

BIRCH RUN TOWNSHIP
SAGINAW COUNTY, MICHIGAN

ORDINANCE NO. 2013-04

ADOPTED: February 12, 2013

PUBLISHED: February 20, 2013

EFFECTIVE: March 19, 2013

An ordinance to amend the 2004 Birch Run Township Zoning Ordinance, Ordinance No. 2004-02 and herein referred to as the Birch Run Township Zoning Ordinance, to add, delete and revise sections of the ordinance pertaining to definitions and regulations for restaurants and commercial and private wind energy conversion facilities.

**THE TOWNSHIP OF BIRCH RUN
SAGINAW COUNTY MICHIGAN
ORDAINS:**

SECTION I

AMENDMENT of ARTICLE 21 to DELETE DEFINITIONS

Article 21 of the Birch Run Township Zoning Ordinance is hereby amended by the deletion of the following terms and phrases and their respective definitions: “Restaurant, Drive-In” and “Restaurant, Standard.”

SECTION II

AMENDMENT of ARTICLE 21 to INSERT DEFINITIONS

Article 21 of the Birch Run Township Zoning Ordinance is hereby amended by the addition of the following terms, phrases and definitions:

“Restaurant: An establishment whose principal business is the sale of food and/or beverages to customers in a ready-to-consume state.

1. **Restaurant, Standard:** A restaurant whose principal method of operation includes one or both of the following characteristics:
 - a. customers, normally provided with an individual menu, are served their food and beverage by a restaurant employee, at the same table or counter at which food and beverage are consumed, within a building.
 - b. a cafeteria-type operation where food and beverage are consumed within a building.
2. **Restaurant, Non-Standard:** A restaurant, other than an outdoor restaurant, whose principal business is the sale of food and/or beverages to customers in a ready-to-consume state and which does not meet the definitional requirements of a “standard restaurant,” including establishments in which all or a substantial portion of the business consists of serving foods and beverages in a ready-to-consume state: 1) from a drive-through window to patrons in motor vehicles; 2) for delivery by the restaurant to the customer in the customer’s vehicle other than by a drive-through window, for consumption in the vehicle on the restaurant property; 3) from a counter for consumption by the customer off-site; and 4) for delivery by the restaurant to the customer at another location. Such non-standard restaurant may be commonly referred to as a carry-out, delivery service, drive-in, and drive-through restaurant.
3. **Outdoor Restaurant:** An outdoor area designed or otherwise used for the serving or consumption of food or beverages, and the building in which the food or beverages are prepared. An outdoor restaurant may operate as the principal restaurant or be accessory to a restaurant that also includes indoor serving and consumption.

Commercial Wind Energy Conversion Facility (Commercial WECF): An electricity generating facility consisting of one or more wind turbines under common ownership or operation control, and may include substations, cables, wires and other structures and buildings accessory to such facility, whose main purpose is to supply electricity to off-site customers. A commercial WECF may be a principal or accessory use of the parcel on which it is located.

Private Wind Energy Conversion Facility (Private WECF): An electricity generating facility consisting of one or more wind turbines, and may include cables, wires and other structures and buildings accessory to such facility, that is used to serve only the parcel on which the private WECF is located. A private WECF shall be construed as an accessory structure to the principle use of the parcel. This definition shall not be construed to prohibit a private WECF from transmitting or otherwise selling back to a public utility any excess generated electricity, commonly referred to as net metering.

Wind Energy Conversion Testing Facility: A structure and accessory equipment used to determine the potential for the placement of a private or commercial WECF by measuring and recording the speed of the wind. A wind energy conversion testing facility may also be referred to as a “test tower.”

Wind Turbine: A wind energy system that converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, and base, and may include a transformer.

Wind Turbine Height/Test Tower Height: The height of a wind turbine or test tower shall be the distance from the ground elevation at the structure’s base to the highest point of the wind turbine or test tower including to a blade tip in its highest position if such tip is the highest point.”

SECTION III
AMENDMENT of TABLE 9-2 of ARTICLE 9

Table 9-2 of Article 9 of the Birch Run Township Zoning Ordinance is hereby amended by the addition of a new line #4 under “Other Uses not Listed Above” to authorize “Commercial wind energy conversion facilities (Commercial WECFs)” in the A-1 District only, by special land use approval.

