

CITY OF BALCH SPRINGS, TEXAS

ORDINANCE NO. 2089-10

AN ORDINANCE OF THE CITY OF BALCH SPRINGS, TEXAS, AMENDING SECTIONS 90-1 "DEFINITIONS", 90-92 "USE REGULATIONS", ADDITION OF SECTIONS 90-93 "WIND ENERGY GUIDLINES, 90-94 "SPECIAL USE PERMIT REQUIRED", 90-95 "CONTINUITY OF USE; ABANDONMENT, 90-96 "DANGEROUS OR NON-COMPLIANT WIND ENERGY SYSTEMS AND 90-97 "VIOLATIONS; PENALTIES OF CHAPTER 90 "ZONING", OF THE CODE OF ORDINANCES OF THE CITY OF BALCH SPRINGS, TEXAS, TO PROVIDE FOR; UPDATED DEFINITIONS, REVISED USE REGULATIONS; ADDING NEW SECTIONS; ADDITION OF PROVIDING FOR CONFLICTING PROVISIONS; SEVERABILITY; EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Balch Springs wishes to update its Zoning Ordinances; and

WHEREAS, the City Council of the City of Balch Springs is authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations; and

WHEREAS, the changes contained within this Ordinance are made pursuant to such authority and for the good government of the City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BALCH SPRINGS, TEXAS, that:

SECTION 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Sections 90-1 "Definitions", 90-92 "Use Regulations" are hereby amended by deleting the existing sections in their entirety and replacing them with the following:

* * *

Sec. 90-1. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. The word "building" includes the word "structure." The word "lot" includes the word "plot." *Accessory building* means, in a residence or apartment district, a subordinate building which is attached to or detached from the main building, without separate utilities, not used for commercial purposes and not rented and containing servant's quarters, a washroom, storage room

for domestic storage only and space for one or more automobiles. In any other district, such term means a subordinate building, the use of which is incidental to and used only in conjunction with the main building.

Alley means a public space or thoroughfare which affords only a secondary means of access to abutting property.

ANSI – shall mean the American National Standards Institute.

Apartment means a room, or suite of rooms, in an apartment building which is arranged, designed or occupied as the residence by a single-family, individual or groups of individuals.

Apartment hotel means a building, larger than an apartment house, which is designed or built to be occupied as a series of separate apartments and by persons living independently of each other.

Apartment building means a building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied as three or more apartments or which is occupied as the home or residence of three or more families, or group of individuals living independently of each other and maintaining separate cooking facilities.

Area of the lot means the net area of a lot and shall not include portions of streets and alleys.

Back yard means the portion of a residential lot between the rear building face of a single-family, duplex, triplex or quadruplex structure and the rear lot line.

Basement means the portion of a building between the floor and ceiling which is partly below and partly above grade, but located so that the vertical distance from grade to the floor below is less than the vertical distance from grade to ceiling.

Block means an area within the city which is enclosed by streets and occupied by or intended for buildings; or, if such term is used as a term of measurement, such term means the distance along a side of a street between the nearest two streets which intersect such street on such side.

Boardinghouse means a building, other than a hotel, where lodging and meals for five or more persons are served for compensation.

Breezeway means a covered passage, one story in height, connecting a main structure and an accessory building.

Building means a structure or building for the support, shelter and enclosure of persons, animals or movable property of any kind.

Building, end of, means the sides of a building having the least dimensions and in which doors or openings are not customarily provided for ingress and egress.

Building line means a line parallel or approximately parallel to the street line and beyond which buildings may not be erected.

Business means and includes retail, commercial and manufacturing uses and districts as defined in this chapter.

Carport means a roofed structure used for vehicle storage only which is not permanently enclosed on at least three sides and which is constructed over a parking space accessible by a driveway to a public street or alley.

Cellar means the portion of a building between the floor and ceiling which is partly below and partly above grade but which is so located that the vertical distance from the grade to the floor below is greater than the vertical distance from the grade to the ceiling.

Clinic, medical, means an institution or station for the examination and treatment of ill and afflicted outpatients.

Commercial Vehicle means a vehicle used in commerce: a road vehicle designed to transport goods or passengers.

