

Proposed Amendment to the City of Oak Grove, Kentucky Zoning Ordinance

Amend Article 2, Section 2.1 Definition of “UTILITY, MAJOR”:

UTILITY, MAJOR – Facilities, structures, and other uses that are necessary for the generation, transmission, and/or distribution of essential services to support development, such as electrical generating facilities and substations including solar farms and wind turbines, electrical and telephone switching stations, sewage collection and disposal facilities, water plants, water storage tanks, and similar uses. This term does not include Solar Energy Systems as are further defined herein.

Amend Article 2, Section 2.1 to add the following definitions:

SOLAR ENERGY SYSTEM (SES). 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:

- (1) **INTEGRATED SOLAR ENERGY SYSTEM (INTEGRATED SES).** 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.
- (2) **ROOFTOP SOLAR ENERGY SYSTEM (ROOFTOP SES).** An SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.
- (3) **GROUND MOUNTED SOLAR ENERGY SYSTEM. (GROUND MOUNTED SES).** An SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:
 - (a) *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a footprint of 2,500 square feet or less.
 - (b) *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a footprint of between 2,500 square feet and ten (10) acres.
 - (c) *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a footprint of ten (10) acres or greater.

DECOMMISSIONING PLAN FOR GROUND MOUNTED SES. A plan prepared by a licensed engineer that establishes the party responsible for the decommissioning, the anticipated

life of the project, the estimated cost for removal of the SES facility, the costs for restoring the land to its original condition, and all other plan information required by Article 5 of this Ordinance.

EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES). An 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, which is exempt from planning and zoning requirements under KRS 100.324.

PHYSICAL CONSTRUCTION (SES FACILITY). The excavation or movement of earth, erection of forms or structures, or similar activities undertaken in the construction of an SES facility. This term does not include any activity or construction undertaken prior to the issuance of a building/zoning permit pursuant to this Ordinance and the issuance of all required approvals and permits, if any, as required under KRS 278 and other applicable state statutes.

SES FOOTPRINT. An area 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.

SITING BOARD REGULATED SES. An SES that constitutes a “merchant electric generating 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.

Amend Article 5, Section 5.29 Industrial and Utility Uses, Subsection 5.29.14 as follows:

§5.29.14 ~~[Reserved]~~. Solar Energy Systems may be permitted subject to the following standards:

- (a) *Purpose.* The purpose of this subsection is to facilitate the siting, development, construction, installation, and decommissioning of solar energy systems (SESs) in the City of Oak Grove in a predictable manner that promotes and protects the safety, health, and welfare of the community. This subsection encourages the appropriate siting of SESs to bolster local economic development and job creation, diversify the state’s energy portfolio, strengthen energy and grid security, and reduce other environmental impacts. This subsection also establishes standards and requirements to ensure that the use and enjoyment of lands located adjacent to and in the proximity of SESs are fully protected.

The requirements of this subsection are intended to be supplemental to any safety, health, or environmental requirements of federal, state, or local laws and regulations.

(b) Applicability. This subsection applies to the siting, construction, installation, and decommissioning of any new SES within the City of Oak Grove on or after the effective date of these provisions. An SES in operation, or which has begun physical construction prior to this subsection's effective date, shall be considered to have legal nonconforming status in accordance with KRS 100.253 and Article 8 of this Ordinance. In addition to the exemptions provided by Article 8, the provisions of this subsection do not apply to the following:

- (1) The routine maintenance and repair, including replacement of solar panels, not increasing the SES Footprint; and
- (2) Any SES exempted by the provisions of KRS 100.324. Any Exempt SES shall provide the Planning Commission information concerning service facilities which have been located on and relocated on private property in accordance with KRS 100.324(3).

Notwithstanding the exemptions provided by this subsection, an SES shall comply with all applicable federal, state, and local laws, regulations, and permitting and other requirements, and applicable building, fire, electrical, and plumbing codes.

(c) Permit Required. A building/zoning permit is required prior to the physical construction of a Solar Energy System in the City of Oak Grove. Prior to the issuance of a building/zoning permit, Ground Mounted SESs are subject to the site plan review requirements of Sections 3.22 through 3.30 and, where applicable, the conditional use permit requirements of Sections 3.40 through 3.48 of this Ordinance.

