

TITLE V – PROPERTY AND LAND USE

CHAPTER 55

AMENDED MADISON COUNTY WIND ORDINANCE

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55.01 – PURPOSE

The purpose of this ordinance is to provide for the present and future conditions regarding the Macksburg and Arbor Hill Wind Project(s), thereby promoting the conservation of energy resources as set forth in Iowa Code Section 335.5 and implementing the smart planning principles under Section 18B.1 to provide for a clean, renewable and efficient energy source. Due consideration has been given to maintaining the historical character of the County, the welfare of the citizens of Madison County, the economic benefits of tourism and the conservation of our natural resources, and eliminating the possibility of future Wind Energy Conversion Projects and/or C-WECS construction permitted in Madison County, Iowa; except for those permitted in 55.03 and 55.04 as set forth below.

55.02 – DEFINITIONS

For use in this ordinance, certain terms and words herein shall be interpreted or defined as follows:

- a. **“Arbor Hill Project”** shall mean the Arbor Hill Wind Farm as located in Madison County, Iowa.
- b. **“Commercial Operation Date”** shall mean the first day of the Project Term.
- c. **“Commercial Wind Energy Conversion System (or C-WECS)”** shall mean a turbine, owned and operated by an energy corporation or a commercial entity to generate electricity by converting the energy of the wind into electrical energy to be used on-site or distributed to the electrical grid. Any C-WECS having a Total Height greater than 125 feet is considered a commercial turbine.
- d. **“C-WECS Project”** shall mean a commercial/industrial electrical generating project designed as an integrated system, more than one commercial turbine installed at the same time as a project that operates by converting the energy of wind into electrical energy to be used on-site or distributed to the electrical grid.
- e. **“County”** shall mean Madison County, Iowa.

- f. **“Discontinued Use”** shall mean with respect to an individual C-WECS that the use of such C-WECS has been discontinued for a period of one (1) year without energy production, unless a plan is developed and submitted outlining the steps and schedule for returning the C-WECS to service.
- g. **“Easement Agreement”** shall mean an agreement between a Participating Landowner and the Facility Owner granting the Facility Owner an easement or other real estate rights for the right to use the Participating Landowner’s property to construct, maintain, operate, repair, repower and remove the C-WECS.
- h. **“Facility Owner (or Owner)”** shall mean the entity or entities having controlling or majority equity interest in the C-WECS Project, including their respective successors and assigns. As of the date of this Ordinance, the Owner is MidAmerican Energy Company (MEC).
- i. **“Macksburg Project”** shall mean the Macksburg Wind Farm as located in Madison County, Iowa.
- j. **“Participating Landowner (or Landowner)”** shall mean any landowner under easement, lease or other agreement with the Facility Owner pertaining to the C-WECS Project.
- k. **“Project Term”** shall mean the period commencing on the date Owner notifies Madison County in writing that the entire Project has commenced commercial operation.
- l. **“Property”** shall mean the real property for which real property rights have been provided to the Facility Owner by a Participating Landowner under an Easement Agreement.
- m. **“Total Height”** shall mean the highest point above ground level reached by a rotor tip or any other part of a turbine.
- n. **“Turbine”** shall mean C-WECS and/or any piece of electrical generating equipment that converts the energy of blowing wind into electrical energy using airfoils, blades, or similar devices to capture the wind.

55.03 – MACKSBURG PROJECT

The Facility Owner shall be permitted to continue to own and operate the Macksburg Project as it is currently permitted, constructed, and operated pursuant to the permit issued by the Board of Adjustment on or about October 1, 2013. There shall be no increase in turbine height beyond the total height of 499 feet nor any additional wind turbines installed beyond the existing 51 total wind turbines. Nothing in this Paragraph shall prohibit the owner of the Macksburg Project from performing maintenance activities, repairs, replacing turbines or turbine components, or installing newer or different model turbines or turbine components than those originally

permitted, whether for repowering or otherwise, provided such activities do not increase the height of the permitted wind turbines beyond 499 feet.