Convalescent home means a structure which is used for or occupied by persons recovering from illness or suffering from the infirmities of old age.

Court means an open, unoccupied space bounded on more than two sides by the walls of the building. An "inner court" means a court entirely surrounded by the exterior walls of a building. An "outer court" means a court having one side open to a street, alley, yard or other permanently open space.

Day nursery means a place where children are left for care between the hours of 7:00 a.m. and 12:00 midnight.

dB(A) – shall mean the sound pressure level in decibels. Refers to the “a” weighted scale defined by ANSI. It is a method for weighting the frequency spectrum to mimic the human ear.

Decibel – shall mean the unit of measurement used to express the magnitude of sound pressure and sound intensity.

Depth of lot means the mean horizontal distance between the front and rear lot lines.

Depth of rear yard means the mean horizontal distance between the rear line of a building, other than an accessory building, and the rear lot line. The depth of a required rear yard is 20 percent of the depth of the lot.

District means a section of the city for which the regulations governing the area, height or use of a building are uniform.

Driveway means an improved parking surface, which provides egress and ingress from and to an adjacent street or alley and which is connected to a street or alley by a driveway approach.

Dwelling, one-family, means a detached building having accommodations for and occupied by not more than one family, or by one family and not more than four boarders or lodgers.

Dwelling, two-family, means a detached building having separate accommodations for and occupied by not more than two families or by two families and not more than four boarders or lodgers (two boarders or lodgers for each unit).

Dwelling unit means a building, or portion thereof, which is arranged, occupied or intended to be occupied as living quarters.

Efficiency apartment means an apartment which has a combination living and bedroom and no separate bedroom.

FAA – shall mean the Federal Aviation Administration or its successor agency.

Family means any number of individuals living together as a single housekeeping unit, in which not more than four individuals are unrelated by blood.

Farm means an area of two acres or more which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as the raising of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine, including dairy farms, with the necessary accessory uses and for treating and storing the produce; provided, however, that the operation of such accessory use shall be secondary to that of the normal activities; and provided, further, that it does not include the commercial feeding of offal or garbage to swine or other animals.

Front yard means the portion of a residential lot between the street and the building face of a single-family, duplex, triplex or quadraplex structure.

Grade means, for buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street; for buildings having walls adjoining more than one street, such term means the average of the elevation of the sidewalks at the center of all walls adjoining the street; for buildings having no wall adjoining the street, such term means the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five feet from a street line shall be considered as adjoining the street. Where no sidewalk has been constructed, the city engineer shall establish such sidewalk level or its equivalent for the purpose of this chapter.

Gross floor area means, for an apartment house, the measurement of the outside dimensions of the apartment building at each floor level, excluding, however, the floor area of basements or attics not used for residential purposes.

Halfway house means a facility for the housing, rehabilitation and training of persons on probation, parole or early release from correctional institutions, or other persons found guilty of criminal offense.

Height means the measurement of a building, or portion thereof, from the average established grade at the street lot line or from the average natural ground level, if higher or, if no street grade has been established, to the highest point of the roof's surface, if a flat surface; to the deck line of mansard roofs; and the mean height level between the eaves and ridge for hip and gable roofs. When measuring the height of a building, the chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height shall be excluded.

Hobby shop means an accessory use housed in a dwelling or accessory building in which the residents of the premises engage in recreational activities, none of which shall disturb the neighbors on either side or in the rear thereof, and from which no revenue may be derived, in which no goods may be publicly displayed, offered or advertised for sale, nor may any sign be used in connection with such activities.

Home occupation and *customary home occupation* mean an occupation customarily carried on in the home by a member of the occupant's family, without structural alterations in the building or any of the rooms of such building, without the installation of machinery other than machinery which is customary to normal household operations or additional equipment without employment of additional persons, without the use of a sign to advertise the occupation, and which does not cause the generation of additional traffic in the street.

Home work shop. See the definition of *Hobby shop*.

Hospital means an institution or place where sick or injured inpatients are given medical or surgical care, either at public (charity) or private expense.

