

AN ORDINANCE OF THE TOWNSHIP OF BERKELEY ESTABLISHING REGULATIONS REGARDING THE ERECTION AND LOCATION OF SMALL WIND ENERGY SYSTEMS.

October 28, 2008

WHEREAS, it is the purpose of this ordinance to promote the safe, effective and efficient use of small wind energy systems to reduce the on-site consumption of utility-supplied electricity; and

WHEREAS, the Township Council of the Township of Berkeley, State of New Jersey, County of Ocean, has determined that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource;
2. Converting wind to electricity will reduce our dependence on nonrenewable energy resources and decrease the air pollution that results from the use of conventional energy sources;
3. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the State's energy supply portfolio; and
4. Small wind energy systems make the electricity supply market more competitive by promoting customer choice; and

WHEREAS, existing local zoning regulations do not address wind power, which while not intended to discourage the installation of small wind turbines, can substantially increase the time and costs required to obtain necessary local land-use permits; and

WHEREAS, the Township Council finds that it is necessary to standardize and streamline the requirements for small wind energy systems so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner in our municipality,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN AND STATE OF NEW JERSEY, that:

SECTION 1. Short Title

This ordinance shall be known as the Small Wind Energy System Ordinance.

SECTION 2. Purpose.

The purpose of this ordinance is to:

- (1) Facilitate the permitting of small wind energy systems.
- (2) Preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a small wind energy system.

SECTION 3. Definitions.

In this ordinance:

- (1) "Administrator" means the Township of Berkeley Zoning Officer.
- (2) "Board" means the Township of Berkeley Planning Board also known as the Township of Berkeley Land Use Board.
- (3) "Construction Official" is the state licensed construction official appointed by the Township of Berkeley who is responsible for administering the New Jersey State Uniform Construction Code Act.

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- (4) "Meteorological tower" or "met tower" means a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.
- (5) "Owner" shall mean the individual or entity that intends to own and operate the small wind energy system in accordance with this ordinance. The individual or entity shall also have a proprietary interest in the land upon which the small wind energy system is proposed to be located.
- (6) "Rotor diameter" means the cross sectional dimension of the circle swept by the rotating blades of a wind-powered energy generator.
- (7) "Small wind energy system" means a wind energy system, as defined in this section, that
- (a) is used to generate electricity;
 - (b) has a nameplate capacity of 100 kilowatts or less; and
 - (c) is as high as necessary to capture the wind energy resource, but not to exceed one-hundred thirty five (135') feet.
- (8) "Total height" means, in relation to a wind energy system, the vertical distance measured from the average elevation of the finished grade to the tip of a wind generator blade when the tip is at its highest point. Additionally, the total height of the tower shall not exceed the distance from the location of the tower to the closest property line
- (9) "Tower" means a monopole, freestanding, or guyed structure that supports a wind generator.
- (10) "Wind energy system" means a wind generator and all associated equipment, including any base, blade, foundation, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries and/or other component necessary to fully utilize the wind generator.
- (11) "Wind generator" means equipment that converts energy from the wind into electricity. This term includes the rotor, blades and associated mechanical and electrical conversion components necessary to generate, store and/or transfer energy.

SECTION 4. Standards.

A small wind energy system shall be a permitted use subject to the following requirements in the Town Center District, Highway Business District, Rural Highway Business District, General Industrial District and in all zoning districts located within the Pinelands Management Area. Further, a small wind energy system shall be permitted in residential zones where the owner and/or developer's property is a minimum of three (3) acres in area.

(1) **Setbacks.** A wind tower for a small wind energy system shall be set back a distance equal to the principal building set back line requirements. Setbacks may be increased at the discretion of the Zoning Officer for reasons of public safety in order to account for the distance to overhead power lines. No portion of the wind generator shall extend beyond the required setback line, nor into the following:

- (a) any public or private right of way, easement or leasehold, unless written permission is granted by the government entity or private party with jurisdiction over said area;
- (b) any overhead utility lines, or aerial easement for same, unless written permission is granted by the utility or entity that owns and/or controls the lines.

(2) **Access.**

- (a) All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- (b) The tower shall be designed and installed so as not to provide step bolts, a ladder, rungs or other publicly accessible means of climbing the tower, for a minimum height of

eight feet above the ground elevation.

(c) All towers shall be constructed so as to limit access to only authorized personnel and shall contain appropriate safety measures to assure compliance with all federal and state occupational safety requirements.

(3) **Electrical Wires.** All electrical wires associated with a small wind energy system shall be located underground when practicable. All wires not located underground, including but not limited to wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box and the grounding wires, shall be contained within an appropriate conduit suitable for same.

(4) **Lighting.** A small wind energy system shall not be artificially light unless such lighting is required by the Federal Aviation Administration.

(5) **Appearance, Color, and Finish.** The wind generator and the tower shall remain painted or finished in the color or finish that was originally applied by the manufacturer, unless a different color of finish is approved in the building permit. All components of the system shall be maintained in accordance with the most current requirements contained within the Property Maintenance Code and the Uniform Construction Code adopted by the township.

(6) **Signage.** There shall be no signs that are visible from any public road posted on a small wind generator system or any associated building, except for the manufacturer's or installer's identification, appropriate warning signs, or owner identification.

(7) **Code Compliance.** A small wind energy system shall comply with all applicable construction and electrical codes, and the National Electrical Code.

(8) **Utility notification and interconnection.** Small wind energy systems that connect to the electric utility shall comply with the New Jersey's Net Metering and Interconnection Standards for Class I Renewable Energy Systems as established by N.J.A.C. 14:4-9.

