ORDINANCE NO. 2010-02

AN ORDINANCE RELATING TO WIND ENERGY SYSTEMS WITHIN THE CITY OF WENDOVER, TOOELE COUNTY, UTAH

RECITALS

A. The statutes of the State of Utah delegate responsibility to the local governments of the state to govern matters relating to planning and zoning, as well as health and safety within their jurisdictions.

B. The City of Wendover, Utah recognizes the increased demand for alternative energy generating systems and the need and desire for more inexpensive electric power and self-reliance that wind energy conversion systems may provide.

C. The City of Wendover, acting through its duly elected City Council has considered the adoption of rules and regulations governing wind energy systems within the City and deems it reasonable to adopt such reasonable rule and regulations by ordinance.

ORDINANCE ADOPTED

BE IT ORDAINED BY THE CITY OF WENDOVER, COUNCIL OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH THAT:

1. Ordinance Adopted. The ordinance attached hereto as Exhibit "A" is hereby adopted as the Wind Energy Systems Ordinance of the City of Wendover, Utah.

2. Governing Law. It is the intent of the City of Wendover that the regulations adopted hereunder by consistent with the current laws, rules and regulations adopted by the State of Utah and the United States of America, including rules and regulations of the Federal Aviation Administration. In the event any provisions herein conflicts with a provision of State or Federal law, the controlling provision of State or Federal shall govern.

3. Penalties for Violation. A violation of the City's Wind Energy Systems Ordinance shall be deemed a Class B Misdemeanor as defined by the law of the State of Utah and shall subject a violator to the penalties for such a crime. Each day the City's Ordinance is violated shall be considered a separate violation.

CITY OF WENDOVER, UTAH
SMALL AND LARGE WIND SYSTEMS ORDINANCE

1.0 Purpose

The purpose of this ordinance is to establish minimum requirements and regulations for the placement, construction, and modification of small wind energy systems, large wind energy systems, and wind metering towers and equipment as defined herein, while promoting the safe, effective, and efficient use of such systems.

2.0 Definitions

Abandoned: A wind energy system or project shall be considered abandoned when, once installed fails to operate for 24 months.

City: The City of Wendover, Tooele County, Utah. This includes the board of appeals or zoning administrator, and also included the Governing Body of the City.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point.

Large Wind Energy System: All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity greater than 100kW.

Meteorological Tower (Met tower): A temporary tower, housing or supporting wind measuring equipment for the purpose of establishing the viability of the wind generated energy by ensuring and monitoring wind velocity, direction, shear, duration, intensity, and regularity.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment rated in Watts or British Thermal Units (BTUs).

Shadow Flicker: Alternating changes in light intensity caused by the moving blade of a wind energy turbine casting shadows on the ground and stationary objects, such as a window at a dwelling.

Small Wind Energy System: All equipment , machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access.

4. Effective Date. This ordinance shall be effective immediately upon adoption by the Governing Body of the City of Wendover, Utah.

5. Publication and Posting. This Ordinance shall be published and/or posted in accordance with the ordinary practices of the City and as required by law.

Passed this 3 day of March, 2010.

Michael R. Crawford

Michael R. Crawford
Mayor

ATTEST:

Tammera Weyland

Tammera Weyland
Clerk/Recorder

Seal:

POSTED 03/15/2010

EXHIBIT "A"

THE CITY OF WENDOVER, UTAH
WIND ENERGY SYSTEMS ORDINANCE

Special Permit Granting Authority: The special permit granting authority shall be the board of city council, planning board, or zoning administrator as designated by zoning ordinance or by-law for the issuance of special permits, or by this section for the issuance of special permits to construct and operate small wind energy systems.

Special Use Permit: A permit provided by the special permitting authority for nonconforming small wind systems (e.g. a small wind system that does not meet the criteria for small wind systems set forth by this ordinance).

Zoning: Ordinances and bylaws adopted by cities and towns to regulate the use of land, buildings, and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety, and general welfare of their present and future inhabitants.

Zoning administrator: A person designated by the City to assume certain duties related to zoning interpretation and enforcement in the City.

3.0 General Requirements – Small Wind Energy System

3.1 Design Standards

3.1.1 Height

The height of small wind energy systems shall not exceed ___75___feet in height without prior approval from the permit granting authority.

