

**DELAWARE TOWNSHIP**  
**ORDINANCE #2012-02LU**

AN ORDINANCE SUPPLEMENTING AND AMENDING THE  
LAND USE ORDINANCE OF THE TOWNSHIP OF DELAWARE  
BY PERMITTING SMALL WIND ENERGY SYSTEMS. #2012-02LU

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 Delaware Township Committee, after consultation with the Delaware Township Planning Board and the Delaware Township Environmental Commission, finds that:

- Wind energy is an abundant, renewable, and nonpolluting energy resource;
- Converting wind 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;
- 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
- Small wind energy systems make the electricity supply market more competitive by promoting customer choice; and

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, 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 Delaware Township Committee, on recommendation of the Delaware Township Planning Board, 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; and

WHEREAS, the purpose of this amendment is to provide a regulatory scheme for the construction and operation of small wind energy facilities in the Township, subject to reasonable restrictions, which will preserve the public health and safety and work in concert with the Township's Master Plan.

NOW, THEREFORE BE IT RESOLVED, by the Delaware Township Committee, as follows:

SECTION 1.

The Land Use Ordinance of the Township of Delaware is hereby supplemented and amended by adding the following new subsection 3:17, entitled "Small Wind Energy Systems":

3:17.1 Title. This ordinance may be referred to as the Small Wind Energy System Ordinance.

3:17.2 Authority. This ordinance is adopted pursuant to the authority of the governing body to promote the public health, safety and welfare as set forth in the general law (N.J.S. 40:48-2) and in the Municipal Land Use Law (N.J.S. 40:55D-2(a), 2(j), 2(n) and 66.12.

3:17.3 Purpose. The purpose of this ordinance is to:

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

3:17.4 Definitions. In this ordinance:

- A. "Board" means the correct Board for the appropriate transaction.
- B. "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.
- C. "Owner" shall mean the individual or entity that intends to own and operate the small wind energy system in accordance with this ordinance.
- D. "Rotor diameter" means the cross sectional dimension of the circle swept by the rotating blades of a wind-powered energy generator.
- E. "Small wind energy system" means a wind energy system, as defined in this section, that

1. is used to generate electricity;
2. has a nameplate capacity of 20 kilowatts or less; and
3. is as high as necessary to capture the wind energy resource for residential or agricultural use.

F. "Total height" means, in relation to a wind energy system, the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point.

G. "Tower" means a monopole, freestanding, or guyed structure that supports a wind generator.

H. "Wind energy system" means one wind generator 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.

I. "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.

3:17.5 Standards. A small wind energy system shall be a permitted use in all zones, provided the small wind energy system is not greater than 120 feet in height, and provided further that the small wind energy system meets the following requirements:

A. Setbacks. A wind tower for a small wind energy system shall meet setback requirements as follows:

1. any wind energy system with a total height of 35 feet or less will adhere to existing Township accessory building setback requirements;
2. for wind energy systems of greater than 35 feet and less than 70 feet in height, setback requirements are 2 times the existing Township setbacks referenced in 00.05 (1)(a);
3. for wind energy systems from 70 feet and less than 105 feet in height, setback requirements are 3 times the existing Township setbacks referenced in 00.05 (1) (a);
4. for wind energy systems 105 to 120 feet in height, setback requirements are 4 times the existing Township setbacks referenced in 00.05 (1)(a);
5. no portion of the wind generator shall extend beyond the setback line, nor into the following:
  - a. any public road right of way, unless written permission is granted by the government entity with jurisdiction over the road right of way;
  - b. any overhead utility lines, unless written permission is granted by the utility that owns and/or controls the lines.

B. Access.

1. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
2. 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.

C. Lighting. A small wind energy system shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.

D. 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 zoning approval.

E. Signs. 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.

F. 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 set forth at N.J.A.C. 14:4-9

G. Met towers. A met tower shall be permitted for the sole purpose of evaluating the appropriateness of the site for a wind generator and shall be removed prior to erection of the wind turbine. Met towers must comply with the same standards, permit requirements, restoration requirements and permit procedures as a small wind energy system.

3:17.6 Permit Requirements.

A. Minor Site Plan Approval. Minor Site Plan Approval is required for the installation of any small wind energy systems with a total height greater than 35 feet.

