

GARRARD COUNTY FISCAL COURT

ORDINANCE NO. ~~23 ORD-002~~ 0-12-11-23-1

0-12-27-23-2

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**AN ORDINANCE RELATING TO SOLAR ENERGY SYSTEMS
IN GARRARD COUNTY AND THEIR REGULATION AS TO
LOCATION AND AFFECT ON AGRICULTURE, SINGLE
FAMILY HOMES, NEIGHBORHOODS, COMMERCIAL
ACTIVITIES AND PROPERTY VALUES**

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Section 1. Purpose and Objectives

The purpose of this ordinance is to provide a means to approve or deny solar energy system (SES) projects and, if approved, to regulate their siting, development, construction, installation, extension, variance, and decommissioning in Garrard County, Kentucky.

The Garrard County Fiscal Court (hereinafter "the Fiscal Court") shall consider applications to develop solar energy systems that promote employment and economic development in Garrard County. It is the intent of this ordinance to maintain Garrard County's agricultural and rural character consistent with growth and development that protects and enhances this character. The Fiscal Court shall not approve any SES that significantly inhibits or disturbs this character or unreasonably diminishes the value of real property, including farmland, residential neighborhoods, single family homes outside neighborhoods, and commercial or industrial properties proximate or adjacent to any proposed SES. Any siting of an SES in Garrard County shall avoid all unreasonable adverse impacts to agricultural land, wildlife and its habitat, forests, wetlands, and historic sites. No SES considered under this ordinance shall include any prime farmland or farmland of statewide importance as defined herein.

Unless otherwise provided in this ordinance, the Fiscal Court shall have sole jurisdiction regarding the siting, development, construction, installation, extension, variance, and decommissioning of solar energy systems (SESs) in Garrard County, Kentucky.

Section 2. Definitions

The following definitions apply to this ordinance:

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Solar Energy System (SES) means a device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

Integrated Solar Energy System means an SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building façade, skylight, shingles, canopy, light, or parking meter.

Rooftop Solar Energy System means an SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.

Ground Mounted Solar Energy System means an SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:

- *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a Footprint of less than 2,500 square feet
- *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a Footprint from 2,500 square feet up to ten (10) acres.
- *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a Footprint greater than ten (10) acres.

Exempt Solar Energy System (Exempt SES) means a SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, same which is exempt from County planning and zoning requirements under KRS 100.324 and this Ordinance.

Farmland of Statewide Importance means a map unit identified by the Natural Resources Conservation Service as including soils that nearly meet the requirements for

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prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods.

Footprint of the SES is calculated by drawing a perimeter around the outermost SES panels and any equipment necessary for the equipment to function, such as transformers and inverters. The footprint does not include perimeter fencing or visual buffers, nor transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

Prime Farmland means a map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture as having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses.

Siting Board Regulated SES means a SES that constitutes a “merchant electric siting facility” under KRS 278.700(2), the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

Section 3. Applicability

(a) This ordinance applies to the siting, construction, installation, and decommissioning of any new SES within the jurisdiction of the Garrard County Fiscal Court after the effective date of this ordinance.

(b) An SES in operation, or which has begun physical construction prior to adoption of this ordinance, shall be considered to have legal nonconforming status in accordance with KRS 100.253.

(c) All modifications which increase the Footprint (regardless of size) of any SESs are subject to this ordinance:

1. Except *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a Footprint of less than 2,500 square feet and which shall not increase its Footprint more than 5 percent without Fiscal Court approval.

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2. Except routine maintenance and repair, including replacement of solar panels that do not increase the SES Footprint.

(d) Any Exempt SES shall provide the Court with information concerning service facilities which have been located on or relocated to other private property in accordance with KRS 100.324 (3).

(e) All SESs shall comply with all applicable federal, state, and local laws, regulations, and permitting and other requirements, and applicable building, fire, electrical, and plumbing codes.

Section 4. Conditional Use Permit Requirements and Allowed Uses

P: The SES is a use that is allowed in Garrard County without the necessity of obtaining a zoning permit or prior planning approval, provided that the applicable requirements below are met. A variance from any of the standards applicable to a SES may be obtained through the Fiscal Court.

CUP: Conditional Use Permit required. The SES is allowed Garrard County subject to the requirements set forth below and only if the applicant first obtains a Conditional Use Permit in accordance with the Fiscal Court.

