

SHELBY COUNTY, ILLINOIS

AMENDMENT TO
ZONING
ORDINANCE OF
SHELBY COUNTY, ILLINOIS 2023

No.23-05-“O”

ADOPTED:

Published in pamphlet form by
authority of The County Board of
Shelby County, Illinois,

this **12th** day of October, 2023

Prepared
for

The Shelby County Zoning Board
of Appeals

The County Board of Shelby County

AN ORDINANCE PROVIDING FOR THE PLACEMENT OF SOLAR ENERGY CONVERSION SYSTEMS

WHEREAS an application for amendment to the Zoning Ordinance of
Shelby County has been made by the Zoning Administrator and said application
was referred to the Shelby County Zoning Board of Appeals for public hearing at its
meeting on September 28th, 2023, recommended such amendments be approved
by the Shelby County Board; and

WHEREAS 55 ILCS 5-12, grants authority to County Boards to regulate and

restrict location and use of structures for the purpose of promoting the public health, safety, morals, comfort, and general welfare; and

WHEREAS, after due consideration, it is the determination of the Shelby County Board that such amendments be made to the Zoning Ordinance of Shelby County; and

WHEREAS, the Zoning Ordinance of Shelby County, No. 05-05 provides for the setting of certain fees to be charged by and paid to Shelby County for various zoning applications, permits and appeals; and

WHEREAS this ordinance shall be published in pamphlet form;

NOW, THEREFORE, BE IT ORDAINED by the Shelby County Board that the aforementioned Zoning Ordinance be amended as follows:

ARTICLE II Sub-Section 16 ½ SOLAR FARMS shall be replaced with the following

ARTICLE II §16 ½ . SOLAR ENERGY CONVERSION SYSTEMS STANDARDS

A. DEFINITIONS

1. **Abandonment** - When Deconstruction has not been completed within 12 months after the Solar Energy Facility reaches the end of its useful life. For purposes of this definition, a Solar Energy Facility shall be presumed to have reached the end of its useful life if the Solar Energy Facility Owner fails, for a period of 6 consecutive months, to pay the Landowner amounts owed in accordance with an Underlying Agreement.
2. **Aboveground Cable** - Electrical power lines installed above ground surface to be utilized for conveyance of power from the solar panels to the solar facility inverter and/or point of interconnection to utility grid or customer electric meter.
3. **Agricultural Impact Mitigation Agreement (AIMA)** - The Agreement between the Facility Owner and the Illinois Department of Agriculture (IDOA).
4. **Commercial Solar Energy Facility** - Means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices reside.
5. **Commercial Solar Energy Facility Owner** - Means a person or persons with a direct ownership interest in a commercial solar energy facility regardless of whether that person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility and/or the person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility regardless of whether the person will own or operate the facility.
6. **Construction** - The installation, preparation for installation and/or repair of a Solar Energy

Facility.

7. **County** - Shelby County, Illinois
8. **Deconstruction** - The removal of a Solar Energy Facility from the property of a Landowner and the restoration of that property as provided in the AIMA.
9. **Financial Assurance** - Means a financial security in the form of a surety bond (performance and payment bond), or a cash escrow account that names Shelby County as the beneficiary.
10. **Facility Owner** - Means a person or persons with a direct ownership interest in a solar energy facility regardless of whether that person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility and/or the person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility regardless of whether the person will own or operate the facility.
11. **Landowner** - Any person with an ownership interest in real property.
12. **Non-Participating Property** - Means real property that is not participating property.
13. **Occupied Building** - Means a residence or community building that is existing and occupied on the date that the application for a permit to develop a Solar Energy Conversion System is filed with the county; houses, schools, places of worship, day care facility, public library, community center, etc.
14. **Participating Property** – Means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of construction a Solar Energy Facility or supporting facilities. Also includes real property that is owned by an individual or a facility owner, for the purpose of constructing a Solar Energy Facility or any Solar Energy Conversion System.
15. **Private use** – A Solar Energy Conversion System that is to be constructed for the sole purpose of generating energy for the property it is constructed on.
16. **Professional Engineer** - An engineer licensed to practice engineering in the State of Illinois.
17. **Solar Energy Conversion System** – Means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity.
18. **Solar Energy Facility** - Means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity and not solely for consumption on the property on which the device or devices reside.
19. **Underlying Agreement** - The written agreement between the Facility Owner and the Landowner(s) including, but not limited to, an easement, option, lease, or license under the terms of which another person has constructed, constructs, or intends to construct a Facility on the property of the Landowner.

