**RESOLUTION NO. \_\_\_\_\_\_\_\_\_\_\_\_**

**ADOPTING REGULATIONS GOVERNING WIND ENERGY FACILITIES**

**WHEREAS**, the Tennessee General Assembly enacted Public Chapter 825, effective April 24, 2018, which authorizes local governments to adopt regulations establishing conditions and criteria for the construction, operation, redevelopment or decommissioning of wind energy facilities and for wind energy facility expansion; and

**WHEREAS**, while \_\_\_\_\_\_\_\_\_\_\_\_ County recognizes a national interest in the development of clean energy, it also recognizes its responsibility to implement and promote energy production practices which protect the county’s natural, agricultural, and built environment and the health and safety of its business entities, residents and visitors;

**NOW, THEREFORE, BE IT RESOLVED** by the \_\_\_\_\_\_\_\_\_\_\_ County Board of Commissioners meeting in regular session on this the \_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Tennessee that this body, pursuant to the authority granted in T.C.A. § 65-17-101 *et seq*., hereby adopts the following regulations governing the development, maintenance, decommissioning and removal of wind energy facilities within \_\_\_\_\_\_\_\_\_ County.

**SECTION 1. DEFINITIONS.** The terms used in these regulations shall have the same meanings as set forth in T.C.A. § 65-17-101.

**SECTION 2. PERMIT REQUIRED.** Applicants must obtain a permit prior to engaging in the construction, operation, or redevelopment of wind energy facilities or wind energy facility expansion within the county.

**SECTION 3. PERMIT PROCEDURES.** *[In this section, the regulations will need to specify the procedures governing the application for and issuance, renewal, modification, suspension, revocation, or denial of the permits. In this section, the Board of Commissioners may appoint itself or create or designate another county agency to process the permit applications and/or hold the public hearing. The public hearing must be held within sixty (60) days of receiving a completed permit application and notice of the hearing must comply with T.C.A. § 65-17-105(d)(3)(B) & (C).]*

**SECTION 4. APPLICATION FEE**. *[If an application fee is to be charged, it should be set forth in this section. The fee must be reasonable and be set at a rate to cover the costs of the following: (A) processing and reviewing permit applications; (B) conducting public hearings; and (C) the performance of the local legislative body's duties under T.C.A. § 65-17-101 et seq.]*

**SECTION 5. CERTIFICATE OF PUBLIC CONVENIENCE.** Applicants must obtain a certificate of public convenience and necessity from the public utility commission pursuant to Tennessee Code Annotated, chapter 4, part 2 of title 65, prior to undertaking the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion in this state. Applicants must submit a copy of the certificate of public convenience and necessity with their county permit application.

**SECTION 6. SETBACKS**. The minimum setback for any wind turbine of a wind energy facility from any non-participating landowner's property line shall be equal to three and one-half (3.5) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip; except, that a non-participating landowner may elect to sign a waiver to allow any wind turbine or group of turbines of a wind energy facility to be placed up to one and one-tenth (1.1) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip from the landowner's property line.

**SECTION 7. ENVIRONMENTAL IMPACT ASSESSMENT**. An environmental impact assessment shall be conducted by qualified, third party experts, paid for by the applicant, of the potential adverse impacts within a maximum of four (4) miles of the perimeter of the facility or expansion; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq*.), which includes public input, a public hearing, an environmental impact statement, and a viewshed analysis. Any environmental impact assessment conducted pursuant to this section shall include, but not be limited to, a study of the following:

1. Economic impacts to individuals, property values, tourism, and agriculture;
2. Potential adverse impacts on ecosystems, including domestic animals, and habitat and migratory patterns for wildlife;
3. Viewshed analysis for national or state parks or forests, historic or cultural sites, public parks or recreation areas, or private conservation lands;
4. Hydrogeological assessment, including water bodies, flowing water sources,
5. stormwater runoff, wetlands, groundwater, aquifers, and private wells within a minimum of two (2) miles of the perimeter of the facility or expansion;
6. Risk assessment and mitigation recommendations for shadow flicker and incidents, such as wind turbine fires, structural damage or failure, ice and blade throw, and hazardous material spills; and
7. Risk assessment for civil air navigation, military or law enforcement routes or training exercises, emergency medical flights, radar operations, and cell phone services.

**SECTION 8. WILDLIFE IMPACT ASSESSMENT**. A wildlife impact assessment shall be conducted through a comprehensive social, economic, and environmental study; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq*.), which includes public input, a public hearing, an environmental impact statement, and a viewshed analysis. As a condition of being issued a permit from the county, the Tennessee Wildlife Resources Agency (“TWRA”) shall review the wildlife impact assessment and approve, grant conditional approval of, or deny the permit. Any such wildlife impact assessment shall include, but not be limited to, a study of the potential adverse impacts to wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the fish and wildlife commission and the wildlife resources agency, and critical fisheries habitats identified pursuant to applicable state or federal law. No permit shall become effective until the county has received notification of approval or conditional approval within one hundred twenty (120) days of the permit being received by the TWRA.

**SECTION 9. NOISE**. Except during the event of inclement weather that prevents the operator of a wind energy facility from controlling the noise level of one (1) or more wind turbines that are part of the wind energy facility, any wind turbine or group of wind turbines of a wind energy facility shall not exceed an emission limit at a non-participating landowner's dwelling of thirty-five A-weighted decibels (35 dBA) and forty-five A-weighted decibels (45 dBA) at a non-participating landowner's property line as determined by a qualified, third-party acoustics expert according to American National Standard Institute (ANSI) Standard 12.9 and other applicable ANSI standards. Prior to construction of a facility or expansion, a qualified, third-party acoustics expert, selected and paid for by the applicant, shall make a baseline determination of preconstruction noise levels, including modeling and enforcement.

