

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF JACKSON IN THE COMMONWEALTH OF PENNSYLVANIA CONCERNING THE PLACEMENT AND OPERATION OF WIND TURBINE GENERATORS IN THE TOWNSHIP, REQUIRING PERMITS FOR THE CONSTRUCTION AND MAINTENANCE OF WIND TURBINE GENERATORS, AND ESTABLISHING CRITERIA AND REGULATIONS FOR THE ISSUANCE, PLACEMENT AND OPERATION OF WIND TURBINE GENERATORS, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE SAME.

WHEREAS, the Jackson Township Board of Supervisors are vested with responsibility for protecting the public health, safety, and welfare under provisions of the Second Class Township Code; and

WHEREAS, the Township is authorized pursuant to the Second Class Township Code to prohibit nuisances and the carrying on of offensive businesses; and

WHEREAS, the Township is concerned that the placement of unregulated Wind Turbine Generators create a potential danger to the public health, safety, and welfare, and endanger the watershed; and

WHEREAS, the Jackson Township Supervisors have determined, that under certain circumstances the operation and construction of large Wind Turbine Generators can be fairly characterized as an offensive business and a nuisance to the general public and persons living in close proximity thereto.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township of Jackson, in the County of Cambria, and Commonwealth of Pennsylvania, and it is hereby ordained and enacted by the authority of the same as follows:

I. **Findings** - The Jackson Township Supervisors make the following findings with respect to the construction, operation and maintenance of Wind Turbine Generators:

- a) The construction, maintenance and operation of Wind Turbine Generators which fail to comply with all criteria and regulations set forth in the attached Exhibit "A", a copy of which is attached hereto and incorporated herein by reference, present tangible and immediate dangers to the public and neighboring landowners in the nature of ejection of projectiles (ice or injured birds), continuous generation of noise during night time hours and glare from sunlight continually flashing off of rotating blades;
- b) The construction, maintenance and operation of Wind Turbine Generators presents a danger following the useful life of the Wind Turbine Generators from deteriorating structures if provisions for decommissioning are not made as required by Exhibit "A";
- c) The construction, maintenance and operation of Wind Turbine Generators, which fail to comply with all criteria and regulations set forth in the attached Exhibit "A", unreasonably interferes with the reasonable use, comfort and enjoyment of property in the vicinity and/or endangers the health, safety and/or welfare of the occupants of the property in the vicinity and prohibits or denies the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of their property and rights;
- d) The construction, maintenance and operation of Wind Turbine Generators, which fail to comply with all criteria and regulations set forth in the

attached Exhibit "A", including, but not limited to, the repetitive noise and glare, visual impacts, flickering reflections, and/or shadows, constitute an unreasonable use of property which causes injury, damage, harm, inconvenience, annoyance, and discomfort to the property owners, and taxpayers in the legitimate enjoyment of their reasonable rights and use of their property and rights, and constitute a danger to migratory birds and the watershed.

- II. **Establishment** - The Jackson Township Supervisors hereby declare the construction and maintenance of Wind Turbine Generators to constitute a nuisance and offensive business, if not constructed and maintained in accordance with the criteria and regulations set forth in Exhibit "A", a copy of which is attached hereto and incorporated herein by reference, subject to prohibition under Section 1529 of the Pennsylvania Second Class Township Code (53 P.S. § 66529) and provide for their regulation and permitting under the conditions set forth below in order to avoid the maintenance of nuisance or offensive businesses within the geographic limits of Jackson Township.
- III. **Definitions: (1) Wind Turbine Generators** - As prohibited or regulated by this Ordinance shall mean real and personal property, which are composed of generators; blades; tower; base; components of the aforementioned; and appurtenances of the aforementioned ("Wind Turbine Generator," with the term referring to both the singular and the plural of such structure); **(2) Property Line** - As referred to in the boundary of the property or lot upon which the Wind Turbine Generators is to be located.

- IV. **Permits Required** - No Wind Turbine Generators shall be constructed, operated or maintained within Jackson Township without a permit for the same. Application for permit shall be made on forms provided by the Township. A separate application shall be filed for each structure.
- V. **Permit Fee** - A permit fee of ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per proposed megawatt for wind turbine generators shall be paid at the time the application is submitted. Fees shall not be returned where an application has been denied. The Township Supervisors may modify this fee by resolution from time to time in keeping with the Township's experience with the cost of administering the provisions of this Ordinance.
- VI. **Duration of Permit** - A permit issued shall be valid for a period of thirty (30) years. Any application for renewal shall satisfy all criteria and regulations set forth in Exhibit "A".
- VII. **Notice of Application** - The applicant must provide written notice of application to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the Wind Turbine Generators will be located. Proof of service of such notice by Certified Mail or notarized Affidavit of hand delivery must be provided with the application.
- VIII. **Review of Applications** - The Township will review the application submitted, and reject the same if it is incomplete in any respect. In such case, the application fee shall be retained as compensation for the time spent in review. If the application is determined to be complete, the Township Secretary shall place the matter on the agenda for action by the Supervisors at a public meeting.