Hotel and *motel* mean a building or arrangement of buildings designed and occupied as a temporary abiding place of individuals who are lodged with or without meals, in which the rooms are usually occupied singly for hire, there are no provisions for cooking in individual rooms or apartments, and there are more than 12 sleeping rooms, a public dining room accommodating more than 12 guests and a central kitchen.

Housing project means an area of three or more acres, arranged according to a site plan to be submitted to and to be approved by the city planning and zoning commission and the city council, on which is indicated the amount of land to be devoted to housing facilities, the arrangement of such housing facilities on such land, together with the arrangement of access streets and alleys, and the entire area shall be zoned as an apartment zone upon the recommendation of the city planning and zoning commission and the action of the city council, and in which it shall not be necessary to subdivide the area into lots and blocks. The site plan shall indicate that all access streets, alleys, sidewalks, storm sewers and storm sewer inlets shall be provided as required by the city, and built in accordance with city specifications.

Kindergarten means a school for children of prepublic school age in which constructive endeavors, object lessons and helpful games are prominent features of the curriculum.

Lodginghouse means a building other than a hotel, where lodging for five or more persons is provided for compensation.

Lot means land occupied, or to be occupied, by a building and its accessory buildings and including such open spaces as are required under this chapter and having its principal frontage on a public street or officially approved place.

Lot lines means the lines bounding a lot as defined in this section.

Lot of record means a lot which is part of a subdivision, the plat of which has been recorded in the office of the county clerk, or a parcel of land, the deed for which has been recorded in the office of the county clerk prior to adoption of this chapter.

Minimum improved parking surface means base asphalt or macadam having a minimum depth of two inches with a four-inch stabilized base; or reinforced concrete having a minimum depth of four inches.

Mobile home park means an area designated, arranged or used for the location of mobile homes which are intended for occupancy as living quarters by individuals or families.

Modular home means a dwelling that is manufactured in two or more modules at a location other than the homesite, and which is designated to be used as a residence when the modules are transported to the homesite and the modules are joined together and installed on a permanent foundation system. Such term includes the plumbing, heating, air conditioning and electrical systems contained in the structure. It is expressly provided, however, that such term shall not mean, nor apply to the following, which are expressly excluded from the purview of this chapter:

- (1) Sectional or panelized housing in which the basis components assembled at the homesite are not at least three dimensional modules;
- (2) A ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling such home and moving the home to another location; and
- (3) A home constructed in modules, incorporating concrete or masonry as the primary structural component.

Nonconforming use means a building, structure or use of land lawfully occupied at the time of the effective date of the ordinance from which this chapter is derived, or amendments to this chapter, and which does not conform to the use regulations of the district in which it is situated.

Open space means area included in any side, rear or front yard, or any unoccupied space on the lot that is open and unobstructed to the sky, except for the ordinary projection of cornices, eaves or porches.

Owner – shall mean the individual or entity that intends to own and operate the wind energy system in accordance with this article and includes the person or entity that owns the real estate on which the wind energy system is situated as well as any occupant or person in control or supervision of the real estate.

Parking space means an area of not less than 180 square feet (measuring approximately nine feet by 20 feet), not on a public street or alley, surfaced with an all-weather surface, enclosed or unenclosed, together with an all-weather surfaced driveway connecting the parking space with a street or alley permitting free ingress and egress. Such term in any dwelling, duplex or apartment district shall not include the parking of trucks or buses for commercial purposes or head-in parking adjacent to a public thoroughfare wherein the maneuvering is done on a public street, and shall not be classified as off-street parking in computing the parking requirements for any use.

Place means an open, unoccupied space reserved for purposes of access to abutting property.

Primary Structure – shall mean a structure that is designed and used as a residential dwelling unit, or a non-residential structure that is regularly occupied to conduct business or commerce (including agricultural use).

Private garage means a building, or portion thereof, in which not more than five privately-owned motor-driven vehicles are stored by occupants of the premises, not more than one of which may be a truck not exceeding one- or 1 1/2-ton capacity.

Private stable means a stable with a capacity for not more than four horses or mules.

