**ORDINANCE NO. O-04-2023**

**AN ORDINANCE AMENDING ADAMS COUNTY CODE, TITLE 17 – ZONING, TO ADD CHAPTER 17.72 'SOLAR ENERGY FACILITIES" AND, PROVIDING AN EFFECTIVE DATE**

**WHEREAS** pursuant to the provisions of Chapter 36.70 RCW, the Board of County Commissioners of Adams County, Washington (hereinafter "BOCC") has created a Planning Commission and a Department of Building and Planning; and

**WHEREAS** pursuant to the provisions of 36.70 RCW, the BOCC is required to adopt Zoning Regulations for the unincorporated areas of Adams County and may amend the same; and

**WHEREAS** The Adams County Planning Commission held a public hearing on the proposed ordinance on July 27th, 2023, at which time they accepted and considered public comments on the proposed adoption of Chapter 17.72; and

**WHEREAS** a SEPA DNS was issued on the Proposed new chapter 17.72 Solar Energy Facilities; and

**WHEREAS** on June 26, 2023, the County provided the Washington State Department of Commerce a 60-day notice of proposed adoption of the Proposed Solar Energy Facilities code; and

**WHEREAS** The BOCC received recommendation from the Adams County Planning Commission to adopt provisions in regard to Solar Energy Facilities; and

**WHEREAS** The BOCC desires to adopt a new chapter 17.72 titled "Solar Energy Facilities" as presented; and

**NOW, THEREFORE,** the BOCC do ordain as follows:

**SECTION I**

**Chapter 17.72 "Solar Energy Facilities" of the Adams County Code (ACC) is added to Title 17 of the Adams County Code as follows:**

## Chapter 17.72

## Solar Energy Facilities

### 17.72.010 Purpose.

**A.** To provide areas suitable for the establishment of Solar Energy Facilities based upon where Solar Energy Facilities can be sited and mitigated in relation to the County's adopted agricultural zoning.

**B.** To provide site criteria for the utilization of the county's solar energy resources. Each solar energy facility will be subjected to individualized review and the imposition of conditions based on site-specific information that will be tailored to address project impacts in accordance with the adopted site criteria. The ultimate goal is to achieve a predictable but sensitive site process that effectively and efficiently addresses project impacts.

### 17.72.020 Definitions

**Large-Scale Solar Energy Facility:** A commercial or utility scale facility whose primary purpose is to convert solar energy into usable electrical energy to supply electricity to the electrical grid. Large-Scale Solar energy facilities consist of one or more solar arrays and other accessory structures, equipment, including substations, switchyards, battery storage, electrical infrastructure, generators, transmission lines, communications infrastructure, and other appurtenant structures and/or facilities. This definition shall not include roof or ground mounted accessory solar panels associated with a principally permitted structure or use and located on the same parcel as the principally permitted structure or use in any zone and designed to primarily serve that structure or use. Large-Scale Solar Facilities require a Type-III review.

**Small-Scale Solar Energy Facility:** A commercial energy system of not more than ten acres in size which is intended to primarily generate power for on-site consumption. The conditions listed in this chapter shall be used as a guide by the county to develop conditions that are appropriate and reasonable to mitigate project impacts. Conditions shall include setbacks from property lines, public rights-of-way, and public utility lines to address public safety, noise, aesthetics, and compatibility among land uses. All other code requirements still apply. This definition shall not include roof or ground mounted accessory solar panels associated with a principally permitted structure or use and located on the same parcel as the principally permitted structure or use in any zone and designed to primarily serve that structure or use. Small-Scale Solar Facilities require a Type II-A review.

**Agrivoltaics:** Means one or more solar energy generation facilities directly integrated with agricultural activities, including crop production, grazing, animal husbandry, apiaries, cover cropping to improve soil health or insect habitat benefits or carbon sequestration, or production of agricultural commodities for sale in the retail or wholesale market.

**17.72.030 Application of standards and criteria.**

**A.** Large-Scale Solar Energy Facilities shall not be allowed on properties in Residential zones or Agriculture zones with a current WA State water right or US Bureau of Reclamation (USBR) water right for agricultural irrigation use as of the date of this ordinance and including water rights as identified in this section which are newly established hereafter, excluding "agrivoltaics" as defined.

**B.** Solar Energy Facilities are allowed on properties zoned, Commercial, Light Industrial, Heavy Industrial and to include those agricultural parcels not identified under section 17.72.020 A.

**C.** Solar Energy Facilities shall not be allowed on sites or portions of sites with an existing average slope greater than 7-percent. Each solar energy facility submitted for permit consideration shall include a full topographic survey of the site with 2-foot contour intervals. The topographic survey shall delineate all portions of the site greater than 7-percent slope.

**D.** The use of general landscape practices shall be used to prevent noxious weeds and ground erosion and is preferred over the use of any kind of ground sterilant.

**E.** Maximum structure height for the solar array shall be 20-feet as measured from the highest existing native grade below each panel.

**F.** Setbacks for solar energy facilities shall meet a minimum setback of 100-feet from all property lines.

**G.** All fencing shall be sight obscuring when neighboring zones classified as residential and from residential uses in all other zone designations.

**H.** Solar Energy Facilities shall incorporate glare reducing materials. Glare reducing materials shall be maintained over the life of the solar energy facility project. In all instances, no fugitive glare shall be permitted to emit onto adjacent properties and/or rights-of-way. Additional glare analyses may be required when a solar energy facility may have the potential to affect flight paths of military operations. These requests will typically, although not exclusively, be made by the United States Department of Defense.

