessary by the county.

b.) The county shall make the applicant aware of any such costs prior to incurring the cost and, if the applicant decides not to pay the costs, the application shall be denied.

c.) The county shall invoice the applicant for the actual and necessary costs incurred pursuant to this ordinance. The applicant will be provided 15 days from the date of the invoice to reimburse the county.

d.) The office is authorized to contract with one or more engineers, environmental specialists, planners, and other consultants and experts to perform necessary services in connection with this ordinance.

e.) The corporation counsel is authorized to contract with outside legal counsel to perform services in connection with this ordinance.

2.0 Permit Expiration and Extension

A zoning permit issued under this ordinance shall expire if at least 51% of the project construction has not been completed within 12 months of the permit issue date. An extension may be requested in writing to the director for up to 12 additional months provided the original permit has not yet expired. The director shall grant an extension provided the project is not

inconsistent with any subsequently enacted law, rule or regulation under the purview of the office.

3.0 Application Requirements

3.1 For small wind energy systems - An owner shall file an application with the office that, at a minimum, includes the following information:

a.) Wind energy system description and maps showing the locations of all proposed wind energy facilities
b.) Technical description of wind turbines and wind turbine sites
c.) Timeline and process for constructing the wind energy system
d.) Information regarding anticipated impact of the wind energy systems on local infrastructure
e.) Information regarding noise anticipated to be attributable to the wind energy system
f.) Information regarding shadow flicker anticipated to be attributable to the wind energy system
g.) Information regarding the anticipated effects of the wind energy system on existing land uses adjacent to the wind energy system
h.) Information regarding the anticipated effects of the wind energy system on airports and airspace
i.) Information regarding the anticipated effects of the wind energy system on line-of-sight communications
j.) A list of all state and federal permits required to construct and operate the wind energy system
k.) Information regarding the planned use and modification of roads during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner's expense
L.) A representative copy of all notices issued under sub. (5) and ss. PSC 128.105(1) and 128.42(1), which are:

(1) PSC 128.105(1): Pre-application notice – At least 60 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

- Adjacent landowners to the planned wind turbine host property
- Political subdivisions within which the wind energy system may be located

3.2 For large wind energy systems - An owner shall file an application with the office that, at a minimum, includes the following information:

a.) All information required under 3.1(a-f) and (h-k) of this ordinance
b.) Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system
c.) A representative copy of all notices issued under sub. (5) and ss. PSC 128.105(1) and 128.42(1), which are:

(1) PSC 128.105(1): Pre-application notice – At least 90 days before an owner files an application to construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

- Land owners within one mile of the planned wind turbine host property
- Political subdivisions within which the wind energy system may be located
- Emergency first responders and air ambulance service providers serving the political subdivisions within which the wind energy system may be located
- The Wisconsin department of transportation
- The public service commission
- The Wisconsin department of natural resources
- The Wisconsin department of agriculture, trade and consumer protection
- The office of the deputy undersecretary of the U.S. department of defense

(2) PSC 128.42(1): Notice of process for making complaints – Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under PSC 128.40(1) for submitting a complaint to the owner, a petition for review to the political subdivision, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

d.) A copy of all emergency plans developed in collaboration with appropriate first responders under s. PSC 128.18(4)(b). An owner may file plans using confidential filing procedures as necessary.
e.) A decommissioning and site restoration plan providing reasonable assurance that the owner will be able to comply with s. PSC 128.19.

3.3 For all applications, the owner shall ensure that information contained in the application is accurate.

3.4 Evidence shall be included for all applications to show that, on the same day an owner filed an application under this ordinance, the owner did, under use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any wind energy system facility. The notice shall include all of the following:

a.) A complete description of the wind energy system, including the number and size of the wind turbines.
b.) A map showing the location of all proposed wind energy system facilities.
c.) The proposed timeline for construction and operation of the wind energy system.
d.) Locations where the application is available for public review.
e.) Owner contact information.

SECTION IV – LOCAL REGULATIONS

4.0 Airport Approach Protection

An owner may not construct any wind energy system that does not comply with the Iowa County Airport Zoning Ordinance which, in part, controls the height of structures within close proximity of the Iowa County Airport.

4.01 Abandonment and Decommissioning

4.011 For small wind energy systems:

a.) A small wind energy system that does not generate electricity for a continuous period of 540 days will be deemed abandoned and the office may issue a Notice of Abandonment to the owner.
b.) If, within 30 days of receipt of a Notice of Abandonment, the owner provides the office with information showing that the small wind energy system has not been abandoned, the office will withdraw the Notice.
c.) Unless the office withdraws the Notice of Abandonment, a small wind energy system tower must be decommissioned as prescribed by PSC 128.19. If the owner fails to remove a small wind energy system and reclaim the site, the county may remove or cause the removal of the small wind energy system and arrange for the reclamation of the site. The cost of removal and reclamation will become a lien upon the property and may be collected in the same manner as property taxes.

