December 30, 2009

City Council Meeting
January 12, 2010

Mayor and Members
of the City Council

ORDINANCE NO. 09-1304 - "AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A ZONE TEXT AMENDMENT TO ALLOW SMALL WIND ENERGY SYSTEMS AS A CONDITIONAL USE IN ALL ZONES SUBJECT TO STANDARDS, AND TO ALLOW SAID SYSTEMS TO EXCEED THE HEIGHT LIMIT."

Submitted for adoption and waiver of full reading is Ordinance No. 09-1304 relating to the above subject.

At the meeting of December 8, 2009, the Ordinance was presented to the City Council for consideration, was amended to lower the maximum decibel level and to clarify the section regarding blade clearance, and was then introduced by the following vote:

AYES: Bobko, Duclos, Fishman, Tucker Mayor DiVirgilio
NOES: None
ABSENT: None
ABSTAIN: None

Elaine Doerfling, City Clerk

Noted:

Stephen R. Burrell, City Manager
ORDINANCE NO. 09-1304

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A ZONE TEXT AMENDMENT TO ALLOW SMALL WIND ENERGY SYSTEMS AS A CONDITIONAL USE IN ALL ZONES SUBJECT TO STANDARDS, AND TO ALLOW SAID SYSTEMS TO EXCEED THE HEIGHT LIMIT

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 17.38.550 of Title 17, Subsection E.2, Chapter 17.38, of the Hermosa Beach Municipal Code is amended to read as follows:

E.2. Notwithstanding Section 17.46.010, no roof structure or element shall exceed the thirty (30) foot height limit; provided that antennas, satellite dishes and similar structures, solar energy systems, single-pole umbrellas, and small wind energy systems may exceed the height limit to the extent allowed by Chapter 17.46.

SECTION 2. Section 17.40.200 is added to Title 17, Chapter 17.40 of the Hermosa Beach Municipal Code to read as follows:

17.40.200 Small Wind Energy Systems.

A. Purpose. Small wind energy systems shall be constructed and installed in conformance with the requirements of this section in order to promote the use of small wind energy systems in accordance with State law while protecting the public health and safety.

B. Applicability. Small wind energy systems shall be regulated as accessory structures as defined in this Title, and are allowed in all zones subject to approval of a Conditional Use Permit pursuant to Chapter 17.40.

C. Definitions. As used in this chapter:

"Ancillary equipment" means any accessory part or device of a small wind energy system that does not require direct access to wind flows, such as batteries, controls, electric meters or AC/DC converters, excluding the turbine, tower, nacelle and tail vane.

"Guy wires" means wires or cables stabilizing and securing the SWES to the ground or structure upon which it is mounted.
"Height" means the vertical distance of the SWES, including the blades extended in a vertical position, measured in accordance with Section 17.04.040.

"Height, tower" means the height of the fixed portion of the tower, excluding the wind turbine, measured in accordance with Section 17.04.040.

"Nacelle" means housing for all of the generating components, such as the gearbox and drive train, in a propeller-type wind turbine.

"Off-grid system" means a SWES that is not connected to the public utility grid.

"On-grid system" means a SWES that is connected to the public utility grid, where power excess to the customer's demand flows to the utility grid.

"Silhouette" means a temporary structure approximating the building envelope of a proposed SWES, typically using colored flags marking the location, height and bulk of the proposed system when the system is in motion.

"Site" means one or more contiguous lots or parcels under the same ownership or management, regardless whether separated by alleys, streets or roads.

"Small Wind Energy System (SWES)" means a wind energy system, consisting of a wind turbine, tower and ancillary equipment, that will be used primarily to reduce consumption of utility power on the site. The SWES must be approved under a state program or any other small wind system certification program recognized by the American Wind Energy Association or its equivalent.

"Tail Vane" means the guiding or stabilizing fin, usually mounted on the nacelle, used to turn the blades into the wind stream.

"Tower" means the vertical component of a SWES that elevates the attached nacelle, tail vane and turbine above the ground.

“Turbine” means the rotor, blades, cage or other component of a SWES that captures the wind’s energy.

