

ORDINANCE O-23-24

AN ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HOWELL, MONMOUTH COUNTY REPEALING ORDINANCE NO. 23-18 ENTITLED "AN ORDINANCE OF THE TOWNSHIP OF HOWELL SUPPLEMENTING CHAPTER 188, ARTICLE X ZONES SUPPLEMENTING SECTION 188-69 ENTITLED AGRICULTURAL RURAL ESTATE ZONES (ARE-1, ARE-3, ARE-4 AND ARE-6) TO INCLUDE APIARY PRACTICES AND BEE KEEPING AS A PERMITTED ACCESSORY USE WITH REASONABLE SETBACK RESTRICTIONS"

WHEREAS, the Division of Plant Industry of the New Jersey Department of Agriculture has requested via letter (attached as Exhibit A) that Howell Township rescind Howell Township Ordinance No. 23-18 because it conflicts with State beekeeping laws and with Department regulations.

NOW THEREFORE BE IT ORDAINED, by the Mayor and Township Council of Howell Township, County of Monmouth, and State of New Jersey, that certain sections of the Township Code be modified as follows (additions to text indicated by underlined text; deletions to text indicated by ~~strikeout~~):

SECTION 1. Howell Township Ordinance No. 23-18 is hereby repealed in its entirety.

SECTION 2. Consistent with Section 1 of this ordinance, Chapter 188, Article X, Section 69 "Agricultural Rural Estate Zones" of the Revised General Ordinances of the Township of Howell, is hereby amended as follows:

CHAPTER 188 LAND USE

Article X Zones

188-69 Agricultural Rural Estate Zones (ARE-1, ARE-3, ARE-4 and ARE-6)

A. Purpose. The purpose of the ARE-1, ARE-3, ARE-4 and ARE-6 Zones is to minimize the impacts of development in areas located outside of the centers identified in the Township's Master Plan. The goals include preservation of rural and agricultural uses and preservation of rural character. Many areas include significant environmental constraints, including wetlands, floodplains, rare and endangered species habitats, aquifer recharge areas and high-quality watersheds. (See Schedule III, Bulk and Dimensional Requirements, for the ARE-1, ARE-3, ARE-4 and ARE-6 Zones)

B. Permitted uses.

(1) Principal uses.

- (a) Agricultural and horticulture.
- (b) Single-family residences.

(c) Municipal buildings and other public-purpose buildings owned by the Township, as well as quasi-public uses limited to fire stations and first-aid buildings.

(d) Community residences for the developmentally disabled and community shelters for victims of domestic violence that contain fewer than six occupants.

(e) Multigenerational family accommodations.

(2) Accessory uses.

(a) Accessory uses customarily incidental and ancillary to a permitted use.

(b) Home occupations as regulated in this chapter.

~~(c) Apiaries and bee-keeping activities with a 300' setback to neighboring principal structures, excluding the structure on the property in which the apiary is located. The setback shall be reduced to 100' if a 6' tall solid fence is erected between the apiary and the neighboring structure.~~

(3) Conditional uses.

(a) Houses of worship.

(b) Schools with state-approved curricula in accordance with § 188-93 and limited to ARE-4 and ARE-6.

(c) Community residences for the developmentally disabled and community shelters for victims of domestic violence that contain more than six and fewer than 15 occupants.

(d) Solar energy generation facility in ARE-3, ARE-4, and ARE-6 Zones only. See § 188-98.3 for conditional requirements, and see Schedule III for bulk and dimensional requirements.

SECTION 3. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the Courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

SECTION 4. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. This Ordinance shall take effect upon passage, publication and as required by law.

NOTICE

The Ordinance published herewith was introduced and passed on first reading by the Township Council of the Township of Howell on July 18, 2023 and will be further considered for final passage and adoption at the Township Municipal Building on 4567 Route 9 North, Howell, New Jersey on August 15, 2023 at 7:00 p.m. or as soon thereafter as the matter can be reached on the Agenda, at which time and place all persons interested therein shall be given an opportunity to be heard and during the week prior thereto, and up to, and including, the date of such meeting, copies of said Ordinance will be available at the Clerk's Office in the Township of Howell Municipal Building to the members of the general public who shall request same.

Introduction:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Fischer</i>	X		X			
<i>Councilman Gasior</i>		X	X			
<i>Councilman Nadel</i>			X			
<i>Deputy Mayor O'Donnell</i>			X			
<i>Mayor Berger</i>						X

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held July 18, 2023. WITNESS my hand this 19th day of July 2023.

Diane Festino

DIANE FESTINO, Municipal Clerk

This is to certify that the foregoing Ordinance was adopted by the Township Council at a regular meeting of the Township of Howell held on August 15, 2023.

Adoption:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Fischer</i>			X			
<i>Councilman Gasior</i>		X	X			
<i>Councilman Nadel</i>			X			
<i>Deputy Mayor O'Donnell</i>	X		X			
<i>Mayor Berger</i>			X			

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held August 15, 2023. WITNESS my hand this 16th day of August 2023.

