

**ORDINANCE NO. 72 A-1
TOWNSHIP OF WHITEFORD, COUNTY OF MONROE, STATE OF MICHIGAN**

UTILITY SCALE SOLAR ENERGY FACILITIES ORDINANCE

An Ordinance regulating the siting, installation, operation and maintenance of utility scale solar energy facilities; to preserve the physical integrity of land in close proximity to dwellings; to provide for penalties for the violation of said ordinance; to replace Ordinance No. 72 in its entirety; to repeal all ordinances in conflict therewith.

SECTION 1. TITLE

This ordinance shall be cited as the Whiteford Township Utility Scale Solar Energy Facilities Ordinance.

SECTION 2. APPLICABILITY

A. This ordinance only applies to solar energy facilities that are intended to provide utility scale energy to the grid. For purposes of clarity, a solar energy facility that is designed to primarily offset the energy consumption of a residence or commercial facility through net metering is not regulated by this ordinance.

B. Modifications to an existing utility scale solar energy facility that increase the area of the facility by more than 20% of the original footprint or changes the solar panel type shall be subject to this ordinance.

C. Utility scale solar energy facilities shall only be allowed in AG, M-1 and M-2 zoning districts.

SECTION 3. DEFINITIONS

A. **Abandonment:** A utility scale solar energy facility shall be deemed to be abandoned when: i) it ceases to produce energy on a continuous basis for 12 months; or ii) the township representative responsible for enforcing the Whiteford Township Zoning Ordinance reasonably believes that the facility is not producing energy, a certified letter has been sent to the last known address of the landowner and owner of the facility and either party has failed to provide substantial evidence that the facility is still generating energy within sixty (60) days of the certified letter's receipt.

B. **Building:** Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

C. **Decommissioning plan:** A document that details the planned shut down or removal of a utility scale solar energy facility from operation or usage.

D. **Dwelling:** a building that is occupied as a home, residence or sleeping place by one or more persons.

E. **Fence:** A continuous barrier extending from the surface of the ground to a uniform height of not less than eight (8) feet from the ground at any given point, constructed of wood, steel, or

other metal, or any substance of a similar nature and strength that will hide the utility scale solar energy facility.

F. Improved Area: An area containing solar panels, electrical inverters and storage buildings.

G. Public Road: Any road or highway which is now or hereafter designated and maintained by the Monroe County Road Commission, Department of Transportation as part of the State Highway System, whether primary or secondary, hard surfaced or other dependable road. Setbacks for improved areas shall be measured from the centerline of the road right of way.

H. Unless otherwise defined in this Ordinance, all terms shall have the meanings set forth in the Whiteford Township Zoning Ordinance.

SECTION 4. LOCATION

A. All utility scale solar energy facilities must comply with the terms of this Ordinance, submit a site plan and comply with the other general requirements established in the Whiteford Township Zoning Ordinance. In case of a conflict between this Ordinance and the Whiteford Township Zoning Ordinance, the terms of this Ordinance shall control.

B. All utility scale solar energy facilities shall be considered a conditional use requiring special approval in M-1, M-2 and AG zoning districts in Whiteford Township. Approval for the special use must be obtained from the Planning Commission.

C. All Improved Areas shall be at least 130 feet from the centerline of a public road right of way and 130 feet from a property line of a parcel not part of the utility scale solar energy facility. In addition, all Improved Areas shall be set back 130 feet from all residential dwellings that are part of the utility scale solar energy facility.

D. If the Improved Area abuts a property zoned R-1, R-2, R-3, R-4, R-5, PUD or the abutting property has dwelling on it, then the improved area must be set back 130 feet from the abutting property line and a berm landscaped with native grasses is required. The height of the berm shall be fifty percent (50%) of the height of the solar panels (e.g. if the solar panels are 12 feet, then the berm shall be at least 6 feet high).

E. A landscaped berm will not be required if the utility scale solar energy facility abuts property zoned M-1, M-2, EX, B-1, B-2 or AG and does not have a dwelling on it.

