

FIRST AMENDMENT TO ORDINANCE NO. 22

AN ORDINANCE AMENDING THE WIND ENERGY DEVICE ORDINANCE NO. 22 OF O'BRIEN COUNTY, IOWA, 2010 BY AMENDING SECTION 3. DEFINITIONS, AMENDING SECTION 4. WIND ENERGY DEVICE REQUIREMENTS, AND CREATING A NEW SECTION 10. WIND ENERGY ACCESSORY BUILDINGS AND STRUCTURES.

WHEREAS, the O'Brien County, Iowa Wind Energy Device Ordinance on file in the office of the County Auditor designates certain standards and requirements for the development and construction of Wind Energy Devices, and

WHEREAS, it is deemed advisable and recommended by the O'Brien County Board of Supervisors to amend Section 3. Definitions, amend Section 4. Wind Energy Device Requirements, and create a new Section 10. Wind Energy Accessory Buildings and Structures in an effort to clearly define and stipulate the definition of Wind Energy Accessory Buildings and Structures and to regulate the setback distance and potential negative impacts of such buildings and structures and their corresponding uses on adjoining neighboring properties.

NOW THEREFORE IT BE ORDAINED, by the O'Brien County Board of Supervisors;

1. DELETE AND REPLACE TEXT IN SECTION 3. DEFINITIONS. The O'Brien County Wind Energy Device Ordinance is hereby amended by deleting definition f. and replacing with the new definition f. "*Wind Energy Device*" in Section 3.
 - f. "*Wind Energy Device*" – Means any equipment that transforms energy from the wind into usable forms of energy not intended for residential or personal use. This equipment includes any base, blade, foundation, generator, nacelle, rotor or tower that are integrated as part of a single device. The term Wind Energy Device often refers to and includes wind towers, wind turbines, wind generators, windmills or other wind energy conversion systems. This definition shall not include any buried wires or other sub-surface electrical transmission equipment or ancillary above ground electrical structures such as junction boxes and step-up transformers.
2. ADD NEW TEXT IN SECTION 3. DEFINITIONS. The O'Brien County Wind Energy Device Ordinance is hereby amended by adding the following new definitions in Section 3.
 - h. "*Wind Energy Device Accessory Building or Structure*" – Means any permanent building or structure located within the same defined boundaries of a permitted wind energy project or on the same lot, parcel or tract of land of a single wind energy device; and is clearly considered customarily incidental and subordinate to the principal wind energy device(s). Any wind energy device accessory building or structure may contribute to the successful operation, convenience and necessity of the principal wind energy device(s). Examples of wind energy accessory buildings or structures may include, but not limited to transfer stations, electrical substations, switching stations or any other permanent structures used in a capacity similar to electrical substations associated with a wind energy project. This definition shall not include any above ground or buried transmission lines, wires or other electrical transmission equipment in addition to any above ground junction boxes, step-up transformers, or any temporary or non-permanent buildings or structures used during construction of a wind energy device or a wind project. Junction boxes are small pieces of electrical equipment that are typical no larger than approximately 3' tall above the surface and approximately 4' in width and 3' in depth. Step-up transformers are pieces of electrical equipment approximately 6' tall above the surface and approximately 6' in width and 6' in depth and are usually located in close proximity to the base of the wind tower.
 - i. "*Permanent*" – For purposes of this ordinance, permanent shall mean any building or structure continuing or existing without fundamental or identifiable change for a continuous period of at least one (1) year. This definition shall not include those temporary or non-permanent buildings and structures utilized during construction of a wind energy project.
 - j. "*Permanent Residential Dwelling*" – Means any occupied or unoccupied buildings or structures intended for human occupancy of which physical construction of the building has commenced, and which shall be placed upon and securely attached to a permanent

foundation. Buildings or structures containing a home occupation of which is part of a residence shall be considered a permanent residential dwelling. Mobile, manufactured or factory built housing that is permanently attached to a foundation is also defined as a permanent residential dwelling. Recreational vehicles, campers, or other temporary forms of housing are not considered a permanent residential dwelling.

3. **AMENDED TEXT IN SECTION 4. WIND ENERGY DEVICE REQUIREMENTS.**

The O'Brien County Wind Energy Device Ordinance is hereby amended by adding the following text to the setback requirements in Section 4.

Setbacks at Property Lines. At no time shall any part of the wind turbine and/or meteorological tower overhang any adjoining property without securing appropriate agreements from affected adjoining property owners.

4. **ADD NEW SECTION 10. WIND ENERGY ACCESSORY BUILDINGS & STRUCTURES.**

The O'Brien County Wind Energy Device Ordinance is hereby amended by adding the following new Section 10.

Section 10. Wind Energy Accessory Buildings and Structures.

Above ground wind energy accessory buildings and structures shall maintain a separation distance of no less than twelve hundred feet (1,200') from any permanent residential dwelling to any wind energy accessory building or structure, or the visually apparent perimeter or boundary of an area containing such above ground wind energy accessory buildings or structures (as may be evidenced by a fence, edge of parking lot, or other visible surface or above ground element of a building or structure; provided however, a sign or natural vegetation shall not be considered a perimeter or boundary). Such separation distance shall be enforced unless the property owner of such permanent residential dwelling provides written consent or approval to the location of such wind energy accessory building or structure.

Above ground wind energy accessory buildings or structures shall maintain a separation distance of no less than one hundred feet (100') feet from any road right-of-way, public right-of-way, railroad right-of-way, or public utility facility; unless the owner of such facilities or such right-of-way or the applicable public utility facility owner provide written consent or approval to the location of such wind energy accessory building or structure.

The O'Brien County wind energy accessory building or structure regulations set forth in this section are intended to be applied only to those above ground wind energy accessory buildings and structures that emit sound, light or odor; have other physical impacts, or that may be visible from adjoining properties that in each case would be reasonably expected to have a material impact on the occupants of a permanent residential dwelling located within 1,200 feet of such wind energy accessory building or structure.

Any such separation distances shall be indicated and specified in the building permit application.

5. **EXEMPTION FOR PRIOR WIND ENERGY PROJECTS.** Any wind energy devices that have received a permit and have commenced construction under the O'Brien County Wind Energy Device Ordinance prior to the effective date of this amendment, together with any wind energy accessory buildings or structures associated with any such wind energy devices that have commenced construction prior to the effective date of this amendment, shall be exempt from the requirements of this amendment.

6. **REPEALER.** All ordinances or parts of the previously adopted O'Brien County Wind Energy Device Ordinance in conflict with the provisions of this amendment are hereby repealed.

7. **SEVERABILITY CLAUSE.** If any section, provision or any part of this amendment is determined to be invalid or unconstitutional, such adjudication shall not affect the validity of the previously adopted O'Brien County Wind Energy Device Ordinance as a whole.

8. **EFFECTIVE DATE.** This amendment shall be in full force and effect from after passage and publication in a newspaper of general circulation.

ADOPTION

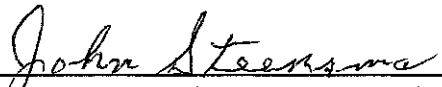
Passed and approved the first consideration on July 7, 2015

Passed and approved the second consideration July 14, 2015

Passed and approved the third and final consideration waived

Adopted on July 14, 2015

Published on _____



Chairperson, O'Brien County Board of Supervisors

Attest:



O'Brien County Auditor