

ORDINANCE NO. 2023B

AN ORDINANCE AMENDING TITLE VI, CHAPTER 6.1 OF THE CODE OF ORDINANCES OF FRANKLIN COUNTY, IOWA, TO MAKE SUPPLEMENTAL STANDARDS APPLICABLE TO WIND ENERGY CONVERSION SYSTEM CONDITIONAL USES IN AN “A” AGRICULTURE DISTRICT, AND ENACTING TITLE VI, CHAPTER 6.5 WITHIN THE CODE OF ORDINANCES OF FRANKLIN COUNTY, IOWA, TO PROVIDE FOR SUPPLEMENTAL STANDARDS

WHEREAS, Franklin County, Iowa (the “County”), has existing commercial wind energy conversion systems (“CWECS,” or “WECS”) within the County; and

WHEREAS, the regulation of the siting, construction, operation, and eventual discontinuance of WECS projects is necessary to protect the health, safety, welfare of residents of the County, to protect public infrastructure, and to ensure proper land use within the County that is consistent with the current comprehensive plan; and

WHEREAS, the Franklin County Board of Supervisors (the “Board”) has undertaken an over year-long legislative study process to determine appropriate regulations for the siting, construction, operation, and eventual discontinuance of WECS projects; and

WHEREAS, during the course of the Board’s legislative study period, it has consulted with residents, current owners and operators of WECS within the County, and professional consultants, including the County’s municipal code editor, engineers, and legal counsel; and

WHEREAS, the County has received and considered the Planning and Zoning Commission’s recommendations for a WECS ordinance; and

WHEREAS, the Board has considered the County’s comprehensive plan and the objectives set forth in Iowa Code section 335.5; and

WHEREAS, pursuant to Iowa Code section 335.6, the Board scheduled a public hearing on this ordinance and caused notice of said hearing to be published in accordance with Iowa Code section 331.305; and

WHEREAS, the Board now finds it to be in the best interests of the County to adopt this ordinance making supplemental standards applicable to WECS in the “A” Agriculture District, and providing for such supplemental standards.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FRANKLIN COUNTY, IOWA, THAT:

SECTION 1. Franklin County Code of Ordinances, Title VI, Property and Land Use, Chapter 6.1, Zoning, Section 7, Districts and District Regulations, “A” Agriculture District, is hereby repealed and replaced as follows:

“A” Agriculture District

1. Purpose.

The “A” Agriculture District is created to provide for those lands within the County that are primarily intended to be used for agricultural purposes.

2. Principal Permitted Uses.

- A. Agriculture and the usual farm buildings, structures and uses, including one mobile home on a farm if used by the owner, an immediate relative or an employee. The farmhouse, farm buildings and farm uses are exempt from any regulation and permit requirements.
- B. Single-family dwellings, but only on severed farmsteads, lots with primary tree cover, or lots with a majority of the area being comprised of soils having a corn suitability rating (CSR) of less than 60 CSR. However, no such residence shall be located closer than five hundred (500) feet from any feedlot of any other person.
- C. Public and private forests and wildlife preserves and similar conservation areas (no permit required).
- D. Public parks.
- E. Accessory buildings and uses, and temporary buildings.

3. Conditional Uses.

The following uses may or may not be permitted subject to determination by the Board of Adjustment:

- A. Church or other place of worship, including parish house and Sunday school building.
- B. Public schools and private educational institutions having a curriculum approved by the State Department of Public Instruction or regulated by the Department of Social Services.
- C. Sanitary landfills, subject to approval of the State Department of Water, Air and Waste Management.
- D. Home Occupations.
- E. Radio and television towers and broadcasting stations, Wind Energy Conversion Systems, windmills or wind generators of greater than twelve (12) feet in height (Ornamental windmills twelve (12) feet in height or less, or windmills used in pumping water on land being used for agricultural purpose are exempt from this section).

