

**SCOTT COUNTY FISCAL COURT
ORDINANCE NO. 22-02**

**AN ORDINANCE PROVIDING FOR AND
REGULATING SOLAR ENERGY IN SCOTT COUNTY**

SUMMARY

Section 1 defines certain terms used in the ordinance.

Section 2 sets out the purpose of the ordinance.

Section 3 sets out the situations subject to the ordinance and those that are not.

Section 4 sets out when a conditional use permit is required to construct and operate a Solar Energy System.

Section 5 sets out general requirements applicable to integrated and rooftop Solar Energy Systems.

Section 6 sets out several requirements applicable to ground mounted Solar Energy Systems.

Section 7 sets out the requirements for conditional use permit applications.

Section 8 provides for public notice and comment.

Section 9 sets out the security required for decommissioning.

A complete copy of the ordinance is available at the Scott County Judge Executive's Office, Scott County Courthouse, 101 E. Main Street, Georgetown, Kentucky 40324.

SCOTT COUNTY FISCAL COURT


JOE PAT COVINGTON
SCOTT COUNTY JUDGE EXECUTIVE

ATTESTED:


STACY HAMILTON
SCOTT COUNTY FISCAL COURT CLERK

CERTIFICATION

I certify that I am a licensed and practicing attorney in the Commonwealth of Kentucky and the foregoing summary was prepared by myself in accordance with K.R.S, 82A.060(9).

WITNESS my hand this 11th day of March, 2022.



RAND MARSHALL
SCOTT COUNTY ATTORNEY
198 E. Washington St.
Georgetown, KY 40324

**SCOTT COUNTY FISCAL COURT
ORDINANCE NO. 22-02**

**AN ORDINANCE PROVIDING FOR AND
REGULATING SOLAR ENERGY IN SCOTT COUNTY**

WHEREAS, the need for alternative sources of renewable energy is a growing concern nationally, in Kentucky and locally in Scott County; and

WHEREAS, the Scott County Fiscal Court desires to provide the legal framework for the orderly progression of solar energy;

NOW THEREFORE, it is hereby ordained by the Scott County Fiscal Court as follows:

1: Definitions

Added to Zoning Ordinance Section 2.1

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

1. **Integrated Solar Energy System** means an SES where the solar materials are incorporated into the building materials such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building façade, skylight, shingles, canopy, light, or parking meter.
2. **Rooftop Solar Energy System** means and 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** means an SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:
 - a. **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.
 - b. **Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)** which is a Ground Mounted SES with a Footprint of at least 2,500 square feet but less than ten (10) acres.
 - c. **Large Scale Ground Mounted Solar Energy System (Large Scale SES)** means a Ground Mounted SES with a Footprint of at least or more ten (10) acres.

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

Farmland of Statewide Importance means a map unit identified by the Natural Resources Conservation Service as including soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops, when treated and managed according to acceptable farming methods.

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

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

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

2: Purpose

Zoning Ordinance 2.53

The purpose of this ordinance is to facilitate the siting, development, construction, installation, and decommissioning of solar energy systems (SESs) in Georgetown, Sadieville, Stamping Ground, and Scott County in a predictable manner that promotes and protects the safety, health, and welfare of the community. This ordinance 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. The appropriate siting of SESs considers, avoids to the extent possible, and mitigates any adverse impacts to wildlife, productive and nationally important agricultural lands, forests, endangered species habitat, and historic, natural, and other sensitive lands. The appropriate siting of SESs also establishes standards and requirements to assure that the use and enjoyment of lands located adjacent to an in the proximity of SESs are fully protected.

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

3: Applicability

Zoning Ordinance 2.53

- A. This ordinance applies to the siting, construction, installation, and decommissioning of any new SES within the jurisdiction Georgetown, Sadieville, Stamping Ground, or Scott County after the effective date of this ordinance.
- B. An SES in operation, or which has begun physical construction prior to adoption of this ordinance, shall be considered to have legal nonconforming status in accordance with KRS 100.253.
- C. The following are not subject to this ordinance:
 - 1. Modification to an existing SES that alone or in combination increases the total SES Footprint by no more than 5% of the original Footprint.
 - 2. Routine maintenance and repair, including replacement of solar panels, not increasing the SES Footprint
- D. Any Exempt SES shall provide the Planning Commission, Board of Adjustment or other authority having jurisdiction, and Fiscal Court with information concerning service facilities which have been located on and relocated on private property in accordance with KRS 100.324(3).
- E. 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.