Public garage means a building, or portion thereof, which is used for repair, care or servicing of motor-driven vehicles, or where motor-driven vehicles are equipped for operation, or kept for hire or sale, but not including the open storage of trucks, trailers and vans.

Public stable means a stable with a capacity for more than four horses or mules.

Rear yard means the open space unoccupied and unobstructed extending across the rear of a lot from one side lot line to the other side lot line and having a depth of 20 percent of the depth of the lot. Accessory buildings may occupy up to 30 percent of the area of the required rear yard, except that in the A district where access to accessory buildings is from a public alley, more than 30 percent of the required rear yard may be covered by such buildings, and the accessory building equals at least 20 percent of the depth of the lot.

Rotor Diameter – shall mean the cross sectional dimension of the circle swept by the rotating blades.

RV Park means an area designed, arranged or used for the parking of one or more recreational vehicles which are occupied, or intended for occupancy, as temporary living quarters by individuals or families and at which an RV may not be parked for more than sixty days, consecutive or cumulative, during any 12 month period.

Self storage, security and *miniwarehouse* mean any storage use consisting of one or more buildings in which individual spaces of 1,000 square feet or less are rented or leased for private storage.

Servant's quarters means an accessory building, or portion of a main building, located on the same lot as the main building and used as living quarters for servants employed on the premises and not rented or otherwise used as a separate domicile.

Shopping center means an area consisting of three acres or more, arranged according to a site plan to be submitted to and approved by the city planning and zoning commission and city council, on which is indicated the amount of land to be devoted to the shopping village, the detailed arrangement of the various buildings, parking areas, streets and type of zoning desired. It shall require that the installation of all utilities, drainage structures, paving of streets, parking areas, alleys and installation of sidewalks be in accordance with the city specifications for each type of improvement.

Side yard means the portion of a residential lot between the front yard and back yard of the structure.

Sound Pressure – shall mean the average rate at which sound energy is transmitted through a unit area in a specified direction. The pressure of the sound measured at a receiver.

Sound Pressure Level – shall mean the sound pressure mapped to a logarithmic scale and reported in decibels (dB).

Storage garage means a building, or portion thereof, which is used for the storage of more than five passenger motor vehicles and trucks of not more than 1 1/2-ton capacity.

Story, half, means a story having an average height of not more than eight feet, covering a floor area of not more than 75 percent of the area of the floor of the first story below it.

Story, standard, means a story having 11 feet, six inches between floors.

Street means a thoroughfare or public driveway, other than an alley, which is more than 20 feet in width, and which has been dedicated or deeded to the public for public use.

Street line means a dividing line between a lot, tract or parcel of land and a contiguous street.

Structural alteration means a change in the supporting member of a building, such as a bearing wall, column, beams or girders.

System Height – shall mean the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.

Tower – shall mean the monopole or freestanding lattice structure that supports a wind generator.

Used car lot means a lot, or portion thereof, which is to be used only for the display and sale of automobiles that are in a condition to be driven on or off the lot. A used car lot shall not be used for the storage of wrecked automobiles, the dismantling of automobiles or the storage of automobile parts.

Utility Grid Wind Energy System – shall mean a wind energy system designed and built with a primary purpose to provide electricity to the electric utility grid.

Width of side yard means the mean horizontal distance between a side wall of a building and the side line of the lot, or to the centerline of any alley adjacent to such side lot line.

Wind Energy System – shall mean a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine, a tower and/or attached apparatus, and associated control or conversion electronics, and is intended for on-site production and consumption of electricity to serve the needs of the consumer on-site.

Yard means an open, unoccupied space, other than a court, on the lot in which a building is situated and which is unobstructed from the ground to the sky.

Sec. 90-92. Use regulations.

(a) The following uses may be authorized by special use permit within any district, except where stated otherwise, upon compliance with all requirements of this section and all other applicable ordinances:

- (1) Airports and airport facilities.
- (2) Commercial amusement parks and facilities and racetracks.
- (3) Baseball fields, athletic fields, stadiums, golf driving ranges, arcades, riding stables, rodeo arenas, miniature golf facilities, commercial recreation parks, recreation parks and facilities owned or operated by non-profit associations or entities, gun clubs and ranges, skeet shoots, and target ranges.
- (4) Country clubs and golf courses.
- (5) Movie theaters and drive-in theaters.