SECTION IV
AMENDMENT of TABLE 9-3 of ARTICLE 9

Lines 19, 20, and 21 under “Uses of a Primarily Commercial or Business Character” of Table 9-3 of Article 9, of the Birch Run Township Zoning Ordinance, is hereby amended to read as follow:

PRINCIPAL USES		ZONING DISTRICTS & PRINCIPAL PERMITTED USES ¹		
		“BR” = Use Permitted by Right “S” = Special Land Use “- -” = Prohibited Use		
		C-1	C-2	I-1
	Uses of a Primarily Commercial or Business Character ¹			
19	Standard restaurants that do not serve alcohol nor constitute an adult entertainment business.	BR	BR	--
20	Standard restaurants that serve alcohol, but excluding adult entertainment businesses.	S	S	--
21	Non-standard and outdoor restaurants, and drive-in, drive-through, take-out, pick-up, and other forms of in-vehicle retail or service establishments including financial institutions, dry cleaning businesses, and similar facilities.	S ³	S ³	--

SECTION V
AMENDMENT of ARTICLE 9 to INSERT FOOTNOTE 3 of TABLE 9-3

Table 9-3 of Article 9 of the Birch Run Township Zoning Ordinance is hereby amended by the insertion of a Footnote 3 to read as follows:

- “3. Outdoor restaurants are classified as a use permitted by right (BR) where the outdoor area is no greater than 1,500 square feet in area and is designed and used to accommodate no more than sixty (60) persons at any one (1) time, sitting or standing, and in which no alcohol is served or consumed. See Section 14.19 for definition of “outdoor area.”

SECTION VI
AMENDMENT of ARTICLE 14 to RENAME ARTICLE

Article 14 of the Birch Run Township Zoning Ordinance is hereby amended to change the title of the Article to “Standards and Regulations for Specific Land Uses” and replace all references to “Article 14, Standards for Specific Special Land Uses” throughout the Ordinance with “Article 14, Standards and Regulations for Specific Land Uses.”

SECTION VII
AMENDMENT of ARTICLE 14 to INSERT SEC. 14.19

Article 14 of the Birch Run Township Zoning Ordinance is hereby amended by the insertion of Section 14.19, to read as follows:

“Section 14.19 Outdoor Restaurants

- A. “Outdoor Area” Defined:** “Outdoor area” shall be defined as the area of the outdoor portion of the restaurant designed for or otherwise used for outdoor eating or drinking, irrespective of whether the serving of such food or drink initially occurs inside of the restaurant.
- B. Additional Application Requirements:** In addition to compliance with the site plan submittal information of Sec. 4.04, the following additional information shall be made part of the site plan:
1. The number and location of all proposed temporary and permanent structures in the outdoor area including tables, chairs, planters, outdoor storage facilities, and other equipment as well as lighting locations, if any.
 2. The proposed capacity of the outdoor area and the capacity of existing indoor dining/drinking areas.
- C. The following site and developmental requirements shall apply:**
1. The outdoor area shall comply with the principal building setback requirements for the District in which it is located, but in no case shall the area be closer than thirty (30) feet to a lot line adjacent to or in a Conservation or Residential District and sixty (60) feet from an existing dwelling.
 2. The boundaries of the outdoor eating area shall be clearly defined by fencing, planters, surface material, or other visual means. Fencing may be required by the approving body to ensure compatibility with surrounding conditions.
 3. No signage shall be allowed in association with an outdoor area except for the name of the establishment on an awning or umbrella fringe, and one menu board not to exceed six (6) square feet in area. Moving, fluttering or flapping pennants, flags, balloons and similar devices or decorations are prohibited.
 4. Electrical illumination of an outdoor eating area need not comply with Section 18.04 but such lighting shall be directed downward except in the case where such lighting does not exceed six (6) feet in height above the outdoor area surface and the site plan approving body determines that such lighting will not undermine the use and enjoyment of nearby property, and such lighting shall not increase glare or light levels by more than one-half (1/2) candle power of light across a lot line in or adjacent to an Agricultural or Residential District.
 5. There shall be compliance with the off-street parking space requirements of Article 16, as applied to the outdoor restaurant and any indoor facilities.
- D. Special Performance Standards:**
1. No furniture, apparatus, decoration or appurtenance used in connection with the outdoor area shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building.
 2. The outdoor area may operate during the regular business hours of the restaurant but no later than 11:00 p.m. The approving body may place further restrictions on the hours of operation of the outdoor area where it determines surrounding land uses or other conditions, such as the proximity of nearby dwellings, justify such a restriction to ensure compatibility and public welfare. No outdoor area shall be used or otherwise occupied except during normal indoor business hours.
 3. The outdoor area shall be kept free of litter. Trash receptacles shall be emptied daily. At no time shall trash or debris be permitted to be blown or swept beyond the outdoor area. The presetting of tables with paper or plastic utensils or napkins is prohibited.
 4. All outdoor tables, chairs, umbrellas and similar furnishings shall be adequately weighted or otherwise secured to resist movement by wind, and shall be maintained in good repair and in a clean and safe condition.
 5. No outdoor entertainment shall be permitted. This limitation shall not apply in the case of recorded music that is not audible at any property line.
 6. The consumption of alcoholic beverages of any and all types and kinds in an outdoor area is prohibited unless served by the licensed premises and such drinking customers are served or may otherwise consume food prepared on the premises.”

