

ORDINANCE NO. 38

AN ORDINANCE REGULATING THE PLACEMENT OF UTILITY SCALE SOLAR ENERGY SYSTEMS ON PROPERTY LOCATED IN THE UNINCORPORATED AREAS OF ADAIR COUNTY, IOWA

Be it enacted by the Board of Supervisors of Adair County Iowa:

Purpose and Intent. The purpose of this Ordinance is to establish minimum requirements and regulation of any Applicant/Developer/Owner engaged in the construction, erection, placement, location, maintenance, modification, operation, and decommissioning of Utility Scale Solar Energy Systems (US-SES) in Adair County, Iowa.

The intent of this Ordinance is to facilitate the construction, installation, and operation of Utility Scale Solar Energy Systems (US-SES) in Adair County in a manner that preserves and protects the rights, privileges, and property of the County and its residents, that ensures the protection of the health, safety, and welfare of the county's residents, and that provides an opportunity for economic growth and development.

All Utility Scale Solar Energy System projects not currently contracted by agreement, permitted, planned, and erected shall follow this Solar Energy Systems Ordinance. This Ordinance shall not apply to any US-SES project with an agreement signed before the effective date of this Ordinance.

Section 1. Definitions. For use in this Ordinance, certain words used herein shall be defined as follows:

Agreement. A legally binding document signed by both a participating landowner and an owner or operator for a specific purpose, including but not limited to a contract, easement, or lease.

Applicant. The person or entity submitting the application under this Ordinance, which is normally expected to be the owner or operator of a US-SES, or the owner of the US-SES development.

Board of Supervisors. A board elected by Adair County residents.

Developed Project Acres. The total project area that is subject to an agreement between the Owner/Operator and the Participating Landowner and is actually developed and utilized for placement of a US-SES.

Easement. A legal agreement for the use of property for a specified purpose.

Non-Participating Landowner. A landowner who has not signed a binding agreement with the Applicant/Developer/Owner of the US-SES project.

Occupied Residence. A house, apartment, or other structure designed for residential use that is the abode of a person, family, or household, and is regularly occupied.

Owner. The entity or entities with an equity interest in the US-SES, including their respective successors and assigns. Owner does not mean the landowner from whom a lease, easement, or other property right is acquired for locating the US-SES unless the landowner has an equity interest in the US-SES, or any person holding a security interest in the US-SES solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the US-SES at the earliest practical date.

Participating Landowner. A landowner who has signed a binding agreement with the Applicant/Developer/Owner of the US-SES project.

Project Area. The geographic area encompassing all components of a US-SES project, including border fencing.

Property Line. The legal boundary between separately owned real estate parcels, and between privately owned parcels and publicly owned land or public right of way.

Setback. The minimum required distance from a certain object, structure or point to the edge of any part or component of the US-SES.

Utility Scale Solar Energy System (US-SES). Also known as solar power plants and solar farms, an alternative energy facility that consists of ground-mounted or freestanding sunlight or solar collection devices, solar energy related equipment, and other associated infrastructure with the primary intention of generating electricity from photovoltaics or concentrated solar power, or otherwise converting energy to a different form of energy, to be distributed to the electrical grid or other off-site use. This does not include small-scale solar panels or technologies installed at individual residential or commercial locations (e.g. roof or ground mounted panels) that are used exclusively for private purposes and not utilized for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.

US-SES Construction Permit. A permit issued by Adair County, which is required before construction of a US-SES is allowed in Adair County.

Section 2. Cap on Total Acres Utilized for US-SES. There shall be a cap of 400 total Developed Project Acres in Adair County devoted to placement of Utility Scale Solar Energy Systems.

A participating landowner who wishes to appeal the denial of a US-SES Construction permit on the basis that the total acreage cap has been met or exceeded must contact the Adair County Auditor's Office to receive the current Appeal for Variance form. The participating landowner must complete the form in its entirety, and file it with the Adair County Auditor's Office for review by the Board of Supervisors.

Section 3. Permit Application Requirements. The applicant for the siting and construction of a Utility Scale Solar Energy System shall file an application with the County Engineer or their designee, along with the permit fee of \$100.00, prior to commencing construction.

The application for a Utility Scale Solar Energy System Construction Permit shall include:

1. A written US-SES project summary, including (1) a general description of the project, including the approximate generating capacity; (2) the model and equipment manufacturer for the solar panel array; (3) the name, address, email address, and telephone number of the applicant, project owner, and/or project operator; and (4) the legal description of the property or properties on which the Utility Scale Solar Energy System will be located.
2. A site plan of the US-SES site to be an aerial photograph of the project location and surrounding area or a scale drawing showing all of the following:
 - a. Boundaries of the site;
 - b. All proposed SES structures and other support structures, including the number, location, spacing, and height of solar panels/arrays and the planned location of underground or overhead electrical lines;
 - c. All proposed fencing to surround the SES structures and other support structures;
 - d. Location of property lines, including identification of adjacent properties and whether they are participating or non-participating;

- e. Setback measurements between the fencing, solar panel(s) and/or equipment closest to the required protected areas, and all applicable property lines, occupied residences, road right of ways, intersections, and airports. This provision does not include underground facilities, such as cable;
 - f. An unredacted Health & Safety Instructions Manual specifically for the make, model, and type of solar panel array from the manufacturer of said solar panels. This manual must be presented to the County to have on file with the Auditor's office and must be made available to the public at time of application. No other generalized statement, document, or manual is acceptable.
3. A description of the anticipated life of the US-SES, the anticipated manner in which the project will be decommissioned, the anticipated site restoration actions, the estimated decommissioning costs in current U.S. dollars, the method for ensuring that funds will be available for decommissioning and restoration; and evidence of an agreement with the property owner for the location of the US-SES that ensures proper removal of all equipment and restoration of the site within six (6) months of decommissioning or abandonment of the project.
 4. Consultation with or notifications from relevant state and federal agencies showing the project will not be a hazard to wildlife, communications, air traffic, and other related matters.

