

LYON COUNTY KENTUCKY
SOLAR ENERGY SYSTEM INSTALLATION REQUIREMENTS
ORDINANCE NO. 04-2024

AN ORDINANCE RELATING TO REPEALING LYON COUNTY FISCAL COURT ORDINANCE
01-2024 AND REPLACING IT AS SET FORTH HEREIN ESTABLISHING LICENSURE
REQUIREMENTS FOR SOLAR ENERGY SYSTEMS IN LYON COUNTY, KENTUCKY

WHEREAS, the Lyon County Fiscal Court, in pursuance of the powers and duties vested in it by the Commonwealth of Kentucky, has previously adopted Lyon County Ordinance 01-2024 addressing and establishing minimum setbacks, screening, and decommissioning requirements for Solar Energy System Installations; and

WHEREAS, the Lyon County Fiscal Court wishes to repeal Ordinance 01-2024 and replace it with a new Ordinance as set forth herein; and

WHEREAS, pursuant to KRS 67.083, the Lyon Fiscal Court is granted the authority to undertake all necessary governmental actions for the welfare of the county, and specifically is endowed pursuant to KRS 67.083(3)(h) and KRS 67.083(3)(m) for the regulation of commerce for the protection and convenience of the public, and with the power to protect and conserve the county's natural resources, including but not limited to soil and wildlife, to safeguard the livelihoods and well-being of its residents; and

WHEREAS, KRS 278.718 became effective June 29, 2023, and further provides that an ordinance, permit, or license issued by a local government, and enacted under the provisions of home rule under KRS Chapter 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082, shall have primacy over the provisions, including setback requirements, set forth in KRS 278.700, 278.704, 278.706, 278.708, and any conflict between an order of the board and a local ordinance, permit, or license shall be resolved in favor of the local government's ordinance, permit, or license; and

WHEREAS, the Lyon County Fiscal Court finds it necessary and appropriate to provide reasonable safeguards which mitigate potential nuisances such as soil erosion, water runoff and erosion, large scale loss of agricultural land, and impacts to local flora and fauna, among others, created by Large Scale Ground Mounted Solar Energy Systems as defined herein in order to protect adjoining properties and public rights-of-way; and

WHEREAS, the Lyon County Fiscal Court desires to exercise its authority pursuant to this subsection; and

**NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF LYON,
COMMONWEALTH OF KENTUCKY AS FOLLOWS:**

A. DEFINITIONS.

- (1) **BUILDING.** Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.
- (2) **MERCHANT ELECTRIC GENERATING FACILITY.** Means, except for a qualifying facility as defined in KRS 278.700(7), an electricity generating facility or facilities that, together with all associated structures and facilities:
 - (a) Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more; and
 - (b) Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission.
- (3) **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:
 - (a) **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 facade, skylight shingles, canopy, light, or parking meter.
 - (b) **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.
 - (c) **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:
 - i. *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.
 - ii. *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a footprint of between 2,501 square feet and forty (40) acres and which does not constitute a Merchant Electric Generating Facility as provided in KRS 278.700(2).
 - iii. *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a footprint of more than forty (40) acres. This term also includes any non-exempt SES that, irrespective of footprint size or

configuration, constitutes a Merchant Electric Generating Facility as defined by the terms of KRS 278.700(2) and is otherwise subject to review and approval by the Kentucky State Board on Electric Generation and Transmission Siting.

- (4) **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 this ordinance.
- (5) **ENLARGEMENT.** To increase the size of an SES footprint or relocate an SES footprint to an area of land not included as part of an original license's approval or any change which would exceed the scope (increased height or decreased setback or buffer) of the original license's approval. SES enlargement does not include the repair, modification, retrofitting, or enhancement of a licensed facility provided such repair, modification, retrofitting, or enhancement does not violate the terms of this ordinance or a condition of the license's approval.
- (6) **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.
- (7) **NON-PARTICIPATING PROPERTY.** Any property that is not a participating property.
- (8) **PARTICIPATING PROPERTY.** A property on which a Solar Energy System (SES), as regulated by the terms of this ordinance, is to be constructed in whole or part. This includes any property for which the owner(s) has provided their signature(s) on a written and recorded agreement, explicitly consenting to be a party to the licensure application for the construction of an SES. Such signature(s) shall constitute prima facie evidence of the owner(s)' consent and/or agreement to any terms set forth in the licensure application, including the waiver of any setback requirements from non-participating properties as subsequently defined herein.

