

**A BILL FOR AN ORDINANCE AMENDING
THE CITY OF LEBANON DEVELOPMENT
CODE; WIND ENERGY SYSTEMS**

) **ORDINANCE BILL NO. 2013-5**
)
) **ORDINANCE NO. 2846**

WHEREAS, the Planning Commission for the City of Lebanon conducted a hearing on Planning File No. 13-06-24 and made findings recommending certain amendments to the Development Code of the City of Lebanon on July 17, 2013; and

WHEREAS, the City Council, pursuant to the provisions of the Lebanon Development Code, after appropriate notice given, has conducted a hearing to take testimony, hear arguments and to consider all of the evidence concerning such proposed Development Code amendments, such hearing being conducted on August 14, 2013; and

WHEREAS, the City Council has considered all relevant evidence and deliberated.

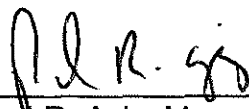
NOW, THEREFORE, the City of Lebanon ordains as follows:

Section 1. In addition to the findings referred to above, the City Council does hereby adopt and find those matters contained in Exhibit "B" which is incorporated herein by this reference as if fully set forth at this point.

Section 2. Based upon the findings adopted herein, the Lebanon Development Code is hereby amended by the inclusion of new language as specified in Exhibit "A", which is incorporated herein by this reference as if fully set forth at this point.

Section 3. Said Exhibit "A" shall be attached to, and become a part of, the Lebanon Development Code upon entry of this order.

Passed by the Lebanon City Council by a vote of 3 for and 0 against and executed by the Mayor this 14th day of August, 2013.



Paul R. Aziz, Mayor
Bob Elliott, Council President

Attested:



Linda Kaser, City Clerk

EXHIBIT A
AMENDMENTS TO THE LEBANON DEVELOPMENT CODE

16.09.120 WIND ENERGY SYSTEMS (WES)

A wind energy system (WES) shall be allowed as an accessory use for an existing or proposed activity within the Industrial Zone, subject to the following standards:

- A. Parcel Size – No wind energy system shall be located on a parcel containing less than one-acre in area.
- B. Number. Only one wind energy system shall be allowed per parcel.
- C. Location – Subject to the setback requirements noted in this Section, the WES make be located on an existing structure (e.g., building roof) or a separate, free-standing structure.
- D. Capacity – The maximum design capacity for a one wind energy system shall be 100 kilowatts (kW).
- E. Separation. The minimum distance between the ground or structure and any part of a rotor blade shall be at least 20 feet.
- F. Design Requirements. Wind energy systems shall have automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the support structure, rotor blades, and turbine components.
- G. Noise. Noise produced by small wind energy systems shall comply with applicable noise regulations in the Lebanon Municipal Code.
- H. Setback. The WES shall comply with setback provisions in Lebanon Development Code Section 16.09.110.4. For the purpose of this requirement, WES height shall be the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point.
- I. Security. Support structures for freestanding systems shall not have a ladder rung (or peg) within 12-feet of the adjacent grade.
- J. Engineering Report. The property owner shall submit a report prepared by an Oregon licensed professional engineer attesting to the fact that the structure to which the system will be mounted is or will be sufficiently strong to support the system and to withstand the wind, vibratory, and other loads to which it would be subjected as a result of mounting the system on it. This report is subject to approval by the Building Official prior to the mounting of the system.

EXHIBIT B
LEBANON CITY COUNCIL FINDINGS
Planning File No. 13-06-24

I. NATURE OF THE APPLICATION

This matter comes before the Lebanon City Council to amend the Lebanon Development Code.

II. BACKGROUND INFORMATION

The City wishes to amend Lebanon Development Code by establishing regulations regarding the establishment of wind energy systems (WES) in the Industrial (Z-IND) zone. Specific amending language is contained in City Council Ordinance Exhibit "A."

III. PUBLIC HEARING

A. Planning Commission Action

A public hearing was held on this application before the Lebanon Planning Commission on July 17, 2013. At that hearing, City Planning File 13-06-24 was made a part of the record. Notice of the hearing was published consistent with the requirements in Chapter 16.20 of the Lebanon Development Code. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. At the conclusion of the hearing, the Planning Commission deliberated on the issue and voted to recommend the City Council adopt the proposed amendments to the Lebanon Development Code. The Commission found the proposed changes consistent with the applicable decision criteria.

