

COVINGTON TOWNSHIP

ORDINANCE NO. 2023 - 01

AN ORDINANCE REGULATING THE CONSTRUCTION, OPERATION
AND DECOMMISSIONING OF LARGE-SCALE SOLAR ELECTRIC
ENERGY FACILITIES

IT IS HEREBY ENACTED AND ORDAINED by the governing body of Covington Township as follows:

Section 1. Title:

This Ordinance shall be known as the Large-Scale Solar Electric Facility Ordinance for Covington Township.

Section 2. Purpose:

The purpose of the Ordinance is to provide for the regulation of the construction, installation, operation, maintenance and decommissioning of Large-Scale Solar Electric Energy Facilities in Covington Township, subject to reasonable conditions that will protect the public health, safety and welfare.

Section 3. Definitions:

- A. "Applicant" is the Landowner or Developer and includes his/her heirs, successors and assigns, who has filed an application for development of a Solar Electric Energy Facility under this Ordinance.
- B. "Facility Owner" means the owner(s) of record of the real estate upon which the Solar Electric Energy Facility is located.
- C. "Facility Operator" means the entity responsible for the day-to-day operation and maintenance of the Solar Electric Energy Facility.
- D. "Glare" is the effect produced by light with an intensity sufficient to cause annoyance, discomfort or loss of visual performance and visibility.
- E. "Solar Electric System" means the components and subsystems that, in combination, convert solar energy into electric energy suitable for use. The term includes, but is not limited to, photovoltaic and concentrated solar power systems.
- F. "Solar Electric Energy Facility or SEF" means a Large-Scale Solar Electric Energy Facility, whose main purpose is to generate and supply electricity and consists of one or more Solar Electric Systems and other accessory structures and buildings, including

substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities whose principal purpose is to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for off-site use. These facilities shall *not* include on-site Solar Electric Energy Systems meant for residential or commercial use. Such uses are regulated by the Uniform Construction Code.

Section 4. Applicability:

- A. This Ordinance applies to any SEF of two (2) acres or more proposed to be constructed after the effective date of the Ordinance.
- B. A SEF constructed prior to the effective date of this Ordinance shall *not* be required to meet the requirements of this Ordinance; provided that any physical modification or alteration to an existing SEF that materially alters the size, type or components of the Solar Electric System shall require a permit under this Ordinance. Routine operation and maintenance or like-kind replacements do not require a permit.

Section 5. Permit Requirements:

- A. No SEF, or addition of a Solar Electric System to an existing SEF, shall be constructed or located within Covington Township unless a Solar Electric Facility Permit (“permit”) has been issued to the Facility Owner or Facility Operator by the Covington Township Board of Supervisors approving construction of the Solar Electric Energy Facility under this Ordinance.
- B. The permit application or amended permit application shall be accompanied with a fee in the amount of \$500.00.
- C. Any physical modification to an existing and permitted SEF that materially alters the size, type and number of Solar Electric Systems or other equipment shall require a permit modification under this Ordinance.

Section 6. Permit Application and Issuance:

- A. The permit application shall demonstrate that the proposed SEF will comply with this Ordinance.
- B. The permit application shall also attach the appropriate land development application as required by Covington Township’s Subdivision and Land Development Ordinance (“SALDO”). Said land development application shall be submitted contemporaneously with the permit application.
- C. Among other things, the application shall contain the following:

1. A narrative describing the proposed SEF, including an overview of the project; the project location; the approximate generating capacity of the SEF; the estimated number of workers involved in the construction of the facility, the proposed sanitary facilities for workers, traffic and off street parking plan; the approximate number, representative types and height or range of heights of the panels or other Solar Electric System equipment to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of all ancillary facilities.
 2. A deed, lease, agreement of sale or similar evidence of agreement between the Landowner(s) of the real property on which the SEF is to be located and the Facility Owner, demonstrating that the Facility Owner has permission of the Landowner to apply for necessary permits or approvals for construction and operation of the SEF ("Participating Landowner Agreement"). The Participating Landowner Agreement shall be reviewed and approved by the Covington Township Solicitor.
 3. Identification by property identification number, name(s) of owner(s) of record, deed book and page number of the properties or portions thereof on which the proposed SEF will be located, and the properties adjacent to where the SEF will be located.
 4. A site plan prepared by a Pennsylvania Professional Land Surveyor showing the planned location of each SEF, property lines, setback lines, access roads, draining facilities and turnout locations, substation(s), electrical cabling from the Solar Electric System to the substation(s), ancillary equipment, buildings and structures, including associated distribution and/or transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
 5. A schedule for decommissioning and identification of entities or persons responsible.
 6. Other relevant studies, reports, certifications, and approvals as may be provided by the Applicant or required by Covington Township to ensure compliance with this Ordinance.
 7. After review of the permit application, Covington Township may require the applicant to place a reasonable deposit into escrow to cover the engineering and legal fees incurred with the permitting process.
- C. Within thirty (30) days after receipt of a permit application, Covington Township will determine whether the application is complete and advise the applicant accordingly.

- D. Within sixty (60) days of a completeness determination, Covington Township will schedule a public hearing before the Covington Township Board of Supervisors. The applicant shall participate in the hearing and be afforded an opportunity to present the project to the public and municipal officials, and answer questions about the project. The public shall be afforded an opportunity to ask questions and provide comment on the proposed project.
- E. Within one hundred and twenty (120) days of a completeness determination, or within forty-five (45) days after the close of any hearing, whichever is later, the Covington Township Board of Supervisors will issue a written decision whether to issue or deny the permit application. An appeal from the denial of a permit may be brought before the Lackawanna County Court of Common Pleas within thirty (30) days of the denial by an aggrieved party with standing to do so.
- F. Throughout the permit process, the applicant shall promptly notify Covington Township of any material changes to the information contained in the permit application.
- G. Changes to the pending application that do not materially alter the initial site plan may be adopted without a renewed public hearing.
- H. Once the applicant completes the SEF, it shall notify Covington Township and request that the permit be issued. After review and recommendation by Covington Township's engineer and solicitor that the SEF was constructed as designed and submitted, the permit will be issued.

Section 7. Design, Construction, Financial Security, Maintenance and Insurance:

- A. Design Safety Certification: The design of the SEF shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories (UL), Institute of Electrical and Electronics Engineers ("IEEE"), Solar Rating and Certification Corporation ("SRCC"), Electrical Testing Labs ("ETL"), Pennsylvania Solar Center ("PA Solar Center") or other similar certifying organizations.
- B. Uniform Construction Code: The SEF and the Solar Electric System shall be constructed to and comply with the Pennsylvania Uniform Construction Code ("UCC"), Act 45 of 1999, as amended, and any regulations adopted by the Pennsylvania Department of Labor and Industry ("PA DOL") as they relate to the UCC, except where an applicable industry standard has been approved by the PA DOL under its regulatory authority. Application for, and approval of, a Building Permit also shall be required.

C. Visual Appearance: Power Lines:

1. SEFs shall not be artificially lighted, except to the extent required by safety or by any applicable federal, state or local authority.
2. SEFs shall not display advertising, except for reasonable identification of the panel, inverter or other equipment manufacturer, and the Facility Owner.
3. On-site transmission and power lines shall, to the maximum extent practicable, be placed underground.

D. Warnings:

1. A SEF shall be enclosed by a fence, barrier or other appropriate means to prevent or restrict unauthorized persons or vehicles from entering the property.
2. Clearly visible warning signs shall be placed on the fence, barrier or SEF perimeter to inform individuals of potential voltage hazards.

E. Site Inspections: Covington Township shall have the right to periodic inspections of the SEF after reasonable, written notice to the Facility Owner.