A site plan shall be submitted to the County that includes the height of the structure, dimensions of the property, location of the structure on the property, location and approximate height of overhead power or transmission lines, and location of principal and accessory structures on the applicant's property as well as surrounding

properties. Any radio and television towers and broadcasting stations, windmill or wind generator must be located on a lot or property so that if it falls, it will not fall on any neighboring structures which are not owned by the person operating and owning the radio and television towers and broadcasting stations, windmill or wind generator.

- F. Publicly owned and operated buildings and facilities.
- G. Public golf courses and community centers; private non-commercial recreational areas and centers, including country clubs, swimming pools and golf courses.
- H. Cemeteries, including mausoleums and crematories; provided that any mausoleum or crematory shall be a distance of at least two hundred (200) feet from adjacent property and street and highway lines and provided further that any new cemetery shall contain an area of twenty (20) acres or more.
- I. Commercial kennels for raising, breeding and boarding of dogs or other small animals; provided that all buildings, including runways, be at least two hundred (200) feet from all property lines.
- J. Hospitals and sanitariums and charitable institutions for the treatment of diseases.
- K. Stables, private and public, and riding academies and clubs, and other structures for housing animals or fowls. Any such structures must be located at least two hundred (200) feet from all boundary lines of the property on which located. Public stables and riding academies and clubs shall be permitted one double-face sign on the premises not to exceed two (2) square feet per face.
- L. Nurseries and greenhouses; provided that any heating plant shall be a distance of at least two hundred (200) feet from any dwelling and from any adjoining lot lines.
- M. Public and private airports and landing strips.
- N. Commercial feedlots, however, no part of any feedlot shall be closer than five hundred (500) feet to any property line. The Board of Adjustment may require greater setbacks to protect nearby property when conditions warrant. Also, the provisions for drainage, sanitation and other health related matters must be approved by the County Board of Health and must meet any requirements of the State Department of Water, Air and Waste Management.
- O. Sewage treatment plants and waste stabilization lagoons, public and private. No part of any treatment facility shall be closer than two hundred (200) feet from any property line.
- P. Specialized raising of poultry, pigeon, rabbit and other similar animals.
- Q. Mineral extraction and mining, and all plants for processing gravel, sand, rock or other such raw material provided that active engagement in such use shall not take place within three hundred (300) feet of any residence, nor within fifty (50) feet of any property line or right-of-way of any public street or highway. Each application for conditional use permit for mineral

extraction shall be accompanied by a plan for reclamation or alternative use of the site upon completion of the proposed mineral extraction, and the applicant shall be required to post bond or to provide other appropriate assurance of the plan's completion.

- R. Any commercial or industrial use similar to the uses listed below that are primarily agriculturally oriented and would better serve the users in the Agricultural District than if located in the commercial or industrial districts.
1. Storage and distribution centers for agricultural chemicals, fertilizers, feeds, seeds and related products.
 2. Livestock, sale barns, stockyards or marketing agencies.
 3. Commercial grain storage facilities.
 4. Repair and service of agricultural implements and vehicles by the resident operator on the same premises of his place of residence.
 5. Oil and/or gas wells, drilling for oil, gas or mineral exploration, and any related structures and installations.

4. Yard Requirements.

- A. Front yard depth, fifty (50) feet.
- B. Side yard width, twenty-five (25) feet.
- C. Rear yard depth, thirty (30) feet. An accessory building may be located in a rear yard but
- D. shall be at least five (5) feet from any property line.

5. Height Regulations.

Airport height limitations shall prevail if applicable.

6. Lot Area.

The minimum lot area shall be not less than twenty-one thousand seven hundred eighty (21,780) square feet or such larger size as may be determined necessary for an on-site sewage system by the County Health Officer.

7. Supplemental Standards for Wind Energy Conversion Systems, windmills or wind generators of greater than twelve (12) feet in height (Ornamental windmills twelve (12) feet in height or less, or windmills used in pumping water on land being used for agricultural purpose are exempt from this section).