SECTION VIII
AMENDMENT to INSERT SECTION 14.20

Article 14 of the Birch Run Township Zoning Ordinance is hereby amended by the insertion of Section 14.20, to read as follows:

“Section 14.20 Wind Energy Conversion Facilities (WECFs)

A. The following site development requirements shall apply:

1. The minimum lot area for a commercial or private WECF, or test facility, shall be as necessary to meet required setbacks of this Section 14.20 and any other standards of this Ordinance, but in no case shall the lot be less than the minimum lot area required by Table 9-4 of Article 9.
2. The permitted maximum private wind turbine or test tower height shall be ninety (90) feet. The permitted maximum commercial wind turbine and test tower height shall be 350 feet. As a condition of approval of a commercial WECF, the Township may require a lesser height for a wind turbine if reasonably necessary to comply with the general special land use approval standards of Section 5.06. All heights shall comply with the requirements of the Federal Aviation Authority and county, state and federal regulations including the Michigan Tall Structures Act and Airport Zoning Act.
3. Setbacks and Separation Distances:
 - a. No part of a private WECF or test tower (including guy wire anchors associated with a test tower) shall be located within or above any required front, side or rear yard setback according to Table 9-4 of Article 9. In addition, in the case of a wind turbine serving a private WECF, such turbine and test tower shall be set back a minimum distance from all property lines, a distance equal to two (2) times the wind turbine height. No setback shall be required in the case where the WECF is mounted on a roof or similar support structure and does not increase the height of such structure by more than ten (10) feet provided such structure complies with all required setbacks. In addition, for a private WECF of less than sixty (60) feet in height, the approving body may decrease the required setback to no less than one (1) times the height of the wind turbine upon finding that existing site and surrounding conditions warrant a more flexible setback requirement, such as due to the proximity of nearby dwellings or the screening effects of site conditions.
 - b. No part of a commercial WECF or test tower (including guy wire anchors associated with a test tower) shall be located within or above any required front, side or rear yard setback according to Table 9-4 of Article 9. In addition, in the case of a wind turbine serving a commercial WECF, such turbine shall be set back a minimum distance from all property lines, and above-ground public electrical and communication lines, a distance equal to the wind turbine height, but in no case shall a wind turbine be located within five-hundred (500) feet of an existing residence. No wind turbine shall be located closer to another wind turbine than the minimum separation distance recommended by the manufacturer or the wind energy industry as may be published from time to time.
4. In the case of a wind turbine serving a private WECF, the lowest point of the arc created by rotating wind vanes or blades shall be no less than twenty (20) feet from the ground below except where the turbine is attached to a roof or other structure that prohibits vehicular and pedestrian movement below such blades. In the case of a wind turbine serving a commercial WECF, no rotor/blade shall approach closer than twenty (20) feet to the ground surface below and seventy-five (75) feet to any structure or tree on the same parcel.
5. Safety measures for all WECF's
 - a. All access doors to turbine towers and electrical equipment shall be lockable, and no climbing device shall be made part of a wind turbine except within the interior of the tower from such lockable door or where not located within twelve (12) feet of the ground when placed on the exterior of the tower.
 - b. A tower capable of being climbed shall be enclosed by a locked, protective chain-link fence at least ten (10) feet high with barbed wire at the top.
 - c. All electrical equipment shall include applicable warning signs.
 - d. All electrical wiring shall comply with all applicable safety and stray voltage standards including any connections to an off-site electrical network.
 - e. All electrical distribution lines from the WECF to an off-site electrical network shall be located and maintained underground on the property where the WECF will be located.
 - f. A WECF shall include a system to prevent uncontrolled rotation at excess wind speeds unless the manufacturer certifies that such a system is not necessary.
6. A test tower shall be temporary and removed within twenty-four months of erection.
7. All WECFs shall be sited in such a manner to minimize shadow flicker from the blades on any road or on any building on an adjacent property existing at the time the application is considered.