4: Conditional Use Permit Requirements and Allowed Uses

Zoning Ordinance Section 2.53

The table below outlines whether primary and accessory uses for SESs are permitted (P), require a conditional use permit (CUP), or are prohibited (N) in each zoning district. The table is organized by the type of SES and whether the proposed system is a primary or accessory use on the site. Integrated and rooftop SESs cannot be primary uses by definition and are therefore marked as not applicable (N/A).

Zoning District	Integrated SES		Rooftop SES		Ground Mounted SES					
					Small Scale ¹		Intermediate Scale		Large Scale	
	Prim.	Acc.	Prim.	Acc.	Prim.	Acc.	Prim.	Acc.	Prim.	Acc.
A-1	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
A-1R	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
A-1S	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
A-5	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
C-1	N/A	P	N/A	P	N	N	N	N	N	N
H	N/A	CUP	N/A	CUP	N	CUP	N	N	N	N
R-1 (A, B, C)	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
R-2	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
R-3	N/A	P	N/A	P	P	P	CUP	CUP	CUP	CUP
P-1	N/A	P	N/A	P	P	P	P	P	CUP	CUP
P-1B	N/A	P	N/A	P	P	P	P	P	CUP	CUP
B-1	N/A	P	N/A	P	P	P	P	P	CUP	CUP
B-2	N/A	P	N/A	P	P	P	P	P	CUP	CUP
B-3	N/A	P	N/A	P	P	P	P	P	CUP	CUP
B-4	N/A	P	N/A	P	P	P	P	P	CUP	CUP
B-5	N/A	P	N/A	P	P	P	P	P	CUP	CUP
BP-1	N/A	P	N/A	P	P	P	P	P	CUP	CUP
I-1	N/A	P	N/A	P	P	P	P	P	CUP	CUP
I-2	N/A	P	N/A	P	P	P	P	P	CUP	CUP
ESLI	N/A	P	N/A	P	P	P	P	P	CUP	CUP

¹ These count as accessory only if their Footprint is less than 50% of the footprint of the primary structure.

5: General Requirements Applicable to Integrated and Rooftop SESs

Zoning Ordinance Section 2.53

- A. **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for an Integrated or Rooftop SES. Such easement shall be recorded.
- B. **Tree Removal.** The removal of trees or natural vegetation for an Integrated or Rooftop SES shall be limited to the extent practicable and shall comply with all the requirements of the Georgetown
– Scott County Zoning Ordinance regarding tree removal if applicable.
- C. **Height Restrictions.** A rooftop SES shall conform to any height restrictions for roof-mounted mechanical devices or equipment for the applicable zoning district and may exceed the maximum permitted height for the structure type by no more than five (5) feet. A rooftop SES shall be positioned on the roof so as not to extend above or beyond the edge of any ridge, hip, valley, or eave, provided that where it is mounted on a sloped roof, the SES shall not vertically exceed the highest point of the roof to which it is attached by more than five (5) feet.
- D. **Lighting.** Integrated and Rooftop SESs shall not be illuminated and shall be designed and installed to prevent off-site glare.
- E. **Historic Preservation.** Where an integrated or rooftop SES is proposed to be installed on a property located within an historic district or which is listed on or eligible for listing on the National Register of Historic Places, the proposed installation shall be coordinated with any review required by the Zoning Ordinance for exterior renovations or additions to such structures.

6: General Requirements Applicable to Ground Mounted SESs

Zoning Ordinance Section 2.53

- A. **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for an Integrated or Rooftop SES. Such easement shall be recorded.
- B. **Tree Removal.** The removal of trees or natural vegetation for an Integrated or Rooftop SES shall be limited to the extent practicable and shall comply with all the requirements of the Georgetown
– Scott County Zoning Ordinance regarding tree removal if applicable.
- C. **Lighting.** Lighting of 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.

- D. 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 without approval by the Board of Adjustment or other authority having jurisdiction. The height restriction excludes utility poles, storage batteries, and antennas constructed for the project. A Ground Mounted SES may exceed twenty (20) feet in height upon a finding that the SES would use less land, or provide other environmental, economic, or other benefits if the height limitation is increased.