From and after the effective date of this ordinance, the approval, amendment or extension of a conditional use permit by the Board of Adjustment for this type of use shall be subject to the supplemental standards set out in Title VI, Chapter 6.5, in addition to the standards for approval set forth in this Chapter 6.1. These uses are limited to a conditional use in the "A" Agriculture District.

SECTION 2. Franklin County Code of Ordinances Title VI, Property and Land Use, is hereby amended by adding the following new Chapter 6.5, entitled “Supplemental Standards for Wind Energy Conversion Systems, windmills or wind generators of greater than (12) feet in height”:

**Chapter 6.5 Supplemental Standards for Wind Energy Conversion Systems,
Windmills, or Wind Generators of Greater than (12) Feet in Height**

Section 1: Purpose and Definitions

1. Purpose. The purpose of this Ordinance is to promote the health, safety, and general welfare of the citizens of Franklin County by providing an orderly and regulated process for the siting, construction, and operation of windmills or wind generators of greater than (12) feet in height, and wind energy conversion system (“WECS”) projects on land within the County’s Agricultural zoning districts.
2. Interpretation. The requirements of this Chapter 6.5 are in addition to the general zoning permit and conditional use permit procedures and standards identified in Sections 4 and 5 of Ordinance 6.1, zoning regulations. In the event of a conflict between this Chapter 6.5 and other provisions of the zoning regulations, the most restrictive provision shall apply.
3. Definitions. As used in this section, the following terms shall have the meanings indicated:
 - A. “Agricultural operation building” means agricultural sheds, shops, bins, barns, or any agricultural structure used daily, weekly, or seasonally.
 - B. “Commercial wind energy conversion system” or “CWECS” means a wind energy conversion system which is intended to produce electricity for sale to a rate regulated or non-regulated utility or for use off site.
 - C. “Components” means all of the physical facilities comprising a WECS, including turbines (i.e., the tower, nacelle, hub, motor, and blades), turbine foundations, crane pads, feeder lines, and any access buildings and equipment including substations built in conjunction with a WECS project.
 - D. “Dwelling” means a house or other building, including all structures attached to the building, which meets all the following criteria:
 - (1) Used as a place of habitation for humans on a permanent and frequent basis;
 - (2) Not readily mobile;

- (3) Connected to a permanent source of electricity.
- (4) Connected to a permanent private water supply or a public water supply and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system;
- (5) Assessed and taxed as real property; and
- (6) Occupied for at least six months in the last two years.

E. “Feeder line” means any above or below ground line that carries electrical power from one or more turbines.

F. “Meteorological tower” or “MET tower” means a tower which is erected to measure wind speed and directions, or collect other atmospheric or weather data relevant to siting and operating a commercial wind energy conversion system. Meteorological towers are not part of a WECS project. Meteorological towers do not include towers and equipment used by airports, the Iowa Department of Transportation, or other applications to monitor weather conditions.

G. “Occupied, non-residential building” means any building (other than a dwelling) that is regularly occupied by humans, and that is open to the public, sells goods or services, or is operated by a public, religious, or other non-profit institution.

H. “Project” means all components used in and for the construction and operation of a wind energy conversion system (WECS) as defined in this chapter.

I. “Project area” means the geographic area encompassing all components of a WECS project identified in an application or applications for conditional use for WECS.

J. “Property line” shall mean the legal boundary between separately owned real estate parcels, and between privately-owned parcels and publicly owned land or public rights-of-way.

K. “Public conservation areas” means land owned by County, State, or federal agencies and managed for conservation/preservation purposes, including but not limited to Wildlife Management Areas, Conservation Areas, parks, preserves, wildlife refuges, and waterfowl production areas. For purposes of this regulation, public conservation areas also include land owned by non-profit conservation organizations and other privately owned lands upon which permanent conservation easements have been granted to public agencies or non-profit conservation organizations. Public conservation areas do not include land enrolled in the Conservation Preserve Program.

