



United Counties Council of Illinois

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SUMMARY OF PUBLIC ACT 102-1123

STATEWIDE SITING OF WIND & SOLAR FACILITIES

- Counties have 120 days from January 27, 2023 to amend any conflicting ordinances.
- Definitions
 - “Commercial solar energy facility” means a “commercial solar energy system” as defined in Section 10-720 of the Property Tax Code. “*Commercial solar energy facility*” does not mean a utility-scale solar energy facility being constructed at a site that was eligible to participate in a procurement event conducted by the Illinois Power Agency pursuant to subsection (c-5) of Section 1-75 of the Illinois Power Agency Act.
 - “Commercial wind energy facility” means a wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity. “*Commercial wind energy facility*” includes a wind energy conversion facility seeking an extension of a permit to construct granted by a county or municipality before the effective date of this amendatory Act of the 102nd General Assembly.
 - “Facility owner” means (i) a person with a direct ownership interest in a *Commercial wind energy facility* or a *Commercial solar energy facility*, or both, regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility.
 - “Nonparticipating property” means real property that is not a participating property.
 - “Nonparticipating residence” means a residence that is located on *Nonparticipating property* and that is existing and occupied on the date that an application for a permit to develop the *Commercial wind energy facility* or the *Commercial solar energy facility* is filed with the county.
 - “Occupied community building” means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the *Commercial wind energy facility* or the *Commercial solar energy facility* is filed with the county: a school, place of worship, day care facility, public library, or community center.

- “Participating property” means real property that is the subject of a written agreement between a *Facility owner* and the owner of the real property that provides the *Facility owner* an easement, option, lease, or license to use the real property for the purpose of constructing a *Commercial wind energy facility*, a *Commercial solar energy facility*, or *Supporting facilities*.
- “Participating property” also includes real property that is owned by a *Facility owner* for the purpose of constructing a *Commercial wind energy facility*, a *Commercial solar energy facility*, or *Supporting facilities*.
- “Participating residence” means a residence that is located on *Participating property* and that is existing and occupied on the date that an application for a permit to develop the *Commercial wind energy facility* or the *Commercial solar energy facility* is filed with the county.
- “Protected lands” means real property that is: (1) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or (2) registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.
- “Supporting facilities” means the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by the *Commercial wind energy facility* or *Commercial solar energy facility*.
- “Wind tower” includes the wind turbine tower, nacelle, and blades.
- A county may establish standards for commercial wind energy facilities and/or commercial solar energy facilities:
 - NOT more restrictive than Act
 - Outside of the zoning jurisdiction of a municipality and that are outside the 1.5 mile radius surrounding the zoning jurisdiction of the municipality
- Public Hearing
 - County board or zoning board of appeals for county must hold at least one public hearing prior to:
 - the county grants siting approval or a special use permit for a *Commercial wind energy facility*; or
 - the county grants citing approval or special use permit for a commercial solar energy facility; or
 - modification of an approved siting or special use permit.
 - Pursuant to Open Meetings Act
 - Allow presentation of evidence and cross-examination of witnesses
 - Allow public comment
 - Not more than 45 days after filing of application for facility
 - Decision not more than 30 days after the conclusion of the public hearing
 - Notice of hearing – published in newspaper
 - Must allow test *Wind towers* or solar systems without formal approval by county board
- Requirements for *Commercial wind energy facility* – A county may require:
 - Setback Descriptions
 - *Occupied Community Buildings*: 2.1 times maximum blade tip height of the *Wind tower* to the nearest point on the outside of the wall structure

- *Participating Residences*: 1.1 times the maximum blade tip height of the *Wind tower* to the nearest point on the outside wall of the structure
 - *Nonparticipating residences*: 2.1 times the maximum blade tip height of the *Wind tower* to the nearest point on the outside wall of the structure
 - Boundary Lines of *Participating property*: None
 - Boundary Lines of *Nonparticipating property*: 1.1 times the maximum blade tip height of the *Wind tower* to the nearest point on the property line of the *Nonparticipating property*
 - Public Road Rights-of-Way: 1.1 times the maximum blade tip height of the *Wind tower* to the center point of the public road right-of-way
 - Overhead Communication and Electric Transmission and Distribution Facilities (Not including overhead utility service lines to individual houses or outbuildings): 1.1 times the maximum blade tip height of the *Wind tower* to the nearest edge of the property line, easement, or right of way containing the overhead line
 - Overhead Utility Service Lines to Individual Houses or Outbuildings: None
 - Fish and Wildlife Areas and Illinois Nature Preserve Commission *Protected lands*: 2.1 times the maximum blade tip height of the *Wind tower* to the nearest point on the property line of the fish and wildlife area or protected land
 - A *Wind tower* of a *Commercial wind energy facility* to be sited so that industry standard computer modeling indicates that any *Occupied community building* or *Nonparticipating residence* will not experience more than 30 hours per year of shadow flicker under planned operating conditions
 - These requirements may be waived subject to the written consent of the owner of each affected *Nonparticipating property*.
- Requirements for *Commercial solar energy facility* – A county may require:
 - Setback Descriptions
 - *Occupied community buildings* and *Dwellings on Nonparticipating Properties*: 150 feet from the nearest the outside wall of the structure
 - Boundary Lines of *Participating property*: None
 - Public Road Rights-of-Way: 50 feet from the nearest edge
 - Boundary Lines of *Nonparticipating property*: 50 feet to the nearest point on the property line of the *Nonparticipating property*
 - A *Commercial solar energy facility* to be sited so that the facility's perimeter is enclosed by fencing having a height of at least 6 feet and no more than 25 feet;
 - A *Commercial solar energy facility* to be sited so that no component of a solar panel has a height of more than 20 feet above ground when the solar energy facility's arrays are at full tilt.
 - These requirements may be waived subject to the written consent of the owner of each affected *Nonparticipating property*.
- Other Requirements:
 - May not set a sound limitation for *Wind towers* in commercial wind energy facilities or any components in *Commercial solar energy facility* that is more restrictive than the sound limitations established by the Illinois Pollution Control Board.

