

Ordinance No. 2020-01

AN AMENDMENT TO THE SCHUYLKILL COUNTY ZONING  
ORDINANCE TO REVISE REGULATIONS REGARDING WIND TURBINES,  
MEDICAL MARIJUANA FACILITIES AND COMPRESSOR STATIONS,  
AND TO REVISE AND ADD DEFINITIONS.

Under the authority and procedures of the Pennsylvania Municipalities Planning Code, as amended, the Board of Commissioners of Schuylkill County, Pennsylvania hereby adopts and enacts the following amendment to the Schuylkill County Zoning Ordinance:

**Part One - Uses Allowed in Zoning Districts.** The following revisions are hereby made to Article 3 regarding the uses allowed in various zoning districts:

Section 306.M.1.000., which currently allows wind turbines as a permitted by right use in the I-C Industrial Commercial District is hereby deleted.

A new Section 306.M.2.s. is hereby added to allow the following use as a special exception use in the I-C district:

- “s. Wind Turbine(s) (S.402), other than is allowed as an accessory use under Section 403”

Section 306.N.1.vv., which currently allows wind turbines as a permitted by right use in the CM Conservation Mining District is hereby deleted.

A new Section 306.N.2.s. is hereby added to allow the following use as a special exception use in the CM district:

- “s. Wind Turbine(s) (S. 402), other than is allowed as an accessory use under Section 403”

A new Section 306.M.2.t. is hereby added to allow the following use as a special exception use in the I-C district:

- “t. Pipeline Compressor Station (S. 402)”

A new Section 306.K.2.m. is hereby added to allow the following use as a special exception use in the C-3 district:

- “m. Medical Marijuana Dispensary (S. 402)”

A new Section 306.L.2.p. is hereby added to allow the following use as a special exception use in the C-4 district:

- “p. Medical Marijuana Dispensary (S. 402)”

A new Section 306.M.2.t. is hereby added to allow the following use as a special exception use in the I-C district:

“t. Medical Marijuana Dispensary (S. 402)”

A new Section 306.M.2.u. is hereby added to allow the following use as a special exception use in the I-C district:

“u. Medical Marijuana Grower/Processor (S. 402)”

**Part Two - Additional Requirements for Specific Uses.** The existing provisions regarding Wind Turbines in Section Section 402.A.56. are hereby repealed and replaced with the following new provisions:

“56. Wind turbines, Other than is Allowed for Wind Turbine as an Accessory Use by Section 403. (This section regulates, among other items, 2 or more wind turbines per lot, or a wind turbine as a principal use).

- a. Purposes. These provisions are intended to provide compatibility between wind turbines and adjacent uses by establishing substantial setbacks and controls on noise and other adverse effects, particularly as equipment may age over time, as well as to minimize potential hazards. This section also is intended to minimize conflicts between wind turbines and military operations, including night-time helicopter training. In addition, these provisions are intended to carry out the mandate under the Pennsylvania Appalachian Trail Protection Act.
- b. Setbacks.
  - (1) Any wind turbine shall be setback from the nearest existing occupied dwelling on another lot a distance not less than 4 times the total wind turbine height, unless a written notarized waiver is provided by the principal owner of such building. In addition, if a wind turbine has a total wind turbine height of 200 feet or greater, the wind turbine shall have a 2,700 feet minimum setback from the nearest existing occupied dwelling, unless a written notarized waiver is provided by the principal owner of such building. The setback shall be measured from the base of the turbine to the nearest part of such building. This provision shall apply to occupied dwellings that existed prior to the submission of a complete application for a zoning approval or zoning permit.
  - (2) Any wind turbine shall be set back from the nearest public road right-of-way a minimum distance equal to the wind turbine hub height.
  - (3) Unless a larger setback is required by another provision of this Section, any wind turbines shall be set back from each lot line a minimum distance equal to the total wind turbine height, unless a written signed and notarized waiver is provided by the principal owner of such lot(s). This setback in subsection (3) shall not apply from land that is owned by a government (such as State Game Lands) or a municipal authority.
  - (4) Setbacks shall be measured from the center of the wind turbine base.
- c. Noise Control. The audible sound from the wind turbine(s) shall not exceed 45 A-weighted decibels, as measured at the exterior of a occupied dwelling on another

lot, unless a written waiver is provided by the principal owner of such building. The measurable sound from the wind turbine(s) shall not exceed 55 C-weighted decibels between the hours of 9 PM and 7 AM, as measured at the exterior of a occupied dwelling on another lot, unless a written notarized waiver is provided by the principal owner of such building. The measurement of noise shall follow standards of the American National Standards Institute.