55.04 – ARBOR HILL PROJECT

The Facility Owner shall be permitted to continue to develop and construct, own and operate the Arbor Hill Project as permitted by the Board of Adjustment, pursuant to the permit issued by the Board of Adjustment and recorded with the Madison County Recorder on or about the 9th day of September, 2021. The construction of the Madison County portion of the Arbor Hills project shall be commenced within two (2) years of the passage of this ordinance. There shall be no increase in turbine height beyond the total height of 499 feet nor any additional wind turbines installed beyond the maximum of 30 total wind turbines. Nothing in this Paragraph shall prohibit the owner of the Arbor Hill Project from performing maintenance activities, repairs, replacing turbines or turbine components, or installing newer or different model turbines or turbine components than those originally permitted, whether for repowering or otherwise, provided such activities do not increase the height of the permitted wind turbines beyond 499 feet.

55.05 – VARIANCE AND SPECIAL USE PERMIT REQUIREMENTS FOR MACKSBURG PROJECT AND ARBOR HILLS PROJECT

1. **Color and Finish.** Wind turbines shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective.
 - a) Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
2. **Tower configuration.** All wind turbines, which are part of a C-WECS project, shall be installed with a tubular, monopole type tower. Meteorological towers may also be guyed or lattice towers.
3. **Lighting.** C-WECS sites shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
4. **Signage.** All signage on site shall comply with the Madison County Zoning Ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator of the C-WECS. Signs indicating the 9-1-1 address of each C-WECS, or grouping of multiple C-WECS, shall be placed at each device site and/or the entry points of access roads per the Madison County Uniform Rural Address System Ordinance and require the signage fee. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the C-WECS sites.

5. **Feeder Lines.** All communications and feeder lines, equal to or less than 34.5kV in capacity, installed as part of a C-WECS project shall be buried.
6. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site and disposed of in accordance with all applicable local, state and federal regulations.
7. **Minimum Ground Clearance.** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.
8. **Signal Interference.** The applicant shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any C-WECS.
9. **Federal Aviation Administration.** All C-WECS shall comply with FAA standards and permits.
10. **Electrical Codes and Standards.** All C-WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
11. **Setbacks.** The following setbacks and separation requirements shall apply to all wind turbines and become effective upon approval of the project Special Use Permit/Variance.
 - a. **Inhabited Structures.** Each wind turbine shall be set back from the nearest inhabitable residence, school, hospital, church or public library, a distance no less than the greater of (a) two (2) times its total height or (b) one thousand (1,000) feet.
 - b. **Property Lines.** At no time shall any part of the wind turbine overhang an adjoining property line. For the purposes of this project, property line shall be defined as follows: *the boundary line of the area over which applicant/owner has legal control for the purposes of installation of a C-WECS. This control may be attained through fee title ownership, easement, or other appropriate contractual relationship between the project applicant/owner and the applicable landowner.*
 - c. **Public Roads.** Setbacks from public road right-of-way, railroad right-of way, power lines and structures or any easement thereto shall be a minimum of 1.1 times the height of the tower and rotor, determined from the existing right of way, power lines and structures or easements thereto.
 - d. **Communication and Electrical Lines.** Each wind turbine shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.

- 12. Noise.** Audible noise due to C-WECS sites operations shall not exceed sixty (60) dBA when measured at any inhabitable residence, school, hospital, church or public library existing on the date of approval of this special use permit. Sound levels, however, may be exceeded during events falling outside the control of the permit holder's control.
- a. In the event audible noise due to operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise shall be reduced by five (5) dBA.
 - b. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected inhabitable residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
 - c. In the event the noise levels resulting from the C-WECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment provided that the following has been accomplished:
 - i. Written consent from the affected property owners has been obtained stating that they are aware of the C-WECS and the noise limitations imposed by this Special Use/Variance permit, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
 - ii. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Madison County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted may exist on or at the burdened property.