F. Financial Security During Construction - During the construction phase of the SEF, the facility owner shall provide financial security shall be in the amount of 110% of the costs of construction. The estimate of costs shall be based upon an estimate of the cost of completion of construction as prepared by the SEF's engineer who shall certify the costs to be fair and reasonable. Covington Township's engineer shall review and approve the cost estimate. The financial security shall be posted and maintained during the life of the project in the form of a performance bond, irrevocable letter of credit, or other financial form of security acceptable to the Covington Township Board of Supervisors. Once construction is completed in accordance with the approved permit application and this Ordinance's standards and requirements, the Facility Owner's engineer shall certify in writing that the construction is so completed and the Facility Owner may submit a written request for release of the financial security. Upon review and written approval from Covington Township's engineer and solicitor, the financial security shall be released. Acceptable forms of financial security are:

1. Surety Performance Bond – a security bond from a surety bonding company authorized to do business in the Commonwealth of Pennsylvania and approved by Covington Township.
2. Escrow Account – a deposit of cash either with Covington Township or in

escrow with a financial institution approved by Covington Township. The financial institution must have a branch located within 100 miles of Covington Township and be located within the Commonwealth of Pennsylvania.

3. Irrevocable Letter of Credit – a letter of credit provided by the Facility Owner from a financial institution subject to the approval of Covington Township. The financial institution must have a branch located within 100 miles of Covington Township and be located within the Commonwealth of Pennsylvania.
- G. A SEF shall be sited in such a way that it presents no threat to traffic or to public health and safety.
 - H. All SEFs shall be situated in such a way that concentrated solar radiation or glare does not project onto nearby properties, structures or roadways.
 - I. Noise from a SEF shall not exceed 55 dBA, as measured at the property line.
 - J. All SEFs should be designed and located to ensure solar access without reliance on or interference from adjacent properties.
 - K. All SEFs shall be properly maintained and kept free from all unsafe conditions.
 - L. Liability Insurance – The Facility Owner shall maintain a general liability insurance policy covering bodily injury and property damage with limits of at least \$1 million in the aggregate. Covington Township shall be named an additional insured. Certificates of insurance shall be provided to Covington Township on an annual basis.
 - M. Knox Box Requirement – The Facility Owner shall provide Knox box(es) for the gates and buildings for the entire SEF to Covington Township’s Volunteer Fire Department to allow a rapid response to emergency calls.

Section 8. Ground-Mounted SEFs:

- A. Property lines: Ground-mounted SEFs shall have a minimum setback at all property lines of 150 feet. These distances shall be measured from the closest edge of the SEF to the property line.
- B. The surface area of the arrays of a ground-mounted SEF, regardless of the mounted angle of any solar panels, shall be considered part of the impervious lot coverage area.
- C. Ground-mounted SEFs shall have a prepared stormwater management plan in accordance with Township Ordinances and Pennsylvania Department of Environmental Protection (“Pa DEP”) Best Management Practices. This shall include the use of low maintenance and low growing vegetative surfaces that support native

pollinators under the SEF. This plan is subject to approval by the Lackawanna County Soil Conservation District.

- D. Ground-mounted SEFs shall have a prepared grading plan that minimizes to the best extent possible the disturbance or alteration of the existing topography on the site. This plan is subject to approval by the Lackawanna County Soil Conservation District native pollinators under the SEF.

Section 9. Emergency Services and Safety:

- A. Training with the local emergency services shall be provided and tested annually at the cost of the owner/or operator.
- B. Any specialized emergency services equipment associated with the handling of emergency services response shall be provided by the Facility Owner and/or Facility Operator. This shall include the full purchase price, any and all upgrades, testing, certification, etc. associated with the possession of equipment. Specialized emergency services equipment will be in the possession of the local emergency services.
- C. The applicant shall provide a copy of the project summary and site plan to local emergency services, including paid and volunteer fire department(s).
- D. The applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the SEF.
- E. A sign shall be posted providing the name of the operator and a phone number to be used in case of an on-site emergency at the primary entrance of the SEF. Additionally, reflective signs shall be posted providing the name of the operator and a phone to be used in case of an on-site emergency along the perimeter of the SEF at intervals of 250 feet. The operator or its designee must respond to such an emergency within one (1) hour.
- F. The SEF must be properly maintained and be kept free from all hazards, including, but not limited to, faulty wiring and/or batteries, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare.