SECTION 5. SECURITY

A. Utility scale solar energy facilities shall be completely fenced in. The perimeter fence shall be designed to restrict unauthorized access.

B. Vegetation on a utility scale solar energy facility must be properly pruned and maintained so that the vegetation will reach maturity as soon as practical and will have maximum density of foliage. Dead or diseased vegetation shall be removed and must be replanted at the next appropriate planting season. Plants or grasses not part of landscaping shall be maintained by the facility owner or operator and shall not exceed twelve inches in height.

SECTION 6. SUPPLEMENTAL REGULATIONS

- A. An appropriate warning sign shall be posted on or near the panels in a clearly visible manner.
- B. Onsite power lines between solar panels and inverters shall be placed underground.
- C. The design of utility scale solar energy facility buffers shall use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment.
- D. If the utility scale solar energy facility uses batteries, adequate design must be provided to ensure all local, state and federal requirements regulating outdoor battery storage have been met.
- E. If a driveway permit is required by the Monroe County Road Commission, a copy of the permit will be provided to the Planning Commission.
- F. The design and construction of utility scale solar energy facilities shall not produce electrical emissions that would interfere with aircraft communication systems or glare that interferes with aviation.
- G. A copy of the application to the utility company that will be purchasing electricity from the proposed site shall be provided to the Township.
- H. An affidavit or evidence of an agreement between the property owner and the facility owner confirming that the facility owner has the permission of the property owner to apply for the necessary permits for construction and operation of the utility scale solar energy facility shall be provided to the Township.
- I. The applicant shall provide any other relevant studies, reports, certificates and approvals that may be reasonably required by the Planning Commission.
- J. An informational sign shall be posted and maintained at the entrance(s) listing the emergency name and phone number of the operator or facility owner.
- K. Solar panels shall be placed and arranged so that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways. Solar panels shall be finished with non-reflective coatings and any exposed frames or components shall have a non-reflective surface.
- L. The applicant must obtain all applicable permits and inspections for the utility scale solar energy facility. The building inspector shall conduct a final inspection of the facility to ensure that the electrical and other mechanical systems comply with state code.
- M. The transfer, exchange or sale of the utility scale solar facility shall only be permitted if the transferee has a bond rating of BBB/Baa or above (i.e. the bond rating is above speculative grade).
- N. The owner shall immediately repair any damage to field drain tiles within thirty (30) days of damage.

SECTION 7. SITE PLAN REQUIRED

A. Owners or operators of utility scale solar energy facilities established after the effective date of this Ordinance shall present six (6) copies of a site plan that conform to the standards of this Ordinance and the Whiteford Township Zoning Ordinance to the Whiteford Township engineer. The applicant must satisfy the Whiteford Township engineering standards and apply for the necessary building and electrical permits.

B. The Planning Commission shall review the site plan after approval from the Township engineer to insure conformity with the requirements of this Ordinance.

C. A description of the proposed technology including the type of solar panel, whether the panels are fixed mounted or solar tracking, number of panels, and angles of orientation shall be part of the site plan.

D. "As built" prints shall be presented prior to final inspection by the building inspector.

SECTION 8. ABANDONMENT AND DECOMMISSIONING PLAN

A. When a utility scale solar energy facility has been determined to be abandoned by Whiteford Township, then the property owner or owner of the facility shall remove all equipment and improvements and shall restore the property to its prior condition.

B. The owner of the utility scale solar facility or property owner shall have six (6) months after abandonment to restore the property to its prior condition.

C. If the owner of the utility scale solar energy facility or property owner fail to properly restore the property after the facility has been determined to be abandoned, the township may remove the facility and related equipment and initiate judicial proceedings and take all other legal actions necessary to recover its costs incurred for removal and site restoration.

D. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) addressing the following shall be submitted prior to the approval of the conditional use:

- i. The anticipated life of the project;
- ii. The estimated decommissioning costs;
- iii. The conditions upon which decommissioning shall be initiated (i.e. end of the land lease, no power production for 12 months etc...);
- iv. Removal of all non-utility owned equipment, conduit, structures, fencing, roads, solar panels and foundations;
- v. Restoration of the property to the condition prior to development of the utility scale solar energy facility including restoring any damaged drain tiles;
- vi. The timeframe for completion of decommissioning activities, which shall not exceed six (6) months;
- vii. Description of any agreement (e.g. lease) with a landowner regarding decommissioning; and
- viii. The party currently responsible for decommissioning.

E. A copy of the decommissioning plan shall be submitted to the Planning Commission at the time of applying for the conditional use permit.

F. Decommissioning shall be six (6) months after determining that the utility scale solar energy facility is deemed abandoned.

G. A surety bond, letter of credit, corporate guaranty, performance bond, or other similar financial instrument acceptable to the Planning Commission that is equal to the cost of decommissioning is required. The owner of the utility scale solar facility shall be required to list Whiteford Township Michigan as an additional insured and provide thirty (30) days advanced written notice of any change to the financial instrument.

H. The owner of the utility scale solar facility shall be required to review the sufficiency of the bond, letter of credit, corporate guaranty, performance bond, or other similar financial instrument annually and shall provide a copy of the review to the Township. In addition, every five (5) years, the owner of the utility scale solar facility shall provide Whiteford Township with a copy of the financial instrument covering the cost of decommissioning.

I. The Township may, at its discretion, require the owner of the utility scale solar facility to escrow sufficient funds for the township to perform an independent decommissioning study to confirm that the owner's anticipated costs for decommissioning the solar facility are reasonable. The funds shall be paid by the owner and held in escrow by the township and any remaining funds shall be returned to the owner.

SECTION 9. ENFORCEMENT AND PENALTIES

A violation of this Ordinance is a municipal civil infraction, for which the fine shall be not less than \$50.00 nor more than \$500.00 for the first offense and not less than \$100.00 nor more than \$1000.00 for subsequent offenses, in the discretion of the Court, and such fine shall be in addition to all other costs, attorneys' fees, damages, expenses, and other remedies provided by law. For purposes of this section "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous similar violation.

SECTION 10. SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and should any provision, section or part thereof be declared invalid or unconstitutional by any Court of competent jurisdiction, such decision shall only affect the particular provision, section or part thereof involved in such decision, and shall not affect or invalidate the remainder of such Ordinance which shall continue in full force and effect.

Section 11. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its publication, or publication of a summary thereof, in a newspaper in general circulation within Whiteford Township.

WHITEFORD TOWNSHIP BOARD
OF TRUSTEES, MONROE COUNTY,
MICHIGAN

By: Christine Bischoff
Christine Bischoff,
Whiteford Township Clerk

AUTHENTICATED:

By: Walter Ruhl
Walter Ruhl,
Whiteford Township Supervisor

I, Christine Bischoff, do hereby certify that I am the duly appointed Clerk of the Township of Whiteford, and I do hereby certify that this Ordinance was adopted by the Whiteford Township Board of Trustees, Monroe County, Michigan, at a regular meeting of the Whiteford Township Board of Trustees held at the Whiteford Township Hall, 8000 Yankee Road, Suite 100, Ottawa Lake, Michigan 49267, on the 17th day of October, 2023 and that:

this Ordinance was offered for adoption by Timothy Hill and was seconded by Don Sahloff. The vote being as follows:

YEAS: Don Sahloff, Tim Hill, Bernice Heidelberg, Christine Bischoff, Walter Ruhl

NAYS: None

ABSENT / ABSTAIN: None

I, Christine Bischoff, Whiteford Township Clerk, do hereby certify that the foregoing is a true copy of an Ordinance adopted at a regular meeting of the Whiteford Township Board of Trustees on the 17th day of October, 2023.

Christine Bischoff
Christine Bischoff, Clerk
Whiteford Township, Michigan

ADOPTED: October 17, 2023

PUBLISHED: October 26, 2023

EFFECTIVE: November 25, 2023