

ORDINANCE 2024-05

AN ORDINANCE OF CLARENDON COUNTY, SOUTH CAROLINA AMENDING THE UNIFIED DEVELOPMENT CODE OF CLARENDON COUNTY REGARDING THE REGULATION OF SOLAR ENERGY FACILITIES AND OTHER MATTERS RELATED THERETO

The County Council of Clarendon County (the “*Council*”), the governing body of Clarendon County, South Carolina (the “*County*”), has made the following findings of fact in connection with the enactment of this ordinance (the “*Ordinance*”):

(A) The County is a political subdivision of the State of South Carolina (the “*State*”), and as such possesses all general powers granted by the Constitution and statutes of the State to counties.

(B) Pursuant to Title 6, Chapter 29 of the Code of Laws of South Carolina 1976, as amended (the “*S.C. Code*”), the Council may guide the development and redevelopment of its area of jurisdiction in accordance with existing and future needs of the County and while promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.

(C) Following a recommendation by the planning commission of the County (the “*Planning Commission*”) and a public hearing on February 12, 2024, the Council enacted Ordinance 2024-01 imposing a three-month moratorium on the acceptance of applications for solar farm use in the County (the “*Moratorium*”), as extended by resolution of County Council adopted on June 10, 2024.

(D) Upon a review of the County’s Unified Development Code Ordinance (the “*UDC*”) and based upon the recommendations of the Planning Commission, the Council has determined to amend the UDC to regulate the development of solar energy facilities, including solar farms, within the County (the “*Solar Energy Facility Regulations*”) and to terminate the Moratorium.

NOW, THEREFORE, BE IT ORDAINED by the Council, in a meeting duly assembled:

Section 1 Ratification of Findings. The Council ratifies and approves the findings of fact recited above.

Section 2 Enactment of Amendments. In a meeting held on May 21, 2024, the Planning Commission reviewed the Solar Energy Facility Regulations and has recommended that such amendments be approved. Upon review and consideration of public comments, County Council has determined to amend the Solar Energy Facility Regulations as reflected in the form attached to this Ordinance at **Exhibit A**. The Solar Energy Facility Regulations, as attached to this Ordinance at **Exhibit A**, are hereby approved and enacted. The County Planning Director and staff are hereby authorized and directed to codify the Solar Energy Facility Regulations in the UDC and are further authorized and directed to make such changes to the enumeration of the

various sections of the Solar Energy Facility Regulations, and cross-references contained therein, as may be necessary to effect such codification. The UDC, as previously enacted by various prior actions of the Council, is hereby amended accordingly.

Section 3 Public Hearing. At a meeting held on August 12, 2024, the County Council conducted a public hearing regarding the enactment of the Solar Energy Facility Regulations, notice of which was published in accordance with the provisions of Section 6-29-760 of the S.C. Code.

Section 4 Repeal of Moratorium; General Repealer. Ordinance 2024-01, and the Moratorium enacted thereby, are hereby repealed as of the effective date of this Ordinance. All other ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 5 Severability. If any section, subsection, sentence, clause or phrase of this Ordinance, or the Solar Energy Facility Regulations enacted hereby, are for any reason held or determined to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance or the Solar Energy Facility Regulations, as applicable.

Section 6 Effective Date. The provisions of this Ordinance shall take effect upon the due enactment of this Ordinance following a public hearing.

Passed and approved this 9th day of September 2024

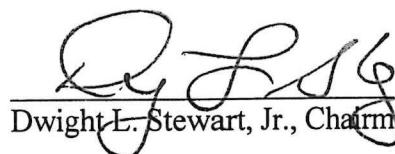
First Reading: June 10, 2024

Second Reading: August 12, 2024

Third Reading: September 9, 2024

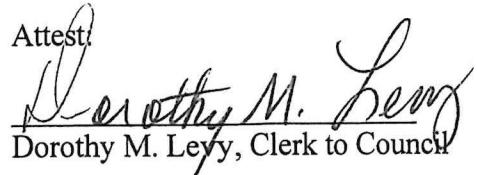
Public Hearing: August 12, 2024

COUNTY COUNCIL OF CLARENDON COUNTY, SOUTH CAROLINA



Dwight L. Stewart, Jr., Chairman

Attest:



Dorothy M. Levy, Clerk to Council



Exhibit A

Solar Energy Facility Regulations

Add to Section 20-02 Definitions:

Solar Energy Facility. A facility consisting of one or more Solar Energy Systems on one or more parcels (1) where the purpose of such Solar Energy Systems is generating photovoltaic power as a commercial enterprise including, but not limited to “solar farms,” or (2) where such Solar Energy System or series of Solar Energy Systems has a capacity rating of one megawatt or greater. This definition does not include Solar Energy Systems that are installed on a parcel where the primary purpose of such Solar Energy System is the generation of photovoltaic power for consumption on such parcel or for distribution to the energy grid to obtain credits against energy consumed on such parcel, except where the capacity rating of such Solar Energy System or series of Solar Energy Systems is one megawatt or greater.