8. All WECFs and test towers shall comply with the electrical and building codes of the Township and all other regulations and requirements of county, state and federal agencies including those of the Federal Aviation Authority, the Michigan Public Service Commission, National Electric Safety Code, and any other agency of the state or federal government with the authority to regulate wind turbine generators or other tall structures in effect at the time the permit is approved. A WECF shall meet the manufacturer's specifications for erection and anchoring the wind turbine including foundation specifications, and shall exceed such specifications where local, state or federal regulations require so.

B. Special Performance Standards:

1. There is no limitation on the peak capacity of a WECF provided, in the case of a private WECF, all provisions of this Section are met including and the definitional provisions in Article 21 for a private WECF.
2. No WECF shall produce noise levels that exceed fifty-five (55) decibels on the dB(A) scale, measured along the property lines of the parcel on which the WECF is located. This sound pressure level shall not be exceeded for more than three (3) minutes in any hour of the day. If the ambient sound pressure level exceeds 55 dB(A), the standard shall be the ambient dB(A) plus 5 dB(A).
3. Appearance:
 - a. Wind turbines shall be of monopole construction except that a private WECF tower may be of lattice construction provided the wind turbine height is no greater than sixty (60) feet. Wind turbines shall be of such color and finish to minimize visual intrusion and improve compatibility with surrounding conditions, subject to any applicable standards of the Federal Aviation Authority. Any additional buildings or structures shall, to the extent reasonably practical, use materials, colors, textures, screening and landscaping to enhance the compatibility of the facility with surrounding conditions.
 - b. No WECFs shall be artificially lighted, except to the extent required by the Federal Aviation Authority or other applicable authority, or otherwise necessary for the reasonable safety and security thereof. Strobe lights, as may be required by the Federal Aviation Authority, shall be shielded from the ground.
 - c. No wind turbines shall be used for displaying any advertising except that each wind turbine shall have one (1) or more signs of no greater than four (4) square feet each that shall provide operational information including, but not necessarily limited to, a warning of high voltage and a specification of the manufacturer's name, company/utility operator, and emergency number(s).
4. No commercial WECF shall be installed in any location where its proximity to existing fixed broadcast, retransmission, or reception antennae for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception unless the applicant provides a replacement signal to the affected party that will restore reception to at least the level present before operation of the WECF. No commercial WECF shall be installed in any location within the line of sight of an existing microwave communications link where operation of the WECF is likely to produce electromagnetic interference in the link's operation unless the interference is insignificant.
5. Under no circumstances shall any WECF or test tower produce vibrations or wind currents humanly perceptible beyond the property boundaries of the parcel on which the WECF or test tower is located.
6. Any WECF or test tower that is not used for one (1) year or longer shall be deemed to be abandoned and shall be promptly dismantled and removed from the property. All above and below ground materials, to a minimum depth of four (4) feet, shall be removed. The ground shall be restored to its original condition within ninety (90) days of abandonment.

C. Special Authorization and Approval Procedures for Private WECF:

1. Private WECFs shall be construed as accessory structures, as defined in this Ordinance, and are permissible in all districts.
2. Approval Procedures:
 - a. A private WECF that has a wind turbine height of no greater than sixty (60) feet, and is not to be located within one-hundred fifty (150) feet of an existing building on another parcel, is subject to Zoning Administrator approval according to Section 4.03. The applicant shall submit a plot plan containing the information required by Section 4.03(A) and any additional information necessary to demonstrate conformance with the standards of this Section. The Zoning Administrator shall approve such application upon finding that the WECF application complies with the standards and regulations of this Section and Ordinance.
 - b. A private WECF that has a wind turbine height greater than sixty (60) feet, or is to be located within one-hundred fifty (150) feet of an existing building on another parcel, is subject to Planning Commission approval. The applicant shall submit a plot plan containing the information required by Section 4.03(A) and any additional information necessary to demonstrate conformance with the standards of this Section. The Planning Commission shall approve such application upon finding that the WECF application complies with the standards and regulations of this Section and Ordinance, and that the WECF is sited to maximize compatibility with surrounding conditions to the greatest extent practical.

