

NOTICE OF PENDING ORDINANCE

ORDINANCE NO. 11-1313

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Tinton Falls, in the County of Monmouth, State of New Jersey, held on January 4, 2011. This Ordinance will be further considered for adoption, after the public hearing is held thereon, at a meeting of the Borough Council to be held on Tuesday, February 15, 2011, located in the Municipal Building, 556 Tinton Avenue, Tinton Falls, New Jersey, beginning at 7:30 o'clock P.M. During the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available in the Clerk's Office to the members of the general public who shall request the same.

MAUREEN L. MURPHY, BOROUGH CLERK

AN ORDINANCE TO PERMIT CERTAIN WIND AND SOLAR ENERGY SYSTEMS AND ESTABLISHING STANDARDS

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

WHEREAS, the Borough Council of the Borough of Tinton Falls has determined the following:

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 air and water 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;
4. Small wind energy systems and solar energy systems make the electricity supply market more competitive by promoting customer choice; and
5. Solar and wind energy may help mitigate the demand for increased transmission lines, offshore drilling and other energy infrastructure such as the proposed LNG island off the coast of New Jersey.

WHEREAS, New Jersey's Renewable Portfolio Standards (RPS) require each supplier/provider, as defined at N.J.A.C. 14:8-1.2, that sells electricity to retail customers in New Jersey to provide a percentage of their retail electricity sales from renewable energy sources, beginning at 3.5 percent in 2004 and increasing to 22.5 percent by 2021; and

WHEREAS, the Municipal Land Use Law (N.J.S.A. 40:55D-2n) 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 N.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; and

WHEREAS, on April 4, 2010, Governor Chris Christie signed P.L. 2010, c. 4 exempting solar panels from being counted in calculations utilized to determine impervious coverage in land use applications under the Municipal Land Use Law; and

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

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

WHEREAS, the Borough of Tinton Falls Planning Board adopted a new Master Plan and Land Use Regulations and has reviewed this ordinance for conformance therewith and recommends its adoption; and

WHEREAS, the Master Plan Reexamination Report and Master Plan Update recommended that the ordinance should be updated to reflect changing trends and conditions and other similar items and the creation of an ordinance governing alternative energy sources is a reflection of changing trends.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Tinton Falls in the County of Monmouth, State of New Jersey, that the Land Use Regulations of the Borough of Tinton Falls be amended and supplemented to include the following:

SECTION 1. Small Wind and Solar Energy Systems.

Small wind and solar energy systems shall be permitted accessory structures and uses in the Borough of Tinton Falls as governed pursuant to the terms of this chapter to be incorporated in to the Borough's land use code.

SECTION 2. Definitions.

The following definitions shall govern Small Wind and Solar Energy systems in the Borough of Tinton Falls.

SMALL WIND ENERGY SYSTEM – means a wind energy system, as defined herein that is used to generate electricity; and has a nameplate capacity of 100 kilowatts or less.

SOLAR ENERGY SYSTEM – means a solar energy system and all associated equipment that converts solar energy into a usable electrical energy, heats water or produces hot air or other similar function through the use of solar panels.

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.

WIND ENERGY SYSTEM – means a wind turbine and all associated equipment, including any base, blade, foundation, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component necessary to fully utilize the wind generator.

WIND TURBINE – means equipment that convert 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 3. Generally Applicable Standards.

- (1) The primary purpose of a wind or solar energy system will be to provide power for the principal use of the property whereon said system is to be located and shall not be for the generation of power for commercial purposes, although this provision shall not be interpreted to prohibit the sale of excess power generated from time to time from a wind or solar energy system designed to meet the energy needs of the principal use. For the purposes of this ordinance, the sale of excess power shall be limited so that in no event an energy system is generating more energy for sale than what is otherwise necessary to power the principle use on the property.
- (2) Wind and solar energy systems shall only be permitted as an accessory use on the same lot as the principle use. All energy systems require approval from the zoning officer and building department prior to installation. Applications for an energy system shall include information demonstrating compliance with the provisions of this ordinance. In the event that the zoning officer or building department does not believe the provisions of this ordinance will be satisfied an applicant may request a variance.
- (3) All applications for wind energy systems shall be presented to the Development Review Committee for administrative approval.
- (4) Wind and solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacture or operator of the system. In no case shall any identification be visible from a property line.
- (5) The design of wind or solar energy systems shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment.
- (6) The installation of a wind or solar energy system shall conform to the National Electric Code as adopted by the New Jersey Department of Community Affairs.
- (7) The installation of a wind or solar energy system is subject to all Jersey Central Power & Light requirements for interconnection.
- (8) The general provisions of the Borough's land use code shall not apply to wind and solar energy systems with regard to height. Wind and solar energy systems shall conform to the height

restrictions provided in this subsection.

