

# **MONTGOMERY COUNTY BOARD OF COMMISSIONERS**

## **Ordinance 2018-4**

### **An Ordinance Amending Noise Regulation of Wind Energy Conversion Systems**

Whereas, pursuant to Indiana Code §36-8-2-4, the Board of Commissioners has the authority to regulate noise; and

Whereas, the Board has received complaints from persons who live in areas where future Wind Energy Conversion Systems are proposed regarding the noise and other adverse effects of such systems; and

Whereas, the Board has received complaints from persons who oppose the development of Wind Energy Conversion Systems that Chapter 155 of the Montgomery County Code unintentionally restricts non-participating land owners from building new structures on their land because it restricts construction of a wind turbine a certain distance from the nearest primary structure rather than from the property line, thereby limiting the right of such landowners from constructing new primary structures in the area between an existing primary structure and a wind turbine; and

Whereas, the Board has received and considered information from citizens opposed to the development of Wind Energy Conversion Systems in Montgomery County and from representatives of such systems regarding noise and other issues; and

Whereas, the Board has considered a presentation by Dr. Keith R. Kluender, Professor of Speech, Language, and Hearing Sciences at Purdue University, regarding the levels of noise emitted by wind turbines, how the distance between the generator of sound and listener affects the noise level, and the practical measures the Board may take to regulate noise from wind turbines appropriately; and

Whereas, having considered all of the information received and information provided by the public and other interested parties at the Board's public meetings and information available to it in the public domain, the Commissioners find that it is in the best interests of the health and general welfare of the citizens of Montgomery County that Chapter 155 be amended in order to lower the noise limits from 60 dB to 50 dB, to require a greater noise buffer distances, to distinguish, for purposes of measuring noise, between residential parcels of five acres or less and other parcels of land, to provide for enforcement of this ordinance, and to make other technical changes to the code; and

Whereas, the Commissioners find that Chapter 155 should be amended accordingly.

IT IS, THEREFORE, ORDAINED that Section 155.11(G) of Chapter 155 is hereby amended to read as follows:

*“(G) Noise and Vibration.* Noise levels generated by the operation of a WECS shall not exceed fifty (50) decibels [dB SPL(A) weighting], as measured:  
*(1)* at the nearest Primary Structure for a participating landowner;

(2) at the nearest Primary Structure for a non-participating landowner whose Primary Structure is located on a parcel of more than five (5) acres; and

(3) at the property line nearest to the wind turbine for non-participating landowners whose Primary Structure is located on a parcel of five (5) or less acres.

(4) In order to protect persons from noise which exceeds these levels, including variations of noise caused by wind direction weather conditions and other environmental conditions, no wind turbine will be allowed within:

(a) a distance equal to 110% of the WECS Tower Height, as defined in Section 155.03, or a distance of 1,000 feet, whichever is greater, from the nearest Primary Structure owned by a participating landowner;

(b) a distance equal to 110% of the WECS Tower Height, as defined in Section 155.03, or a distance of 1,400 feet, whichever is greater, from the nearest Primary Structure owned by a non-participating landowner whose Primary Structure is located on a parcel of more than five (5) acres; and

(c) a distance equal to 110% of the WECS Tower Height, as defined in Section 155.03, or a distance of 1,500 feet, whichever is greater, from the nearest property line of any Primary Structure for non-participating landowners whose Primary residence is located on a parcel of five (5) acres or less.

(5) Noise and vibration levels shall comply with all other applicable county, state and federal laws, ordinances or regulations. “

IT IS FURTHER ORDAINED that Section 155.11(I) of Chapter 155 is hereby amended in order to conform to the amendment of Section 155.11(G) and will read as follows:



*“(I) Setbacks.*

**(1)** Except as otherwise provided herein, no WECS Tower shall be located within any of the following minimum setback distances:

<b>Distance from ...</b>	<b>Minimum Setback Distance</b>
Road or street rights-of-way, measured from the center of the WECS Tower to the nearest edge of the right-of-way	1.1 times the WECS Tower Height, or 350 feet, whichever is greater
Railroad rights-of-way, public utility easements, or underground pipeline easements, measured from the center of the WECS Tower to the nearest edge of the right-of-way or easement	1.1 times the WECS Tower Height, or 350 feet, whichever is greater
Regulated drains subject to jurisdiction of the Montgomery County Drainage Board pursuant to I.C. 36-9-27, measured from the nearest edge of the WECS Tower foundation	75 feet from (i) the center line of any tiled drain or (ii) the top edge of the nearest bank of an open drain
Sugar Creek, measured from the center of the WECS Tower to the nearest ordinary high-water mark	2,640 feet (1/2 mile) from the nearest “ordinary high-water mark” as defined by 312 IAC 1-1-26
Incorporated limits of a municipality, or boundary of a platted residential subdivision outside the corporate limits of a municipality, measured from the nearest edge of the WECS Tower Foundation.	1,500 feet
State, county, city or town parks, measured from the center of the WECS Tower to the nearest point on the park boundary	1,500 feet

**(2) Substations:** No Substation shall be located nearer than 1,000 feet from any Residence. Participating Landowners may agree in writing to reduce the 1,000-foot Substation setback from Residences on their property. Any such written agreement shall be executed and acknowledge by all affected Participating Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

**(3) Right of Way:** No WECS Tower or Substation shall be located within any dedicated public easement or public right-of-way.

**(4) Waivers:** Adjacent Landowners may agree in writing to reduce the minimum noise reduction distances established by this section from their common property lines. Any such written agreement shall be executed and acknowledged by all affected Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

**(5) Grandfathered Set-Backs:** Once a WECS Tower or Substation is constructed, the setback and noise buffer are established. If after construction, a landowner sells the land to another person or entity, the new owner is treated, for purposes of this section, in the same manner as the previous owner, regardless of whether the new landowner has an agreement with a WECS provider.

IT IS FURTHER ORDAINED that a new subsection, namely Section 155.10(C) is hereby added to Chapter 155, and it reads as follow:

**155.10(C) Expiration of Permit.** Any WECS Building Permit issued by the Building Commissioner expires two (2) years after the date of issuance. No WECS Tower or Substation may be constructed or modified without a valid WECS permit. Permits issued under this Chapter may be renewed after the initial two-year period for a period one (1) year so long as the application for such renewal is filed before the expiration of the permit. The fee for a WECS Tower permit is \$1,750.00 per megawatt of generating capacity. The fee for a Substation permit is \$300.00. The fee for the renewal of either a WECS Tower or Substation permit is \$50.00.

IT IS FURTHER ORDAINED that a new subsection, namely Section 155.17 (K) is hereby added to Chapter 155, and reads as follows:

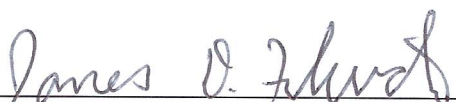
**155.17 (K) Violations.** In the event that a violation exists and the permit holder or operator of the WECS facility or system fails or refuses to comply with an order of the Building Commissioner, fails to pay a fine as provided for in subsection H of this Section, or otherwise violates the provisions of this Chapter, the Building Commissioner has the authority to seek against such violator a money judgment, injunction or other legal remedy, either legal or equitable, in order to enforce this Chapter. If such enforcement action is filed by the Building Commission and the Court finds that a violation exists, the violator will be responsible for all costs incurred in the enforcement action, including but not limited to reasonable attorney's fees, court costs, litigation expenses, the cost of consultants and experts and other expenses related to the enforcement action.

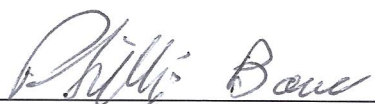
IT IS FURTHER ORDAINED that all other provisions of Chapter 155 which are not expressly amended by this ordinance will remain in full force and effect.

IT IS FURTHER ORDAINED that this ordinance will be effective upon adoption.

Adopted this 9<sup>th</sup> day of July, 2018.

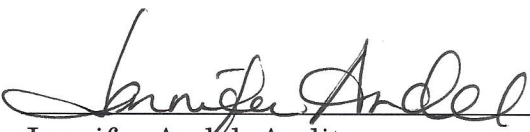
A Majority of the Montgomery County  
Board of Commissioners

  
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James D. Fulwider, President

  
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Phil Bane, Vice President

  
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John Frey, Member

ATTEST:

  
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Jennifer Andel, Auditor