L. “Repowering” means either the complete dismantling and replacement of generation equipment at an existing project site or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

M. “Rotor diameter” means the diameter of the circle described by the turbine’s moving rotor blades. “Rotor” is defined for purposes of this ordinance as including the turbine hub and blades.

N. “Shadow flicker” means the shadow of a turbine or the turbine rotors as it rotates.

O. “Total height” means the highest point above ground level reached by a rotor tip or any other part of a turbine.

P. “Tower” means the vertical structure that supports the electrical generator, rotor blades, or meteorological equipment. Reinforced concrete or precast towers shall not be permitted within Franklin County.

Q. “Turbine” means any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils, blades, or similar devices to capture the wind.

R. “Wind energy conversion systems” or “WECS” means an electrical generating project designed as an integrated system, the components of which are installed at the same time (a “project” for the purposes of this chapter), that operates by converting the kinetic energy of wind into electrical energy to be used on-site or distributed into the electrical grid. A MET tower is not considered a component of a WECS project.

S. “Zoning administrator” means the administrative officer designated or appointed to administer and enforce the regulations contained in this chapter.

T. “Zoning permit” means a conditional use permit, building permit, or both that is issued by the enforcing officer authorizing the use of land in the manner for the purpose specified in the application.

Section 2: Permit Application and Review – Conditional Use Permit Required

1. General. Wind Energy Conversion Systems are not a utility or other principal permitted use in the “A” Agriculture zoning district. As such, before any construction activities related to a commercial wind energy conversion system or a MET tower can begin in the County, zoning permits must be issued by the County. For purposes of this section, the installation of MET towers and access roads associated with a commercial WECS shall be deemed construction activities requiring a zoning permit, and any such

tower or road must be installed in compliance with all other applicable County ordinances and regulations. A conditional use permit is required for each individual structure (tower). The conditional use permit must be approved prior to seeking any building permits.

2. Application for Conditional Use Permit. The County Zoning Administrator's office will supply the written application forms to be used by any person seeking the zoning permits. A pre-application meeting shall be held between the applicant and the Zoning Administrator at least 30 days prior to submission of the final application to the Zoning Administrator. Each project shall require a separate application. The application shall contain:

A. The name, address, EIN of the applicant, as well as the proposed owners or operators of the project, including the contact information (name, address, telephone, and email) of their authorized representatives. The application shall designate the entity that will be the permit holder.

B. A list of the names and addresses of all property owners, located within the project area, and located within 5,280 feet from the circumference of any turbine's approximate proposed location. Applicant shall provide proof of verification by the County Auditor.

C. A development plan ("Plan") for the project, which plan shall contain aerial photographs of the entire proposed project area, showing the approximate proposed location of the turbines, private access roads, feeder lines, substations, and all other components of the project. The Plan shall show property lines and setback distances under Section 3 below, as well as all public roads and public and private drainage district facilities (i.e., ditches and underground tiles) in the project area. The Plan shall also identify any other turbines, communication antennae, and airstrips (including private airstrips) located within five miles of the project area; and all lakes, permanent water courses and public conservation areas within three miles of the project area boundaries. In providing the above information, the Plan shall use a GPS coordinate system that is compatible with the County's geographical information and data systems. The accuracy of the information included in the Plan under this paragraph shall be verified in writing by the County Engineer prior to submission. The Plan shall also include a mailing address for the owner of each communication antennae identified.

D. Project details, including the name of the project, and the final number, type, generating capacity, total height, tower height, and rotor diameter of the turbines must be provided in the development plan. A waiver request for specific application requirements, upon showing of impossibility or hardship, may be requested at the time of application. Applications that lack any required information in this ordinance and which do not make an express waiver request will be deemed incomplete and will be returned to the applicant without further action.

E. Documentation of applicant's legal control over all of the private property interests necessary for the project, signed by the property owner. Such legal control must rest in the permit holder at the time of application.

