

CITY COUNCIL OF ERIEINTRODUCED BY: MRS. HORAN-KUNCOCOUNCIL FILE NO. 15,698 OFFICIAL ORDINANCE NO. 2-2010AN ORDINANCE

Amending Official Ordinance No. 80-2005 known as the Zoning Ordinance of the City of Erie, Pennsylvania by adding to Article 6 (Definitions) the definitions of "Commercial/Industrial Scale Wind Energy System", "Small Wind Energy System", "Turbine Height", "Wind Energy Conversion System" and "Wind Turbine"; by adding to Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) a new Section 305.52 (Wind Energy Conversion Systems); and by adding to Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) a new Section 305.53 (Small Wind Energy Systems and Commercial/Industrial Wind Energy Systems).

WHEREAS, Erie City Council, by Resolution dated January 7, 2009, on its own initiative directed the City Solicitor to prepare an Ordinance amending Official Ordinance No. 80-2005 known as the Zoning Ordinance of the City of Erie, by providing definitions of "Commercial/Industrial Scale Wind Energy System", "Small Wind Energy System", "Turbine Height", "Wind Energy Conversion System" and "Wind Turbine"; by adding to Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) a new Section 305.52 (Wind Energy Conversion Systems); and by adding to Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) a new Section 305.53 (Small Wind Energy Systems and Commercial/Industrial Wind Energy Systems) all as approved by the City Planning Commission.

WHEREAS, the Council of the City of Erie under the provisions of the Pennsylvania Municipalities Planning Code (53 P.S. 10303) finds the said amendments to be in accordance with the spirit and intent of the formally adopted Comprehensive Plan for the development of the City of Erie, said Plan being known as the Erie City Plan of the Future.

NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF ERIE, PENNSYLVANIA:

Section 1. That Official Ordinance No. 80-2005, known as the Zoning Ordinance of the City of Erie the Zoning Ordinance of the City of Erie, Article 6 (Definitions) is hereby amended by adding the following definitions:

COMMERICAL/INDUSTRIAL SCALE**WIND ENERGY SYSTEMS:**

A wind energy conversion system consisting of one or more wind turbines, towers, and associated controls and conversion electronics which has a rated capacity of greater than one hundred (100) kilowatts (kW) and which is designed and used solely to generate power to offset utility costs.

SMALL WIND ENERGY SYSTEMS:

A wind energy conversion system consisting of a wind turbine, a tower, and associated control and conversion electronics which has a rated capacity of not more than one hundred (100) kilowatts (kW) and which is designed and used to generate power solely to serve to offset utility costs of a principal and/or accessory building located on the lot on which said device is situated.

TURBINE HEIGHT:

The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

WIND ENERGY CONVERSION SYSTEM:

Any device such as a wind charger, wind turbine or windmill and/or other electric generation facility whose main purpose is to convert wind power into another form of energy such as electricity or heat for distribution, consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

WIND TURBINE:

A wind energy system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower and pad transformer, if any.

Section 2. That Official Ordinance No. 80-2005, known as the Zoning Ordinance of the City of Erie, Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) is amended by adding new Section 305.52 (Wind Energy Conversion Systems) to read as follows:

305.52 WIND ENERGY CONVERSION SYSTEMS (WECS): A WECS may be installed in the M-1, M-2, W-M and I-P Districts as a Conditional Use approved by City Council. Such approval shall be in accordance with the following requirements:

- a. The maximum height of a WECS shall be no taller than 160 feet in height.
- b. The minimum setback for a WECS shall be 1.1 times the total height from the nearest occupied building, property line, or public or private street right of way.

NOTE: The total height shall include the height of any structure that a tower or pole is mounted on if it is not mounted directly at ground level. The setback distance shall be measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.

- c. The following performance standards shall be met for all WECS:
 - (1) All wind energy systems including towers shall comply with all applicable local, state and national construction and electrical codes, and applicable electric utility standards.
 - (2) No wind energy system shall be installed until evidence has been given to the City of Erie that the electric utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
 - (3) All wind turbines shall be equipped with controls to limit the rotational speed of the rotor within the design limits of the turbine.
 - (4) Wind turbines shall remain painted or finished with the non-reflective color that was originally applied by the manufacturer.
 - (5) All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a wind energy system visible from any public road shall be prohibited.
 - (6) A clearly visible warning sign detailing voltage must be placed at the base of all pad mounted transformers and substations.
 - (7) On-site transmission and power lines between turbines or other structures or buildings shall, to the maximum extent practicable, be placed underground.

(3) Other relevant studies, reports, certificates and approvals as may be reasonably requested by the City of Erie including but not limited to documents confirming compliance with all setbacks and performance standards.

(4) Documents related to decommissioning, including a schedule for decommissioning and financial security to ensure such decommissioning.

e. An applicant for a WECS shall hold a Neighborhood Informational Meeting prior to going before the City Planning Commission. The applicant shall notify all property owners within a 500-foot radius of the property lines of the lot upon which the WECS is proposed to be located. The meeting shall explain the exact proposed location of the equipment, outline relevant safety measures, and otherwise answer any questions the attendants might have. The applicant shall provide evidence of both the mailing and the meeting to the Commission.

f. The following requirements shall be met for decommissioning:

(1) A zoning permit issued which authorizes this use shall be subject to the condition that the owner shall comply with all applicable regulations of this Ordinance governing decommissioning.

(2) The facility owner and/or operator shall, at its expense, complete decommissioning of the wind energy system(s) within six (6) months after the end of the useful life of the facility or individual turbine(s) or, if applicable, within six (6) months after termination of any lease or agreement authorizing such use or the revocation by the City of Erie of a permit authorizing such use. A wind energy system will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months. The applicant shall be responsible for notifying the City of Erie's Zoning Officer, in writing, of the end of the useful life of the system or, if applicable, the termination of use of such systems.