**SECTION 10. FINANCIAL SECURITY**. Prior to the start of construction of a wind energy facility, the applicant for a permit for the construction, operation, or expansion of the wind energy facility, or wind energy facility expansion, shall establish financial security in the amount of one hundred percent (100%) of the estimate of the total cost to decommission and remove the wind energy facility, as determined by an independent consultant selected and paid for by the applicant. To establish financial security, the applicant shall file with the county a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of the foregoing, in the required amount. The county shall take custody and hold the bond or other form of financial security.

**SECTION 11. OTHER PERMIT CRITERIA AND CONDITIONS**. *[In this section, the county may include any other condition, criteria, or provision it deems necessary for regulating or granting a permit for the construction, operation, or redevelopment of a wind energy facility or wind energy facility expansion. The county may specify that it will issue a permit for a general boundary, and the wind energy facility may elect to move the planned locations of a wind turbine or other wind energy facility component after permit approval; provided, that the locations shall not be moved outside of the permitted boundary and shall comply with all other requirements pursuant to T.C.A. § 65-17-101 et seq. The county may also institute wind energy facility design conditions for granting a permit in order to comply with any conditional approval from the wildlife resources agency and to mitigate potential impacts, as identified by the Board of Commissioners or local agency.]*

**SECTION 12. DENIAL OR REVOCATION OF PERMIT.** The county may deny the issuance or renewal of a permit, or revoke, suspend, or modify any existing permit for cause, including but not limited to the violation of any conditions of the permit or of the county’s regulations, obtaining the permit by misrepresentation, or failing to fully disclose all relevant facts. Prior to any revocation or suspension of a permit, the permit holder shall be given notice of the noncompliance and a six-month cure period, during which time the Board of Commissioners may impose financial penalties for noncompliance.

**SECTION 13. DECOMMISSIONING OR REMOVAL**. A facility is deemed to be decommissioned or removed if:

1. Any wind turbine of a wind energy facility ceases to generate electricity for one hundred eighty (180) continuous days, unless the termination of electricity was mandated by state or federal law; provided, that one (1) or more extensions may be allowed for one-hundred-eighty-day periods at a time; or
2. Any wind turbine or group of wind turbines of a wind energy facility violates the noise level restrictions, unless the turbine or group of turbines is brought into compliance within one hundred eighty (180) days of the violation; provided, that a single one-hundred-eighty-day extension may be allowed.

Within twelve (12) months following the decommissioning of a facility or expansion, the property shall be restored to its original condition prior to commencement of activities on the site.

 **SECTION 14. ANNUAL REPORTING**. On or before January 1 of each year after the effective date of these regulations, the county shall submit a written report on its permitting activities to the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate. The report shall include, but not be limited to, data on the number of approved and denied permits, data summarizing the findings of the environmental impact assessment and wildlife impact assessments conducted during the permit process, data on the activities of any wind energy facilities currently in operation, and data on any decommissioned facilities.

**SECTION 15. EFFECT ON OTHER LAW**. The issuance of a permit under these regulations shall not preclude the applicant’s obligation to obtain any and all other applicable local, state, or federal permits, licenses, or approvals. Enforcement of these regulations does not limit the county’s ability to plan for and regulate the siting or permitting of a wind energy facility or wind energy facility expansion also in accordance with applicable land-use regulations authorized under titles 5 and 6 of the Tennessee Code.

**SECTION 16. PUBLIC RECORDS**. All permit applications and other documents received by the county, and any documents used by the county to evaluate the permit application, shall be subject to disclosure under § 10-7-503; except, proprietary information contained in a permit application or in other documents received by the county, or in any other documents used by the county to evaluate and approve or deny the permit applications, shall remain confidential and not subject to disclosure to the public pursuant to T.C.A. § 65-17-108, § 10-7-503, or any other law.

**SECTION 17. ENFORCEMENT**. The county may enforce these regulations by seeking injunctive relief or instituting other appropriate actions or proceedings in the chancery court of either the county in which any violation of T.C.A. § 65-17-104 or of the county regulations occurred, or the local government in which the person responsible for the violation resides or has the person's principal place of business to ensure compliance. The chancery court may grant a temporary or permanent injunction restraining the violation of § 65-17-104 or of the county regulations. The institution of an injunctive action is in addition to, and not in lieu of, all civil penalties and other remedies prescribed in Tennessee Code Annotated, title 5 for permit violations and violations of county regulations.

**SECTION 18. CERTIFIED COPY OF REGULATIONS.** Upon passage of the regulations, or any amendment thereto, the county clerk shall furnish a certified copy of the adopted regulations or amendments to the Tennessee Department of Environment and Conservation.

**SECTION 19. AMENDMENT OR REPEAL OF REGULATIONS**. These regulations may only be amended or repealed by a two-thirds (2/3) majority vote of the Board of County Commissioners of \_\_\_\_\_\_\_\_\_\_\_\_ County.

**SECTION 20. CONFLICT WITH OTHER LAW**. In the event that county regulations conflict with applicable federal law or regulations, the federal requirements shall take precedence over the conflicting requirements of these regulations.

Passed by a two-thirds (2/3) majority vote of the Board of County Commissioners of \_\_\_\_\_\_\_\_\_\_\_\_ County, this the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County Mayor/Executive

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County Clerk