B. City Council Action

A public hearing was held on this application before the Lebanon City Council on August 14, 2013. At that hearing, City Planning File 13-06-24 was made a part of the record. Notice of the hearing was published consistent with the requirements in Chapter 16.20 of the Lebanon Development Code. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. At the conclusion of the hearing, the City Council deliberated on the issue and voted to adopt the proposed amendments to the Lebanon Development Code. The Council found the proposed changes consistent with the applicable decision criteria.

IV. FINDINGS OF FACT-GENERAL

The Lebanon City Council, after careful consideration of the testimony and evidence in the record, adopts the following General Findings of Fact:

- A. The applicant is the City of Lebanon.
- B. The City wishes to amend Lebanon Development Code by establishing regulations regarding the establishment of wind energy systems (WES) in the Industrial (Z-IND) zone. Specific amending language is contained in City Council Ordinance Exhibit "A".

- C. The proposal affects all property zoned Industrial (Z-IND).
- D. The decision to approve or deny shall be based on the criteria contained in the Lebanon Development Code: Chapter 16.28 – Comprehensive Plan and Development Code Text Amendments.

V. APPLICATION SUMMARY

- A. Through a series of workshops, the City Planning Commission considered the need regulations governing wind energy systems. Allowing systems to be located within residential or commercial areas was rejected as creating significant potential impacts. For this reason, the proposed regulations were limited to the Industrial zone.
- B. The proposed language in Attachment “A” would be added to Development Code Chapter 16.09. The material is summarized below (language in *italics*):

16.09.120 WIND ENERGY SYSTEMS (WES)

A wind energy system (WES) shall be allowed as an accessory use for an existing or proposed activity within the Industrial zone, subject to the following standards:

Comments: Since the standards are limited to the Industrial zone, the standards were placed in Chapter 16.09: Industrial Land Use Zone.

- A. *Parcel Size – No wind energy system shall be located on a parcel containing less than one-acre in area.*

Comments: When examining other codes, this appears the minimum allowable area to ensure some separation between individual wind energy systems located within industrial areas.

- B. *Number. Only one wind energy system shall be allowed per parcel.*

Comments: To avoid creating a “wind” farm, only a single facility is allowed. Further, the system is an accessory structure (or use) and therefore requires a primary structure (or use) to be located on the property.

- C. *Location – Subject to the setback requirements noted in this Section, the WES make be located on an existing structure (e.g., building roof) or a separate, free-standing structure.*

Comments: This allows both building-mounted and free-standing locations and clarifies all WES standards apply regardless of the location.

- D. *Capacity – The maximum design capacity for a one wind energy system shall be 100 kilowatts (kW).*

Comments: Based on information from the National Renewable Energy Laboratory, this power level appears to be the upper-limit for individual systems. Systems greater than 100kW are intended for commercial power generation.

- E. *Separation. The minimum distance between the ground or structure and any part of a rotor blade shall be at least 20 feet.*

Comments: This was included as a safety measure.

- F. Design Requirements. Wind energy systems shall have automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the support structure, rotor blades, and turbine components.

Comments: This is especially important during power outages when spinning turbines may be transmitting power through the grid. Evidence of compliance must be submitted when installation permits are submitted.

- G. Noise. Noise produced by small wind energy systems shall comply with applicable noise regulations in the Lebanon Municipal Code.

Comments: As with all industrial activities, the use must comply with noise regulations.

- H. Setback. The WES shall comply with setback provisions in Lebanon Development Code Section 16.09.110.4. For the purpose of this requirement, WES height shall be the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point.

Comments: As the Industrial zone does not have any height restrictions, setbacks from adjacent residential property are increased as a function of building height. The WES must still comply with those setbacks; this Section contains a specific method to measure height.

- I. Security. Support structures for freestanding systems shall not have a ladder rung (or peg) within 12-feet of the adjacent grade.

Comments: A safety measure to limit unauthorized access.