(6) Churches and institutions of religious worship. A church may not be excluded in any district and, therefore, an application for a special use permit may not be denied. In issuing special use permits, there shall be imposed only those reasonable conditions and regulations as are necessary to protect the public health, safety and general welfare of the community and surrounding properties. Parking, whether on-site or off-site, shall be identified in the site plan submitted with the application for special use permit. Unless otherwise modified by the ordinance granting the special use permit classification, all setback and structural requirements contained in the base zoning classification applicable to the property shall be met.

(7) Private schools.

(8) Day care center, day nursery, or child care center.

(9) Group homes for the disabled.

(10) Dog kennels and veterinary facilities.

(11) Hospitals and rehabilitation centers.

(12) Halfway houses and penal or correctional institutions.

(13) Radio, television, and microwave towers and antennae.

(14) Public utilities and buildings, structures and premises for public utility service and public service corporations including but not limited to ground storage and elevated water supply or storage tanks, utility pump stations, electrical power substations, telephone equipment buildings, and waste water treatment facilities.

(15) Sexually-oriented businesses, as described in and subject to the requirements of chapter 18 and article VI of this chapter. This use is permissible by special use permit only in areas zoned CIM, commercial industrial manufacturing district.

(16) Establishments which derive at least 75 percent of the establishment's gross revenue from the on-premises sale of alcoholic beverages. This use is permissible by special use permit only in the LR, C-1, and CIM districts and only where the place of business is not within 300 feet of a church, public school, day care, private school or public hospital.

(17) Establishments which hold and have been issued a private club registration permit or other private club permits under the Texas Alcoholic Beverage Code, chapter 32 or chapter 33, as amended, if:

a. The establishment derives at least 35 percent of its gross revenues from the on-premises sale or service of alcoholic beverages;

b. The premises of the establishment are located in a dry area; and

c. The permit is not issued to a fraternal or veterans organization or the holder of a food and beverage certificate issued by the state alcoholic beverage commission.

(18) Vehicle and car washing facilities.

(19) New and used car and truck dealerships.

(20) Automobile and automotive repair garages and automobile painting facilities.

(21) Storage, display and sale of automobile and automotive parts and accessories. The storage, display and/or sale of new or used automobile and automotive parts must be conducted entirely within an enclosed permanent building, situated on a concrete foundation with electrical and plumbing connections and service. In no event shall such sales occur within a motor vehicle wrecking or salvage yard.

(22) Bus terminal and bus and truck storage. Bus terminals are permissible in the CIM commercial industrial manufacturing district only. A special use permit zoning classification is required for businesses and establishments whose primary operation is the storage of buses and trucks. As used herein, "bus terminal" shall mean a facility, the primary use of which is for

passengers to board and/or disembark from buses, whether or not buses are stored or parked on site.

(23) Greenhouses and nurseries.

(24) Motels and hotels.

(25) Concrete and asphalt batching plants and batch mixing facilities and cement storage.

(26) Any structure, not designed to be occupied, in excess of 30 feet in height, other than standard telephone poles, standard lighting poles and standard or residential television receiving antennas.

(27) Flea markets and open air retail sales, whether temporary or permanent.

(28) Pallet businesses and yards. Businesses involved in the construction, repair, sale (retail or wholesale), or storage of wooden pallets may be allowed only in the CIM districts, subject to such location, height, area, parking, signage and intensity/floor area ratio regulations as may be reasonably imposed.

(29) Trailer park, trailer court, trailer subdivision or mobile home park subdivisions on sites of 20 acres or more in any district.

(b) Any applicant seeking a land use not otherwise authorized by this chapter or as listed in this section may make application to amend this section to include the unlisted use and may at the same time make application for specific use permit zoning for such use, on a specific property. In such a case both amendments may be heard at the same time by the planning and zoning commission; may be heard at the same time by the city council; and the adoptive ordinances may be acted upon by the city council on the same date.

(30) Carting, express, hauling and parking of commercial vehicles and storage of sand and gravel.