F. A description of the county roads, bridges, and culverts anticipated to be used during all phases of construction, as well as for access to material storage sites and staging areas. As set forth in Sections 4 and 6, below, before construction commences on a project, all public road crossings proposed for use must be provided to the County Engineer and reviewed for compliance with the County's Road Use Protection Agreements.

G. A description of all public drain tile anticipated to be crossed during all phases of construction, as well as for access to material storage sites and staging areas, as set forth in Section 4 and 6 below, before construction commences on the project. All public drainage crossings must be provided to the Drainage District Engineer and approved by the Board of Supervisors, acting as or for the Drainage District Trustees having jurisdiction of the District impacted. The approval must be obtained before the time in which the application is considered by the Board of Supervisors and prior to the issuance of any zoning permits. The Applicant shall provide proof of approval by private drainage district trustees for anticipated crossings located within private drainage districts.

H. Any FAA, FCC, or other State or federal permits or approvals that are necessary for the project. Applicant shall submit a copy of the actual permit application, or proof that the permit has been filed with the appropriate agency.

I. Evidence in the form of a report prepared by a qualified third-party acceptable to the Board that the project will not materially interfere with any existing commercial or public safety communication systems including radio, telephone, internet, G.P.S., microwave, or television signals.

J. A report prepared by a qualified third-party acceptable to the Board using the most current modeling software available establishing that no dwelling will experience more than 25 hours per year of shadow flicker from the centroid of the dwelling based on a "real world" or "adjusted case" assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all dwellings caused by the individual turbines in the project. The Applicant shall specify the manufacturer and specifications for a proposed shadow flicker control system to be installed for each turbine for which the projected shadow flicker measurement exceeds the limitations of this ordinance.

K. A Decommissioning Plan pursuant to Section 5, Paragraph 2 below.

L. Such additional information as the County may request due to unique circumstances with the project. Applicants are encouraged to have ongoing

discussions with the Zoning Administrator and both engineers (County & Drainage District) during preparation of the application.

M. The owner of a dwelling may waive their setback distance requirements, flicker limitations, and noise decibel limits, established in this chapter. Each waiver must be in a written instrument signed by all owners impacted by a particular turbine(s) and included with the application.

Section 3: Siting and Design Standards

1. Setbacks. All turbines and project components shall demonstrate compliance with the following setbacks at the time of application. The Zoning Administrator will evaluate setbacks and make recommendations. [Note: All measurements shall be from the center point of the tower (or from the nearest above ground non-fence structure at a substation site) to the nearest point on any dwelling, occupied non-residential building, or confinement feeding operation building; or to the nearest property line of any other protected area.]

Protected Area	Set Back Requirement
Adjacent Property Lines	120% of the total height
Dwelling	1,900 feet or three times (3x) the total height, whichever is greater
Occupied, Non-residential Building	1,900 feet or three times (3x) the total height, whichever is greater
Agricultural Operation Building	120% of the total height
Public Road Right-of-Way	120% of the total height
Trustee Drainage District Right-of-Way <ul style="list-style-type: none"> ▪ Open Ditch ▪ Tile (centerline) 	120% of the total height 300 feet from center of tower to center of drainage district tile or open ditch
Public Conservation Area	120% of the total height
Cemetery	120% of the total height
City Limits or Airstrip	1,900 feet or three times (3x) the total height, whichever is greater, from the Corporate Limits and per FAA regulations

2. Specific Restrictions.

A. From the lowest point of a blade tip to ground level must be seventy-five feet (75') or greater.

B. No turbine within a project shall be located more than two (2) miles from the next closest turbine in that same project.

C. There shall be no project constructed or erected that causes the total number of towers in the County to exceed 330 total turbines.

D. Color and Finish. All turbines and towers that are part of a commercial WECS shall be white or grey. Finishes shall be matte or non-reflective.