- May not place any restriction on the installation or use of a *Commercial wind energy facility* or a *Commercial solar energy facility* unless it adopts an ordinance that complies with this Section.
 - May not establish siting standards for *Supporting facilities* that preclude development of commercial wind energy facilities or commercial solar energy facilities.
 - A request for siting approval or a special use permit for a *Commercial wind energy facility* or a *Commercial solar energy facility*, or modification of an approved siting or special use permit, shall be approved if the request is in compliance with the standards and conditions imposed in this Act, the zoning ordinance adopted consistent with this Code, and the conditions imposed under State and federal statutes and regulations.
- May not adopt zoning regulations that disallow, permanently or temporarily, commercial wind energy facilities or commercial solar energy facilities from being developed or operated in any district zoned to allow agricultural or industrial uses.
- All application fees imposed by the county must be reasonable and must be consistent with fees for projects in the county with similar capital value and cost.
- Except as otherwise provided, a county shall not require standards for construction, decommissioning, or deconstruction of a *Commercial wind energy facility* or *Commercial solar energy facility* or related financial assurances that are more restrictive than those included in the Department of Agriculture's standard wind farm agricultural impact mitigation agreement, template 81818, or standard solar agricultural impact mitigation agreement, version 8.19.19, as applicable and in effect on December 31, 2022.
 - Any decommissioning payment shall be limited to the cost identified in the decommissioning or deconstruction plan, as required by those agricultural impact mitigation agreements, minus the salvage value of the project.
- May not condition approval of a *Commercial wind energy facility* or *Commercial solar energy facility* on a property value guarantee and may not require a *Facility owner* to pay into a neighboring property devaluation escrow account.
- May require certain vegetative screening surrounding a *Commercial wind energy facility* or *Commercial solar energy facility* but may not require earthen berms or similar structures.
- May set blade tip height limitations for *Wind towers* in commercial wind energy facilities
 - This may not be more restrictive than the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration.
- May require that a *Facility owner* provide:
 - Results and recommendations from consultation with the Illinois Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool; and
 - Results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with (i) the "U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines" and (ii) any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review.
- May require that a *Facility owner* provide evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

- To maximize community benefits, a county may county may require a *Commercial solar energy Facility owner* to plant, establish, and maintain for the life of the facility vegetative ground cover, consistent with the goals of the Pollinator-Friendly Solar Site Act and (2) require the submittal of a vegetation management plan in the application to construct and operate a *Commercial solar energy facility* in the county.
- If a *Facility owner* enters into a road use agreement with the Illinois Department of Transportation, a road district, or other unit of local government relating to a *Commercial wind energy facility* or a *Commercial solar energy facility*, the road use agreement shall require the *Facility owner* to be responsible for (i) the reasonable cost of improving roads used by the *Facility owner* to construct the *Commercial wind energy facility* or the *Commercial solar energy facility* and (ii) the reasonable cost of repairing roads used by the *Facility owner* during construction of the *Commercial wind energy facility* or the *Commercial solar energy facility* so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction. Roadways improved in preparation for and during the construction of the *Commercial wind energy facility* or *Commercial solar energy facility* shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities. The road use agreement shall not require the *Facility owner* to pay costs, fees, or charges for road work that is not specifically and uniquely attributable to the construction of the *Commercial wind energy facility* or the *Commercial solar energy facility*. Road-related fees, permit fees, or other charges imposed by the Illinois Department of Transportation, a road district, or other unit of local government under a road use agreement with the *Facility owner* shall be reasonably related to the cost of administration of the road use agreement.