D. Application Requirements.

1. Applications shall comply with the following requirements, in addition to all other requirements of this Title and law:
a. The application shall include drawings and an engineering analysis of the system's tower showing compliance with the California Building Code certified by a qualified professional licensed by the state of California.

b. The application shall include information demonstrating that the system will be used primarily to reduce onsite consumption of electricity.

c. Where an on-grid system is proposed, the application shall include evidence that the electric utility service provider that serves the proposed site has been informed of the intent to install an interconnected electricity generator.

d. The application shall include evidence that the proposed height of a tower does not exceed the height recommended by the manufacturer or distributor of the system.

e. The applicant shall erect a silhouette of the proposed SWES, unless this requirement is waived by the Community Development Director due to limited height, mass and low probability of visual impacts in the particular case.

f. The application shall include noise specifications for the proposed system and shall include an acoustical evaluation demonstrating compliance with the noise requirements of this section prepared by a qualified professional, unless waived by the Community Development Director based on information demonstrating compliance. Demonstration that the proposed system will not produce or result in noise levels exceeding forty-five (45) dBA under various wind conditions at the closest residential dwelling or similar sensitive receptor shall not require an acoustic evaluation.

g. The application shall include any additional information required by the Community Development Director necessary to make all the determinations required by this section.

2. To the extent required by law, the Community Development Department shall, at least thirty-five (35) days prior to the public hearing on the conditional use permit, submit a notice of proposed construction or alteration of the SWES to the Federal Aviation Administration pursuant to Title 14 of the Federal Aviation Regulations Part 77, commencing with Section 77.13 Construction or Alteration Requiring Notice, Caltrans Division of Aeronautics, and/or to any other
applicable or affected agency or entity.

E. Development Standards.

The following minimum requirements and standards shall apply to SWES, in addition to any other conditions deemed necessary or appropriate to ensure compatibility with existing or future uses in the vicinity or to protect the public health, safety or welfare:

1. System type and location.
   a. The SWES shall comply with the definition of "Small Wind Energy System" in subsection C of this section.
   b. More than one (1) SWES may be located on the same site if all requirements of this section and applicable laws are met.
   c. Where feasible, ancillary SWES equipment shall be located inside a building or screened from public view in a manner compatible with site elements.

2. Height.
   a. The SWES shall not exceed ten (10) feet above the maximum height limit.
   b. The SWES shall not constitute an obstruction or hazard to air navigation and shall comply with all applicable requirements of the Federal Aviation Administration including the Federal Aviation Regulations (including Part 77 of Title 14 of the Code of Federal Regulations), the State Aeronautics Act (Part 1, commencing with Section 21001 of Division 9 of the California Public Utilities Code), and any other applicable law.

3. Setbacks and clearances.
   a. Yards setbacks. The SWES shall be considered an accessory structure and shall comply with the setbacks applicable to the zone in which the SWES is located, provided that a greater setback may be required to reduce impacts to adjacent parcels.
   b. Blade clearances. No portion of a blade when fully operational shall extend within twenty (20) feet of the finished grade or within ten (10) feet of a property line, unless the planning commission finds that a reduced clearance will not adversely affect any person, property or improvement in the vicinity, or conflict with the zone in which the property is located.
   c. Clearance to structures. A minimum clearance of six (6) feet shall be
maintained between any tower and any structure, tree, utility line, or similar object, unless the
planning commission finds that a reduced clearance will not adversely affect any person, property
or improvement in the vicinity.

d. Fire clearance. The SWES shall not inhibit or interfere with emergency
vehicle or structure access, fire escapes, exits or standpipes, as determined by the fire department.
e. Ladders. Every SWES shall be designed so that no ladder or other means of
climbing a tower is located within twelve (12) feet of the finished grade or accessible space. The
planning commission may require a fence with a minimum height of five (5) feet when necessary
to prevent the climbing of ladders, provided that the use of barbed wire or other similar materials
is not permitted unless otherwise specifically allowed by this Title.
f. Guy wires. Any guy wires utilized to support a tower shall be located
within the property lines and shall not be attached to, cross or affect any above-ground utility lines.