- 20. Underground Cable** - Electrical power lines installed below the ground surface to be utilized for conveyance of power within a Solar Energy Facility or from a Commercial Solar Energy Facility to the electric grid.

B. APPLICABILITY

1. No person shall construct or operate a ground mounted Solar Energy Conversion System without having fully complied with the provisions of this section.
2. Ground mounted Solar Energy Conversion Systems are only allowed pursuant to a Special Use Building Permit on Agriculturally zoned areas as determined by the Shelby County Zoning Administrator.

C. DESIGN STANDARDS FOR SOLAR ENERGY CONVERSION SYSTEMS

1. Solar Energy Facilities shall construct, decommission, and deconstruct facilities based on the regulations of the required Agricultural Impact Mitigation Agreement through the Illinois Department of Agriculture.
2. All Solar Energy Conversion Systems shall adhere to the following setbacks.
 - a. No less than 50 feet to the nearest point on the property line of nonparticipating property.
 - b. No less than 150 feet from the nearest point on the outside wall of any Occupied Community Buildings and Dwellings on Nonparticipating Properties.
 - c. No less than 50 feet from the nearest edge of any Public Road Right-of-Way.
 - d. No less than 150 feet from any underground pipeline or supporting facility.
3. Any Solar Energy Conversion System shall not produce noise pollution greater than the standards set by the Illinois Pollution Control Board.
4. Any Solar Energy Conversion System shall be enclosed by fencing having a height of at least 6 feet and no more than 25 feet.
5. Any Solar Energy Conversion System shall demonstrate avoidance of protected lands as identified by the Illinois Department of Natural Resources and the Illinois Nature Preserve Commission.
6. Wherever applicable, DC power lines shall be buried beneath the ground in accordance with the Agricultural Impact Mitigation Agreement.

D. PERMITTING PROCESS

1. Anyone wishing to construct, modify, move, or replace a solar energy conversion system or any of its components shall obtain a special use building permit before commencing such work.
2. Applications for a special use building permit for a private use Solar Energy Conversion System may be granted by the Zoning Administrator.
3. All applications for a special use building permit for a Solar Energy Facility shall be referred to the Shelby County Planning Commission for a public hearing and;
 - a. Notice of the hearing shall be given by the applicant or Facility Owner to all property owners within 250 feet of the proposed project by certified mail with return receipt no less than 15 days before the hearing.
 - b. Notice shall be published in a paper of general circulation in Shelby County no less than 15 days before the hearing.
 - c. The Shelby County Planning Commission, after reviewing the proposed project, shall either recommend approval, approval with modifications or denial to the Shelby County Board. The County Board, at their next regularly scheduled meeting, shall approve, approve with modifications, or deny the proposed project.

E. APPLICATION REQUIREMENTS

1. The following information shall be provided with all applications for a special use building permit for ground mounted Solar Energy Conversion Systems.
 - a. Project summary, including, to the extent available: The general location of the project including location, quantity, and spacing of solar panels.
 - b. Existing property lines, and property lines extending 150 feet from the exterior boundaries, including the names of adjacent property owners.
 - c. The maximum generation capacity.
 - d. Maximum height.
 - e. Public, private, and proposed access roads, showing widths of the roads and any associated easements.
 - f. Existing buildings and any impervious surfaces.