(d) General Requirements Applicable to Integrated and Rooftop Solar Energy Systems. Integrated SESs and Rooftop SESs are permitted in all districts and on all lands within the City of Oak Grove subject to the following requirements:

- (1) 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. Where obtained, such easements shall be platted and recorded.
- (2) Tree Removal. The removal of trees or natural vegetation for an Integrated or Rooftop SES and solar easements shall not conflict with the provisions of Article 6, Division IV of this Ordinance.
- (3) Height Restrictions. A rooftop SES shall conform to the height restrictions of the applicable zoning district. 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.
- (4) Lighting. Integrated and Rooftop SESs shall not be illuminated and shall be designed and installed to prevent off-site glare.

(e) General Requirements Applicable to Ground Mounted SESs. Ground mounted SESs are permitted in accordance with the provisions of this subsection and the provisions of Section 5.2 of this Ordinance.

- (1) 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. Where obtained, such easement shall be platted and recorded.
- (2) Tree Removal. The removal of trees or natural vegetation for a Ground Mounted SES and solar easements shall not conflict with the provisions of Article 6, Division IV of this Ordinance nor the provisions of this subsection.
- (3) Lighting. Lighting of a Ground Mounted SES shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible. Lighting shall be designed to avoid light trespass. Nothing in this subsection is intended to preclude installation of lighting required by the Federal Aviation Administration.
- (4) Height Requirements 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. The height restriction excludes utility poles, storage batteries, substation structures, and antennas constructed for the project.
- (5) Siting Restrictions for Ground Mounted SES.
 - a. Small Scale Ground Mounted Energy Systems as measured from the outer edge of the nearest panel are not permitted in a required front yard and shall be setback a minimum of thirty (30) feet from any lot line.
 - b. An Intermediate Scale SES, measured from the closest outer edge of the nearest panel or perimeter fencing, shall be located:
 - 1) At least one-hundred (100) feet from the nearest lot line of any property zoned R-1, R-1A, R-2, R-3, RMH-1, RMH-2, or B-1;
 - 2) At least one-hundred (100) feet from the nearest lot line of any property containing a residential use (excluding residential uses located on the same lot as the SES);
 - 3) At least fifty (50) feet from the right-of-way boundary of any public road; and
 - 4) Where not addressed by parts 1), 2), and 3) above, at least thirty (30) feet from any lot line.
 - c. A Large Scale SES, measured from the closest outer edge of the nearest panel or perimeter fencing, shall be located:
 - 1) At least one-thousand (1,000) feet from any lot line;
 - 2) At least two-thousand (2,000) feet from the nearest lot line of any property zoned R-1, R-1A, R-2, R-3, RMH-1, RMH-2, or B-1; and
 - 3) At least two-thousand (2,000) feet from the nearest lot line of any property containing a residential use or quasi-public use.
 - d. Setback requirements may be expanded by the Board of Zoning Adjustment as a condition of approval of a conditional use permit, where deemed necessary to ensure effective screening or separation between uses.
 - e. Setbacks are not required for property lines contained within an SES Footprint where the property line is shared by two (2) or more participating landowners.
 - f. A variance from the setbacks required by parts a, b, or c of this subsection may be granted by the Board of Zoning Adjustment pursuant to Article 3, Division V or, in the case of zoning map amendment, by the Planning Commission pursuant to Section 9.5 of this Ordinance.

- (6) Screening. Excluding Small Scale Ground Mounted Energy Systems, perimeter screening shall be provided. Screening shall:
- a. Consist of an eight (8) foot tall fence and a double row of staggered evergreen trees (minimum five (5) feet in height at planting and maturing to a minimum of fifteen (15) feet in height);
 - b. Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
 - c. Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
 - d. Screening shall be installed within one hundred eighty (180) days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
 - e. All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.