**I.** Any lighting incorporated into the design of a solar energy facility shall be designed to provide full cutoff shielding and shall not emit off-site glare.

**J.** All solar energy facilities must comply with any applicable critical area standards found in ACC18.06. Additionally, solar energy facilities that will impact fish and wildlife habitat areas including but not limited to priority habitat areas, must comply with the protection and mitigation requirements found in the Washington Department of Fish and Wildlife Wind Power Guidelines, published in April 2009 or as amended hereafter.

1. In the event a solar energy facility proponent chooses to utilize the fee-in-lieu option offered by the WDFW Wind Power Guidelines, a qualifying entity must be identified as the recipient of the funds. The qualifying recipient must be a bona fide and verifiable conservation organization with a specialization or focus on land and habitat conservation. A binding agreement executed by the solar energy facility proponent and the recipient shall be presented to Adams County Building and Planning in advance of

any land use application hearing demonstrating that the requirements in the WDFW Wind Power Guidelines have been satisfied.

2. WDFW shall provide a written approval of the terms and conditions of the fee-in-lieu agreement prior to any public hearings required for the solar energy facility.

K. The applicant for any solar energy facility is required to enter into a Development Agreement with Adams County as authorized by RCW 36.70B.170 concurrently with the land use applications for the solar energy facility. The purpose of the development agreement is to ensure that the decommissioning/reclamation of the site is adequately addressed pursuant to the following:

1. A decommissioning and reclamation plan shall be prepared and submitted with the initial application for a new solar energy facility.

2. Decommissioning/reclamation of a solar energy facility shall be completed within three (3) years of the date that power production is deemed to have ceased or after the facility has ceased to produce power for a period of 12 consecutive months at any time during the life of the facility.

3. All non-utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least three (3) feet below grade shall be removed.

4. All fences, graveled areas and access roads shall be removed unless the landowner's agreement to retain is presented, in writing, in which the property owner agrees for these elements to remain.

5. The property shall be restored to a condition reasonably similar to its condition prior to development of the solar energy facility. Restoration/reclamation conditions must comply with the Stormwater Management Manual for Eastern Washington in effect at the time of reclamation.

6. The developer or owner of the solar energy facility is responsible for the decommissioning, the development agreement shall transfer to any future operator or owner of the site.

7. Decommissioning/reclamation cost estimates, which shall be updated every five (5) years from the establishment and submittal of the Security, shall include all costs associated with the dismantlement, recycling, and safe disposal of facility components and site reclamation activities, including the following elements:

   a. All labor, equipment, transportation, and disposal costs minus actual salvage value based on current market rates. Associated with the removal of all facility components from the facility site;

   b. All costs associated with full reclamation of the facility site, including removal of non-native soils, fences, and constructed access roads;

   c. All costs associated with reclamation of any primary agricultural soils at the facility site to ensure each area of direct impact shall be materially similar to the condition it was before construction;

   d. All decommissioning/reclamation activity management, site supervision, site safety costs;

e. Any other costs, including administrative costs, associated with the decommissioning and reclamation of the facility site; and

f. The estimated date of submission of the Security to Adams County.

8. Prior to issuance of any grading or building permits, an irrevocable standby letter of credit, bond, or alternate form of Security in an amount sufficient to fund the estimated decommissioning/reclamation costs required by this Code. The Security shall:

a. Name the Board of County Commissioners of Adams County as the sole beneficiary of the letter of credit;

b. Be issued by an A-rated financial institution based upon a rating provided by S&P, Moody's, Fitch, AM Best, or other rating agency with similar credentials;

c. Include an automatic extension provision or "evergreen clause";

d. Be "bankruptcy remote," meaning the Security will be unaffected by the bankruptcy of the solar energy facility operator;

e. Adams County, in its sole discretion, may approve alternative forms of Security such as, but not limited to bonds, letters of credit, or other securities, if it finds that such alternative forms will provide an assurance of the availability of financial resources for decommissioning/reclamation that equals or exceeds that provided by the form required herein;

f. Adams County, at its sole discretion, may also approve modified terms and timing of the bond amounts based on the lifecycle stage of the solar energy facility; and

g. Any bond, letter of credit, or other securities shall be updated every five (5) years to match the decommissioning/reclamation cost estimates of section 17.72.020 (K)(7).

9. The developer or owner of the solar energy facility will include in the Development Agreement the plan for disposal of any damaged or decommissioned components. Various Solar Energy Facility components are considered a form of toxic, hazardous electronic form of "e-waste," therefore disposal of solar energy facility components will not be acceptable within Adams County.

L. Damaged and Repair: Any Solar Energy Facility that is damaged by the elements or vandalism shall be required to submit applicable building permit applications (if any required) within one year of the date the damage was first observed. Damage and repair do not qualify as decommissioned or abandoned unless the duration of the cessation of power production meets the requirements of section 17.72.020(K) above.

## SECTION II

**Severability.** If any section, sentence clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, section, sentence clause or phrase of the ordinance.

## SECTION III

**Effective Date.** This ordinance shall take effect upon adoption.

**ADOPTED** this 3rd day of October, 2023.

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, WASHINGTON

Jay R. Weise, Chairman

Dan C. Blankenship, Vice-Chairman

Miguel A. Garza, Commissioner

ATTEST:

Patricia J. Phillips, CMC
Clerk of the Board

Approved as to form:

Randy J. Flyckt
Adams County Prosecuting Attorney
WSBA# 29302