E. Lighting. Lighting, including lighting intensity and frequency of strobes, shall adhere to, but not exceed, requirements established by the FAA permits and regulations. Lighting shall have Airline Detection Lighting System (ADLS) lighting system or have applied for ADLS lighting system to be installed within 60 days of the application's approval by the FAA.

F. Signage. All turbine sites shall be required to have individual 911 rural addresses at each access road. All other signs except those required for safety and directional purposes (or otherwise authorized by the County) shall be prohibited in the project area.

G. No new, used, or non-functional equipment shall be stored over 60 days in the County.

(1) An exception to this restriction shall apply to equipment required for new construction that has been granted zoning permits by the County. Said equipment may be stored in the County for up to 365 days.

H. Noise from a wind turbine may not exceed 45 decibels (dba) as measured from the closest setback distance, ground level to a residence.

(1) Noise Complaint Procedures: Any complaint submitted to the County will be investigated by the Zoning Administrator or his/her designee. Whenever the Zoning Administrator or other authorized official finds that a noise violation by a wind turbine owner has occurred, such officer shall cause to be served upon the wind turbine owner a written notice to abate the within a reasonable time after notice.

(2) Investigation by County: If action is not taken by the wind turbine owner within ten days of notice, the County may take further investigative action by ordering a sound level analysis for all substations and related wind facilities, to be conducted by a third-party engineer selected by the County to ensure noise compliance, at the permit holder's expense. The Zoning Administrator shall determine whether a noise violation is founded based on the report of the engineer. If founded, the Zoning Administrator may issue notice to the Wind turbine owner with an order for abatement.

(3) Any person who knowingly makes a false noise complaint to the County may be subject to penalties as provided by state or local law.

I. Federal Aviation Administration. All WECs shall comply with FAA standards and permits.

J. The setback distance for airports shall be governed by the rules and regulations of the Federal Aviation administration (“FAA”) or any laws or rules of the State of Iowa that are applicable. An applicant shall not construct a turbine in violation thereof.

3. Application Fees. The table below outlines the fee schedule for WECS project applications.

Current Fees per Board of Supervisors Resolution 2014-16		
Zoning Board of Adjustment	Appeal	\$200.00
	Variance	\$200.00
	Conditional Use	\$200.00
Planning Commission	Zoning Change	\$250.00
	Text Amendment	\$250.00
Subdivision	Preliminary Plat Review	\$225.00
	Final Plat Review	\$275.00
	Waiver	\$50.00
Building Permit	\$0 - \$7,500 – Level 1	\$25.00
	\$7,501 - \$25,000 – Level 2	\$50.00
	\$25,001 - \$50,000 – Level 3	\$75.00
	\$50,001 - \$100,000 – Level 4	\$100.00
	\$100,101 - \$250,000 – Level 5	\$125.00
	\$250,001 - \$500,000 – Level 6	\$225.00
	\$500,001 & Up – Level 7	\$325.00
	Agricultural Use	\$0.00
Floodplain Development Permit	\$0 - \$25,000 – Level 1	\$50.00
	\$25,001 - \$50,000 – Level 2	\$75.00
	\$50,001 - \$100,000 – Level 3	\$100.00
	\$100,001 - \$250,000 – Level 4	\$125.00
	\$250,001 - \$500,000 – Level 5	\$225.00
	\$500,001 & Up – Level 6	\$325.00

4. Application Forms and Checklist. All application forms and checklists required for a project under this chapter will be adopted by resolution following the approval of this ordinance.

Section 4: Procedures

1. All applications shall be on a form proscribed by the Zoning Administrator and filed with the Franklin County Planning and Zoning Department. An application for a conditional use permit shall be submitted for each individual wind turbine along with

applicable fee. Applications may be considered individually or in conjunction with other applications.