4.012 For large wind energy systems:

a.) An owner with a nameplate capacity of one megawatt or larger shall provide the county with financial assurance of the owner's ability to pay the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities.
b.) An owner shall provide the county with 3 estimates of the actual and necessary cost to decommission the wind energy system. The cost estimates shall be prepared by third parties agreeable to the owner and the county. The amount of financial assurance required by the county will be the average of the 3 estimates.
c.) An owner shall establish financial assurance that is acceptable to the county and that places the county in a secured position. The financial assurance must provide that the secured funds may only be used for decommissioning the wind energy system until such time as the county determines that the wind energy system has been decommissioned, as provided for in PSC 128.30(5)(b), or the county approves the release of the funds, whichever occurs first. The financial assurance must also provide that the county may access the funds for the purpose of decommissioning the wind energy system if the owner does not decommission the system when decommissioning is required.
d.) The county may periodically request information from the owner regarding industry costs for decommissioning the wind energy system. If the county finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or

less than the amount of financial assurance provided under this section, the county may correspondingly increase or decrease the amount of financial assurance required.
e.) The county may require an owner to submit a substitute financial insurance of the owner's choosing if an event occurs that raises material concern regarding the viability of the existing financial assurance.
f.) An owner shall, within 30 days of consulting with any federal or state agency about the construction, operation, or decommissioning of the wind energy system, provide the county with information about the reason for the consultation.
e.) An owner shall, within 30 days of receiving any non-binding recommendation for the construction, operation, or decommissioning of the wind energy system from any federal or state agency, provide the county with information about the consultation

4.02 Lighting

4.021 For small wind energy systems:

a.) A small wind energy wind system may be artificially lighted only if lighting is required by the Federal Aviation Administration.
b.) An owner shall use shielding or control systems approved by the Federal Aviation System to reduce visibility of light when viewed from the ground.

4.03 Noise

4.031 For small wind energy systems:

a.) The noise generated by the operation of a small wind energy system may not exceed 50 dB(A) during the daytime hours and 45 dB(A) during the nighttime hours as measured at the outside wall of a nonparticipating residence or occupied community building that existed when the owner gave notice pursuant to PSC 128.105(1) or for which complete publicly available plans for construction were on file with a political subdivision within 30 days of the date when the owner gave notice pursuant to PSC 128.105(1).
b.) The owner of an adjacent nonparticipating residence or adjacent occupied community building may relieve the owner of the small wind energy system of the requirement to meet any of the noise limits in this section by written contract as provide in PSC 128.14(5) and (6).
c.) The owner shall provide the notice as prescribed by PSC 128.61(4).
d.) If an owner receives a complaint of a violation of the noise standards contained in PSC 128.14 and the owner has not provided the department with the results of an accurate test conducted within 2 years of the date of the complaint showing that the small wind energy system is in compliance with the noise standard at the location relating to the complaint, the owner shall promptly conduct a noise study to evaluate compliance with the noise standards at that location using the most current version of the noise measurement protocol as described in PSC 128.50(2).

4.032 For large wind energy systems:

a.) If an owner receives a complaint of a violation of the noise standards

contained in PSC 128.14 and the owner has not provided the office with the results of an accurate test conducted within 2 years of the date of the complaint showing that the wind energy system is in compliance with the noise standard at the location relating to the complaint, the owner shall promptly conduct a noise study to evaluate compliance with the noise standards at that location using the most current version of the noise measurement protocol as described in PSC 128.50(2).

4.04 Ownership Change

An owner shall provide the county with notice of any change in ownership of the small wind energy system on or before the effective date of the change.

For large wind energy systems, a notice of change in ownership of the wind energy system shall include information showing that the financial responsibility specified under section 4.012 of this ordinance will be met by the new owner.

4.05 Setbacks

4.051 For small wind energy systems:

a.) A small wind energy system must be set back at least 1.0 times the maximum blade tip height from any nonparticipating property line, nonparticipating residence, occupied community building, or overhead communication and electrical transmission line, not including utility service lines to individual houses or outbuildings.
b.) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the required setback distance by providing a written agreement with the owner to the office and if the director is in agreement.

4.052 For large wind energy systems:

a.) A large wind energy system shall comply with the setback distances shown in Table 1 in PSC 128.13, which are:

Setback Description	Setback distance
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Property Lines	none
Nonparticipating Property Lines	1.1 times the maximum blade tip height

Public Road Right-of-Way	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines – not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines – Lines to Individual houses or outbuildings	None

SECTION V – LOCAL PROCEDURE

5.0 Application Processing

5.1 Within 10 days of receiving the application, the office shall notify the applicant whether the application is complete and, if it is not, what the applicant must do in order to make it complete.

a.) The applicant shall provide the additional information specified in the notice to the office within 60 days of the date of the notice.

b.) If the applicant fails to provide additional information specified in the notice to complete the application within 60 days of the date of the notice, the application shall be deemed abandoned. The owner may file a new application at a later date, subject to payment of a new application fee. There is no limit to the number of times that an owner may file an application.

c.) An application shall be deemed complete if it complies with the filing requirements of section 3.0 of this ordinance and of PSC 128.50.