Section 10. Other Conditions:

The Covington Township Board of Supervisors may require additional conditions related to the protection of the public's health, safety and welfare.

Section 11. Decommissioning:

- A. The Facility Owner is required to notify Covington Township immediately upon

cessation or abandonment of the use. The SEF shall be presumed to be discontinued or abandoned if no electricity is generated by the system for a continuous period of twelve (12) months.

- B. The Facility Owner shall then have six (6) months in which to dismantle and remove the SEF, including all solar-related equipment or appurtenances related thereto, as well as all buildings, cabling, electrical components, transmission and plumbing lines, roads, foundations, and other associated facilities from the property. The Facility Owner shall also restore the land to its original pre-construction condition. If the SEF owner fails to dismantle and/or remove the SEF and restore the land within the six (6) month period, Covington Township may, but shall not be required to, complete the decommissioning and land restoration at the owner's expense.
- C. At the time of issuance of the permit for the construction of the SEF, the Facility Owner shall provide proof of liability insurance and a financial security to Covington Township to secure the expense of dismantling and removing the SEF and restoration of the land to its original condition. The financial security shall be in the amount of 110% of the costs of decommissioning. The decommissioning funds shall be posted and maintained during the life of the project in the form of a performance bond, irrevocable letter of credit, or other financial form of security acceptable to the Covington Township Board of Supervisors as more fully set forth in section 7 herein.
- D. An independent and registered professional engineer shall be retained by Covington Township at the Facility Owner's cost to estimate the total cost of decommissioning without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment. Thereafter, the Facility Owner shall retain an engineer to provide Covington Township with cost estimates of decommissioning after the first (1st) year of operation and every fifth (5th) year thereafter. Said estimate is subject to the review and approval of Covington Township's engineer.
- E. During the operation of the SEF, the Facility Owner shall maintain financial security in the amount of 110% of the estimate of the cost of decommissioning. The Financial Security may be in any one of the forms set forth in section 7 herein.

Section 12. Remedies:

- A. It shall be unlawful for any person, firm or corporation to violate or fail to comply with or take any action that is contrary to the terms of this Ordinance or a permit issued under this ordinance or cause another to violate or fail to comply, or take any action which is contrary to the terms of this Ordinance or a permit issued under this Ordinance. If this occurs, the Facility Owner and/or Facility Operator shall be issued a Notice of Violation by Covington Township which specifies the violation and the action required to remedy it.

- B. If, after thirty (30) days from the date of the notice of violation, Covington Township determines, in its discretion, that the parties have not resolved the alleged violation, Covington Township may institute civil enforcement proceedings or any other remedy at law or in equity to ensure compliance with this Ordinance. If Covington Township institutes and prevails in such civil enforcement proceedings, legal or equitable, the Facility Owner and/or Facility Operator shall be responsible for all fees, costs and attorney's fees related to said proceedings.

Section 13. Severability:

If any provision of this Ordinance, or the application thereof, to any person or circumstance is for any reason held invalid, such invalidity shall not affect other provisions of applications of the Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

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The Public Hearing for this Ordinance was held on February 28, 2023.

This Ordinance is hereby Ordained and Enacted by the Board of Supervisors of Covington Township, Lackawanna County, Pennsylvania, at a duly convened meeting of the Board of Supervisors of Covington Township this 28th day of February, 2023, to become effective immediately.

COVINGTON TOWNSHIP BOARD OF SUPERVISORS

BY: Melissa Kearney
Melissa Kearney
Chairwoman

Vicki Williams
Vicki Williams
Vice-Chairwoman

Marshall Peirce
Marshall Peirce
Supervisor

William Willson
William Willson
Supervisor

Wanda Andreoli
Supervisor

ATTEST:

Melissa Kearney
Melissa Kearney
Secretary