2. The Zoning Administrator is authorized to establish the written forms and applications necessary to carry out the purpose of this ordinance and the Zoning Code.
3. Applications for WECS shall include all information required under this ordinance.
4. Applications shall state whether variances or waivers are being requested from the Board of Adjustment.
5. Following review, the Zoning Administrator shall make a written report and recommendation on each application to the Board of Adjustment.
6. The Board of Adjustment shall determine whether to grant or deny any conditional use permit application.
7. Building permits shall not be issued until after all applicable conditional use permits have been approved by the Board of Adjustment.

Section 5: Discontinuance/Decommissioning

1. Any component of a commercial WECS shall be considered a “discontinued use” either (i) after one continuous year of being non-operational, unless a plan is approved by the County outlining the steps and schedule for returning the component to service; or (ii) upon revocation of any zoning permits. The Zoning Administrator, in consultation with the County Engineer, shall determine whether a component is a discontinued use. Notice shall be provided to the permit holder whenever a component is declared a discontinued use. Once declared to be a discontinued use, the commercial WECS components shall be subject to removal pursuant to this section.
2. Each building permit application must be accompanied by a proposed decommissioning plan in a form satisfactory to the Zoning Administrator to be considered by the Board of Supervisors. Such plan shall contain:
 - A. A description of the project components, and a sequence and description of the activities required to remove the same in compliance with this section.
 - B. A report prepared by a qualified third-party (to be approved by the Board in advance) setting forth the procedures and estimated net cost associated with the removal of the components (other than feeder lines) to a depth of forty-eight inches (48”) and the accompanying restoration of the surface to the original elevation with soil content similar to that of the immediate area of each site.
 - C. Cash, an irrevocable letter of credit, or a performance bond running in favor of the County in an amount no less than the total estimated net removal/restoration

costs as determined by said report. Said security must be submitted on the tenth (10th) year following completion of the project and must remain in effect until decommissioning is completed. No such security shall be cancelable without notice to the Zoning Administrator. Each year following submission of security, the permit holder shall provide proof that such security remains effect at the same time as the annual report to the assessor is made for purposes of the real estate tax assessment.

D. The report prepared under Paragraph B above shall be updated and provided to the County (i) at least once every five years; and (ii) upon any proposed transfer of the zoning permit. Should any update indicate a change in the decommissioning costs, the security required under Paragraph C above shall be adjusted accordingly, with proof provided to the County within sixty (60) days.

E. No transfer/assignment of the zoning permit shall be effective without a corresponding transfer or assignment of the obligations and financial security required under the decommissioning plan, as approved by the Board of Supervisors.

3. The permit holders for existing wind projects shall be required to submit a decommissioning plan within 12 months of the date this ordinance is adopted.

Section 6: Ancillary Agreements/Procedures

1. Issuance of a building permit shall not occur until the applicant executes the following:

A. Franklin County Road Use and Repair Agreements, approved by the Secondary Roads Engineer.

B. Franklin County Public Drainage System Protection Agreement to be approved by the Board of Supervisors, acting for the public and private Drainage Districts.

C. Written approval of the Board of Trustees of all affected private Drainage Districts.

D. An Emergency Response Plan provided by applicant and approved by the Board of Supervisors, in consultation with the Franklin County Emergency Management Coordinator as deemed necessary by the Board. Said plan shall contain response procedures to be followed in the event of a fire, collapse, personal injury, or other emergency at a project. The plan shall contain 24-hour emergency contact information for the project.

Section 7: Repowering

Prior to repowering any permitted WECS, the permit holder shall submit repowering plan(s) to the Zoning Administrator for review. The Zoning Administrator may issue a certificate of compliance if the repowering plan results in no material change in the components or design elements of the turbine originally permitted. In conducting the review required by this Section, the Zoning Administrator may engage and consult with any necessary third-party.

In the event a plan or plans to repower a permitted WECS(s) materially changes any component(s) or design element(s) of the turbine under its existing permit, the permit holder must apply for a new conditional use permit pursuant to Sections 2, 3, and 4 of this ordinance, or a variance, or both, if applicable. Repowering construction shall not be authorized in the absence a certificate of compliance or conditional use permit and issuance of building permits.