13. Safety.

- a. All wiring between wind turbines and the C-WECS project substation shall be underground. If the applicant/owner can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved as a condition of the special use permit by the Board of Adjustment.
- b. Wind turbine towers shall not be climbable up to fifteen (15) feet above ground level.

- c. All access doors to Wind turbine towers and electrical equipment shall be locked when not being serviced.
- d. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and C-WECS entrances.
- e. For all C-WECS, the manufacturer's engineer or another qualified engineer shall certify that the wind turbine, foundation and tower design of the C-WECS is within accepted professional standards, given local soil and climate conditions.
- f. For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires.

55.06 – DECOMMISSIONING PLAN

a. Macksburg Project.

6.4.1 Removal of Wind Energy Facilities and Restoration of Easement Properties.

Within 180 days after full or partial termination of any of the Easements, the Facility Owner will remove all physical material pertaining to the Wind Energy Facilities from the affected Easement Properties to a depth of forty-eight inches (48") beneath the surface, and restore the area formerly occupied by the Wind Energy Facilities to substantially the same physical condition that existed immediately before the construction of the Wind Energy Facilities ("**Removal Obligations**"). Where feasible, the Facility Owner will use excavated materials including topsoil incorporated in the Easement Properties during construction to complete the restoration. The Facility Owner will leave access roads in place at Landowner's request and if permitted to do so by applicable permits and regulations. Any Wind Energy Facilities remaining on Landowner's property after satisfaction of Facility Owner's Removal Obligations will be deemed abandoned to Landowner and thereafter shall be owned and controlled by Landowner and Facility Owner will have no further responsibility to those Wind Energy Facilities.

6.4.2 **Review of Removal Plans.** Plans to satisfy Facility Owner's Removal Obligations will be subject to Landowner's review before beginning work on removal of Wind Energy Facilities located on property. Facility Owner will consider in good faith any comments Landowner may have with respect to plans.

6.4.3 Funding of Removal Plans.

a. **Salvage.** All proceeds from salvage of materials removed shall be applied first to the costs of satisfying Facility Owner's Removal Obligations. If Removal Obligations are satisfied within the period allowed, any remaining salvage proceeds shall be Facility Owner's property.

b. **Security for Removal Obligation.** Except as provided in subsection (d) below, in each of Years 15, 16, 17, 18 and 19 (Year One will be from the Commercial

Operation Date to December 31 of that calendar year, and each subsequent year will be a full calendar year) Facility Owner will post security of \$10,000 per Turbine (i.e. a total of \$50,000/Turbine over the five-year period) to assure funding of Removal Obligations Landowners at the Wind Farm. Unless Landowners owning properties hosting more than 50% of the Turbines in the Wind Farm agree to a different form of security, which agreement shall not be unreasonably withheld or delayed, the security shall be in the form of a bond or cash deposited in an interest-bearing escrow account managed by the Trust Department of a Winterset or Des Moines bank (“**Escrow Agent**”). Interest on escrowed funds shall be retained in and become a part of the escrow fund. Facility Owner shall be responsible for payment of reasonable fees and expenses for administering the escrow.

c. Distribution of Removal Security. If Removal Obligations are satisfied within the period allowed, then upon satisfaction of Removal Obligations, the Escrow Agent shall deliver the bond of all of the escrowed funds including the accrued interest to Facility Owner. If Facility Owner fails to satisfy Removal Obligations within the period allowed, so much of the bond or escrowed funds as are reasonably necessary to complete the Removal Obligations, less salvage proceeds recovered by Landowner, shall be used to complete the Removal Obligations. Initially an equal amount of the escrowed funds shall be allocated to satisfaction of the Removal Obligations for each Turbine; any escrowed funds not distributed on this basis shall be retained by the Escrow Agent to fund any unsatisfied Removal Obligations, again allocated equally to each remaining Turbine, until all Removal Obligations with regard to the entire Wind Farm are completed. If there are funds remaining in the escrow account after all Removal Obligations are satisfied with regard to the entire Wind Farm, the Escrow Agent shall deliver to Facility Owner any balance remaining in the Escrow Fund.