- g.** Waterways, watercourses, lakes, and public water wetlands including any delineated wetland boundaries.
 - h.** Planned location of underground and/or overhead electric lines connecting the solar farm to a building, substation, or other electric load.
 - i.** The manufacturer of the Solar Energy Conversion System and contact information.
 - j.** A description of the method of connecting the solar array to a building or substation.
 - k.** Location of any underground Pipelines within 500 feet of the facility.
- 2.** All Applications for a special use permit for a Solar Energy Facility shall also provide the following.
- a.** A copy of the underlying agreement with the landowner.
 - b.** Proof of all applicable state and federal regulatory standards including the Uniform Building Code as adopted by the State of Illinois, The Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture, the National Electrical Code as adopted by the State of Illinois, The National Electrical Safety Code, Illinois Commerce Commission, Federal Energy Regulatory Commission, EPA regulations (noise, hazardous waste, construction, storm water; etc.) and any other statutory or regulatory requirements.
 - c.** All contact information including name, phone number, and address of the Facility Owner, current property owner, lessor, lessee, the interconnecting utility company, and buyer of the power, if applicable and if this information can be disclosed publicly.
 - d.** A Commercial Solar Energy Facility Owner shall provide proof of a Vegetative Management Plan that, for the life of the facility, establishes and maintains vegetative ground cover consistent with the goals of the Pollinator-Friendly Solar Site Act.
 - e.** A Commercial Solar Energy Facility Owner shall provide evidence of entering into an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture.
 - f.** A Commercial Solar Energy Facility Owner shall provide results of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.
 - g.** A Commercial Solar Energy Facility Owner shall provide results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review.
 - h.** A Commercial Solar Energy Facility Owner shall provide results and

recommendations from consultation with the Illinois Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.

- i. Any Solar Energy Facility shall produce proof of entering into a road use agreement with the Shelby County Highway Department and the road district with which the proposed facility will reside.

F. OPERATIONS

1. Interference

- a. If, after construction of the SECS, the Owner or Operator receives a written complaint related to interference with local broadcast residential television via public broadcast and or dish, RTK Ag Correction Signal, Machine to Machine sync communication, wireless data transfer communication, phone, internet, business ban radio, the Owner or Operator shall rectify the issue within 30 days.

2. Coordination with Local Fire Department

- a. A Facility Owner shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), and any amendments to such documents, for a Solar Energy Facility so that emergency management services that have clear jurisdiction control over each site may evaluate and coordinate their emergency response plans with the Facility Owner of the Solar Energy Facility
- b. The Facility Owner shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24-hour contact information including names, titles, email addresses, and phone numbers for the Facility Owner and/or Operator.
- c. The Facility Owner, at its expense, shall be responsible for any interference caused by the Solar Energy Facility on any applicable Emergency Response entity. Such interference shall be cause for immediate shutdown of the facility until the source of interference can be removed, altered, or replaced.
- d. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire / emergency laws and regulations.

G. PROCEDURES

1. **Financial Assurance.** The Facility Owner shall provide the County with Financial Assurance to cover the estimated costs of Deconstruction of the Solar Energy Facility. Provision of this Financial Assurance shall be phased in over the first 11 years of the Project's operation as follows:

- a. On or before the first anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover ten (10) percent of the estimated costs of Deconstruction of the Facility as determined in the Deconstruction Plan.
- b. On or before the sixth anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover fifty (50) percent of the estimated costs of Deconstruction of the Facility as determined in the Deconstruction Plan.
- c. On or before the eleventh anniversary of the Commercial Operation Date, the Facility Owner shall provide the County with Financial Assurance to cover one hundred (100) percent of the estimated costs of Deconstruction of the Facility as determined in the updated Deconstruction Plan provided during the tenth year of commercial operation.
- d. Financial Assurance shall not release the surety from liability until the Financial Assurance is replaced. The salvage value of the Solar Energy Facility may only be used to reduce the estimated costs of Deconstruction if the Shelby County Board agrees that all interests in the salvage value are subordinate or have been subordinated to that of Shelby County if Abandonment occurs.

2. Arbitration

- a. In the event a dispute arises as to satisfaction of the forgoing conditions to this special ordinance, such dispute may be resolved judicially or may at the request of the petitioner, county, or the aggrieved party, be resolved pursuant to binding arbitration in accordance with the procedures of the American Arbitration Association by an independent arbitrator acceptable to petitioner and the County or aggrieved party, as applicable. If petitioner and the County or the aggrieved party, as applicable, are unable to agree on an arbitrator, then each such party shall choose an independent arbitrator and their respective choices shall then choose an arbitrator. This condition shall not bind an aggrieved party, other than the County or petitioner, to submit to arbitration. The applicant is responsible for any and all arbitration costs and expenses.