3.1.2 Setbacks

Small wind energy systems shall be set back at a distance equal to 110% of the total height of the system from all inhabited structures, overhead utility lines, property lines, and public roads or public rights-of-ways.

3.1.3 Setbacks Waivers

The building inspector may reduce the minimum setback distance if written permission is granted by permit granting authority.

3.1.4 Minimum Blade Height

The minimum height of the lowest extent of a turbine blade shall be ___20___ feet above the ground.

3.1.5 Color and Finish

The wind energy system shall be a neutral color that blends with the environment. Gray, beige, and white are recommended.

3.1.6 Lighting
Small wind energy systems shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the small wind energy shall be limited to that required for safety and operational purpose.

3.1.7 Signage and Advertising
Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the small wind energy system, utility, and safety signs. Other signage or advertising is prohibited.

3.1.8 Access
No tower shall have a climbing apparatus within 10 feet of the ground. All access doors or access ways to towers and electrical equipment shall be locked.

3.1.9 Noise
The small wind energy system and associated equipment shall not exceed 60 dBa as measured from the nearest property line.

3.2 Site Conditions and Property Maintenance

3.2.1 Land Clearing, Soil Erosion, and Habitat Impacts
Clearing of natural vegetation shall be limited to that which in necessary for the construction, operation, and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and ordinances. Once the system is operational, any land that has been disturbed and is not necessary for the functioning of the system shall be reclaimed with natural vegetation immediately. Soil erosion is to be mitigated by the use of silt fencing, the captured product of which can be used in the vegetation reclamation.

3.2.2 Minimum Lot Size
Small wind energy systems that are less than 75 feet in height may be constructed on lots one acre or less, in which event the lot shall be at least one-half (1/2) acre in size. If the small wind energy system is grater than 75 feet in height, the system must be constructed on a lot greater than one acre.

3.2.3 System Conditions
The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, mechanical/electrical repairs, structural repairs, and security measures.

3.2.4 Removal and Decommissioning Requirements
Any small wind energy system, which has reached the end of its useful life or had been abandoned, shall be removed. A small wind energy system shall be considered abandoned when it fails to operate for 12 months. Upon a Notice of Abandonment issued by the Building

Inspector or Zoning Administrator, the small wind energy system owner will have 30 days to remove the system, provide sufficient evidence that the system has not been abandoned, or the City shall have the authority to enter the owner's property and remove the system at the owner's expense. If a system is removed by the City, the expenses of removal shall be paid within 15 days written notice to the Owner. Any unpaid amount shall bear interest at the rat of 18 percent per annum, compounding monthly, and shall become a lien against the property in favor of the City. Once the system has been removed the owner is then responsible for land reclamation using the natural vegetation that was removed or disturbed upon construction of the project. To the greatest extent possible, the land shall be full returned to its natural state within five years of the removal and decommissioning of the project.

3.3 Permit Granting Authority Issued Permits

3.3.1 Building Permits
Small wind energy systems shall be constructed as provided in this section by first obtaining a building permit from the City.

3.3.2 Modifications
Any physical modification to an existing and permitted wind energy system that materially alters the size and/or type of wind turbines or other equipment shall require a permit modification under this ordinance. Replacement of an already permitted turbine with a similar size and height will not require a permit modification.

3.3.3 Conditional Use Permit (CUP)
A conditional use permit may be granted in the case where a proposed small wind energy system or project does not satisfy the standard criteria of the building permit set forth under this ordinance. The applicant must then seek review and petition the City for a Conditional Use Permit. This CUP variance from the standard building permit criteria will only be applicable to that specific non-conforming project.

3.3.4 Expiration
A permit issued pursuant to this ordinance shall expire if:
(a) the small wind energy system is not installed and functioning within 24 months from the date the permit is issued; or
(b) the small wind energy system is abandoned.

3.3.5 Violations
It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt. The violation of this Ordinance shall be deemed a Class B Misdemeanor under the laws of the State of Utah. Each day of violation shall be a separate offense.

3.3.6 Administration and Enforcement

(a) This ordinance shall be administered and enforced by the Building Inspector or other official as designated by the City.

(b) The Building Inspector 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.

3.4 Compliance with Laws, Ordinances, and Regulations

The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state, and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and aviation requirements promulgated by the State of Utah or the Federal Aviation Administration.