Exception: Unless required as part of a conditional use permit, the planting provisions of this part do not apply along a property line or SES footprint boundary in the following instances:

- a. Existing tree lines or plantings are retained on the site which achieve the opacity and minimum planting height as specified above; or
 - b. The SES development involves the use of berms or natural grade of a height comparable to vegetative screening and effectively obscures visibility from an adjoining property or public rights-of-way.
- (7) Signage. A Ground Mounted SES may include such signage as is required by law to provide safety information, and other signage as may be allowed under this Ordinance.
- (8) Decommissioning. Other than as specifically approved by the Board of Zoning Adjustment, decommissioning shall begin no later than twelve (12) months after a Ground Mounted SES has ceased to generate electricity or thermal energy. 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.
- (9) Application Required; Supplemental Information and Exhibits. In addition to the application requirements of Article 3, Division II (Building/Zoning Permits) and Article 3, Division IV (Conditional Use Permits), an application to establish or enlarge an Intermediate or Large Scale SES shall include:
- a. Documentation, such as a deed, lease, or other agreement with the landowner, demonstrating the applicant's right to use and control the property;
 - b. A description 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 on all associated structures and facilities, and substations. The 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 buffers will effectively screen the proposed SES from adjacent properties and public rights-of-way;

- c. For projects with an SES Footprint located within five hundred (500) feet of an airport property or within an airport's approach zones or airport imaginary surfaces as defined by the United States Code of Federal Regulations or within one thousand (1,000) feet of an Accident Potential Zone (APZ I or APZ II), the applicant must complete and provide the results of a glare analysis through a qualitative analysis of potential impact, field test demonstration, or geometric analysis of ocular impact in consultation with the Federal Aviation Administration Office of Airports, the Kentucky Airport Zoning Commission, the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse, and the United States Army, Fort Campbell Directorate of Public Works;
- d. Proof of adequate casualty and liability insurance covering installation and operation of the SES. The owner or operator shall maintain a current general liability policy covering bodily injury and property damage and shall be required to name the City of Oak Grove as an additional insured with a dollar amount limit not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably available and which is mutually suitable to the applicant or successor and the city;
- e. In addition to the exhibits required by the City of Oak Grove's Erosion Prevention and Sediment Control and Stormwater Management ordinances, 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;
- f. A decommissioning plan prepared by a registered professional engineer, and updated not less than once every five (5) years, containing the following:
 - 1) The anticipated life of the project and defined conditions upon which decommissioning will be initiated;
 - 2) The estimated decommissioning costs, including removal of the SES and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate;
 - 3) 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 condition;
 - 4) The manner of SES component disposal including the estimated recycle value of components;
 - 5) The party responsible for decommissioning; and
 - 6) A copy of any lease containing specific agreements regarding decommissioning with the landowner; and
- g. A surety instrument in an amount and form acceptable to the city sufficient to cover the costs of decommissioning the SES in accordance with the approved plan in the event the applicant defaults in its decommissioning obligations. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every five (5) years.

The posting of a surety instrument by an applicant does not alleviate the property owner, lessee, or any other responsible party from its obligations to decommission

the SES in accordance with the approved plan, or otherwise transfer to the city, the Hopkinsville-Christian County Planning Commission, or its employees or agents any responsibility or claim against it under law. The posting of surety instrument does not preclude or otherwise constrain the ability of the city or its authorized agents to pursue enforcement action as is authorized by code, or seek other remedies to ensure compliance or abate any violations as is authorized by law.

Amend Article 5, Section 5.2, Table 5.2 Schedule of Uses to add:

Table 5.2 Schedule of Uses												
R = Permitted by Right		R*=Permitted by Right (Specific Standards)					C = Conditional Use			Blank Cell = Use Not Allowed		
Use Classifications	Districts									Use Specific Standards	Parking Code (See Section 6.30)	
	R-1	R-1A	R-2	R-3	RMH-1	RMH-2	B-1	B-2	I-1			
Industrial, Public Facilities Services, and Utility Uses												
Solar Energy System (Integrated SES)	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	§5.29.14	
Solar Energy System (Rooftop SES)	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	<u>R*</u>	§5.29.14	
Solar Energy System – Ground Mounted (Small Scale SES)							<u>C</u>	<u>C</u>	<u>R*</u>		§5.29.14	
Solar Energy System – Ground Mounted (Intermediate Scale SES)								<u>C</u>	<u>C</u>		§5.29.14	Z
Solar Energy System – Ground Mounted (Large Scale SES)									<u>C</u>		§5.29.14	Z

Amend Table 5.2 “Schedule of Uses” (Industrial, Public Facilities Services and Utility Uses) to make a drafting error correction to legend: P— R = Permitted by Right and P* R* = Permitted by Right (Specific Standards).

Amend Zoning Ordinance Table of Contents to adjust page numbers resulting from the above amendment.