5.2 As soon as possible after receiving a complete application, the office shall publish a class 1 notice, under ch. 985 Stats., stating that an application for approval has been filed with the county. If the application is deemed incomplete, the notice shall state the reason for the determination. The office will accept written comments on the application for a period of 10 days following the date of the published notice.

5.3 The county shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval.

5.4 The county shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record of any public hearing.

5.5 The county shall approve or disapprove an application for approval no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. The county may extend this time period in writing provided the extension is done during the initial 90-day period, except the total amount of time for all extensions

granted may not exceed 90 days. Any combination of the following extensions may be granted:

a.) An extension of up to 45 days if the county needs additional information to determine whether to approve or deny the application.
b.) An extension of up to 90 days if the applicant makes a material modification to the application.
c.) An extension of up to 90 days for other good cause specified in writing by the county.

If the county fails to act within the initial 90 days, or within any extended time period, the application is considered approved.

5.6 For large wind energy systems, the county may deny an application if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development as shown in an adopted comprehensive plan.

5.7 The denial by the county of any application shall be made in writing to the applicant and must include the reasons for denial. Any denial by the county of an application may be appealed to the Iowa County Board of Adjustment following the procedure outlined in Chapter 10 of the Iowa County Zoning Ordinance. Any decision made by the county may be appealed to the Iowa County Board of Adjustment following the procedure outlined in Chapter 10 of the Iowa County Zoning Ordinance.

5.8 The county shall provide a written decision to the applicant and the public service commission. Said decision shall contain findings of fact supported by evidence in the record.

SECTION VI – MODIFICATIONS TO AN APPROVED SYSTEM

6.0 Material change

An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the office. An owner shall submit an application for a material change to an approved wind energy system to the county. The county may not reopen the merits of the earlier approval, but shall consider only those issues relevant to the proposed change.

An application for material change is subject to PSC 128.35.

At its discretion, the county may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

SECTION VII – THIRD PARTY CONSTRUCTION INSPECTOR

The office may contract with a third party inspector to monitor and report to the office regarding the owner's compliance with permit requirements during construction. The inspector monitoring compliance under this section shall also report to a state permitting authority upon the state permitting authority's request. The inspector shall make monthly written reports to the office. The owner shall reimburse the county for the actual and necessary cost of the inspector.

SECTION VIII – POSTCONSTRUCTION FILING REQUIREMENT

Within 90 days of the date a wind energy system commences operation, the owner shall file with the office and the public service commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities, and current information identifying the owner of the wind energy system.

An owner shall label each wind turbine location described in its filing and shown on the map of the wind energy system with a unique identifier consistent with the information posted at the wind turbine location under PSC 128.18 (1).

SECTION IX – COMPLIANCE MONITORING

This subsection applies to large wind energy systems only. An owner shall maintain a maintenance log for each wind turbine. The log must contain the following information:

a.) date and time maintenance was performed
b.) nature of the maintenance performed
c.) reason for the maintenance
An owner shall, at the owner's expense, provide the office with a copy of the maintenance log for each wind turbine for each month upon the request of the county.

The office may retain such consultants or experts as it deems necessary to assess and determine whether the wind energy system facilities are compliant or to assess whether the wind energy system facilities are being maintained in good repair and operating condition.

SECTION X – DECOMMISSIONING REVIEW

An owner shall file a notice of decommissioning completion with the county and any political subdivision within which its wind energy system facilities are located when a wind energy system approved by the county has been decommissioned and removed.

The office shall conduct a decommissioning review to determine whether the owner has decommissioned and removed the wind energy system as required by PSC 128.29(1)(a) and whether the owner has complied with its site restoration obligation under PSC 128.29(4).

The owner shall cooperate with the county by participating in the decommissioning review process.

SECTION XI – APPEALS

A decision by the office that the application is not complete, to approve or disapprove the application, or to impose a restriction on a small wind energy system may be appealed to the public service commission.

Any action by the county to enforce a restriction on a small wind energy system may be appealed to the public service commission.

An appeal must be filed with the public service commission within 30 days after the date of the decision or the start of the enforcement action that is being appealed.

SECTION XII – COMPLAINTS

12.1 Complaint process for wind energy systems

12.11 An aggrieved person who has made a complaint to an owner in accordance with PSC 128.40 may petition the county for review of the complaint if it has not been resolved within 45 days of the day the owner received the original complaint.