4.0 General Requirements – Large Wind Energy Systems and Projects

4.1 Design Standards

4.1.1 Height

The height of large wind energy systems shall not exceed 450 feet in height without prior approval from the Permit Granting Authority.

4.1.2 Setbacks

Large wind energy systems shall be set back a distance equal to 110% of the total height of system from all inhabited structures, overhead utility lines, property lines, and public roads or public rights-of-ways.

4.1.3 Setback Waivers

The building inspector may reduce the minimum setback distance if written permission is granted by the Permit Granting Authority.

4.1.4 Minimum Blade Height

The minimum height of the lowest extent of a turbine blade shall be __25__ feet above the ground surface.

4.1.5 Color and Finish

The large wind energy system shall be a neutral color that blends with the environment. Gray, beige, and white are recommended.

4.1.6 Lighting

Large wind energy systems and projects shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the large wind energy system shall be limited to that required for safety and operational purposes.

4.1.7 Signage and Advertising
Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the large wind energy system, utility, and safety signs. Other signage or advertising is prohibited.

4.1.8 Access
No tower shall have a climbing apparatus that is external of the pole, within 10 feet of the ground. All access doors or access ways to towers and electrical equipment shall be kept locked for safety purposes.

4.1.9 Noise
The large wind energy system and associated equipment shall not exceed 60 dBa as measured from the nearest property line.

4.2 Site Conditions and Property Maintenance

4.2.1 Land Clearing, Soil Erosion, and Habitat Impacts
Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the large wind energy system and is otherwise prescribed by applicable laws, regulations, and ordinances. Once the system is operational, any land that has been disturbed and is not necessary for the functioning of the system shall be reclaimed with natural vegetation immediately. Soil erosion is to be mitigated by the use of silt fencing, any accumulated product of which can be used in the site reclamation.

4.2.3 System Conditions
The applicant shall maintain the large wind energy system and/or project in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

4.2.4 Removal and Decommissioning Requirements
Any large wind energy system and/or project, which has reached the end of its useful life or has been abandoned, shall be removed. A large wind energy system or project shall be considered abandoned when it fails to operate for 12 months. Upon a Notice of Abandonment issued by the Building Inspector or Zoning Administrator, the large wind energy system owner will have 30 days to remove the system, provided sufficient evidence that the system has not been abandoned, or the City shall have the authority to enter the owner's property and remove the system at the owner's expense. If a system is removed by the City, the expenses of removal shall be paid within 15 days written notice to the Owner. Any unpaid amount shall bear interest at the rate of 18 percent per annum, compounded monthly, and shall become a lien against the property in favor of the City. Once the system has been removed the owner is then responsible for land

reclamation using the natural vegetation that was removed or disturbed upon construction of the project. To the greatest extent possible, the land shall be fully returned to its natural state within five years of the removal and decommissioning of the project.

4.2.5 Reclamation
Once the system has been removed the owner is then responsible for land reclamation using the natural vegetation that was removed or disturbed upon construction of the project. To the greatest extent possible, the land shall have returned to its natural state within five years of the removal and decommissioning of the project.

4.3 Permit Granting Authority Issued Permits
A large wind energy system shall be constructed as provided in this section by first obtaining a permit from the City. Permit applications for project expansions shall be based on the total nameplate capacity including the existing project.

4.3.1 Modifications
Any physical modification to an existing and permitted wind energy system that materially alters The size and/or type of wind turbines or other equipment shall require a permit modification under this ordinance. Replacement of an already permitted turbine with a similar size and height will not require a permit modification.

4.3.2 Conditional Use Permits
A conditional use permit may be granted in the case where a proposed large wind energy system or project does not satisfy the standard criteria of the building permit set forth under this ordinance. The applicant must then seek review of, and petition the City for a Conditional Use Permit. This CUP variance from the standard building permit criteria will only be applicable to that specific non-conforming project. A permit issued pursuant to this ordinance shall expire if: (a) the large wind energy system or project is not installed and functioning within 48 months from the date the permit is issued; or (b) the large wind energy system or project is abandoned.

4.3.4 Violations
It is unlawful for any person to construct, install, or operate a large wind energy system or project that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Large wind energy systems installed prior to the adoption of this ordinance are exempt. The violation of this Ordinance shall be deemed a Class B Misdemeanor under the laws of the State of Utah. Each day of violation shall be a separate offense.