- J. Engineering Report. The property owner shall submit a report prepared by an Oregon licensed professional engineer attesting to the fact that the structure to which the system will be mounted is or will be sufficiently strong to support the system and to withstand the wind, vibratory, and other loads to which it would be subjected as a result of mounting the system on it. This report is subject to approval by the Building Official prior to the mounting of the system.

Comments: This reinforces the need to ensure the system can withstand anticipated loads.

- C. The Department sent out notice of the Code amendments to affected agencies and the Department of Land Conservation (DLCD). None were received by the date of the Council hearing.

VI. CRITERIA AND FINDINGS

- A. Chapter 16.28 establishes the procedures and criteria for amending the text of both the Comprehensive Plan and the Development Code. Section 16.28.010 identifies the purpose of text amendments while Section 16.28.020 identifies the various types of amendments. The proposed changes involve only the text of the Development Code; amendments to the Comprehensive Plan are not required.
- B. Section 16.28.030 identifies those agents authorized to initiate a text amendment. Conforming to provisions in this Section, City staff and the Planning Commission initiated this action.

- C. Section 16.28.040 requires the City Recorder to maintain records of all changes to the Development Code. This administrative process requires City compliance.
- D. Sections 16.28.050 and 16.28.060 require all proposed amendments to the Comprehensive Plan Text shall be consistent with Oregon's Statewide Planning Goals, and with all adopted facility plans, including the Transportation System Plan. These Sections do not apply, as the proposal does not amend the Plan.
- E. Section 16.28.070 requires Development Code amendments to be consistent with the City's Transportation System Plan.

FINDINGS: City staff has the authority to require applicants to conduct a Traffic Impact Study or Analysis for any new use (LDC Sections 16.12.010.B and 16.20.110). The Study or Analysis must indicate the proposed use complies with the adopted TSP or mitigation measures are available to ensure compliance. The amendments do not change these requirements. Further, the Code amendment does not change functional classifications or performance standards for City transportation routes.

- F. Section 16.28.080 outlines the process for text amendments. This is a legislative action pursuant to Chapter 16.20 and requires hearings before both the Planning Commission and City Council. The Commission reviews the request and makes recommendation to the Council. The final decision on this matter rests with the City Council. For the record, the Council hearing and process comply with the requirements for a legislative action.
- G. Specific decision criteria are contained in Section 16.28.090. The City may approve a Development Code Amendment application if it satisfies the relevant Decision Criteria: Oregon Department of Land Conservation and Development (DLCD) administrative rules, the applicable Statewide Planning Goals, the applicable provisions of the Lebanon Comprehensive Plan, and any other applicable and relevant facility or special area plans, specific projects or goals adopted by the City.

FINDINGS: Findings in response to the above noted criteria:

1. DLCD Administrative Rules – The Oregon Administrative Rules address a variety of issues including development on farmland, provisions for needed housing, requirements to expand an urban growth boundary, meeting natural resource planning requirements and similar issues. Based on the submitted staff review, and that the DLCD did not identify specific Administrative Rules for the City to consider, the Council concludes there are no Administrative Rules that specifically address the proposed Code amendment.
2. Statewide Planning Goals - Compliance with the Statewide Goals is noted as follows:
 - Goal 1, Citizen Involvement: The Commission and City Council will conduct public hearings on the request, consistent with City procedures and the intent of the Goal.
 - Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the locally adopted

Development Code requirements.

Goal 3, Agricultural Lands: The proposal does not involve or affect farmland. An exception to this goal is not required.

Goal 4, Forest Lands: The proposal does not involve or affect identified forestland. An exception to this goal is not required.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed Code amendments do not alter existing regulations that affect identified historic, cultural, or natural resources within Lebanon.

Goal 6, Air, Water and Land Resource Quality: Nothing in this amendment establishes or promotes land uses that adversely affect air, water or resource quality issues.

Goal 7, Natural Hazards: The Code amendment does not alter development requirements for natural hazard areas; these remain in force.

Goal 8, Recreational Needs: The proposed changes do not create uses that adversely affect recreational opportunities or involve land identified for recreational purposes.

Goal 9, Economic Development: The City anticipates the Code amendment will benefit economic development by allowing an alternative energy source for industrial users.