E. Siting Restrictions for Ground Mounted SES

1. An Intermediate or Large-Scale Ground Mounted SES, measured from the closer of the outer edge of the nearest panel or perimeter fencing, shall be located at least one hundred (100) feet from the property line of any property zoned for residential or agricultural use, at least thirty (30) feet from the property line of any property zoned for commercial, business, industrial, office, or institutional use, and at least one hundred (100) feet from the centerline of any public road.
2. An Intermediate or Large Scale Ground Mounted SES, measured from the closer of the outer edge of the nearest panel or perimeter fencing, shall be located no closer than one hundred (100) feet from a residence located on a property other than that on which the Ground Mounted SES is to be installed.
3. Setbacks are not required where the property line is shared by two or more participating landowners.
4. Setback requirements may be expanded by a Board of Adjustment or other authority having jurisdiction, as a condition of approval of a Conditional Use Permit, where deemed necessary to assure effective screening. The Board of Adjustment shall state the findings justifying the expanded setbacks.

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

1. Ground Mounted SESs approved as a conditional use shall have or install a visual buffer of natural vegetation, plantings, earth berms, and/or fencing that provides an effective visual and lighting screen between the SES and properties zoned for residential use, unless waived by the Board of Adjustment or other authority having jurisdiction. If such a waiver is

requested, it shall be the Applicant's responsibility to prove to the Board of Adjustment or other authority having jurisdiction that the SES will be effectively screened from residentially zoned properties. Existing buffers along an SES perimeter shall be preserved when reasonably practicable.

G. Protection of Farmland and Revegetation of Disturbed Areas

1. Compaction of soil associated with the location of roads and installation staging areas for Intermediate and Large-Scale Ground Mounted SES on land zoned for agricultural use shall be minimized to the extent possible. Compaction of soil associated with the location of roads and installation staging areas for all Ground Mounted SES on land zoned for agricultural use that are classified either as prime farmland or farmland of statewide importance shall be avoided to the extent possible, and the soils shall be de-compacted as part of the decommissioning process.
2. Upon completion of construction and installation of the Ground Mounted SES, all temporary roads constructed by the applicant shall be removed, and all disturbed areas shall be graded, de-compacted, and reseeded with native vegetation in order to establish an effective ground cover and to minimize erosion and sedimentation.
3. Topsoil shall not be removed. Grasses shall be maintained or established. Herbicides and ground sterilant and gravel shall not be used as a method of vegetative control, except around fences. Grasses, weeds, and wildflowers inside and outside the security fence shall comply with all applicable requirements of the adopted property maintenance code. The Board of Adjustment may waive this requirement if the developer can show this requirement will create an undue burden and an acceptable ground maintenance plan is submitted with the conditional use permit application.

H. 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.

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

1. If the Ground Mounted SES was a permitted use without a conditional use permit, all structures and facilities associated with the SES shall be removed within six (6) months of the beginning of decommissioning. All materials shall be recycled or otherwise reused to the extent reasonably practicable and the disturbed areas shall be reclaimed, revegetated, and restored consistent with the zoning classification of the property.

2. If the Ground Mounted SES was allowed under a conditional use permit, the SES shall be decommissioned according to the decommissioning plan approved in the Conditional Use Permit.

7: Conditional Use Permit Application Requirements

Zoning Ordinance Section 2.53

A. Applications for an SES requiring a conditional use permit shall include the following information:

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

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

8. Information demonstrating that approval of the SES will not result in any disproportionate individual or cumulative environmental burden on low-income communities or communities of color.
9. A decommissioning plan prepared by a registered professional engineer, and updated every three (3) years, containing the following:
 - a. The anticipated life of the project and conditions upon which decommissioning will be initiated;
 - b. The estimated decommissioning cost, including removal of the SES and related foundations, pads, underground collector lines and road, and the salvage value of any equipment in current dollars and the calculations supporting the decommissioning estimate. The estimated salvage value of the material using current, publicly available material indices and/or firm quotes from a decommissioning or recycling company experienced in the decommissioning of SES, shall be provided, and the Board of Adjustment or other authority having jurisdiction shall consider the salvage value identified in 9.b in computing the amount, if any, of financial assurance required under subsection 9.e;
 - c. The manner in which the project will be decommissioned, including provision and a timetable for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition or a condition compatible with the zoning or the parcel(s);
 - d. The party responsible for decommissioning;
 - e. Security, sufficient to cover the net costs identified in 9.b and to assure that decommissioning of the site can be achieved by a third party in the event that a permittee defaults in that obligation, shall be provided in accordance with Section 600 of the *Subdivision & Development Regulations*.
 - f. A copy of any lease containing specific agreements regarding decommissioning with the landowner;
10. Proof of adequate casualty and liability insurance covering installation and operation of the SES;
11. 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.
12. Where the applicant for a Conditional Use Permit is also seeking a construction certification pursuant to KRS 278.700 – 278.716, the applicant