D. Special Authorization and Approval Procedures for Commercial WECF: An application for a commercial WECF shall be accompanied by all information normally required for a special land use including a site plan according to Article 4, and including the identification of the proposed location of wind turbines, underground and overhead wiring including wiring depths, substations and accessory structures; the location and height of all proposed buildings, structures, electrical lines, towers, guy wires, guy wire anchors, security fencing, and other above-ground features associated with the WECF; and engineering data concerning construction of the turbine towers and bases. In addition to the submittal requirements of Article 4, the following supplemental information shall be provided. Where the application is for a wind energy conversion test facility only, the designated approving body may waive any of the submittal requirements where it determines such information is not necessary in evaluating the application solely for testing purposes based on the character of the site, surrounding conditions, and the nature of the test tower.

1. Locations and height of all adjacent buildings, structures, and above-ground utilities located within 300 feet of the exterior boundaries of the parcel where the proposed commercial WECF and/or test tower will be located. Specific distances to other on-site buildings, structures, and utilities shall also be provided. The location of all existing and proposed overhead and underground electrical transmission or distribution lines shall be shown, whether to be utilized or not with the commercial WECF or test tower, located on the parcel involved, as well as within 1,000 feet of the boundaries of such parcel.
2. A lighting plan describing all lighting that will be utilized, including any lighting that may be required by the Federal Aviation Authority. Such plan shall include but shall not be limited to the planned number and location of lights, light color and whether any lights will be flashing.
3. Location of access drives and their dimensions and construction profiles.
4. Planned security measures to prevent unauthorized trespass and access.
5. Narrative description of facility operations including anticipated regular and unscheduled maintenance, and the manner in which the site will be returned to its original condition upon termination of its use as a commercial WECF.
6. Proof that the proposed WECF site has a minimum wind rating of 3 according to the U.S. Department of Energy, National Renewable Energy Laboratory.
7. A description of the routes to be used by construction and delivery vehicles and of any road improvements that will be necessary in the county to accommodate construction vehicles, equipment or other deliveries.
8. The applicant shall conduct an analysis of the alternating changes in light intensity caused by the moving blades of a WECF casting shadows on the ground and stationary objects, commonly referred to as "shadow flicker." The analysis shall identify the locations of shadow flicker that may be caused by the WECF and the expected durations of the flicker at these locations where located on adjacent properties, from sunrise to sunset over the course of the year. The analysis shall identify areas where shadow flicker may affect such properties including persons in structures or on roads, measures that shall be taken to eliminate or mitigate flicker in such circumstances, and the source and basis for such flicker projections.
9. The applicant shall fund an environmental study assessing the potential impact on wildlife. At minimum, the analysis shall include a thorough review of the existing information regarding species and potential habitats in the vicinity, the potential effects on specified list under the Federal Endangered Species Act and Michigan's Endangered Species Protection Law, and the extent to which the WECF conforms to the "Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines" as prepared by the U.S. Fish and Wildlife Services.
10. The applicant shall submit modeling and analysis that will confirm that the WECF will not exceed the maximum permitted sound pressure levels specified in subsection (B)(1). Modeling and analysis shall conform to International Electrotechnical Commission 61400 and International Organization for Standardization 9613.
11. A copy of the manufacturer's installation instructions and blueprints shall be provided to the Township. Included as part of or as an attachment to the installation instructions shall be standard drawings of the structural components of the WECF and support structures, including base and footings provided along with engineering data and calculations to demonstrate compliance with the structural design provisions of the Building Code as adopted by the Township. Drawings and engineering calculations shall be certified by a registered engineer licensed in the State of Michigan."

SECTION IX
SEVERABILITY

Should any section, clause or provision of this Ordinance be declared unconstitutional, illegal or of no force and effect by a court of competent jurisdiction, then and in that event such portion thereof shall not be deemed to affect the validity of any other part or portion of this Ordinance.

SECTION X
EFFECTIVE DATE and REPEAL of CONFLICTING ORDINANCES

This Ordinance shall take effect eight (8) days following publication, following adoption. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

STATE OF MICHIGAN
COUNTY OF SAGINAW

I, the undersigned, the fully qualified and acting Clerk of the Township of Birch Run, Saginaw County, Michigan, do hereby certify that the foregoing is a true and complete copy of an ordinance adopted at a regular meeting of the Township Board of the Township of Birch Run, Michigan, held on the _____ day of _____, 2011.

I further certify that on the _____ day of _____, 2011, I caused a notice of such adoption to be published in the _____, a newspaper circulated in the Township of Birch Run, and that said Ordinance and the record of publication was duly recorded in the Book of Ordinances of the Township of Birch Run and is available for public use and inspection at the offices of the Birch Run Township Clerk.

IN WITNESS WHEREOF, I have hereunto fixed my official signature on this _____ day of _____, 2011.

CoreyTrinklein, Clerk
Birch Run Township