Upon receipt of the complete application and permit fee, the Adair County Engineer shall review the application. Upon the determination by the Adair County Engineer that the requirements of this Ordinance have been satisfied, the completed US-SES Construction Permit Application and any/all necessary supporting documentation shall be presented to the Adair County Board of Supervisors for approval. The Adair County Board of Supervisors, upon approval of the application, shall provide any necessary building permits for each US-SES. If there are changes to the information as provided as a part of the application that occur from the time of the application until the time of the construction of the US-SES, the applicant shall submit a new application together with the updated information and any such change shall be in compliance with this Ordinance. The Adair County Engineer shall present the amended and completed US-SES Construction Permit Application to the Adair County Board of Supervisors using the process described above.

Section 4. General Requirements for Utility Scale Solar Energy Systems (US-SES). US-SES shall be subject to the following requirements:

1. Setbacks. All US-SES and any upgrades to existing solar energy systems shall observe the following setbacks, to be measured from the edge of the solar panels and equipment (not underground facilities such as cable or fencing):

Protected Area	Setback Requirement
Occupied Residence	1,000 feet from occupied residence
Any non-participating parcel	250 feet from property line
Public road right of way	50 feet from road right of way
Public road intersections	Radius of 150 feet from the center of the intersection
Public Airports	5 miles from property line

Participating and non-participating landowners may sign a waiver consenting to the placement of US-SES and/or upgrades closer than the setback requirements outlined above.

2. Safety. Security fencing shall be installed and maintained in good condition around all electrical equipment related to the US-SES project, including but not limited to transformers and transfer stations. The fencing shall be equipped with a minimum of one gate and locking mechanism on the primary access side. Appropriate warning signage shall be placed at safe intervals at the entrance and perimeter of the US-SES project.
3. Insurance. Applicants shall provide evidence, in the form of a certificate of insurance satisfactory to the county, showing general liability insurance coverage for the installation and operation of the project under a standard homeowner's or standard business owner's insurance policy, separate and distinct from any requirements of a public utility.
4. Ground Cover. All solar panels shall have native perennial vegetation planted and maintained beneath them, including a mix of grasses and wildflowers. The site shall be maintained to prevent fire hazards. No concrete or gravel type cover of property is permissible.
5. Certification & Compliance. All US-SES shall conform to applicable industry standards, including those from the Underwriters Laboratory (UL) and Federal Aviation Administration (FAA), and shall be in compliance with all applicable local, state, and federal regulatory standards and applicable electrical codes, including the National Electric Code (NEC).

Section 5. Public Infrastructure Damage Avoidance/Mitigation & Decommissioning.

1. Roads. The applicant or owner of the US-SES shall enter into a road use agreement, substantially in the form attached to this Ordinance, with Adair County prior to the start of construction of the US-SES project. Adair County's approval and execution of the agreement shall not be unreasonably withheld.
2. Decommissioning. The US-SES's owner shall enter into a decommissioning agreement, substantially in the form attached to this Ordinance, with Adair County prior to the start of construction of the US-SES project. Adair County's approval and execution of the agreement shall not be unreasonably withheld.

Section 6. Miscellaneous.

1. Condemnation Waiver. Issuance of a US-SES Construction Permit shall be conditioned on the permit holder's enforceable promise, supported by the consideration of the issuance of the US-SES Construction Permit, that the permit holder shall never use, or seek to use, eminent domain to acquire any real property interests to construct or operate the project.
2. Legal Fees. In any action brought by the County against the permit holder or a US-SES Construction Permit to enforce the provisions of this Ordinance, the County shall be entitled to recover its reasonable attorney's fees and court costs as may be awarded by the decision-making tribunal.

Section 7. Transfer. Building permits and associated decommissioning and road use agreements granted under this Ordinance may be transferred to another party subject to Adair County Board of Supervisors approval, which approval shall not be unreasonably withheld. Any assignee of the building permits and associated decommissioning and road use agreements shall be subject to all the requirements in this Ordinance and the agreements.

Section 8. Severability. Should any section or provisions of this Ordinance be declared by the courts to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be invalid or unconstitutional.

Section 9. Penalty. Any person, persons, firms, partnerships or corporations, whether acting alone or in concert with any other, who violates this Ordinance, shall be guilty of a simple misdemeanor as authorized by Iowa Code section 331.302.

Section 10. Effective Date. This Ordinance shall be in effect after its final passage, approval, and publication as required by law.

Passed and approved this 5th day of May, 2021.

Steve Shelley, Chairperson, Board of Supervisors

Attest: Mandy Berg, County Auditor