- (1) The noise requirement shall be a maximum noise level using a Lmax standard, and not based upon an average. All required noise studies and testing shall be completed by a qualified independent professional specializing in noise analysis. The qualifications of the person(s) conducting the analysis shall be included in the special exception application.
- (2) With the special exception application, the applicant shall provide a written noise modeling study that projects the maximum sound levels at the nearest dwellings, and that recommends measures that may be used as conditions by the Zoning Hearing Board to minimize noise impacts. The noise study shall document expected compliance with the decibels level requirements of this Section.
- (3) The applicant shall provide an independent written test of actual noise produced by the project upon completion of the project, and every 2 subsequent years after the project is completed, to document compliance with the noise standards in this Section. If the project will involve more than 10 total wind turbines, then the noise study shall also be completed after each 10 wind turbines are put into service. If the testing finds that the noise levels in this Section are being violated, then the owner of the wind turbines shall be provided with an Enforcement Notice which shall provide a reasonable period of time for the applicant to bring the use into compliance through modifications, replacements, or repairs, or removal of one or more turbines from service.
- (4) If the County institutes an enforcement action because of a violation of the noise limits, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the County, the judgement shall require the owner of the project to pay all of the County's reasonable costs and expenses to prove non-compliance with the noise requirements, including the tests to determine the noise levels. Such costs shall be paid within 30 days by the owner of the project after the final judgement. In the event the owner does not pay such costs within 30 days, the County may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

d. Removal. The owner of the turbines shall completely remove all above ground structures within 18 months after the wind turbine(s) are no longer used to generate electricity. The applicant shall be required to provide financial security in a form acceptable to the County to ensure that funding is available for such removal. Such financial security shall be accessible for use by the County if the owner does not comply with the removal requirement.

- (1) The owner shall be required to provide written evidence each year that the financial security is still valid.

- (2) The financial security shall be equal in value to the cost of the demolition and removal of the turbines and other structures, minus the salvage value of the materials. The security shall be based upon a written estimate that is signed and sealed by a Pennsylvania-Registered Professional Engineer, and shall include an inflation factor, and which is subject to review and acceptance by the Zoning Officer, after considering any review that is provided to the Zoning Officer by a professional.
- e. Clearance. Wind turbines shall not be climbable for at least the first 12 feet above the ground level.
  - f. Wires. If guy wires are used, and they are not within a fence, they shall be marked near their base with reflectors, reflective tape or similar method.
  - g. Speed Controls. The turbine shall include automatic devices to address high speed winds and to address icing of the blades.
  - h. Electrical. Accessory electrical facilities are allowed, such as a transformer. To the maximum extent feasible, all new electrical wiring shall be underground, except connections to distribution systems. Warning signs shall be posted around pad-mounted transformers and electrical substations.
  - i. Site Plan. The site plan shall show proposed driveways, turbines and areas of woods proposed to be cleared.
  - j. Trail Setback. To address compatibility with the Appalachian Trail and migratory raptor habitats along the Kittatinny Ridge/Blue Mountain, any wind turbine under this section shall be setback a minimum of 2,700 feet from each side of the centerline of the Appalachian Trail.
  - k. Land Development. If two or more wind turbines are on a lot, they shall need approval as a Land Development under the Subdivision and Land Development Ordinance.
  - l. Test Tower. Wherever a wind turbine is allowed, a temporary test tower shall also be allowed.
  - m. Maximum Height. The maximum total height of any wind turbine above the adjacent ground level shall be 400 feet. The adjacent ground level shall not be artificially raised in order to achieve a taller turbine height.
  - n. Insurance. During all times of on-site construction and operation and until completion of removal of the wind facilities, the owner of the wind turbines shall maintain a current general liability insurance policy covering bodily injury and property damage of others, with a minimum limit of \$1 million per occurrence and \$3 million in the aggregate. Certificates of insurance shall be made provided to the Zoning Officer annually.
  - o. Complaints. The operator shall publicize the phone number, mailing address and email address of a specific contact person who is authorized to receive complaints and questions from neighbors and County officials on behalf of the operator. Such person or their designee shall regularly respond to such complaints and questions.
  - p. Military Compatibility. At the same time a wind turbine application is submitted to the County, a copy of the application shall be also provided to the senior military officer commanding the Fort Indiantown Gap Military Reservation or his/her designee. The Zoning Hearing Board may place conditions upon an approval to address compatibility and safety concerns regarding military operations in the vicinity. If it is determined by the Zoning Hearing Board that such concerns cannot be addressed through conditions upon approval, then the application may be denied

