ORDINANCE NO. 2010-2

AN ORDINANCE OF THE TOWNSHIP OF PORTAGE IN THE COMMONWEALTH OF PENNSYLVANIA AMENDING ORDINANCE NO. 2005-6, AND ORDINANCE NO. 2010-2 WHICH REGULATED THE PLACEMENT AND OPERATION OF WIND TURBINE GENERATORS IN THE TOWNSHIP AND REQUIRED PERMITS FOR THE CONSTRUCTION AND MAINTENANCE OF WIND TURBINE GENERATORS, TO PROVIDE ADDITIONAL FINDINGS AND CERTAIN EXEMPTIONS TO THE PERMIT REQUIREMENTS FOR WIND TURBINE GENERATORS ERECTED FOR THE PURPOSE OF GENERATING ELECTRICITY THAT WILL BE ENTIRELY CONSUMED UPON THE PREMISES

WHEREAS, the Portage Township Board of Supervisors is vested with the 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, in furtherance of the aforementioned powers granted by the legislature, the Township adopted an ordinance, Ordinance No. 2005-6, which regulated the placement and operation of Wind Turbine Generators in the Township, required permits for the construction and maintenance of Wind Turbine Generators, established criteria and regulations for the issuance of such permits, placement and operation of Wind Turbine Generators and prescribed penalties for violation of the ordinance; and

WHEREAS, since the adoption of Ordinance No. 2005-6, and Ordinance No. 2010-2, the Portage Township Supervisors have become aware of the promotion of wind energy to be utilized by landowners directly and understand that many of the issues, problems, concerns and complaints that exist with Wind Turbine Generators in a commercial context do not exist or do not exist to the same extent in the context of use when the electricity is entirely consumed upon the premises.

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

1. **NO AMENDMENT UNLESS STATED HEREIN.**

Ordinance No. 2005-6 is not amended except as specifically stated herein and shall remain in full force and effect except as otherwise amended by this Ordinance.

2. **AMENDMENT TO ROMAN NUMERAL I RE-LETTERING A THROUGH D AS C THROUGH F AND ADDING NEW LETTERS A AND B.**

(i) Subparts "a" through "d" are deleted and replaced with the following:

a) Premises Use Wind Turbine Generators ("PUWTG") are a distinct class of Wind Turbine Generators that do not inherently possess the same possible problematic characteristics as Wind Turbine Generators utilized in a commercial context due to the fact that PUWTG generate electricity for the sole use of the premises and thus, are smaller, are not as high, are not as loud, do not carry the same risks of stray voltage or EMF to other landowners or citizens of the Township and impact neighboring parcels of land to a lesser degree;

b) As a distinct class, PUWTG cannot be regulated in the same manner as Wind Turbine Generators as a whole, and thus, whenever "Wind Turbine Generators" is used in this Ordinance, it shall expressly exclude PUWTG;

c) The construction, maintenance and operation of Wind Turbine Generators and PUWTGs which fail to comply with all criteria and regulations set forth in the attached Exhibits "A" and "B," respectively, copies of which are 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;

d) The construction, maintenance and operation of Wind Turbine Generators and PUWTGs present a danger following the useful life of the Wind Turbine Generators or PUWTGs from deteriorating structures if provisions for decommissioning are not made as required by Exhibits "A" and "B";

e) The construction, maintenance and operation of Wind Turbine Generators and PUWTGs, which fail to comply with all criteria and regulations set forth in the attached Exhibits "A" and "B," respectively, unreasonably interfere 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 prohibit or deny the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of their property and rights;

f) The construction, maintenance and operation of Wind Turbine Generators and PUWTGs, which fail to comply with all criteria and

within Portage Township without a permit for the same. Permit application shall be made on forms provided by the Township. A separate application

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.

3. **AMENDMENT TO ROMAN NUMERAL III ADDING THE DEFINITION OF "PREMISES USE WIND TURBINE GENERATOR," AND OTHER TERMS.**

(3) "Premises Use Wind Turbine Generators" or "PUWTG" – a distinct class of Wind Turbine Generators in which all of the electricity generated is utilized on the premises only and no other premises, nor is such electricity generated transmitted to any electrical grid for use by others ("Premises" being the same tax parcel identification number upon which the PUWTG is constructed, or any tax parcel having an identification number that shares a common boundary with the tax parcel identification number upon which the PUWTG is constructed AND the owner or owners of all tax identified parcels are the same) and shall be defined as generating not more than 50 kW and not more than 100' in Turbine Height.

(4) "Applicant" is the person or entity filing an application under this Ordinance.

(5) "Hub Height" means the distance measured from the surface of the ground to the height of the Wind Turbine hub, to which the blade is attached.

shall be filed for each structure. In the event a person desires to convert a PUWTG to a Wind Turbine Generator, a permit in accordance with subpart (a) above shall be obtained prior to any alteration to the structure and failure to properly obtain such a permit shall constitute a violation of this Ordinance.

5. **REPLACEMENT OF ROMAN NUMBERAL V IN ITS ENTIRETY WITH AMENDMENT.**

V. **Permit Fee** - A nonrefundable permit fee of SEVENTY-FIVE AND 00/100 DOLLARS ($75.00) per PUWTG permit sought shall be paid at the time the permit application is submitted. Fees shall not be returned where an application has been denied. The Township Supervisors may modify the fees by resolution from time to time in keeping with the Township's experience with the cost of administering the provisions of this Ordinance.

7. **REPLACEMENT OF ROMAN NUMBERAL IX IN ITS ENTIRETY WITH AMENDMENT.**

IX. **Issuance of Permit.**

a) Wind Turbine Generators - 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 permit 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; or

b) PUWTG - 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 permit application submitted meets the criteria and regulations set forth in this Ordinance and attached Exhibit "B", and approve or reject the application based upon that determination in a public vote.

8. **REPLACEMENT OF ROMAN NUMBERAL X IN ITS ENTIRETY WITH AMENDMENT.**

X. **Criteria and regulations for Granting of Permit.**

a) Wind Turbine Generators - No permit for the construction, operation or maintenance of a Wind Turbine Generator(s) shall be granted unless the applicant demonstrates compliance in its permit 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.

b) PUWTG - No permit for the construction, operation or maintenance of a PUWTG shall be granted unless the applicant demonstrates compliance in its permit application with all criteria and regulations set forth in the attached Exhibit "B". The criteria and regulations, set forth in Exhibit "B", are incorporated herein by reference.

9. This amendatory Ordinance shall become effective immediately, or as soon as legally permissible.

ADOPTED at a public meeting of the Portage Township Supervisors held the 7 day of April, 2010, following advertisement, as required by law.

ATTEST:

Secretary

PORTAGE TOWNSHIP

By:

Supervisor

By:

Supervisor

By:

Supervisor