Add to Section 32.03, Table III – 3:

Solar Energy Facility as a PPC use in the AG II, IND I, and IND II zoning districts.

Add new [Article V, Section 57]:

Section 57.01 Purpose and Applicability

The purpose of this Section 57 is to facilitate the siting, construction, installation, and operation of solar energy facilities in Clarendon County in a manner that promotes economic development and ensures the protection of the health, safety and general welfare of the citizens while preserving the dignity and aesthetic quality of the natural and built environment, conserve and ensure access to the County's natural and scenic resources, preserve the physical integrity of land in close proximity to residential areas, and avoiding adverse impacts to adjacent land uses and property owners.

Section 57.02 Application

In accordance with Section 32.03, Table III – 3, all solar energy systems/solar farms shall require application to the Planning Commission for a Zoning Certificate prior to beginning the Site Plan Application process. The application to the Planning Commission shall be in the name of the proposed operator of the Solar Energy Facility (the “operator”) and the owners (the “landowner”) of all property on which the proposed Solar Energy Facility will be located, and shall include the following:

- (a) A site plan showing the proposed location of all solar panels, inverters, existing and proposed structures, screening, fencing, property lines, parking, access driveways and turnout locations, ancillary equipment, transmission lines, a detailed screening and buffer plan in compliance with the provisions of this Section 57, the location of any residences on site and within 500 feet of the property lines of the applicable parcel, all required setbacks, the location of any proposed solar access easements;

- (b) Standard drawings of solar energy system components including engineered drawings and documentations for footings and array structural supports and horizontal and vertical to-scale drawings of all solar panels and other facilities;
- (c) (1) Written documentation demonstrating that the operator has applied to an electric utility for an interconnection agreement for the applicable Solar Energy Facility or (2), with respect to a Solar Energy Facility for which the purpose thereof is the generation of photovoltaic power for consumption on the parcel or group of parcels where such Solar Energy Facility is located, written documentation of an agreement with the owner of such parcel for the use of such photovoltaic power;
- (d) A summary of the terms of any lease or other agreement between the operator and the landowner (if different) regarding the term of such agreement, any provisions related to the responsibility to carry out the Decommissioning Plan, and any indemnification provisions;
- (e) Certification by an engineer licensed in the State of South Carolina that the solar panels have the capacity to withstand a maximum wind speed of 130 mph shall be submitted with the site plan application;
- (f) Certification from the applicant that the Solar Energy Facility will only utilize components that are designated as “UL listed” by Underwriter’s Laboratories where such designation is available for components of that type.
- (g) Proposed insurance property and liability insurance limits and terms, including Environmental Insurance (as defined herein), which shall be reasonable based upon limits and terms that are customary within the solar facility industry and sufficient to protect neighboring properties, which proposed limits and terms may be supported by an insurance risk assessment performed and delivered to the County by an independent insurance consultant; and
- (h) A draft Decommissioning Plan that complies with the requirements of Section 57.12.

Section 57.03 General Siting Standards

- (a) No Solar Energy Facility shall be located (1) within five miles of Lake Marion; or (2) within five miles of the Clarendon County Airport.
- (b) No Solar Energy Facility shall be developed on a single site consisting of one or more contiguous parcels with an aggregate size of less than five acres.
- (c) No additional Zoning Certificates for Solar Energy Facilities shall be issued after the aggregate acreage of property within the County for which Zoning Certificates have been issued for Solar Energy Facilities exceeds 3,900 acres.