Accessory Use	Residential	Commercial	Industrial	Agricultural
<i>Integrated SES</i>	P	P	P	P
<i>Rooftop SES</i>	P	P	P	P
<i>Ground Mounted SES</i>				
<i>Small Scale*</i>	P	P	P	P
<i>Intermediate Scale</i>	CUP	P	P	CUP
<i>Large Scale</i>	CUP	CUP	CUP	CUP
Primary Use	Residential	Commercial	Industrial	Agricultural
<i>Integrated SES</i>	-	-	-	-
<i>Rooftop SES</i>	-	-	-	-
<i>Ground Mounted SES</i>				
<i>Small Scale</i>	P	P	P	P
<i>Intermediate Scale</i>	CUP	P	P	CUP
<i>Large Scale</i>	CUP	CUP	CUP	CUP

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*A Small-Scale Ground Mounted SES qualifies as an accessory use only if its area is less than 50% of the footprint of the primary structure.

Section 5. General Requirements Applicable to Integrated and Rooftop Solar Energy Systems.

(a) **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for an Integrated or Rooftop SES. Such easement shall be recorded in the Garrard County Clerk's Office with copy provided to the Garrard Judge-Executive's Office.

(b) **Tree Removal.** The removal of trees or natural vegetation for an Integrated or Rooftop SES shall be limited to the extent practicable and shall comply with all the requirements of the [city/county] zoning code regarding tree removal, and any applicable state or federal requirements.

(c) **Height Restrictions.** A rooftop SES shall be positioned on the roof so as not to extend above or beyond the edge of any ridge, hip, valley, or eave, provided that where it is mounted on a sloped roof, the SES shall not vertically exceed the highest point of the roof to which it is attached by more than five (5) feet.

(d) **Lighting.** Integrated and Rooftop SESs shall not be illuminated and shall be designed and installed to prevent off-site glare.

(e) **Historic Preservation.** Where an integrated or rooftop SES is proposed to be installed on a property located within a historic area or which is listed on or eligible for listing on the National Register of Historic Places, the proposed installation shall be coordinated with any review required by local or state regulations for exterior renovations or additions to such structures.

Section 6. General Requirements Applicable to Ground Mounted SESs

(a) **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for a Ground Mounted SES. Such easement shall be recorded in the Garrard County Clerk's Office with copy to the Garrard County Judge-Executive's Office.

(b) **Tree Removal.** The removal of trees or natural vegetation for a Ground Mounted SES shall comply with all local or other regulations regarding tree removal and mitigation related to trees and branches.

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(c) Lighting. Lighting of a Ground Mounted SES shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporating full cut-off features, and incorporating motion sensors where feasible. Lighting shall be designed to avoid light trespass. Nothing in this Ordinance is intended to preclude installation of lighting required by the Federal Aviation Administration.

(d) Height Restrictions for Ground Mounted SES. A Ground Mounted SES shall not exceed twenty (20) feet in height as measured from the highest natural grade below each solar panel without approval by the Garrard County Fiscal Court. The height restriction excludes utility poles, storage batteries, substation structures, and antennas constructed for the project. A Ground Mounted SES may exceed twenty (20) feet in height upon a finding that the SES would be more productive, use less land, or provide other environmental, economic, or other benefits if the height limitation is increased.

(e) Siting Restrictions for Ground Mounted SES

1. An Intermediate SES, measured from the closer of the outer edge of the nearest panel or perimeter fencing, shall be located at least one hundred (100) feet from the property line of any residential or agricultural property, at least one hundred (100) feet from the property line of commercial, business, industrial, office, or institutional use, and at least one hundred (100) feet from the centerline of any public road.
2. A Large-Scale Ground Mounted SES, measured from the closer of the outer edge of the nearest panel or perimeter fencing, shall be located at least one hundred (100) feet from the property line of any residential or agricultural property, and at least one hundred (100) feet from the property line of commercial, business, industrial, office, or institutional properties, and at least one hundred (100) feet from the centerline of any public road.
3. Setback provisions cannot be waived by adjacent property owners to whom the property line or residence setback is applicable.
4. Setbacks are required even where a property line is shared by two or more participating landowners.
5. Setback requirements may not be waived or reduced regardless of existing or proposed visual screening.
6. Setback requirements may be expanded by the Fiscal Court, as a condition of

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approval for a Conditional Use Permit, where deemed necessary to assure effective screening.