(3) Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, fencing, roads, foundations to a depth of forty-eight inches and any other associated facilities.

(4) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

(5) Facility owner and/or operator shall provide evidence of financial assurance for decommissioning. Decommissioning Funds maybe in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the City of Erie.

Section 3. That Official Ordinance No. 80-2005, known as the Zoning Ordinance of the City of Erie, Article 3 (General Regulations), Section 305 (Conditional Uses, Special Exceptions and Special Regulation Criteria) is amended by adding new Section 305.53 (Small Wind Energy Systems and Commercial/Industrial Wind Energy Systems) to read as follows:

305.53 SMALL WIND ENERGY SYSTEMS (SWES) and COMMERCIAL/ INDUSTRIAL WIND ENERGY SYSTEMS (CIWES): A SWES may be permitted as a special exception in all zoning districts and a CIWES may be permitted as a special exception in all zoning districts, except R-1, R-1A and R-2, in accordance with the following regulations as approved by the Zoning Hearing Board of the City of Erie, or in Waterfront Zoning Districts by City Council.

a. The maximum height of a SWES or CIWES shall be no taller than 160 feet in height.

b. The minimum setback for a SWES or CIWES shall be 1.1 times the total height from the nearest occupied building, property line, or public or private street right of way.

NOTE: The total height shall include the height of any structure that a tower or pole is mounted on if it is not mounted directly at ground level. The setback distance shall be measured from the center of the wind turbine base to

- (8) Visible, reflective, colored objects, such as flags, reflectors or tape, shall be placed on the anchor points of guy wires and along the guy wires eight (8) feet from the ground.
 - (9) Wind turbines shall not be artificially lighted unless the Federal Aviation Administration or other applicable authority regulating air safety requires such lighting.
 - (10) All towers or poles shall be enclosed by an eight and a half (8.5) foot fence with a lockable entry to prevent entry by non-authorized persons. Or, the lot on which the towers or poles are located may be enclosed by an eight and a half (8.5) foot perimeter fence with a lockable entry, and all towers shall have clearance of at least ten (10) feet for any climbing structure (ladder rungs, etc).
 - (11) The name and telephone number of the current contact person in the event of an emergency shall be posted at the site at all times.
 - (12) The applicant shall maintain the wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.
 - (13) The owner and/or operator of a wind energy system, at all times, shall maintain a current general liability insurance policy covering bodily injury and property damage caused by or arising from the wind energy system with limits of at least \$1 million per occurrence and \$1 million in the aggregate. A certificate of such insurance shall be supplied to the City of Erie prior to issuance of a permit and a current certificate of insurance shall be supplied to the City of Erie annually within thirty (30) days after the policy anniversary issuance date.
 - (14) The facility owner and operator of a WECS shall maintain a telephone number and identify a responsible person for the public and the City of Erie to contact with inquiries and complaints throughout the life of the project. The facility owner and operator shall make reasonable efforts to respond to inquiries and complaints by the public, and shall respond fully to all inquiries and complaints by the City of Erie.
- d. In addition to other requirements of this ordinance, an application for a permit shall meet the following submission requirements:
- (1) A document providing a description of the proposed wind energy system shall include all of the following:
 - (a) Property lines and physical dimensions of the property, including the locations of any existing structures on the property.
 - (b) Location and height of each proposed wind turbine, setback distances, access road and turnout locations, substation(s), ancillary equipment, buildings and structures, including permanent meteorological towers, associated transmission lines and layout of all structures within the geographical boundaries of any applicable setback.
 - (c) Any public road right of ways that are contiguous with the property and all utility lines or easements.
 - (d) Wind system specifications, including manufacturer and model, rotor diameter, tower height and tower type (freestanding or guyed) and approximate generating capacity.
 - (e) Stamped engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer. Wet stamps shall not be required.
 - (2) An affidavit or evidence of agreement between lot owner and the facility's owner or operator confirming that the owner or operator has permission of the property owner to apply for necessary permits for construction and operation of the wind energy system.

the nearest point on the foundation of the occupied building.

- c. All applicable performance standards set forth in Section 305.52 of the Zoning Ordinance governing Wind Energy Conversion Systems, as the same may be amended in the future, shall apply to and govern use of Small Wind Energy Systems or Commercial/Industrial Wind Energy Systems. Applicable performance standards include those set forth in Section 305.52c(1)-(12) generally – except changing the fence height of 305.52c(10) to six and half (6.5) feet for SWES – and others if relevant to a given application. Proof of homeowner's insurance covering the SWES or other applicable insurance covering the CIWES shall be supplied to the City of Erie prior to the issuance of a permit.
- d. In addition to the submission requirements of 305.52d(1)-(3), an applicant for a SWES or CIWES shall also hold a Neighborhood Informational Meeting with the same requirements as outlined in 305.52e. However, instead of appearing before the Planning Commission, the evidence of the meeting will be provided to the Zoning Hearing Board.
- e. The requirements for the decommissioning of a SWES and CIWES include those set forth in Section 305.52f(1)-(2). Decommissioning shall include removal of all turbines, towers, and poles.

Section 4. That all Ordinances and parts thereof in conflict herewith are hereby repealed.

Section 5. That this Ordinance shall be effective twenty (20) days after final passage and approval by the Mayor.

We do hereby certify that the above ordinance was finally passed by the City Council on , 2010.

Attest: January 20, 2010

SIGNED January 20, 2010

James Klemm
City Clerk

James N. Thompson
President of Council

THIS ORDINANCE APPROVED THIS 21st DAY OF January, 2010.

Joseph Sinnott Mayor