(9) **Met towers.** A met tower shall be permitted under the same standards, permit requirements, restoration requirements and permit procedures as a small wind energy system.

(10) **Noise.** A small wind energy system shall comply with the Noise Control Ordinance of the Township of Berkeley as set forth in § 4-27.1 as it may be amended from time to time.

SECTION 5. Permit Requirements.

(1) **Permits.** An Owner shall be required to make application for and obtain minor site plan approval from the Berkeley Township Planning Board prior to erecting any small wind energy system contemplated under this ordinance. Said application shall be made in accordance with the procedures and requirements of Land Development Ordinance in effect for the Township of Berkeley and the Municipal Land Use Law, N.J.S.A. 40:55D-1. A building permit shall also be required for the installation of a small wind energy system.

(2) **Documents:** In addition to any requirements of the Township of Berkeley Land Development Ordinances and application procedures, the zoning application shall be accompanied by a plot plan which includes the following:

- (a) Property lines and physical dimensions of the property;
- (b) Location, dimensions, and types of existing principal and accessory structures on the property;
- (c) Location of the proposed small wind energy system tower;
- (d) The right-of-way delineation of any public road that is contiguous with the property;
- (e) Any overhead utility lines within 300 feet of the outbound property lines;
- (f) Easements;
- (g) Small wind energy system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)
- (h) Detailed tower and tower foundation drawings, stamped and sealed by a New Jersey

licensed Professional Engineer;

(i) A map of the 200 foot area surrounding the subject property, showing all affected lands and structures;

(j) A study conducted by a licensed professional engineer certifying to the viability and feasibility of the small wind energy system at the proposed location. This requirement may be waived for a Meteorological or Met Tower, at the discretion of the Zoning Officer.

(3) Fees. The fees for the small wind energy system minor site plan shall be in accordance with the Land Development Fees and Escrow Ordinance Article VI, §35-8, et seq. of the Township of Berkeley.

(4) Expiration. Any minor site plan or other approval issued pursuant to this ordinance shall expire if:

(a) The small wind energy system is not installed and functioning within 12-months from the date the building permit is issued; or

(b) The small wind energy system is out of service or otherwise unused for a continuous 12-month period.

SECTION 6. Planning Board Referral.

In lieu of the permit requirements of Section 5., the governing body or any other public agency, seeking to construct a wind energy system shall refer the specific plan to the Planning Board for review and recommendation pursuant to the terms of the Municipal Land Use Law N.J.S. 40:55D-31.

SECTION 7. Abandonment.

(1) A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to have been abandoned.

(2) The Administrator may issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The notice shall be sent via regular mail and certified mail return receipt requested to the owner of record as it appears on Building Permit and, if different, the current tax duplicate of the Township.

(3) The Owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date.

(4) If the owner provides information that satisfactorily demonstrates to the Administrator that the small wind energy system has not been abandoned, the Administrator shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn.

(5) If the Administrator determines that the small wind energy system has been abandoned, the Owner of the small wind energy system shall remove the wind generator and the tower at the Owner's sole expense within 6 months after the Owner receives the Notice of Abandonment.

(6) If the owner fails to remove the wind generator and the tower in the time allowed under Paragraph (5) above, the Administrator may pursue any legal remedies available to have the wind generator removed at the Owner's expense, including costs of litigation and reasonable attorney's fees.

SECTION 8. Permit Procedure.

No Building permit shall be issued for a small wind energy system without prior minor site plan approval from the Berkeley Township Planning Board.

SECTION 9. Violations.

(1) It is unlawful for any person to construct, install, or operate a small wind energy system that

is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance.

(2) Small wind energy systems installed prior to the adoption of this ordinance are exempt from the requirements of this ordinance, except for the provisions at Section 7. regarding abandonment.

SECTION 10. Administration and Enforcement.

(1) This ordinance shall be administered by the Administrator or other official as designated.

(2) The Administrator and/or Construction Official may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

(3) The Administrator and/or Construction Official may direct the Township Code Enforcement Officer to issue orders to abate any violation of this ordinance.

(4) The Administrator and/or Construction Official may direct the Township Code Enforcement Officer to issue a citation for any violation of this ordinance.

(5) The Administrator may refer any violation of this ordinance to the Township Attorney for enforcement.

SECTION 11. Penalties.

(1) Any person, partnership, firm or corporation who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties and upon conviction be subject to a fine of up to five hundred dollars (\$500.00) or up to thirty (30) days imprisonment, or both.

(2) Nothing in this section shall be construed to prevent the Township of Berkeley from using any other lawful means to enforce this ordinance.

SECTION 12. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed as separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 13. Inconsistent ordinances

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

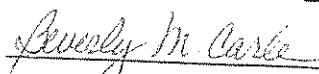
SECTION 14. Effective Date

Pursuant to the provisions of law, this Ordinance shall take effect twenty (20) days after its passage by the Township Council and approval by the Mayor, where such approval is required by law.


PETER J. MUSTARDO, Council President

CERTIFICATION

I HEREBY CERTIFY THAT THE WITHIN Ordinance WAS FINALLY PASSED BY THE GOVERNING BODY OF THE TOWNSHIP OF BERKELEY, IN THE COUNTY OF OCEAN, ON THE 25th DAY OF November, 2008. IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND THE OFFICIAL CORPORATE SEAL OF SAID TOWNSHIP THIS 26th DAY OF October, 2008.



Beverly M. Carle
Township Clerk