(f) Screening. Ground Mounted SESs shall be effectively screened from properties zoned for residential use other than that on which the SES is to be constructed.

1. Ground Mounted SESs approved as a conditional use shall have or install a visual buffer of natural vegetation, plantings, earth berms, and/or fencing that will provide an effective visual and lighting screen between the SES and properties zoned for residential use, unless waived by the Fiscal Court. Existing buffers along an SES perimeter shall be preserved when reasonably practicable.

(g) Protection of Farmland and Revegetation Of Disturbed Areas

1. Any compaction of soils associated with the location of roads and staging areas for Intermediate and Large-Scale Ground Mounted SES on agricultural land shall be minimized to the extent possible and all soils shall be de-compacted as part of the decommissioning process and restored to their original natural contours.

2. Upon completion of construction and installation of the Ground Mounted SES, all temporary roads constructed by the applicant shall be removed, and all disturbed areas shall be graded and reseeded with native vegetation in order to establish an effective ground cover and to minimize erosion and sedimentation.

(h) Signage. A Ground Mounted SES shall include such signage as is required by law to provide safety information, and other signage as may be allowed under this Ordinance.

(i) Decommissioning. Other than as specifically approved by the Fiscal Court or other authority having jurisdiction, upon application and notice, decommissioning shall begin no later than twelve (12) months after a Ground Mounted SES has ceased to generate electricity or thermal energy:

1. If the Ground Mounted SES was a permitted use without a conditional use permit, all structures and facilities associated with the SES shall be removed within six (6) months of the beginning of decommissioning. All materials shall be recycled or otherwise reused to the extent reasonably practicable and the disturbed areas shall be reclaimed, revegetated, and restored consistent Section 6 (h)(1) above. All contaminated materials of any type shall be disposed consistent with applicable industry standards and applicable local, state, and federal

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regulations relating to such materials. Under no condition shall such contaminated materials be disposed on-site or burned on-site.

2. If the Ground Mounted SES was allowed under a conditional use permit, the SES shall be decommissioned according to the terms of this ordinance and with reference to 6 (j) (1) above.

Section 7. Conditional Use Permit Application Requirements

(a) Applications for an SES requiring a conditional use permit shall include the following information:

1. Name, address, telephone number, and email address (if available) of the applicant, the project owner, and the project operator.
2. The address of the property on which the SES will be located and the property owner's name, address, telephone number, and email address if available.
3. Documentation, such as a deed, lease, or other agreement with the landowner, demonstrating the applicant's right to use and control the property.
4. A topographic map that depicts vegetative cover, watersheds, floodplains, and other geographic information about the property and surrounding area.
5. A description in writing of the project, including the maximum number of modules, mounting type (fixed-tilt or tracking), system height, system capacity, total land area covered by the system, and information about all associated structures or facilities such as transformers, substations, feeder lines, and battery storage.
6. An illustrative (i.e., a plat) site plan including property lines, zoning classification of the property and all adjacent properties, existing buildings and proposed structures, the proposed location of the solar equipment, transmission lines, any associated structures and facilities, and substations. The illustrative site plan shall also identify existing and proposed temporary or permanent roads, drives, and parking, fencing or other methods to ensure public safety, and a visual buffer plan demonstrating how proposed visual buffers will effectively screen the proposed SES from adjacent properties zoned for residential use. A map from the Natural Resources Conservation Service identifying prime farmland and farmland of statewide importance (if in a district zoned as agricultural), documentation from the U.S. Fish and Wildlife Service regarding the presence of any identified critical habitat for rare or endangered federal or state species. The application shall also contain a Federal Emergency

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Management Agency map delineating floodplains, shall include evidence of any water quality or stormwater permit needed for the project, and shall contain a letter from the State Historic Preservation Office regarding known archaeological or cultural resources listed or eligible for listing on the National Register.

7. Information demonstrating that approval of the SES will not result in any disproportionate individual or cumulative burden on any neighborhood or area regardless of income level or property values.