B. Documents: The site plan application shall be accompanied by a plot plan in accordance with the Land Use Ordinance and also include the following:

1. Property lines and physical dimensions of the property;
2. Location, dimensions, and types of existing major structures on the property;
3. Location of the proposed small wind energy system tower;
4. The right-of-way of any public road that is contiguous with the property;
5. Any overhead utility lines;
6. Small wind energy system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed);

7. The appropriateness of the site, as determined by the New Jersey Wind Resource Map most closely matching the height of the proposed system.

C. Fees. The site plan application for a small wind energy system must be accompanied by the ordinance required fees.

D. Expiration. A site plan approval issued pursuant to this ordinance, or a variance from this ordinance, shall expire if:

1. The small wind energy system is not installed and functioning within 24-months from the date the approval is issued; or

2. The small wind energy system is out of service or otherwise unused for a continuous 18-month period.

E. Environmental Impact Statement. The site plan application must include an analysis of the wind energy system's impact on migratory birds consistent with US Fish and Wildlife Service guidelines. The permit application must also include a view shed analysis comprising no fewer than 4 color photographs of the proposed site (no smaller than 5" x 7") taken from locations to be selected by the Planning Board or Board of Adjustment and showing computer-enhanced images to simulate the appearance of the as-built facilities as they would appear from these locations.

F. Economic Viability Analysis. The site plan application must include an analysis showing the economic viability of the wind energy system.

G. Safety. All Township regulations limiting climbing access will apply. The minimum distance from the ground and any part of the rotor blade shall be thirty (30) feet. The design must be such that the entire structure will fall within the building envelope.

### 3:17.7 Abandonment.

A. A small wind energy system that is out-of-service for a continuous 18 -month period will be deemed to have been abandoned.

B. The Delaware Township Zoning Officer 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 return receipt requested.

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

D. If the owner provides information that demonstrates the small wind energy system has not been abandoned, the Delaware Township Zoning Officer shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn.

E. If the Delaware Township Zoning Officer determines that the small wind energy system has been abandoned, the Owner of the small wind energy system shall remove the entire system at the Owner's sole expense within 6 months after the Owner receives the Notice of Abandonment.

F. If the owner fails to remove the wind generator from the tower in the time allowed under Section 00.07, (5) above, the Delaware Township Zoning Officer may pursue legal action to have the wind generator removed at the Owner's expense.

3:17.8 Violations.

A. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance.

B. 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 00.07 regarding abandonment.

3: 17.9 Administration and Enforcement.

A. This ordinance shall be administered by the Delaware Township Zoning Officer or other official as designated.

B. The Delaware Township Zoning Officer may enter any property for which a permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

C. The Delaware Township Zoning Officer may issue orders to abate any violation of this ordinance.

D. The Delaware Township Zoning Officer may issue a citation for any violation of this ordinance.

E. The Delaware Township Zoning Officer may refer any violation of this ordinance to legal counsel for enforcement.

F. Each owner shall submit annually (from the date of permit issuance) to the Delaware Township Zoning Officer a report showing the effectiveness of the wind energy system. Wind energy systems not performing in accordance with Section 00.06 (6) Economic Viability Analysis of this Ordinance may be deemed by the Delaware Township Zoning Officer to be abandoned.

3:17.10 Penalties.

A. Any person who fails to comply with any provision of this ordinance shall be subject to enforcement and penalties as stipulated in chapter and section of the appropriate zoning code.

B. Nothing in this section shall be construed to prevent Delaware Township from using any other lawful means to enforce this ordinance.

3:17.11 Severability.

The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 2. Repealer. All ordinances and resolutions, or parts thereof, inconsistent with this Ordinance, are hereby repealed.

SECTION 3. Severability. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 4. Codification. This ordinance may be renumbered for codification purposes.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon its passage and publication, as required by law.

ATTEST:

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Judith A. Allen, RMC  
Township Clerk  
January 30, 2012  
Published 2/2/12

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Roger Locandro, Mayor

PLEASE TAKE NOTICE that the Delaware Township Committee approved the above ordinance on first reading at its Regular Meeting held on January 30, 2012. It will be considered on second reading for final adoption and will have a public hearing at a Regular Meeting beginning at 8:00 p.m. on February 13, 2012 at the Delaware Township Municipal Bldg., 570 Rosemont Ringoes Rd. (County Rt. 604), Sergeantsville, NJ. At that time an opportunity will be given for all interested citizens to be heard.