if the proposed concerns are determined by the Board to involve a matter of national security. This provision is under the authority and mandate of Section 604(1) of the Pennsylvania Municipalities Planning Code, which states that “The provisions of zoning ordinances shall be designed: to promote, protect and facilitate ... national defense facilities.”

- q. Consultant Review. The applicant shall be required to establish an escrow account to fund the reasonable costs of a professional review of a special exception application by a consultant selected by the County.
- r. Notice. Written notice of the filing of a special exception application for 2 or more wind turbines shall be provided by the County to the last known address of owners of land within 1,500 feet of a proposed wind turbine.
- s. Lighting. The application shall include a written plan for lighting of the turbines. Such lighting shall meet Federal Aviation Administration safety requirements, but in a manner that minimizes conflicts with military operations and that minimizes lighting nuisances for neighbors.
- t. Codes and Regulations. The applicant shall provide the County with copies of approvals and permits under the Uniform Construction Codes, the National Electrical Code, soil and erosion control regulations, and other applicable State and Federal regulations and permits. Failure to obtain such approvals prior to construction shall cause suspension of any zoning permit. The applicant shall state in writing which safety and industry codes will apply to the project, such as standards of the American National Standards Institute and Underwriters Laboratory.
- u. Colors. The range of colors of the turbines and blades shall be described. Such colors shall not be obtrusive, but shall provide sufficient visibility for aircraft.
- v. Roads. The applicant shall submit a traffic study, which shall identify the public roads to be used for the transportation of the wind turbine components, and which analyzes how such traffic will be safely accommodated on public roads, considering the length and weight of truck loads, the weight limits of bridges, the geometry of intersections and the slope of roads. The applicant shall have the burden of proof of showing that the route will be able to safely accommodate the traffic without creating hazards or damage to roads or bridges.
  - (1) A professional engineer selected by Schuylkill County, with the reasonable costs paid by the applicant, shall document road conditions prior to construction. Such engineer shall document road conditions again after construction is complete.
  - (2) A municipality may bond a road in compliance with State regulations.
  - (3) Any road or bridge damage caused by the applicant or its contractors shall be promptly repaired at the Applicant’s expense.
- w. Emergencies. The applicant shall submit an emergency response plan, which shall address matters such as firefighting and potential spills. The emergency response plan shall be submitted to the Fire Companies with the primary responsibility to serve the project area for comment. After considering any comments provided and any revisions by the applicant, the plan shall need to be found to be acceptable by the Zoning Hearing Board. The Zoning Hearing Board may establish reasonable conditions to address hazards. The applicant shall offer in writing to provide training to local emergency responders in the proper response to on-site hazards, at no cost to the public. If locked gates control access to the property, local fire officials shall be

provided with keys, security codes or similar methods to access the property in an emergency.

- x. Shadow Flicker. The applicant shall provide an analysis with a map of the shadow flicker impacts of the project upon any occupied dwellings that will be impacted by this effect. The analysis shall be conducted by a qualified professional using generally accepted modeling methods, and shall estimate the number of hours per year that occupied dwellings will be impacted by shadow flickering. No occupied dwelling shall be affected by shadow flicker for a total of more than 20 hours per year, and no more than 30 total minutes per day. This requirement shall only apply to occupied dwellings that existed at the time of submission of the zoning approval application to the County. This provision shall not apply to a dwelling if a written and signed waiver is provided by the principal owner of an affected property.
- y. Expert Credentials. The qualifications of experts who provide information or testimony regarding compliance with technical standards of this Section shall be provided to the Zoning Officer and the Zoning Hearing Board. During special exception hearings, the Zoning Hearing Board shall have the authority to determine the credibility of the testimony and reports of various experts and may weigh the value of the testimony and reports as a result.
- z. Electronic Interference. The owner of the project shall make reasonable efforts to minimize interference with electronic communications, including cellular communications, military communications and television and radio reception.”