Section 57.04 Setbacks

All buildings, structures, equipment, and parking areas related to the Solar Energy Facility shall be setback at least 100 feet from the property line of the applicable parcel and 200 feet from the property line of any adjacent parcel on which a residence is located, and all solar panels and other energy generating systems shall be setback at least 500 feet from all property lines, unless, however, a notarized consent is obtained from the owner of any property adjoining the property on which the Solar Energy Facility is to be located, in which case all solar panels and other energy generating systems shall be setback at least 300 feet from the property lines adjoining the property of such property owners. Setbacks may be increased during the Planning Commission's review of any proposed Solar Energy Facility if components of the Solar Energy Facility may be visible from existing residences or religious, educational, medical, or public facilities due to the topography of the area, notwithstanding the buffer and screening requirements at Section 57.05. The setbacks set forth in this Section 57.04 do not apply to security fencing, gates, and other security apparatus and facilities and aerial lines necessary to deliver power generated by the Solar Energy Facility to the power grid, provided that all applicable buffer and screening requirements hereof are met.

Section 57.05 Bufferyards and Screening

- (a) Within the applicable setbacks, all Solar Energy Facilities must be screened by a 25-foot-wide landscape buffer along all exterior property lines. A planting plan meeting this requirement shall be developed and submitted that creates a year-round vegetative screen of at least six (6) feet in height over a three (3) year growing season and not less than 20 feet in height at maturity, and which includes low-lying vegetation to fill in gaps between taller vegetation. The vegetative buffer and screening shall utilize a variety of evergreen species to avoid the creation of a monoculture vegetative buffer. Vegetation shall be of species native to South Carolina to the extent feasible. The vegetative buffer shall retain and incorporate existing mature trees; provided, however, dead trees may be removed. Buffer areas shall remain unbroken around all exterior property lines except for necessary disturbances, such as access roads.
- (b) All new plantings in any vegetative buffer shall include a means of irrigation in order to keep new vegetation alive until fully established, and all dead or diseased vegetation shall be removed and replaced promptly, but in no case later than 60 days after written notification by the County. Failure to replace dying, diseased or plants failing to thrive constitutes a violation of the Ordinance and shall result in enforcement action per Article X of this Code. The operator and landowner shall be jointly and severally responsible for the maintenance of bufferyards and vegetative screening.

Section 57.06 Environmental Standards and Insurance

- (a) Improved areas of any Solar Energy Facility shall not be located in wetlands, nor within a Special Flood Hazard Area as shown on the current FEMA Flood Map Service Center maps.

- (b) Solar Energy Facilities shall be designed and developed using native ground cover/vegetation within the area of the solar array and other best management practices as outlined in the Technical Guidance for Development of Wildlife & Pollinator Habitat at Solar Farms (South Carolina Solar Habitat Act - March 2021) document or similar best practices document. No gravel, rock, pavement, or other impervious surface material may be used on the site, except within approved access roads, vehicle parking areas, the footprint of approved buildings, and where required as a foundation or pad for equipment (excluding solar panels). Soil sterilants shall not be used on the site.
- (c) In addition to the other property and liability insurance requirements of this Article, and without limiting the generality of such provisions, the operator of a Solar Energy Facility shall obtain and maintain during the life of the Solar Energy Facility an environmental impairment liability, site pollution liability, or other comprehensive insurance policy that includes coverage to remediate contamination of neighboring properties that may be caused by the operator's activities on the Solar Energy Facility site ("Environmental Insurance"), including, by way of example only, the cleanup of glass or other contaminants that may contaminate adjacent properties due to the destruction of the Solar Energy Facility due to weather events.

Section 57.07 Glare Standards

Solar panels shall be designed with an antireflective coating or other similar means so as not to produce glare that would constitute a nuisance to aircraft or nearby roads. The use of mirrors is prohibited.

Section 57.08 Noise

Noise levels shall not exceed 55 decibels, as measured at any exterior property line of the site once the Solar Energy Facility is fully operational.

Section 57.09 Other Site Development Standards

All Solar Energy Facilities shall be designed in compliance with the following site development standards:

- (a) *Fencing.* All components of a Solar Energy Facility except aerial electric lines shall be enclosed by a security fence of a minimum of six feet in height and designed to secure the facility from the public. The security fence shall be located within the vegetative buffer and screening required pursuant to Section 57.05. If any portion of the fencing is visible at such time as the plants within the vegetative buffer and screening have reached maturity (over a period of time not to exceed five years), the fence shall be supplemented to include plastic slats or other means of making the fencing opaque.
- (b) *Security and Signage.* Access to the Solar Energy Facility shall be controlled by a security gate. A warning sign concerning voltage shall be placed at the main entrance that includes the name of the facility operator and telephone number for an in-State contact person. Warning signs concerning high voltage shall

additionally be placed at intervals along all security fencing, which shall also include contact information for the local contact (as defined herein).