d. Exception to Obligation to Fund Removal Security. (*NOTE: The Wind Farm at some point in time may be divided and owned by two or more separate entities (each part of the Wind Farm owned by a separate entity, a “Unit”).*) If the Wind farm or a Unit of the Wind Farm is owned by a regulated public utility, subsections (a), (b) and (c) above shall not apply to the Wind Farm or Unit it owns. However, if the public utility sells or otherwise disposes of its ownership of the Wind Farm or Unit to an entity other than another regulated public utility before the Removal Obligation is satisfied, subsections (a), (b) and (c) above shall apply to the new owner and at or before the time of transfer to the new owner, the removal security for the Wind Farm or Unit, as applicable, shall be funded as require by subsection (b) to the date ownership is transferred from the public utility to the new owner.

b. Arbor Hill Project.

8.4 Surrender of Property. Upon the expiration or earlier termination of this Agreement, MidAmerican shall peaceably and quietly leave, surrender and return the Property to Owner. MidAmerican agrees and herby covenants to dismantle and remove all Wind Power Facilities owned or installed by MidAmerican or its

affiliates on the Property (provided that all footings and foundations shall only be removed to a depth of four (4) feet below the surface of the ground and shall be covered with soil and the underground cables and wires may be left in their respective trenched locations), within one (1) year after the date of such expiration or earlier termination of this Agreement; and MidAmerican shall have a continuing easement to enter the Property for such purposes during such one (1) year period.

Permit Obligations. (Consistent with Zoning Administrator's recommendations).

- a. A WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four (4) feet below ground level within one hundred eighty (180) days of the discontinuation of use.

- b. In the event the Project is transferred to an owner who is not a public utility regulated in the state of Iowa, the County will have the right to request that prior to any such transfer the new Project owner provide a decommissioning plan (as further described below) and also provide financial assurance for decommissioning in the form of (1) a cash escrow or deposit, bond, or letter of credit (as selected by the Project owner) in a form acceptable to the County and in the amount of the total estimated costs of decommissioning the WECS located in the County, as such amount will be set out in a engineers report provided by Owner to County as part of the decommissioning plan or (2) a guarantee or such other form of security that is acceptable to the County. If and when required by this part b, each WECS shall have a decommissioning plan outlining the anticipated means and cost of removing the WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a professional engineer licensed in the State of Iowa. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities in accordance with the requirements hereof. In addition, in the event and at the time that MidAmerican Energy Company ceases to be a public utility regulated in the state of Iowa, the County will have the right to require MidAmerican Energy Company to comply with requirements in this part b with respect to providing a decommissioning plan and financial assurance.

55.07 – SPECIAL USE PERMITS FILED WITH COUNTY RECORDER

All requirements set forth in the special use permits filed with the Madison County Recorder are hereby incorporated and adopted herein by this reference.

55.08 – EXPANSION OF EXISTING PROJECTS

There shall be no expansion of the Macksburg Project or the Arbor Hills Project. The Facility Owner shall be able to perform the necessary maintenance, repairs and replacement of turbines or turbine components so long as such activity does not violate any other provision of this Ordinance.

55.09 – FUTURE PROJECTS

Consistent with the principles outlined in Section 55.01, there shall be no further Wind Energy Conversion Projects and/or C-WECS construction permitted in Madison County, Iowa; except for those permitted in 55.03 and 55.04.

55.10 – REPEALER

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

55.11 – SEVERABILITY CLAUSE

If any section, provision, or other part of this ordinance shall be adjudged invalid or unconstitutional, said adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or other part thereof not adjudged invalid or unconstitutional.

55.12 – EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law, which means it will be effective thirty days from the date of the Public Hearing and its approval, whichever is later.

Passed and approved this ____ day of _____, 2021.