The following new provision are hereby added to Section 402.A. as additional requirements for specific uses:

“29.1 Medical Marijuana Dispensary.

- a. The use shall be setback a minimum of: 1) 1,000 feet from the property line of a primary or secondary school or child day care center, 2) 500 feet from a public park or playground, and 3) 250 feet from a residential district.
- b. The use shall not have any outdoor activities, such as outdoor seating, and shall not have drive-through service.
- c. The use shall not be open to customers between 9 PM and 7 AM.
- d. The use shall meet all other zoning requirements that would apply to a Retail Store.
- e. The use shall include exterior recorded security cameras.

29.2 Medical Marijuana Grower/ Processor.

- a. The use shall prove to the Zoning Officer that there will be sufficient security measures.
- b. The use shall be setback a minimum of: 1) 1,000 feet from the property line of a primary or secondary school or child day care center, 2) 1,000 feet from a public park or playground, and 3) 1,000 feet from a residential district.
- c. The use also shall meet all of the same zoning requirements that would apply to a manufacturing use.
- d. The use shall be within a completely enclosed building. The use shall not generate offensive odors that are discernable beyond the property line. The

applicant shall describe any air filtration systems or similar measures that will be used to control odors.

- e. The use shall include a building security system, including exterior recorded security cameras.

“38.1. Pipeline Compressor Station.

- a. A pipeline compressor station shall be setback a minimum of 750 feet from an existing dwelling and a minimum of 500 feet from a residential district, and shall only be allowed as a special exception use in the I-C district.
- b. The pipeline compressor station shall be within a completely enclosed building, with a walls and roof that are designed to minimize noise heard beyond the property line.”

**Part Three. Definitions.**

In the current definition of “Renewable Energy Facility” in Section 202, after “are regulated separately” add “, and therefore are not regulated in this Ordinance as Renewable Energy Facilities.”

Add the following new definitions to Section 202:

“Medical Marijuana Dispensary. An indoor facility operated by a legal entity which holds a permit issued by the State Department of Health to dispense medical marijuana.

Medical Marijuana Grower / Processor. An indoor facility operated by a legal entity which holds a permit from the State Department of Health to grow and process medical marijuana.

Pipeline Compressor Station - A mechanical facility that ensures that adequate pressure is provided for natural gas or closely similar substances in order to efficiently transmit such substances through a pipeline.

Wind Turbine Height, Total - The vertical distance measured from the surrounding ground surface elevation to the highest extended edge of a wind turbine blade.

Wind Turbine Hub Height - The vertical distance measured from the surrounding ground surface elevation to the highest point of the hub, to which blades are attached.”

**Part Four. Administrative Provisions.**

In Section 103.A.3.t. regarding exemptions from zoning permits, add the words “of up to 30 feet in height above the roof height” after “wind turbines.”

**Part Five. Repealer.** All ordinances or parts thereof inconsistent with the provisions of this Ordinance Amendment are hereby repealed to the extent of the inconsistency.

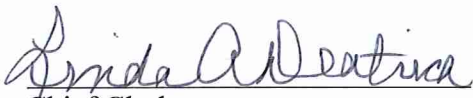
**Part Six. Severability.** The provisions of this Ordinance Amendment are declared to be severable. If any provision of this Ordinance Amendment is declared by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall have no effect on the remaining provisions of this Ordinance Amendment or other sections of the Zoning Ordinance.

**Effective Date.** This Ordinance shall be effective immediately following its legal enactment.

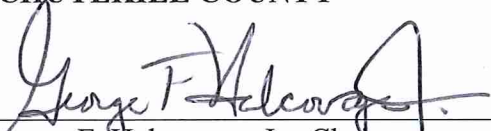
**This Ordinance is hereby ENACTED and ORDAINED this**

19th day of February, 2020.

ATTEST:

  
Chief Clerk

**BOARD OF COMMISSIONERS OF  
SCHUYLKILL COUNTY**

  
George F. Halcovage, Jr., Chairman

  
Gary J. Hess, Commissioner