SECTION 4. Small Wind Energy Systems.

- (a) Wind Turbines are permitted in all residential, agricultural, forest and preservation districts subject to the following requirements:
- [1] Minimum lot size: one (1) acre provided the lot size ~~and~~ conforms to the height requirements below.
 - [2] Minimum setbacks: All wind turbines shall be setback from all property lines a distance equal to 100% of the height of the structure including the blades.
 - [3] Wind turbines shall not be permitted in any front yard.
 - [4] Maximum Height.
 - i. Freestanding wind turbines shall not exceed a height of 80 feet on lots between one (1) acre and three (3) acres. On lots of three (3) acres or more a maximum height of 150 feet is permitted.
 - ii. Rooftop wind turbines may not exceed a height of six (6) feet on lots between one (1) acre and three (3) acres. Rooftop wind turbines may not exceed a height of twelve (12) feet on lots of three (3) acres or more.
 - iii. The maximum height of any wind turbine shall include the height of the blades at its highest point.
 - [5] No more than one wind turbine shall be permitted per residential property.
 - [6] ~~Wind turbines shall not be permitted as a rooftop installation.~~ Rooftop installation of wind turbines may only be permitted subject to technical review of the manufacturer's specifications.
 - [7] Wind turbines on residential properties shall have a nameplate capacity of 10 kilowatts or less.
- (b) Wind turbines shall be permitted in a non-residential zoning district subject to the bulk requirements for that district and the following:
- [1] The maximum height for a wind turbine shall not exceed 150 feet, including the height of the blades at its highest point measured from ground level even if mounted on a building or structure.
 - [2] Minimum setbacks: All wind turbines shall be setback from all property lines a distance equal to 100% of the height of the structure including the blades.
 - [3] Wind turbines shall not be permitted in a front yard.
 - [4] ~~No more than one wind turbine shall be permitted per property.~~
 - [5] ~~Wind turbines shall not be permitted as a rooftop installation.~~ Rooftop installation of wind turbines may only be permitted subject to technical review of the manufacturer's specifications.
- (c) Noise: All wind energy systems shall comply with the following:
- [1] Between a residential use or zone sound levels of the wind energy system shall not exceed ~~55~~ 35 dBA at a common property line or ~~50~~ 30 dBA to the closest occupied structure.
 - [2] In all other cases at a common property line sound levels of the wind energy system shall not exceed ~~65~~ 45 dBA.
 - [3] These levels may be exceeded during short-term events such as utility outages and/or severe windstorms.
- (d) Wind turbines shall be designed with an automatic brake or other similar device to prevent over-speeding and excessive pressure on the tower structure.
- (e) Wind energy systems shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- (f) All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- (g) The tower shall be designed and installed so as not to provide step bolts, a ladder, or other publicly accessible means of climbing the tower, for a minimum height of eight feet above the ground.
- (h) All moving parts of the wind energy system shall be a minimum of ten (10) feet above

ground level.

- (i) The blades on the wind energy system shall be constructed of a corrosive resistant material.
- (j) All guy wires or any part of the wind energy system shall be located on the same lot as the energy system.

SECTION 5. Solar Energy Systems.

- (a) Solar Panels shall be permitted as a rooftop installation in any zoning district. The solar panels shall not exceed a height of ~~eight~~ twelve (12) inches from the rooftop. In no event shall the placement of the solar panels result in a total height including building and panels than what is permitted in the zoning district that they are located for the principle building.
- (b) Solar Panels shall be permitted as ground arrays in accordance with the following:
 - [1] All ground arrays shall be setback a distance of 20 feet from all property lines in a residential zoning district or in conformance with the bulk standards for accessory structures in commercial districts as provided herein.
 - [2] Ground arrays shall not be permitted in a front yard.
 - [3] Ground arrays shall be located so that any glare is directed away from an adjoining property.
 - [4] Ground arrays shall not exceed a height of twelve (12) feet.

SECTION 6. Abandonment.

- (a) A small wind energy system or solar energy system that is out of service for a continuous 12-month period will be deemed to have been abandoned.
- (b) The zoning officer may issue a “Notice of Abandonment” to the owner. The notice shall be sent via regular and certified mail return receipt requested to the owner of record.
- (c) Any abandoned system shall be removed at the owner’s sole expense within six months after the owner receives the “Notice of Abandonment” from the municipality. If the system is not removed within six months of receipt of notice from the Borough notifying the owner of such abandonment, the Borough may remove the system as set forth below.
- (d) When an owner of a wind or solar energy system has been notified to remove same and has not done six months after receiving said notice, then the Borough may remove such system and place a lien upon the property for the cost of the removal. If removed by the owner, a demolition permit shall be obtained and the facility shall be removed. Upon removal, the site shall be cleaned, restored and revegetated to blend with the existing surrounding vegetation at the time of abandonment.