- (9) **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 all required certificates, approvals and permits, if any, as required under KRS Chapter 278 and other applicable state statutes.
- (10) **RESPONSIBLE ENTITY.** The owner of the Solar Energy System and related improvements irrespective of land ownership by fee simple title, lease agreement, or other instrument. The responsible entity is the applicant under the terms of this ordinance.
- (11) **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.
- (12) **SETBACK.** The minimum distance established by this ordinance measured from the property line of a non-participating property or boundary of a public roadway or rail-line to the nearest portion of an SES Footprint or other regulated SES feature. The setback distance required by this ordinance is to be contained within the boundary of a participating property and is the minimum distance from a non-participating property or public roadway or rail-line boundary that an SES Footprint or other regulated SES feature is allowed to be constructed.
- (13) **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.

B. APPLICABILITY.

1. This ordinance and its requirements for licensure shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Large Scale SES facilities in all unincorporated areas of Lyon County, Kentucky. The requirements of this ordinance shall not apply to the following:

- (a) Integrated SES;
- (b) Rooftop SES;
- (c) Small-Scale SES;
- (d) Intermediate Scale SES; and
- (e) Large Scale SES where physical construction began prior to the effective date of this ordinance provided:
 - i. Physical construction is completed within two (2) years of the effective date of this ordinance; and
 - ii. The SES footprint is not thereafter cumulatively enlarged by more than five (5) percent.

C. LICENSE REQUIRED AND RENEWAL LICENSE.

1. Prior to the commencement of physical construction or enlargement of a Large Scale Solar Energy System (SES), the responsible entity (applicant) must obtain a Lyon County Solar Energy System License. Additionally, a renewal license shall be required concomitant with the updating of the decommissioning plan, as stipulated in Section 4(d) hereafter. All applications and supporting documents for licensure shall be submitted by the applicant to the Lyon County Planning Commission (Planning Commission) for a determination of conformance with the requirements of this ordinance. A request for licensure shall contain the following:
 - (a) An application for licensure that includes:
 - (1) The name of the applicant and owner(s) of participating property (if different);
 - (2) The street address and tax map parcel number of the property for which a license is sought to include all participating property;
 - (3) The current mailing address and phone number of the applicant and the owner(s) of participating property;
 - (4) A copy of deeds and lease agreements for participating property;
 - (5) A listing of the names, mailing addresses, and property addresses (including tax map parcel number) of all adjoining non-participating property owners to include all owners within 2,500 feet of the proposed SES footprint;
 - (6) A written description of the proposed facility that includes a statement of conformance with the requirements of this ordinance; and
 - (7) The signed statement of the applicant and all participating property owners attesting to the truthfulness and exactness of information supplied in the application.
 - (b) Supplemental documents and exhibits that include:

- (1) Twenty-four copies (24) of a site plan, drawn to a scale of no greater than 1" to 100', which illustrates:
 - a. A vicinity map denoting the location of the proposed facility;
 - b. Property lines of participating properties and adjacent nonparticipating properties, public rights-of-way, and rail-lines within 2500 feet of the SES footprint (due to scale, this information may be provided on a separate sheet at a scale of no greater than 1' to 300');
 - c. Required setbacks with plan notes detailing the minimum distance to be provided from the SES Footprint to the boundary of non-participating properties and public streets and rail-lines;
 - d. Adjoining roads and points of proposed access to the facility;
 - e. The proposed location of all buildings, panels, invertors, transformers, and other onsite supporting facilities with plan notes detailing the height of such features;
 - f. The proposed location of perimeter fencing with plan notes detailing type, height, and setback;
 - g. The proposed location of the vegetative buffer with plan notes detailing plant type, planting height and anticipated mature height, and opacity; and
 - h. Any additional site plan depictions or accompanying descriptions which may be required to determine compliance with this ordinance
 - (c) A decommissioning plan and surety instrument.
 - (d) A statement of the proposed Large Scale SES's conformance (or pending conformance) with the requirements of KRS 278.700 et seq. where the State Board of Electric Generation and Transmission Siting's approval is required.
2. Fee Entitlement for Review and Application. The fee for the review and processing of licensure applications shall be sixteen cents (\$0.16) per square foot of any applicable SES, not to exceed a total fee of five hundred thousand dollars (\$500,00.00.) This fee shall be payable upon submission of a licensure application and is non-refundable. The fee shall be paid to the Lyon County Planning Commission and thereafter equally divided between the Lyon County Planning Commission and the Lyon County Fiscal Court General Fund.
 3. Within sixty (60) days of its receipt of a complete licensure application, supplemental documents and exhibits, and fee, the Planning Commission shall review and recommend that the application for licensure be 1) approved, 2) approved with conditions or required

modifications, or 3) denied, with cause stated. Such recommendation shall be recorded in the minutes of the Planning Commission. Notification of the Planning Commission's recommendation shall be provided to the applicant and the Lyon County Judge Executive.