8. A decommissioning plan prepared by a registered professional engineer, and updated every ten (10) years, containing the following:

a. The anticipated life of the project and defined conditions upon which decommissioning will be initiated.

b. The estimated decommissioning cost, including removal of the SES and related foundations, pads, underground collector lines and roads, and the salvage value of any equipment in current dollars and the calculations supporting the decommissioning estimate. The estimated salvage value of the material using current, publicly available material indices and/or firm quotes from a decommissioning or recycling company experienced in the decommissioning of SES, shall be provided. The Court or other authority having jurisdiction shall consider the salvage value identified in computing the amount, if any, of financial assurance required under subsection e. below.

c. The manner in which the project will be decommissioned, including provision and a timetable for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original natural contours and original condition or a condition compatible with the zoning of the parcel(s);

d. The party responsible for decommissioning.

e. A performance bond, letter of credit, or other financial assurance payable to the Fiscal Court, sufficient to cover the net costs identified in subsection 8b. and to assure that decommissioning of the site can be achieved by a third party in the event that a permittee defaults in that obligation, Said financial assurance shall be provided prior to commencement of construction.

f. A copy of any agreement with the landowner regarding decommissioning the SES site, a copy of which shall be filed with the Garrard County Clerk's Office and the Garrard Judge-Executive's Office.

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- g. Proof of adequate casualty and liability insurance covering installation and operation of the SES.
 - h. A description of the measures that will be taken to minimize erosion and sedimentation, and to promptly stabilize and revegetate disturbed areas with native vegetation.
 - i. Where the applicant for a Conditional Use Permit is also seeking a construction certification pursuant to KRS 278.700 – 278.716, the applicant may submit a copy of a complete state siting board application and site assessment report meeting the requirements of KRS 278.706 and 278.7008 in lieu of the above requirements of Section 7(a)1-7.
 - j. A conditional use permit issued by the Fiscal Court or other authority having jurisdiction shall include, at a minimum, all applicable requirements of Sections 6 and 7 of this Ordinance, and any additional conditions deemed by the Fiscal Court necessary or appropriate pursuant to KRS 100.237 to allow the proper integration of the proposed SES into the location in which it is proposed.
9. A performance bond, letter of credit, or other financial assurance payable to the Court and/or landowner/s is required for approval of a SES. Said bond or other financial assurance shall be sufficient to defray the costs of completion of the SES or to defray the costs of site clean-up in the event the SES is not completed consistent with its site plan.
10. A copy of the approved illustrative site plan (i.e., plat) shall be filed in the Garrard County Clerk's Office with a copy to the Garrard County Judge-Executive's Office.

Section 8. Implementation of Changes; Severability; Conflicts

- (a) **Implementation of Changes.** The Fiscal court may promulgate rules and regulations and/or amendments to this Ordinance in its discretion in order to ensure its proper implementation.
- (b) **Severability.** If any section of this Ordinance, including but not limited to, any section subsection. paragraph, sentence, clause, phrase, or any other portion of this Ordinance, is declared illegal or unconstitutional, or otherwise invalid by a Court of competent jurisdiction such declaration shall not affect the remaining portions hereof.
- (c) **Conflicts.** Any other County Ordinance or Ordinances in conflict with this Solar Energy Ordinance are hereby repealed but only to the extent of such conflict.

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Section 9. Public Notice and Public Comment

Public notice of an application for a Conditional Use Permit for a Ground-Mounted SES shall conform to the public notice requirements generally applicable to conditional use permit applications. The public notice and hearing requirements of this Chapter shall be in addition to and independent of any local hearing conducted pursuant to KRS 278.712.

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This Ordinance is ADOPTED pursuant to KRS 67.077 in that it was published in summary form on the 11th day of December, 2023, and was introduced and read on the day of December, 2023 and was given final reading on the 27th day of December, 2023, and said ordinance shall be in full force and effect upon signature, recordation, and publication in summary pursuant to KRS Chapter 424 and KRS 67.077 Subsection 3.

APPROVED this 27th day of December 2023.

By Chris Elleman
CHRIS ELLEMAN
Garrard County Judge-Executive

ATTEST:

By Kevin Montgomery
KEVIN C. MONTGOMERY
Garrard County Clerk

DATE: 12-11-2023

FIRST READING

DATE: 12-11-2023

SECOND READING

DATE: 12-27-2023