(31) RV (recreational vehicle) park (temporary occupancy)

(32) Box and crate manufacturing, other than paper.

(33) Motor freight terminal and truck stop.

(34) Mortuary.

(35) Wind Energy.

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SECTION 4. Sections 90-93 - Wind Energy – Guidelines

(a) Wind energy systems shall not be erected, constructed, relocated or maintained in the territorial limits of the city unless a valid special use permit has first been approved then a building permit and the wind energy system is in full compliance with the provisions of this article, the ordinances of the city, and all applicable laws and regulations. Wind energy systems shall not be permitted, erected, constructed or installed on any lot or tract of property if the setbacks and spacing requirements of this article are not met.

(b) A wind energy system shall be a permitted use in all zoning districts, subject to the issuance of a special use permit, a building permit and to the following requirements:

(1) Primary Structure Required on Lot – A wind energy system may be erected only after a primary structure has been constructed on the lot. A wind energy system may

not be constructed on a vacant lot. If an occupied primary structure is removed from a lot or property, a wind energy system must be removed from said property.

- (2) Prohibited Locations – No portion of a wind energy system or the required setback shall encroach upon or be erected, constructed or located within any public right-of-way; public or private easement or within any front, side or rear property setback area. No part of a wind energy system may extend beyond the property lines or required building lines of the lot on which the wind energy system is located unless the adjacent property is contiguous and maintains the same owner.
- (3) Required Setbacks; Platting – A tower for a wind energy system shall be set back from the property lines and any overhead or aboveground public or private utility line, cable or primary structure, at a distance equal to one hundred and ten percent (110%) of the system height. No tract of property shall be subdivided, platted or replatted such that a preexisting wind energy system will fail to meet the foregoing requirements.
- (4) Compliance Standards – A wind energy system shall be erected and installed according to the instructions of the system manufacturer and under the seal of a professional engineer registered in the State of Texas. All components of the system must be in compliance with this article, the ordinances of the city, and all applicable state and local building codes. All wind energy systems must meet or exceed current standards and regulations of the FAA and any other agency of the state or federal government with the authority to regulate wind energy systems. If such standards and regulations are changed, and if the controlling state or federal agency mandates compliances, then the owners of the wind energy system governed by this ordinance shall bring such wind energy system into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency.

The system must have a certificate of compliance from Underwriters Laboratories, Inc. with the most current standard or UL 1741 standard for safety for inverters, converters, controllers, and interconnection system equipment for use with distributed energy resources. All applicable components of the wind energy system shall meet and comply with the city's building codes and electrical code.

- (5) Height Limitations – The system height shall not exceed seventy (70) feet. Additionally, no tower height shall exceed the tower height recommended by the manufacturer or the distributor of the wind energy system. The system height shall provide a minimum of ten (10) feet of clearance between the rotor diameter and fencing or other system elements at the base of the tower.
- (6) Control of Access – All wind energy systems shall operate within an area enclosed by approved fencing that is no less than six (6) feet in height. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized

access. The above-mentioned equipment shall be secured by a lockable mechanism. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.

- (7) Electrical Wires – All electrical wires associated with a wind energy system, other than the wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires, shall be located underground.
- (8) Sound Pressure Levels – Sound pressure levels shall not exceed a noise level of fifty-five (55) decibels as measured from the property line closest to the wind energy system.
- (9) Interference – The owner of a wind energy system shall mitigate any interference with electromagnetic communications, such as, but not limited to, radio, telephone, television or broadband signals caused by the operation of a wind energy system.
- (10) Appearance, Color, and Finish – The wind generator and tower shall remain painted or finished matching the color or finish that was originally applied by the manufacturer, unless approved in the wind energy system permit. The color of finish shall be non-reflective and non-obtrusive.
- (11) Maintenance – The paint, finish, landscaping, and structural integrity of a wind energy system and each of its components shall be maintained at all times. All such systems shall be kept in good working order. If, upon inspection, the city concludes that a wind energy system fails to comply with such codes and regulations and/or constitutes a danger to persons or property, then the city shall order an immediate cessation of the wind energy system until all violations and/or safety concerns have been resolved.
- (12) Lighting – All lights not required by the FAA are prohibited. When obstruction lighting is required by the FAA, such lighting shall not exceed the minimum requirements of said agency. A tower structure may be artificially lighted only with steady-burning red obstruction lights (FAA type L-810) or flashing red obstruction lights (FAA type L-864) flashing no faster than 20 flashes per minute. Flashing red obstruction lights (FAA type L-864) flashing faster than 20 flashes per minute, medium intensity flashing white obstruction lights (FAA types L-865 or L-866), high intensity flashing white lights (FAA types L-856 or 857) or dual flashing red obstruction lights and medium intensity flashing white obstruction lights (FAA types L-864/L865) may be used only when the FAA specifies that the specific lighting pattern is the only lighting pattern acceptable to promote aviation safety and refuses an applicant's request for authorization to use the lighting required by this article. Upward lighting, flood lights or other lighting not strictly required by the FAA is prohibited.