Goal 10, Housing: All properties subject to the overlay zone are zoned, planned or developed for non-residential uses. Therefore, the proposed Code amendment does not affect housing supply or location, or, the City's ability to meet housing needs.

Goal 11, Public Facilities and Services: Any new use allowed by the amendments must still comply with existing public facility requirements. The amendment does not affect the City's ability to provide public services.

Goal 12, Transportation: As previously noted, the proposed Code revisions do not create uses or activities that significantly affect the City's transportation facilities.

Goal 13, Energy Conservation: The amendments provide alternative energy sources to support industrial development.

Goal 14, Urbanization: The proposed amendments address urban uses within an urban environment.

Goals 15 to 19, Willamette River Greenway, Estuarine Resources, Coastal Shores, Beaches and Dunes, Ocean Resources: The proposals do not involve land within the Willamette Greenway or coastal areas.

In general, the proposed amendments are consistent with Goal provisions, or, the Goals do not directly apply to the amendments.

3. Lebanon Comprehensive Plan – The Comprehensive Plan consists of ten Chapters with each Chapter addressing specific land use issues such as housing or natural resources. Each Chapter is reviewed below:

- a. Chapter 1: Introduction - This introductory Chapter describes the Comprehensive Plan, its relationship to the Statewide Land Use Goals, the Citizen Involvement program and key terminology. As introductory provisions, this Chapter does not directly apply to the proposed text amendments.
- b. Chapter 2: Natural Environment – The Chapter address goals and policies related to the City’s natural environment.
FINDINGS: This Chapter does not apply, as the Code amendment does not establish new regulations involving wetlands, wildlife habitat or other resources identified as requiring preservation or protection.
- c. Chapter 3: Urbanization – This Chapter provides the basic framework for future urban development within the City, including public facility provisions and annexations.
FINDINGS: This Chapter does not apply, as the proposed Code amendments do not affect, reduce or otherwise alter provisions for urban development within the community.
- d. Chapter 4: Land Use – This Chapter details the goals and policies to assure the City provides different types of land within City limits that are suitable for a variety of uses.
FINDINGS: This Chapter does not apply as the proposal Code amendments do not modify or alter existing zoning, and thereby, the City’s ability to provide different types of land, of suitable size and quantity, to meet a variety of development needs.
- e. Chapter 5: Population & Economy – This Chapter addresses population growth and economic development as well as those trends affecting both.
FINDINGS: The amendments provide alternative energy sources for industrial users and are there expected to have some economic benefits.
- f. Chapter 6: Housing – This Chapter establishes the City’s Goals and Policies related to Housing.
FINDINGS: The amendments do not directly apply, as they do not affect the City’s ability to meet the community’s housing needs.
- g. Chapter 7: Community Friendly Development & Preservation of Historic Resources - This Chapter focuses on policies creating a built environment suitable for the needs of a diverse population through a variety of uses scaled for the pedestrian, and capable of accommodating the automobile and mass transit.
FINDINGS: Policies in this Chapter focus on design elements to improve density and housing options while encouraging mixing or combining land uses (residential, commercial, industrial, public) to increase urban livability. Therefore, this Chapter does not directly apply to the request.
- h. Chapter 8: Transportation – This Chapter addresses the transportation needs of the City with an emphasis of creating a variety of transportation

options for pedestrians, bicyclists, vehicles and mass transit.

FINDINGS: The amendments do not change functional classifications or performance standards for transportation routes.

- i. Chapter 9: Public Facilities and Service - The City is required by State law to plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.

FINDINGS: The amendments do not alter the City's ability to provide necessary public services.

- j. Chapter 10: Plan Implementation, Amendment, and Land Use Planning Coordination – This Chapter establishes procedures for amending the Comprehensive Plan Map and Zoning Map.

FINDINGS: This Chapter does not apply as the proposal amends only the Development Code text; there are no changes to the Comprehensive Plan or Zoning maps.

- 4. Other Facility Plans or Projects – The Council notes Department staff did not identify and plans or policies that apply to the proposed Code amendments.

VII. CONCLUSION

The City Council concludes the proposed amendments to the Development Code comply with the applicable decision criteria.