- IX. **Issuance of Permits** - The Supervisors of the Township, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the application submitted meets the criteria and regulations set forth in this Ordinance and attached Exhibit "A", and approve or reject the application based upon that determination in a public vote.
- X. **Criteria and regulations for Granting of Permit** - No permit for the construction, operation or maintenance of a Wind Turbine Generator(s) shall be granted unless the applicant demonstrates compliance in its application with all criteria and regulations set forth in the attached Exhibit "A". The criteria and regulations, set forth in Exhibit "A", are incorporated herein by reference.
- XI. **Continued Compliance** - An applicant granted a permit under this Ordinance shall be under a continuing obligation to meet the performance criteria and regulations set forth above. The Jackson Township Supervisors hereby declare that a Wind Turbine Generator(s) which ceases to meet the criteria and regulations listed above, after construction pursuant to a permit, shall constitute a nuisance, and following 30-day notice to the applicant at the address listed on the application for permit of the need for abatement, which remains unremedied or unappealed, the Township may act to remove the structure. Such Notice shall be designated as a Notice of Violation, and shall be appealable as set forth below.
- XII. **No Further Land Development** - No property or block of property upon which a permit has been granted for the construction, maintenance or operation of a Wind Turbine Generator(s) shall thereafter be eligible for the issuance of a

building permit within the distance of 2,500 feet from a permitted Wind Turbine Generator(s), unless the party requesting the building permit shall have executed a written waiver or non-disturbance easement, covenant or consent, any of the aforementioned which has been recorded in the Office of the Recorder of Deeds of Cambria County, Pennsylvania.

- XIII. **No Further Subdivision** - No property or lot upon which a Wind Turbine Generator has been located shall be further subdivided where to do so would result in the setbacks required by this Ordinance and/or as set forth in the permit not to be met.
- XIV. **Penalty** - Any person who violates any portion of this Ordinance shall in a civil enforcement proceeding pay a fine as set by the Township Supervisors, as provided for in the Second Class Township Code, 53 P.S. §66601. This Ordinance is deemed to be an ordinance related to public health and safety, enacted under authority of the statutes referred to in the preamble hereto and the Township's general authority to protect public health and safety and welfare. As such, a penalty of \$1,000.00 shall be assessed as a civil penalty for any violation hereof. Each day a violation continues shall be considered a separate and distinct violation and subject to a separate assessment, until proof of compliance is provided. Notwithstanding any provision of this Ordinance respecting enforcement, the Township reserves the right to enforce this Ordinance through an action for injunction in the Court of Common Pleas of Cambria County pursuant to 53 P.S. §66601 (c.1) (4).

- XV. **Appeals** - Any person aggrieved by any determination or action by the Township shall have an opportunity to present and explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations by the Township Board of Supervisors may be appealed to the Court of Common Pleas of Cambria County, and all appeals are *de novo*. Any such request to be heard by the Township Board of Supervisors shall be on forms provided by the Township and shall include a complete statement of the reasons the person is aggrieved together with a written statement of all evidence to be provided to the Township Board of Supervisors. The factual basis or summary of any expert testimony that will be presented at such meeting of the Township Board of Supervisors must also be attached to the form provided by the Township. Failure to request the opportunity to present evidence to the Township Board of Supervisors under this paragraph within thirty (30) days from the date of the determination or action by the Township will result in the waiver of any right to request an opportunity to present evidence to the Board of Supervisors and appeal to the Court of Common Pleas. The person requesting an opportunity to be heard under this paragraph must provide written notice of the same to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the Wind Turbine Generators will be located. Proof of service of such notice by Certified Mail or notarized Affidavit of hand delivery must be provided with the form provided by the Township.
- XVI. The appeal shall be accompanied by a fee of \$300.00. Appellant shall be responsible for all costs of the appeal in excess of \$300.00. Failure to file a

complete appeal together with all statements may result in dismissal of the appeal.

- XVII. Savings Clause** - It is hereby declared to be the intent of the Township that these regulations be considered nuisance regulations and not building regulations under the Uniform Construction Code authorized by Act 45 of 1999 implemented by regulations of the Commonwealth of Pennsylvania Department of Labor and Industry.
- XVIII. Repealer** - All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.
- XIX. Severability** - If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Board of Supervisors that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
- XX.** This Ordinance shall become effective immediately, or as soon as legally permissible.
- XXI.** It is declared that the adoption of this Ordinance and the execution, acknowledgment and delivery of the documents are necessary for the protection, benefit and preservation of the health, safety and welfare of the general public of the Municipality.

ADOPTED at a public meeting of the Jackson Township Supervisors held the _____ day of _____, 2006, following advertisement, as required by law.

ATTEST:

JACKSON TOWNSHIP

Secretary

By: _____
Supervisor

By: _____
Supervisor

By: _____
Supervisor