(13) Signage Prohibited – No advertising or signage of any type, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification, shall be allowed or permitted on a wind energy system.

(14) Limit of One – No more than one wind energy system shall be erected, constructed, operated or permitted on any single lot or tract.

(c) Utility grid wind energy systems larger than 20 kw are prohibited within the city.

SECTION 5. Section 90-94 – Special Use Permit Required

(a) No person shall erect, construct, maintain or cause to be erected, constructed or maintained a wind energy system without first having applied for and been issued a valid special use permit to do so. A wind energy system building permit shall not be issued unless the requirements of this article and this section have been met and satisfied.

(b) Permit applications shall be submitted on forms furnished by the city and shall demonstrate full compliance with all applicable state and local building and electrical codes. A building permit application shall be accompanied by:

(1) the appropriate permit fee;

(2) a survey and legal description of the lot or tract on which the system is to be erected;

(3) a site plan showing:

(i) the location of all proposed elements for the wind energy system on the subject property including, but not limited to, tower, guy wires, enclosures, and fencing;

(ii) distances to property lines, required setbacks, and structures;

(iii) the tract or lot lines, the dimensions of the lot or tract, all building and setback lines, and the location of the proposed wind energy system;

(iv) the location of existing buildings and structures, overhead utility lines, and utility easements;

(v) the location and course of all streets and roadways within and adjacent to the lot or tract; and

(vi) natural features on the lot or tract.

(4) an elevation drawing showing the height of the wind energy system and other structures

(5) a detailed depiction and description of the proposed wind energy system showing:

(i) wind system specifications, including the design and height of the wind energy

(ii) system, including the tower, guying, base and footings, the manufacturer and model, and rotor diameter;

(iii) all components of the system;

(iv) standard installation drawings of the tower and wind turbine; and

(v) tower and tower foundation blueprints or drawings.

(6) a standard drawing and engineering analysis or report regarding the system's tower, and showing compliance with building codes, certified by a professional engineer registered in the State of Texas;

- (7) proof of compliance with the city's electrical code, including but not limited to line drawings of the electrical components in sufficient detail to demonstrate compliance with the electrical code;
 - (8) evidence of notice to utility company; and
 - (9) proof of insurance – Owners of any wind energy system must provide a minimum amount of three hundred thousand dollars (\$300,000.00) liability insurance that covers all components of the wind energy system, and such insurance coverage must be maintained at all times. Proof of insurance coverage must be provided to the city at the time application is made for a building permit. The property owner must provide a letter from the insurance provider stating that the city will be notified of any changes in insurance coverage. Any lapse of insurance coverage or a reduction in coverage below the minimum amount required will result in immediate cessation of wind energy system use until all requirements have been met.
- (c) Upon completion of construction, a wind energy system shall not be operated or maintained until an inspection by the city determines that the system meets the requirements of this article.