4. Within thirty (30) days of receiving a recommendation from the Lyon County Planning Commission regarding a licensure application, the Lyon County Judge Executive's Office shall:
 - a. Issue the requested license with or without conditions or modifications as deemed appropriate,
 - b. Deny the license request, providing the cause for denial in writing, or
 - c. Remand the matter back to the Planning Commission for additional review and findings. In such cases, the Lyon County Judge Executive shall specify the reasons necessitating further review with particularity.
5. Should the matter be remanded, the Planning Commission is required to re-examine the application and submit a report to the Lyon County Judge Executive within forty-five (45) days of the remand receipt. This report should address the specified reasons for remand and provide additional findings as requested.
6. When a license is issued, it shall remain in effect, unchanged, provided the applicant maintains compliance with the terms of this ordinance and the conditions of the original approval.
7. Upon the issuance of a Solar Energy System License by the Lyon County Judge Executive's Office, it shall be recorded with the Lyon County Clerk's Office to place notice upon all bona fide purchasers for value of the existence of said license.
8. In the event of a denial, the County Judge Executive will provide the decision in writing, which shall be sent via certified mail, with return receipt requested, to the applicant, all participating properties, and any non-participating properties included within the application. Furthermore, the denial will be published in accordance with the provisions of Chapter 424 of the Kentucky Revised Statutes.
9. Any aggrieved party by either the issuance or denial of a license shall have a period of thirty (30) days from the date of the recording of the license or the publication of the denial of said license to file an action with the Lyon Circuit Court seeking judicial review.

D. SPECIFIC REQUIREMENTS.

1. The following standards shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Large Scale SES:
 - (a) Setbacks. The SES footprint shall be setback no less than 2,000 feet from any non-participating property line and any right-of-way for a publicly maintained roadway or rail-line.
 - (b) Perimeter Access and Screening. Access to the site must be controlled by a fence of at least eight (8) feet in height with a vegetative landscape buffer provided between the fencing and the property line. The fence shall be equipped with screening to help shield the facilities and equipment from view. Screening shall consist of:
 - i. 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);
 - ii. Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
 - iii. Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
 - iv. Screening shall be installed within 180 days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
 - v. All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.
 - (c) 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 section is intended to preclude installation of lighting required by the Federal Aviation Administration.
 - (d) Decommissioning Plan Required. The applicant shall be responsible for a decommissioning plan, prepared by a registered professional engineer at the expense of the applicant, and updated not less than once every five (5) years, containing the following:
 - i. The anticipated life of the project and defined conditions upon which decommissioning will be initiated;
 - ii. The estimated decommissioning costs, including removal of the Solar Energy System 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;
 - iii. The manner in which the project will be decommissioned, including provision and a

timetable (such timetable not to exceed five years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition;

iv. The manner of SES component disposal including the estimated recycled value of components; and

v. A copy of any contract containing specific agreements regarding decommissioning.

(e) Surety Instrument Required. The applicant shall provide a surety instrument in an amount and form acceptable to the Lyon County Judge Executive, upon recommendation of the Planning Commission, 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. A surety instrument shall be continuously maintained by applicant, their successors in interest and/or assigns, until such time as the Large Scale SES is decommissioned and all disturbed areas are reclaimed, revegetated, and restored. The form and content of surety shall be in accordance with the requirements of KRS 278.706(2)(m)5 and shall name Lyon County Government as secondary beneficiary.

(f) For projects with an SES Footprint located 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 1 or APZ 2), 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, and the United States Army, Fort Campbell Directorate of Public Works.

E. DECOMMISSIONING REQUIRED.

1. The applicant shall begin decommissioning no later than twelve (12) months after a Large Scale 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.

2. Failure of the applicant to decommission a Large Scale Solar Energy System (SES) in accordance with this Ordinance and the approved decommissioning plan shall be grounds for the County to invoke the surety instrument. The County shall be entitled to recover from the

surety instrument proceeds that are necessary to complete the decommissioning of the facility. Furthermore, should the costs of decommissioning exceed the value of the surety instrument, the County shall be entitled to recover the excess amount necessary to complete the decommissioning process.

