

ORDINANCE 2010-8

AN ORDINANCE OF THE TOWNSHIP OF OCEAN, COUNTY OF OCEAN, STATE OF NEW JERSEY ESTABLISHING REGULATIONS REGARDING THE ERECTION AND LOCATION OF SMALL WIND AND SOLAR ENERGY SYSTEMS

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 Committee of the Township of Ocean, State of New Jersey, County of Ocean has determined that:

1. Wind and solar energy are an abundant, renewable, and nonpolluting energy resource;
2. Converting wind and solar rays to electricity will reduce our dependence on nonrenewable energy resources, and decrease the air and water pollution that results from the use of conventional energy sources;
3. Distributed small wind energy systems and solar arrays 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. Wind and solar energy systems should be a permitted use in all zoning districts in the Township; and

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

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

WHEREAS, the Township Committee finds that it is in the best interest of the public health, safety and general welfare to standardize and streamline the requirements for small wind and solar energy systems so that these clean, renewable energy resources can be utilized in a cost-effective and timely manner in our municipality; and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-2(n) provides that to promote utilization of renewable energy resources is a purpose of zoning; and

WHEREAS, on November 20, 2009 the Governor signed P.L.2009, c.146, clarifying that a wind, solar or photovoltaic energy facility or structure should be considered an "inherently beneficial" use under the Municipal Land Use Law's analysis of positive criteria for the grant of a "d variance" under J.J.S.A. 40:55D-70, regardless of whether the facility or structure is a principal use, a part of the principal use, or an accessory use or structure.

NOW, THEREFORE BE IT ORDAINED, by the Township Committee of the Township of Ocean, County of Ocean, State of New Jersey, that the Land Use Regulations of the Township of Ocean be amended and supplemented to include the following:

SECTION I – Short Title.

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

SECTION II - Purpose.

The purpose of this ordinance is to:

- (1) Declare Small Wind and Solar Energy Systems a permitted use in all zoning districts of the Township.
- (2) Facilitate the permitting of small wind and solar energy systems
- (3) Preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a small wind energy system.

SECTION III - Definitions.

In this Ordinance:

- (1) “Administrator” means the Township of Ocean Zoning Officer.
- (2) “Board” means the Township of Ocean Planning Board.
- (3) “Construction Official” is the state licensed Code Enforcement official appointed by the Township of Ocean who is responsible for administering the New Jersey State Uniform Construction Code Act.
- (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) "Solar Energy System" – means a solar energy system and all associated equipment which converts solar energy into a usable electrical energy, heats water or produces hot air or other similar function through the use of solar panels.
- (8) "Solar Panels" - a structure containing one or more receptive cells, the purpose of which is to convert solar energy into usable electrical energy by way of a solar energy system.
- (9) "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.
- (10) "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.
- (11) "Tower" means a monopole, freestanding, or guyed structure that supports a wind generator.
- (12) "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.
- (13) "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 IV - Standards.

Small wind and solar energy systems shall be a permitted use in all zoning districts subject to the following requirements:

A. Small Wind Energy Systems

(1.1) **Setbacks.** A wind tower for a small wind energy system shall be set back from all property lines a distance equal to 150% of the height of the structure including the rotor blade tips. 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.

(1.2) Wind turbines shall not be permitted in any front yard

(1.3) Maximum Height

- (a) Freestanding wind turbines shall not exceed a height of 135 feet.
- (b) Rooftop wind turbines may not exceed a height of six feet.
- (c) The maximum height of any wind turbine shall include the height of the blades at its highest point.

(1.4) Wind turbines on residential properties shall have a nameplate capacity of 10 kilowatts or less.

(1.5) No more than one wind turbine shall be permitted per residential property.

(1.6) Wind turbines shall be designed with an automatic brake or other similar device to prevent over-speeding and excessive pressure on the tower structure.

(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.

(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.

(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 manufacturers 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.** The sound levels of the wind energy system shall not exceed 55 dBA at a common property line. These levels may be exceeded during short-term events such as utility outages and/or severe windstorms.

(11) **Trees and Shrubs.** All of the rules and regulations of Section 12.12 of the Ocean Township Code regarding Trees and Shrubs shall be met regarding the construction of wind energy systems.

B. Solar Energy Systems

(1) Solar energy systems shall be permitted as a rooftop installation in any zoning district. Solar panels mounted to the roof of garages and accessory structures will also be permitted. Structurally attached solar energy systems installed on a building with a sloped roof shall not project vertically above the peak of the roof and/or shall comply with the height regulations of the zone. Roof-mounted solar energy systems shall not exceed a height of three (3) feet from the rooftop at any point. Structurally attached solar energy systems installed on a building with a flat roof shall not project vertically more than 5 feet above the roof and/ or shall comply with the height regulations of the zone.

(2) Freestanding or ground mounted solar energy systems (ground arrays) shall be considered a structure and shall be subject to the regulations of the zone for such, together with all other applicable building codes and ordinances. Ground mounted or free standing solar energy systems shall not be permitted to be constructed in the front yard of any property in any zone. The height of any ground mounted or free standing solar energy system shall not exceed 6 feet. Ground solar energy systems shall be located so that any reflection is directed away or is properly buffered from an adjoining property.