- (c) *Height.* All ground-mounted solar panels shall be limited to a maximum height of 15 feet when oriented at maximum tilt. This provision shall not include the interconnection poles, substation equipment, or other devices necessary for the electricity to be delivered to the public electric grid.
- (d) *Underground Facilities.* All on-site electrical interconnections and power lines shall be installed underground wherever reasonably practical.
- (e) *Access Roads.* All internal roads servicing the Solar Energy Facility, including the access road, must be named in accordance with Section 52.07 of this Code. All access roads not connecting directly to a public right-of-way shall be located within a 30-foot minimum easement to the public right-of-way.
- (f) *Lighting.* To the maximum extent feasible, all lighting shall be controlled by motion detectors or other means of ensuring that lighting is not continuously in use. All lighting shall be fully shielded and downcast so that light does not spill onto any adjacent property or into the night sky.

Section 57.10 Local Agent and Contact

The operator of a Solar Energy Facility, and the landowner if residing outside of the County, must designate a person, firm, manager, or agent that resides or has a place of business within the County that has the authority to accept service of process and ordinance summons on behalf of the operator and the landowner, as applicable (the “local agent”). In addition, the operator of a Solar Energy Facility must designate a person, firm, manager, or agent that resides or has a place of business within the State of South Carolina that has the authority and capability to respond to emergencies and is authorized to act on behalf of the operator (if different than the operator) (the “local contact”). The local agent and local contact may be the same person or entity. The operator and landowner, as applicable, shall provide the County planning director with up to date contact information for the local agent and local contact.

Section 57.11 Abandonment

A Solar Energy Facility is considered to be abandoned upon the occurrence of any of the following:

- (a) Immediately upon the expiration or other termination of the lease or other agreement between the operator and the landowner (if different) to occupy the property, except where the landowner has certified by affidavit (updated every three months) that such landowner is in active negotiations with the operator to renew or extend such lease or other agreement or to negotiate a new lease or other agreement with another operator;
- (b) Immediately (1) upon receipt by the County of notice from the holder of any performance guarantee that the premium on such performance guarantee has not

been paid within 90 days of the expiration of the term thereof; (2) upon receipt by the County of notice from the holder of any performance guarantee that such performance guarantee shall otherwise terminate or be canceled; or (3) if the County becomes aware for any reason that such performance guarantee is subject to expiration within 90 days or is otherwise subject to termination or cancellation; or

- (c) The Solar Energy Facility ceases to produce energy on a continuous basis for 12 months, except where the operator and landowner (if different) certify by affidavit and provide satisfactory evidence (updated every three months) of the intent of the operator and landowner to maintain and reinstate the operation of the Solar Energy Facility.

A Solar Energy Facility that has been abandoned shall be decommissioned and the property on which the Solar Energy Facility is located shall be restored in accordance with the Decommissioning Plan within six months of abandonment. The operator and the landowner (if different) are jointly and severally responsible for such decommissioning and restoration. Failure to decommission the Solar Energy Facility and restore the property in accordance with the Decommissioning Plan within six months of abandonment shall constitute a violation of this Code. In the event of a violation, the County may pursue any and all actions available at law or in equity, including, but not limited to (1) the enforcement procedures set forth at Article X of this Code; (2) actions for breach of contract, specific performance, and mandatory injunctions; (3) actions under the International Property Maintenance Code, including the abatement of unsafe conditions or other violations of the International Property Maintenance Code and the imposition of a lien against the applicable real property for the costs of such action and abatement, which may include any costs of decommissioning in excess of the amount available under any applicable performance guarantee. In addition to or in lieu of any such action, in the discretion of the County, the County may choose to decommission any abandoned Solar Energy Facility and seek payment for the costs thereof from any applicable performance guarantee.