SECTION 6. Section 90-95 – Continuity of Use; Abandonment

- (a) At such time as an owner plans to abandon or discontinue, or is required to discontinue, the operation of a wind energy system, such owner must notify the city by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations.
- (b) In the event that an owner fails to give such notice, the wind energy system shall be considered abandoned if the wind energy system is not operated for a continuous period of twelve (12) months, unless the owner of said wind energy system provides proof of continued maintenance.
- (c) Upon abandonment or discontinuation of use, the person who operated the wind energy system or the property owner shall physically remove the wind energy system within thirty (30) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - (i) removal of the tower, turbine and all other components of the wind energy system;
 - (ii) transportation of the tower, turbine and all other components of the wind energy system to an appropriate disposal site;
- (d) the owner of the wind energy system shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition;
- (e) if a party as stated in subsections (3) and (4) herein fails to remove a wind energy system in accordance with this section, the city shall have the authority to enter the subject

property and physically remove the wind energy system. In the event the city must remove the wind energy system, costs for the removal of the wind energy system shall be charged to the landowner of record, and city may place a lien on the property for such costs of removal; and

- (f) failure to remove an abandoned wind energy system as required by this section shall constitute a violation and be subject to the penalties prescribed herein.

SECTION 7. Dangerous or Non-compliant Wind Energy Systems

- (a) Wind energy systems that have, due to damage, lack of repair, or other circumstances, become unstable, lean significantly out-of-plumb, or otherwise present a danger or hazard to the public health or safety, shall immediately cease operating and be removed or brought into repair within thirty (30) days following notice given by the city. If the wind energy system is not made safe or removed within thirty (30) days of notification from the city, the city may remove the wind energy system and place a lien upon the property for the costs of the removal. However, the city may order immediate action to prevent an imminent threat to public safety or property.
- (b) The mayor may revoke or suspend a special use permit for cause or if it is determined that a wind energy system is not in compliance with the requirements of this article or other laws or regulations. The owner shall be given not less than seven (7) days' notice of suspension or revocation, which notice shall be presumed received on the expiration of three days after deposit in the mail properly addressed to the owner at the address stated in the application, or immediately upon hand-delivery to the owner.
- (c) Upon expiration of the period set forth in the notice, the operation of the wind energy system shall cease. If the violation or event of non-compliance giving rise to the suspension is not corrected, and the suspension lifted and special use permit reinstated, within ninety (90) days thereafter, the wind energy system shall be removed by the owner at the owner's sole expense. If a special use permit is revoked and a new special use permit is not thereafter issued within sixty (60) days after the date of revocation, the wind energy system shall be removed by the owner at the owner's sole expense.
- (d) The suspension or revocation of a wind energy system special use permit may be appealed by written notice of appeal, filed with the city, with twenty (20) days after receipt of notice of suspension or revocation. The use and operation of the wind energy system shall cease upon expiration of the period set forth in the notice, notwithstanding the pendency of an appeal. The city council shall have sole and exclusive authority to hear and decide all such appeals, and the decision of the city council shall be final and binding.

SECTION 8. Violations; penalties

- (a) It is unlawful for any person to construct, install, maintain or operate a wind energy system that is not in compliance with this article or with any condition contained in a wind energy system special use permit issued pursuant to this article.
- (b) It is unlawful for any person to violate any condition, notice or order directed to the owner regarding the discontinuance or removal of a wind energy system or component thereof.
- (c) Any owner, person, firm or association violating any of the provisions of this article shall be deemed guilty of a misdemeanor offence and upon conviction, shall be punished by a fine not to exceed the sum of two thousand dollars (\$2000.00) and each and every day a violation shall be deemed a separate offense.
- (d) A violation of any term or provision of this article may be enjoined by civil injunctive relief. The city may, at its sole option, seek injunctive and other equitable relief to restrain any violation of this article and may, in addition, pursue any lawful remedies to correct, abate, or punish any violation hereof.
- (e) The penalties and remedies provided for in this article are not exclusive of each other or of any other remedy at law or in equity, and all such remedies are declared to be cumulative.

SECTION 9. All provisions of the ordinances of the City of Balch Springs in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of such conflict, and all other provisions of the ordinances of the City of Balch Springs not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 10. Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 11. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

SECTION 12. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

DULY PASSED AND ADOPTED by the City Council of the City of Balch Springs, Texas, on the 24th day of May, 2010.

APPROVED:

Carrie F. Gordon, Ph.D., Mayor

ATTEST:

Cindy Gross, City Secretary