(3) All of the rules and regulations of Section 12.12 of the Ocean Township Code regarding Trees and Shrubs shall be met regarding the construction of solar energy systems.

(4) Solar energy systems may consist of photovoltaic cells, hot water collector applications and hot air applications.

(5) Roof mounted solar energy systems are discouraged from being erected on the front roof of a structure which faces a street. Solar energy systems shall be located on a rear- or side-facing roof, as viewed from any adjacent street, unless such installation is proven to be ineffective or impossible. The removal of potential obstructions such as interceding vegetation shall not be sufficient cause for permitting a front-facing installation. Front-facing installation may be permitted in accordance with the following provisions:

- a. Applicant must indicate valid reasons as to why this is the only effective or possible means for utilizing solar energy on the property. Such information shall be certified by a professional deemed qualified by the Board and reviewed by the Township Engineer and any other Professional that the Township deems necessary.
- b. Solar panels must be flush mounted to the roof.

(6) Solar energy systems installations for the purpose of generating electricity shall conform to the following criteria:

- a. The solar energy systems shall not be sized to generate more power than what is required by said structure. All solar energy systems shall be grid tied.
- b. A study, prepared by a qualified individual, shall be performed to verify that the property conditions will produce the intended solar power generation based on property location, surrounding structures, and building orientation. Solar ground mounted or freestanding solar energy systems shall be set back a minimum distance of 20 feet from all property lines.
- c. Solar energy systems shall be designed by a licensed engineer of the State of New Jersey. In the event that the solar energy system is to be mounted to, or is constructed on top of, an existing dwelling or building, detailed calculations and engineered drawings of the mounting must be provided by a licensed engineer of the State of New Jersey. Electric cables must be concealed below the roof line.
- d. All units and unit installation shall be in accordance with all applicable state construction and electric codes, as well as the National Electric Code.
- e. All wiring leading to and from the panels shall be installed below the roof structure or shall be installed under ground.

SECTION V - Permit Requirements.

(1) Permits. An Owner shall be required to make application for and obtain minor site plan approval from the Ocean Township Planning Board prior to erecting any small wind or solar energy system contemplated under this ordinance. Said application shall be made in accordance

with the procedures and requirements of Land Use Ordinances in effect for the Township of Ocean 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 or solar energy system.

(2) Documents: In addition to any requirements of the Ocean Township Land Use 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 or solar energy system;
- (d) The right-of-way delineation of any public road that is contiguous with the property;
- (e) Any overhead utility lines;
- (f) Easements;
- (g) Small wind or solar energy system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed); arrays, cells, etc.
- (h) Detailed tower and 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;

(3) Fees. The fees for the small wind or solar energy system minor site plan shall be in accordance with the Land Development Fees and Escrow Ordinance of the Township of Ocean.

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

- (a) The small wind or solar energy system is not installed and functioning within 12-months from the date the building permit is issued; or
- (b) The small wind or solar energy system is out of service or otherwise unused for a continuous 12-month period.

SECTION VI - Abandonment.

(1) A small wind or solar 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 or solar 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 or solar 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 or solar energy system has been abandoned, the Owner of the small wind or solar energy system shall remove the energy system from the property to a place of safe and legal disposal 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 energy system in the time allowed under Paragraph (5) above, the Administrator may pursue any legal remedies available to have the energy system removed at the Owner's expense, including costs of litigation and reasonable attorney's fees.
- (7) The former wind or solar energy site shall be restored to its natural or prior condition within six (6) months of the removal from the property.

SECTION VII - Permit Procedure.

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

SECTION VIII - Violations.

- (1) It is unlawful for any person to construct, install, or operate a small wind or solar 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 or solar energy systems installed prior to the adoption of this ordinance are exempt from the requirements of this ordinance, except for the provisions at Section VI regarding abandonment.

SECTION IX - 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 X - 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 Ocean from using any other lawful means to enforce this ordinance.

SECTION XI - 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 XII - Inconsistent ordinances

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

SECTION XIII – Effective Date

This ordinance shall take effect immediately upon its final passage, approval and publication, as required by law.

NOTICE

PUBLIC NOTICE is hereby given that the foregoing ordinance was introduced and passed on first reading of the Township Committee of the Township of Ocean, in the County of Ocean, held on September 3, 2010, and will come on for a second reading, public hearing and final passage at a regular meeting of said Township Committee to be held on October 14, 2010 at Township Committee Chambers, 50 Railroad Avenue, Waretown, New Jersey, at 7:00 P.M., or as soon thereafter as the matter can be reached, at which last mentioned date, hour and place any person desiring to be heard either for or against the adoption of the within ordinance will be given an opportunity to be so heard.

DIANE B. AMBROSIO, RMC
Municipal Clerk

Gluck, & Allen, LLC
217 Washington Street
Toms River, New Jersey 08753
(732) 505-4800