4.3.5 Administration and Enforcement
(a) This ordinance shall be administered and enforced by the Building Inspector or other official as designated by the City.
(b) The Building Inspector or other designated authority 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.

4.3.6 Penalties
Any person 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 as allowed by applicable law.

4.4 Compliance with Laws, Ordinances, and Regulations
The construction and operation of all such proposed large wind energy systems shall be consistent with all applicable local, state, and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and aviation requirements of the State of Utah and the Federal Aviation Administration.

5.0 General Requirements – Temporary Meteorological Towers (Met towers)

5.1 Permitted Use by Rule
Met tower installations shall be considered a permitted use in all zoning districts where the following criteria are met.
(1) Applicants shall submit the following information to the City prior to commencing any installation or construction:

(a) a site plan drawn at an appropriate scale with the following information:

(i) the perimeter and dimensions of the property;
(ii) the names and locations of all street, roads, or highways on or contiguous to the property;
(iii) the location of all easements or rights-of-way on the property;
(iv) the names and locations of all floodways, rivers, streams, or waterways on or contiguous to the property;
(v) the use, location, and dimension af all structures on the property (include distance from all proposed structures to the property lines);
(vi) a scale: and
(vii) a north arrow.

(2) In addition to other applicable provisions set forth in these regulations, approval of met tower applications shall be subject to the following requirements:

(a) All necessary zoning certificates and building permits shall be applied for and issued, and all structural reviews shall be completed by the Permit Granting Authority prior to construction.

(b) The met tower shall be constructed in conformity with all applicable Federal Aviation Administration regulations and all FAA notices and approvals shall be received and submitted to the Permit Granting Authority prior to any construction.

(c) Applicants shall furnish evidence that applicable rights-of-way have been granted for access to the met tower across any private, state, or BLM lands. For BLM right-of-way grants, applicants may furnish a copy of the signed BLM Right-Of Way Grant application together with evidence that applicable fees have been tendered to the BLM.

(d) The met tower shall be in place for a period not exceeding three years. Applicants Shall provide the Permit Granting Authority with 90 days prior written notice of removal of the tower.

(e) In the event the applicant desires to relocate the net tower, the applicant shall receive prior written approval form the City and furnish coordinates for the new tower location.

(f) If the applicant desires to extend the tower usage period, a request for an extension must be submitted in writing 90 days prior to the expiration of this permit to the City for consideration.

(g) The net tower shall not physically obstruct or encumber any road, power line, or pipeline easement.

6.0 General Requirements – Rules Applicable To All Wind Energy Systems and Met Towers.

6.1 All applications shall be submitted by the owner of the property. If required by the City, the Applicant shall submit evidence of ownership in the form of a title report or other document acceptable to the city.

6.2 All applications and structure of wind energy systems shall comply with all other rules, regulations and ordinances of the City including without limitations, zoning, building, health and safety rules. All applications and structures for wind energy systems shall comply with all national or international codes adopted by the State of Utah including, without limitation, building and electrical codes.

6.3 If the City initiates a legal or administrative proceeding to enforce the requirements of this Ordinance, the City shall be entitled to recover its reasonable costs and attorney's fees from the owner of the property and form any other person listed as an applicant on any application submitted to the City.

6.4 No system subject to this Ordinance shall be connected to the power grid operated by Wells Rural Electric Cooperative until written approval is obtained from said entity. If the plans of construction of a system call for connection to the power grid, no permit shall be issued or effective until written approval is obtained from Wells Rural Electric and delivered to the City.

6.5 Procedures for emergency shut down of any system shall be established and posted prominently and permanently within three (3) feet of the meter panel.

6.6 All systems under this ordinance shall be built on appropriate foundations affixed to the ground. No system shall be roof mounted. No system shall be attached or affixed to any other structure.

6.7 the owner/applicant shall submit three (3) sets of complete and detailed plans with any application, including a site plan, structural, land and electrical designs including drawings of the

wind turbine structure tower, base, and footings. Said drawings are to be completed and signed by a registered professional engineer licensed to do such work in the State of Utah, whose seal shall be affixed to the drawings.

6.8 Guy wires shall not be permitted as part of the structure for a wind energy system.

6.9 Wind energy systems shall not be sited in a manner that results in significant shadow flicker impacts. The owner/applicant has the burden of proving that the shadow flicker will not have a significant adverse impact on neighboring or adjacent uses. Evidence of shadow flicker shall be submitted with the application.

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