3. In the event of a failure to perform, default, or failure to extend a surety instrument, the County reserves the right to take all available legal and administrative actions necessary to compel the completion of the decommissioning by the applicant. This includes securing all necessary easements and rights of entry, and/or to recoup any public funds expended by the County in the fulfillment of the applicant's obligation.
4. A failure to decommission a Large SES Facility as required herein is a violation of this ordinance and is subject to the enforcement and penalties as provided herein.

F. LICENSE REVOCATION.

1. The Lyon County Judge Executive may revoke a license, subject to a 90-day written notice to the applicant, upon the occurrence of one (1) or more of the following:
 - a. The applicant has 1) provided false or inaccurate information as part of the application for licensure; 2) the false or inaccurate information would result in the siting, construction, or operation of a Large SES Facility in violation of this ordinance; and 3) the applicant has failed to correct the violation through the resubmittal of an amended and approvable application and perform any necessary site modifications within the 90 day notification period;
 - b. The applicant has 1) failed to construct or maintain the Large Scale SES in accordance with this ordinance and the approved plan; and 2) the applicant has failed to correct the violation within the 90 day notification period;
 - c. The applicant has 1) failed to decommission the Large SES Facility in accordance with this Ordinance; and 2) the applicant has failed to correct the violation within the 90 day notification period;
 - d. The applicant has 1) failed to submit an updated decommissioning plan and accompanying revised surety instrument within the five (5) year period as required by Section 4(d); and 2) the applicant has failed to correct the violation within the 90 day notification period; or

- e. The applicant has failed to transfer the license upon change of responsible entity in accordance with Section 7 of this ordinance.
2. Any license revocation issued under this section shall be recorded at the Lyon County Clerk's Office. Within 90 days of the recording of a revocation of a license, the Large Scale SES shall cease operation and, within 12 months thereafter, be decommissioned in accordance with Section 5 of this ordinance.

G. LICENSE TRANSFER, NOTIFICATION, REQUIRED EXHIBITS.

1. A change in or transfer of the responsible entity's ownership, as contained on a Large Scale SES application and accompanying license, shall require the issuance of an amended license which shall be so recorded at the Lyon County Clerk's Office. No later than thirty (30) days following the sale or transfer of a Large SES Facility, the responsible entity that has or is assuming ownership shall provide written notification to the Lyon County Judge Executive and shall submitted the following information:
 - a. The name and mailing address of the current, licensed responsible entity and license number;
 - b. The name and mailing address of the responsible entity assuming ownership with proof of ownership;
 - c. A statement that lease agreements for participating property, if any, are transferable with accompanying documentation;
 - d. A statement of conformance with this ordinance. If SES enlargement or change to the conditions of the original application (other than ownership) is to occur, a new application as provided in Section 3 is required; and
 - e. A revised surety instrument bearing the name of the new responsible entity.
2. Within sixty (60) days of receipt of notification, the Lyon County Judge Executive shall 1) approve the issuance of the amended license; or 2) deny the issuance of the amended license with cause stated. In the review of the license transfer, the Judge Executive may refer the requested transfer to the Planning Commission for recommendation.
3. All other state and regulatory laws that are not specifically addressed by this ordinance remain in effect.

H. SEVERABILITY.

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity

does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

I. VIOLATION AND PENALTY.

Any person found in violation of this ordinance shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

J. REPEAL OF ORDINANCE AND EFFECTIVE DATE.

Lyon County Ordinance 01-2024 is hereby repealed and replaced as set forth herein. All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed. This Ordinance shall be in full force and effect from and after its adoption and approval as provided by law and set forth below.

Date of First Reading: April 11, 2024

Motion by: Bobby Cummins

Seconded by: Quin Sutton

Vote:

Jaime Smith Aye

Jeff Fowler Aye

Bobby Cummins Aye

Quinn Sutton Aye

Date of Second Reading and Passage: April 29, 2024

Motion by: Bobby Cummins

Seconded by: Jeff Fowler

Vote:

Jaime Smith Aye

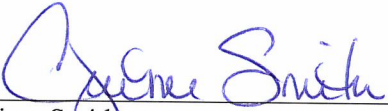
Jeff Fowler Aye

Bobby Cummins Aye

Quinn Sutton Aye

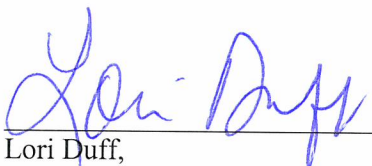
Effective Date: April 29, 2024

Date of Publication: May 8, 2024



Jaime Smith
Lyon County Judge/Executive

Attest:



Lori Duff,
Lyon County Clerk

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