Section 8: Effect and Transferability of Permits

1. No construction activities on a project may begin until all zoning permits have been issued, except as permitted in Section 2, Paragraph 1.
2. Any material violation of any provision of this chapter that remains uncured after thirty (30) days' written notice from the County to the permit holder shall be deemed a County Infraction and shall be subject to all enforcement action allowed by law, including a fine for each instance of violation in the amount of \$250, revocation of the zoning permit, or both.
3. If construction on the project has not begun within twelve (12) months from the date of issuance of the zoning permits, the permits shall be automatically revoked without further action by the County. In such event, no work on the project may take place unless and until new permits have been issued, and any portion of the project then completed shall be deemed a discontinued use subject to Section 5, Paragraph 1.
4. Only the holder of the zoning permits (the "permit holder") shall own the project, and such holder shall be the entity responsible for observing all requirements of this chapter. The permit holder shall be responsible for maintaining all components of the commercial WECS in good repair, and in compliance with this ordinance and the ancillary agreements listed in Section 6.
5. No zoning permit shall be transferred or assigned, voluntarily or involuntarily, without the written approval of the County Board of Supervisors, which consent can be withheld unless and until the Board is satisfied that a proposed transferee has the financial and operational responsibility to assume all obligations required of the permit holder under this ordinance and the ancillary agreements listed in Section 6. Requests for approval of the zoning permits shall be directed to the Zoning Administrator.

Section 9: Miscellaneous

1. Limited Number of Turbines. The number of turbines is limited to 330 towers in the County.
2. Condemnation Waiver. Issuance of a zoning permit shall be conditioned on the permit holder's enforceable promise, supported by the consideration of the issuance of the permit, that the permit holder shall never use, or seek to use, eminent domain to acquire any real property interests to construct or operate the project.
3. In any action brought by the County against the permit holder of a zoning permit, to enforce the provisions of this chapter, the County shall be entitled to recover its reasonable attorney fees and court costs as may be awarded by the decision-making tribunal.

Section 10: Applicability

The rules and regulations of this ordinance are applicable to any project zoning permit applications submitted after the effective date of this ordinance. Any permitted WECS projects for which no construction has begun within twelve (12) months of the effective date of this ordinance will be deemed terminated and subject to the provisions of this ordinance. A current permit holder must notify the Board of Supervisors of its intent to begin construction within twelve (12) months and certify that: (i) the project will meet the requirements of the existing permit; (ii) the permit holder will comply with the decommissioning requirements of this ordinance and will submit a plan for compliance within thirty (30) days; and (iii) construction of the project will not result in material inconsistencies with the terms of this ordinance.

Additionally, any towers existing as of the effective date of this ordinance which do not provide energy for a continuous period of twelve (12) months shall also meet the requirements of this ordinance prior to repowering. No modification or alteration to an existing WECS shall be allowed without full compliance with this ordinance.

Section 11: Severability Clause

If any of the provisions of this chapter are for any reason illegal or void, then the lawful provisions of this chapter, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the chapter contained no illegal or void provisions.

Section 12: Repealer

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

Section 13: Date of Effect

This chapter shall become effective upon its passage by the Board of Supervisors and is published as required by the *Code of Iowa*, Section 331.302[8].

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof.

SECTION 4. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. Effective. This ordinance shall be in full force and effect, from and after its passage, adoption, and approval and publication as required by law, unless a subsequent effective date is set out hereinabove.

First Reading Passed: _____

Second Reading Passed: _____

Third Reading Passed: _____

Passed and adopted this _____ day of _____, 202__, by the Franklin County Board of Supervisors.

Chris Vanness, Chairman

Richard Lukensmeyer, Supervisor

Gary McVicker, Supervisor

ATTEST:

Katy Flint, Franklin County Auditor