4. Other safety and design requirements.
a. Over-speed controls. The SWES shall be equipped with manual and
automatic over-speed protection controls so that blade rotation speed does not exceed the system’s
design limits.
b. Automatic shut-off. An on-grid SWES shall be designed to automatically
turn off when on-grid connection is lost or the batteries are fully charged.
c. On-grid systems. All on-grid SWES shall be approved by the applicable
utility prior to installation.
d. Undergrounding electrical facilities. Electrical poles, wires and the items in
Chapter 13.08 required to convey power generated by a SWES to the public utility grid shall be
installed underground when required by Chapter 13.08.
e. Noise. The SWES shall comply with the requirements of Chapter 8.24,
provided that noise generated by the SWES shall not exceed fifty-five (55) decibels-A weighted
dB(A), or five (5) dB above background noise, whichever results in lower noise levels, as
measured from the closest residential dwelling or similar sensitive receptor, except during short-
term events such as utility outages and severe wind storms.
f. Signs.

   i. One (1) sign not exceeding eighteen (18) inches in length and one
      (1) foot in height shall be posted at the base of a ground-mounted tower or a generator, including a
      notice of no trespassing, a warning of high voltage or electrical shock, and the property owner's
      telephone number or telephone number of another individual designated by the property owner as
      responsible for operation and maintenance of the SWES, in addition to any other signs required by
      law.

   ii. The SWES shall not bear any signs or advertising devices other than
       certifications, public safety warnings, or other seals or signage required by law.

   g. Lighting. No lighting shall be placed upon, attached to, or in any way
      illuminate a SWES unless required by law. Any required lighting shall be designed and located to
      reduce impacts to properties in the vicinity to the maximum extent allowed by law as determined
      by the Community Development Director.

5. Maintenance and removal.

   a. The SWES shall at all times be operated and maintained in accordance with
      manufacturer's requirements, the requirements of this section, the conditional use permit, and all
      applicable laws. In no case shall the condition or operation of the SWES pose noise, safety or
      other adverse effects to the site, or persons, improvements or properties in the vicinity.

   b. The Community Development Director may require the SWES to be
      removed from the property if the director determines that the SWES has been inoperable, or has
      ceased to operate, for twelve (12) consecutive months or more. The City may pursue all available
      means to abate the SWES and recover all costs to the City if not voluntarily removed by the
      property owner.

SECTION 3. Section 17.46.010 of Title 17, Chapter 17.46 of the Hermosa Beach
Municipal Code is amended to read as follows:

17.46.010 Height of roof structures.

A. Commercial and Manufacturing Zones. The following elements may be constructed
above the height limit, provided they do not exceed the height limit by more than eight (8) feet and
cover no more than five (5) percent of the total roof area. Where the height of the element is
governed by a uniform building code standard, the element may exceed the height limit only by
the minimum amount necessary to comply with the uniform building code standards.

1. Elevator housing;
2. Stairways;
3. Tanks;
4. Ventilating fans;
5. Parapet fire walls;
6. Towers;
7. Chimneys;
8. Flues;
9. Vents;
10. Smokestacks;
11. Wireless masts; and
12. Similar structures as determined by the Planning Commission.

B. Residential Zones. Residential uses may have chimneys, vents and flues exceed the
height limit only to the extent required to meet the uniform building code requirements.

C. No structure exceeding the height limit under this Section 17.46.010 shall result in
additional floor area.

D. For the height standards for antennas, satellite dishes, and similar structures refer to
Section 17.46.210.

E. For the development standards for solar energy systems refer to Section 17.46.220.

F. For the height standards for single-pole umbrellas refer to Section 17.46.230.

G. For the height and development standards for small wind energy systems refer to
Section 17.40.200.

SECTION 4. Pursuant to the California Environmental Quality Act, an Initial Study has
been prepared finding that this project fully mitigates and will result in a less than significant
impact on the environment and a Negative Declaration is hereby adopted. The Department of Fish
and Game has made a "No Effect Determination" that the project will not impact fish or wildlife or the habitat on which it depends.

**SECTION 5.** This Ordinance shall become effective and be in full force and in effect from and after thirty (30) days of its final passage and adoption.

**SECTION 6.** Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

**SECTION 7.** The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED this 12th of January 2010 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

ATTEST:                      APPROVED AS TO FORM:

City Clerk                      City Attorney