Section 57.12 Decommissioning and Performance Guarantee

- (a) *Decommissioning Plan.* All Decommissioning Plans shall contain, at minimum, the following, and shall be reviewed for compliance with the requirements and approved during the application process prior to execution and recordation thereof: (1) the anticipated useful life of the major components of the Solar Energy Facility, including the type of solar panels, storage facilities, and materials to be installed at the site; (2) a summary of the term and termination provisions of the lease or other agreement between the operator and the landowner (if different) to occupy the property, including an obligation to update such Decommissioning Plan in connection with any applicable extension or amendment; (3) a detailed description of the work necessary for the restoration of the property to its natural state, including the removal of all solar panels, buildings, cabling, electrical components, roads, and any other associated facilities and the abatement and removal of any and all hazardous materials that may have been introduced to the property or any adjacent property in connection with the Solar Energy Facility; (4) acknowledgement of the conditions constituting abandonment and other conditions upon which decommissioning must be initiated; (5) the anticipated time for

completion of decommissioning and restoration activities, which shall not exceed six months following abandonment; (6) an estimate of the cost of decommissioning and restoration prepared by an engineer licensed to practice in South Carolina, including an acknowledgement that such estimate shall be updated at least every five years following the issuance of a certificate of occupancy; (7) identification of the party primarily responsible for decommissioning and restoration activities, including an acknowledgement that the landowner (if different) is jointly and severally responsible for decommissioning and restoration activities; and (8) a requirement to update the Decommissioning Plan to account for amendments to or extensions of the lease or other agreement between the operator and the landowner (if different) to occupy the property and to update the cost estimate for decommissioning and restoration activities at least every five years.

(b) *Performance Guarantee.* The applicant must provide the County with a performance guarantee in the form of a bond, irrevocable letter of credit and agreement, or other financial security acceptable to the County in the amount of the greater of (1) 150% of the estimated decommissioning cost, as set forth in the Decommissioning Plan, or (2) \$50,000. All performance guarantees shall renew automatically and shall provide a minimum 90-day notice to the County prior to expiration, termination, or cancellation. Performance guarantees must be provided by a company that is listed as a company certified to provide surety bonds by the U.S. Department of Treasury, or similar listing or designation such as a AAA rating from Standard & Poor's. The amount of the performance guarantee must be adjusted every five years from the initial submission in connection with the update of the cost of decommissioning and restoration, as required in connection with a Decommissioning Plan. The performance guarantee shall be payable upon abandonment, as defined in Section 57.11, and shall name the County as obligee. The applicant shall submit a completed and executed performance guarantee to the Planning Director prior to, and as a condition of, the issuance of a certificate of occupancy for the Solar Energy Facility.

(c) *County Decommissioning.* Prior to commencing the decommissioning of any Solar Energy Facility the Planning Director shall provide the landowner and operator (if different) and the surety or holder of any performance guarantee with not less than 30 days written notice that the Planning Director has determined that the Solar Energy Facility is abandoned and the date on which the County intends to commence decommissioning. The County Council expressly determines that abandoned Solar Energy Facilities constitutes a violation of the International Property Maintenance Code and any decommissioning costs in excess of the amount of any performance guarantee may be charged as a lien against the applicable real property. The County may, but is not obligated to, enter into an agreement with a landowner under which the landowner carries out the decommissioning of a Solar Energy Facility in accordance with an applicable Decommissioning Plan and the County pays the costs of such decommissioning using the proceeds of a performance guarantee, but no such agreement shall obligate the County to pay any amount in excess of amounts available under such performance guarantee.

Section 57.13 Code Compliance

Notwithstanding any provision of this Section 57 or the UDC, the plans, engineering and design of any Solar Energy Facility shall adhere to the applicable sections of all applicable building and technical codes in effect at the time of construction.

Section 57.14 Permitting

In addition to any and all requirements of the County's code of ordinances and any applicable technical code, prior to the issuance of a permit for a Solar Energy Facility, the applicant shall have completed the Site Plan Application and approval process, as required by this Section 57 and all other requirements of the Code, and shall have submitted the following to the Planning Director:

- (a) Written documentation of an interconnection agreement between the operator and an electric utility for interconnection of the completed Solar Energy Facility. Once constructed, the operator shall provide a copy of the signed certification of completion from the electric utility prior to issuance of the Certificate of Occupancy for the Solar Energy Facility. This subsection shall not apply to a Solar Energy Facility for which the purpose thereof is the generation of photovoltaic power for consumption on the parcel or group of parcels where such Solar Energy Facility is located
- (b) A completed and executed Decommissioning Plan and evidence of the recording thereof in the Office of the Register of Deeds for Clarendon County;
- (c) Certificates of property and liability insurance, including Environmental Insurance, that comply with the limits and terms for such policies that have been approved by the Planning Commission during the application review process; and
- (d) A grading permit and all other required federal, State, and local permits.