may submit a copy of a complete state siting board application and site assessment report meeting the requirements of KRS 278.706 and 278.7008 in lieu of the above requirements of Section 7(a) subsections 1-7.

- B. A conditional use permit issued by a Board of Adjustment or other authority having jurisdiction shall include, at a minimum, all requirements of Section 7 of this Ordinance, and any additional conditions deemed by the Board necessary or appropriate pursuant to KRS 100.237 to allow the proper integration of the proposed SES into the zone and location in which it is proposed.

Section 8: Public Notice and Public Comment

Zoning Ordinance Section 2.53

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

Section 9: Security for Decommissioning

Subdivision & Development Regulations

Article VI 600 Security Requirements

E. Security for Decommissioning Ground Mounted Solar Energy Systems (SES).

1. The developer shall provide and maintain security in an amount sufficient to cover the net costs identified in the Decommissioning Plan to assure that decommissioning can be achieved by a third party in the event that a permittee defaults in that obligation.
2. Security sufficiency requirements
 - a. The Planning Commission will accept a performance bond naming the Planning Commission and/or the applicable city council/ city commission/ fiscal court as a beneficiary.
 - b. In lieu of a performance bond, the developer may post cash as security. For purposes of this provision, cash security includes certificates of deposit, Treasury certificates, certified checks, and cashiers' checks. Said cash security shall be immediately deposited by the Planning Commission and/or the applicable city council/ city commission/ fiscal court. The developer shall submit with the cash security a letter specifically describing the conditions under which decommissioning will be initiated and a copy of the decommissioning plan. The Planning Commission may use this cash security to pay for the timely and satisfactory decommissioning of the Ground Mounted SES. The Planning Commission shall refund any unused portion of the cash security when the project is satisfactorily completed.
 - c. Any developer who posts security under these regulations shall sign

a statement that he/she has read and understands this Article VI and all subsections thereunder and that he/she will abide by its terms. The developer must further acknowledge in writing that he/she shall not attempt to hold either the Planning Commission or the applicable city council/ city commission/ fiscal court, nor any employees of the same, liable for any damages that may result from strict enforcement of this Article VI and related regulations.

- d. When the decommissioning plan is updated every three (3) years, the Planning Commission shall review the posted security and allow for adjustments, so the posted security matches the net costs of decommissioning identified in the decommissioning plan.

2. Release of Security

- a. Security shall be released by written certification of the Planning Commission Director pursuant to the decommissioning of the Ground Mounted Solar Energy System in accordance with the decommissioning plan.

3. Calling of Security

- a. The required security for decommissioning a Ground Mounted SES shall remain in effect until it is officially released as described above. If the decommissioning is not completed within the time specified in the decommissioning plan, the Planning Commission may proceed against the developer and the projects security. If at any time the Planning Commission is required to notify the bank or financial institution of its intention to call the security, this shall be deemed as a violation of these regulations and the following shall apply:
- b. The owner or developer of the Ground Mounted SES shall be notified of the violation and means to remedy such violation and shall be subject to all applicable rules of enforcement contained in these regulations or associated regulatory bodies, and
- c. The entire amount of the security shall be drawn regardless of the progress made on decommissioning the SES completed up to the date of draw request. Any funds not used after completion of all required work by the Planning Commission shall be returned to the bank or financial institution one (1) year after completion of the decommissioning, less five hundred dollars (\$500) or such greater amount if documented as an amount necessary to be expended by the Planning Commission in procuring completion of all work, but not to exceed one thousand dollars (\$1,000) in any case.

First reading approved on March 11, 2022.
Adopted at second reading on March 24, 2022.

SCOTT COUNTY FISCAL COURT

3-24-22
DATE



JOE PAT COVINGTON
SCOTT COUNTY JUDGE EXECUTIVE

ATTESTED:



STACY HAMILTON
SCOTT COUNTY FISCAL COURT CLERK