Diane Festino

DIANE FESTINO, Municipal Clerk

EXHIBIT A

Division of Plant Industry of the New Jersey Department of Agriculture Correspondence
Requesting Rescission of Ordinance 23-18



State of New Jersey

DEPARTMENT OF AGRICULTURE
PO Box 330
TRENTON NJ 08625-0330

DOUGLAS H. FISHER
Secretary

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

June 30, 2023

The Honorable Teresa Berger, Mayor (tberger@twp.howell.nj.us)
The Honorable Evelyn O'Donnell, Deputy Mayor (eodonnell@twp.howell.nj.us)
The Honorable Susan Fischer, Councilwoman (sfischer@twp.howell.nj.us)
The Honorable Fred Gasior, Councilman (fgasior@twp.howell.nj.us)
The Honorable Ian Nadel, Councilman (inadel@twp.howell.nj.us)

Howell Township Municipal Offices
4567 Rt.9 North, 2nd Floor
Howell, NJ 07731

SENT VIA EMAIL

RE: Unlawful regulation of beekeeping activities, Ordinance #23-18

Dear Mayor Berger and Members of the Howell Township Council:

I am writing this letter on behalf of the Division of Plant Industry of the New Jersey Department of Agriculture ("Department"). The Plant Industry Division Director, Joseph Zoltowski, has been notified that Howell Township has adopted an ordinance that regulates beekeeping activities in Howell Township. Ordinance #23-18 amends Chapter 188, Article X, Section 69 of the Howell Town Code, making apiaries and beekeeping activities an allowed accessory use in certain zones within the Township if they meet the following requirements:

"Apiaries and beekeeping activities with a 300' setback to neighboring principal structures, excluding the structure on the property in which the apiary is located. The setback shall be reduced to 100' if a 6' tall solid fence is erected between the apiary and the neighboring structure."

The Department respectfully requests that Howell Township rescind Ordinance #23-18 because it conflicts with State beekeeping laws and with Department regulations. The State of New Jersey has long recognized the vital benefits provided by maintaining a large and healthy honeybee population in the State. Accordingly, beekeeping laws and regulations have been

centralized with the purpose of enabling beekeeping activities throughout the State with as few restrictions as necessary to protect public health and safety. Specifically, P.L. 2015, c.76, N.J.S.A. 40:48-1.5 states in pertinent part:

a. Except as otherwise provided in subsections b. and c. of this section, **no municipality may:**

(1) adopt an ordinance, resolution, rule, or regulation concerning the breeding or keeping of honey bees or any activities related thereto, including, but not limited to, the use of honey bees for pollination, the reproduction and sale of honey bees, or the production of honey or other apiary products from such bees;.... (Emphasis added.)

The only institution authorized to enact rules concerning apiaries and beekeeping activities within our State is the New Jersey Department of Agriculture. See N.J.S.A. 4:6-24, 4:6-20. The Department's regulations establish statewide standards for apiaries and beekeeping activities. See N.J.A.C. 2:24-7. Apiary setback requirements are found in N.J.A.C. 2:24-7.2(d), and apiary flyway barrier requirements are found in 2:24-7.2(e). Those setback and flyway requirements were established to address health and safety considerations. See 51 N.J.R. 577(a) at 585, 592, 599. Accordingly, Ordinance #23-18 is not permitted by State law, and it conflicts with Department regulations.

The Department may delegate enforcement authority to a municipality if the municipality has adopted by reference the Department's regulations at N.J.A.C. 2:24 "Diseases of Bees and Beekeeping Activities." See N.J.S.A. 40:48-1.5(b). However, such delegation would not permit the Township to adopt an ordinance that varies from the standards set forth in N.J.A.C. 2:24-7, and the municipality's authority would be limited to monitoring and addressing certain violations, while the Department would maintain regulatory jurisdiction over apiary registration, and any denial or revocation of apiary registration. See N.J.A.C. 2:24-7.2. If Howell Township would like to be delegated such authority, the Department can assist you with the process. See N.J.A.C. 2:24-7.4.

For further context, please be advised that the Department amended the beekeeping regulations in 2019. Even though the Department had consulted with New Jersey beekeeping organizations as prescribed in N.J.S.A. 4:6-24(c), our initial proposals were met with strong opposition from the beekeeping community. The Department received public comments from roughly 1,000 or more separate individuals. See 50 N.J.R. 2355(a); 51 N.J.R. 577(a). Howell Township may face similar backlash if local beekeepers reach out to these organizations.

The Department must maintain its regulatory jurisdiction over beekeeping activities, and we believe this matter can be resolved amicably through prompt corrective action by the Township Council to rescind Ordinance #23-18. I ask that you **please provide a response by July 21, 2023**, acknowledging this letter and indicating whether steps are being taken to reconsider and rescind Ordinance #23-18. Feel free to contact me directly at Christopher.LaRegina@ag.nj.gov, or call my cell phone at (609) 775-5616 if you have any questions and would like to discuss the matter further before providing a written response. Director Joe Zoltowski and State Apiarist Meghan

McConnell are also available for consultation if you are interested in having enforcement authority delegated to the Township.

Sincerely,

Christopher LaRegina, Esq.

Chris LaRegina, Esq.
Legal Specialist, NJDA

Encl. P.L. 2015 c. 76; NJSA 40:48-15; NJSA 4:6-20; NJSA 4:6-24; NJAC 2:24-7.2, 7.4

cc: Diane Festino, Municipal Clerk (clerk@twp.howell.nj.us)
Joseph Clark, Township Manager (TwpManager@twp.howell.nj.us)
Caitlin Harney, Esq., Township Attorney (charney@twp.howell.nj.us)

Christina Rasiewicz, NJDA, Chief of Staff
Joseph Zoltowski, NJDA Director, Division of Plant Industry
Meghan McConnell, State Apiarist
Nathan Schatz, NJDA Legal Specialist