12.12 The petition for review must be filed with the office within 90 days of the date of the original complaint and shall contain the following:

a.) name, address, and telephone number of the person filing the petition
b.) copy of the original complaint to the owner
c.) coy of the owner's original response
d.) statement describing the unresolved complaint
e.) statement describing the desired remedy
f.) any other information the complainant deems relevant to the complaint
g.) notarized signature of the person fling the petition

12.13 The office shall forward a copy of the petition to the owner by certified mail within 10 days of the office receiving the petition.

12.14 The owner shall file an answer to the petition with the office and provide a copy of its answer to the complainant within 30 days of its receipt of the petition.

12.15 The answer must include the following:

a.) name, address, and telephone number of the person filing the answer
b.) statement describing the actions taken by the owner in response to the complaint
c.) statement of the reasons why the owner believes that the complaint has been resolved or why the complaint remains unresolved
d.) statement describing any additional action the owner plans or is willing to take to resolve the complaint
e.) any other information the owner deems relevant to the complaint
f.) notarized signature of the person filing the answer

12.16 The complainant and the owner may, within 30 days following the owner's filing of its answer, file such additional information with the office as each deems appropriate.

12.17 The office may request such additional information from the complainant and the owner as it deems necessary to complete its review.

12.18 The office may retain such consultants or experts as it deems necessary to complete its review.

12.19 The office shall issue a written decision and may take such enforcement action as it deems appropriate with respect to the complaint.

12.120 The decision of the office and enforcement action is subject to review under Wis. Stat. § 66.0401(5).

12.2 Additional process for large wind energy systems

12.21 An owner shall comply with the notice requirements contained in PSC 128.42(1).

12.22 An owner shall, before construction of a large wind energy system begins, provide the office with a copy of the notice issued pursuant to PSC 128.42(1), along with a list showing the name and address of each person to whom the notice was sent and a list showing the name and address of each political subdivision to which the notice was sent.

12.23 An owner shall, before construction of a large wind energy system begins, file with the office the name and telephone number of the owner's contact person for receipt of complaints or concerns during construction, operation, maintenance, and decommissioning. The owner shall keep the name and telephone number of the contact person on file with the office current.

SECTION XIII – VIOLATIONS, ENFORCEMENT, AND PENTALTIES

13.0 Violations

13.01 It is unlawful for any person to violate any provision of this ordinance.

13.02 It is unlawful for any person to knowingly provide false information, make a false statement, fail to provide, or misrepresent any material fact to a county agent, board, commission, committee, department, employee, official, or officer acting in an official capacity under this ordinance.

13.03 It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist a permit or order issued pursuant to this ordinance.

13.04 A separate offense is deemed committed on each day that a violation occurs or continues.

13.1 Enforcement

13.11 Office Authority. The office shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.

13.12 Inspection Authority. The office may request permission to inspect, at a reasonable time and date, any premises or structure for which a permit has been applied for or granted to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If permission is not given, the office may apply for, obtain, and execute a special inspection warrant pursuant to Wis. Stat. § 66.0119.

13.13 Notice of Noncompliance. If the office finds a violation of any provision of this ordinance, the office may issue a written notice to the owner stating the conditions of non-compliance, specifying the action required to come into compliance, and providing a reasonable amount of time within which compliance is required.

13.14 Permit Revocation Authority. The office may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of wind energy systems facilities for which a permit has been granted, or failure to comply with the action requirement contained in a notice of noncompliance.

13.15 Citation Authority. The office may issue a citation for any violation of this ordinance. The office is not required to issue a notice of noncompliance or take any other action prior to issuing a citation.

13.16 Legal Referral. The office may refer a violation of this ordinance to corporation counsel for legal action, including an action seeking injunctive relief. The office is not required to issue a notice of noncompliance or take any other action prior to referring a violation to corporation counsel.

13.17 Other Enforcement Means. Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

13.2 Penalties

13.21 A person will, upon conviction for any violation of this ordinance, forfeit not less than $100 nor more than $1,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

13.22 The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 12 month period.

13.23 A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.

13.24 The failure of a county employee, official, or officer to perform an official duty imposed by a section of this code will not subject the employee, official, or officer to a penalty unless the section imposing the duty also specifies the penalty.

SECTION XIV - EFFECTIVE DATE

This ordinance is effective on the day following publication per Wisconsin Statute.

Adopted this 17th day of June, 2014

John M. Meyers
Iowa County Chairman

ATTEST:

Gregory T. Klusendorf
Iowa County Clerk

CERTIFICATION OF ADOPTION

This is to certify that the above ordinance was duly adopted by the County Board of Iowa County on the 17th day of June, 2014

Gregory T. Klusendorf
Iowa County Clerk
Iowa County, Wisconsin