3. Violations

- a. Any person, firm, corporation, agent, employee, or contractor of such, who violates, disobeys, omits, neglects, or refuses to comply with, or who resists enforcement of any provision of this Ordinance shall be in violation, and shall be subject to a fine of not more than five hundred dollars (\$500.00) for each offense. Each week a violation continues to exist shall constitute a separate offense. The Shelby County Zoning Administrator shall be responsible for the administration and enforcement of the regulations of this Ordinance. The Shelby County State's Attorney shall prosecute violations of this Ordinance for the County.

4. Public Participation

- a. Nothing in this Ordinance is meant to augment or diminish existing opportunities for public participation.

5. Severability

- a. If any section, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the remaining portions of this Ordinance.

6. Indemnification

- a. The Applicant or Facility Owner shall defend, indemnify, and hold harmless the County and its officers, appointed and elected officials, employees, attorneys, engineers, and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including reasonable attorney's fees, relating to or arising out of the special use permit application process and public hearing for the application, the issuance of the Special Use Permit, and the construction, operation, maintenance and removal of the Solar Energy Conversion System/s and affiliated equipment. This includes, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract, tort, or any violations of local, state, or federal law, including the Illinois Constitution and the United States Constitution (including without limitation strict liability or negligence) or any acts or omissions of the Applicant, Facility Owner, or the Operator under this Ordinance or the Special Use Permit. This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law.

7. Re-imbursement

- a. The Applicant, Facility Owner, or Operators shall reimburse the County for any and all reasonable engineering fees incurred if the County, in its sole discretion, deems it necessary to hire an outside engineering consulting firm to work on any or all parts of the Solar Energy Conversion System/s Application Process and for the lifetime of the facility.

8. Delegation

- a. Notwithstanding any other provision in this Zoning Code, the Chairman of the Zoning Board of Appeals, in his sole discretion, is authorized to delegate to a third party (the "Presiding Officer") the Chairman's authority to preside over the public hearing on an application for a special use permit to site a Solar Energy Conversion System for the purpose of ensuring an orderly public hearing consistent with Illinois statutes and Constitution, Shelby County ordinances, and the Articles of Rules and Procedure of

the ZBA, and to rule on evidentiary and procedural disputes in the public hearing. The Presiding Officer must be an attorney in good standing with the Illinois bar. The Presiding Officer does not have any power to vote or deliberate on the pending application for special use permit, or to otherwise contribute to the Advisory Report of the Zoning Board of Appeals, such authority being expressly reserved to the ZBA. Applicant, Owner, or Operator shall pay the fees of the Presiding Officer and shall deposit a retainer with the Presiding Officer as a condition to the public hearing commencing, unless other terms are agreed upon in writing between the Presiding Officer and the Applicant, Facility Owner, or Operator.

9. Remedies

- a.** The Applicant's, Facility Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under the Ordinance.
- b.** Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the Owner, Facility Owner, and Operator, setting forth the alleged default(s). Such written notice shall provide a time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).
- c.** If the County determines in its sole discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the County shall have the right to rescind the permit for the Solar Energy Conversion System, take the actions allowed in the County Ordinance or take any other action permitted by law or in equity.

10. Fees

- a.** A fee may be assessed and collected for a special use building permit for the placement of a ground mounted Solar Energy Conversion System dependent on energy production.

- 0-50 Kw \$125.00
- 51-250 Kw \$500.00
- 251-500 Kw \$1000.00
- 501kw-999Kw \$2500.00
- 1Mw-2Mw \$5000.00 plus \$500 for each additional 100 kw or \$5000 per MW

11. Self-Executing Moratoriums

If Illinois Public Act 102-1123 or the Illinois State Statutes 55 ILCS 5/5 12020 are deemed invalid by any Illinois Appellate Court, an automatic moratorium for Solar Energy Facilities shall be enacted for Shelby County until:

- a.** An appeal to the Illinois Supreme Court regarding Public Act 102-1123 or the Illinois State Statutes 55 ILCS 5/5 12020 has been successful.
- b.** The Shelby County Board removes the moratorium by a majority vote.

If Illinois Public Act 102-1123 or the Illinois State Statutes 55 ILCS 5/5 12020 are deemed invalid by the Illinois Supreme Court or removed, the County Board of Shelby County shall have authority to reject applications for Solar Energy Facilities.