

BARRY COUNTY, MICHIGAN

NOTICE OF ADOPTION FOR

ORDINANCE #A-3-2024

**AN ORDINANCE TO AMEND THE BARRY COUNTY ZONING ORDINANCE OF 2008, AS
AMENDED, TO CHANGE THE FOLLOWING ARTICLE.**

BARRY COUNTY, MICHIGAN HEREBY ORDAINS:

A-3-2024

**Article TWO DEFINITIONS AND INTERPRETATION
 SECTIONS 200-227**

**Article FIVE ACCESSORY USE SOLAR ENERGY
 SYSTEMS SECTION 505**

**Article TWENTY-THREE PRINCIPAL-USE SOLAR ENERGY
 SYSTEMS SECTION 2370**

{See attached}

BARRY COUNTY, MICHIGAN

Date: August 13, 2024

David Jackson, Chairperson
Barry County Board of Commissioners

Cynthia L White,
Barry County Clerk

Published Date: August 15, 2024

The above named ordinance becomes effective August 23, 2024. A copy of this ordinance is available for purchase or inspection at the Barry County Planning Department, 220 West State Street, Hastings, Michigan 49058 between the hours 8:00 a.m. - 5 p.m., Monday through Friday. Please call (269) 945-1290 for further information.

STATE OF MICHIGAN

At a regular meeting of the Board of Commissioners of the County of Barry, Michigan,
held in the County Building in Hastings, Michigan, on the 13th day of August, 2024, at 9:00 a.m.
Local Time.

PRESENT: Members: John Smelker, Dave Hatfield, Mike Calton, Catherine Getty,
Bob Teunessen, Mark Doster, Bruce Campbell

ABSENT: Members: David Jackson

It was moved by Doster and seconded by Smelker that the following Ordinance be adopted under the authority of the Michigan Zoning Enabling Act, Act 110 of the Public Acts of Michigan of 2006, as amended.

ORDINANCE NO. A-3-2024

**AN ORDINANCE TO AMEND THE BARRY COUNTY ZONING ORDINANCE
TO REGULATE SOLAR ENERGY SYSTEMS AND OTHER MATTERS RELATED
THERE TO**

THE BOARD OF COMMISSIONERS OF THE COUNTY OF BARRY ORDAINS:

Section 1. Article Two, Sections 200-227 of the Barry County Zoning Ordinance, containing Definitions are hereby amended so as to insert the following defined terms in the proper alphabetical order:

ACCESSORY GROUND-MOUNTED SOLAR ENERGY SYSTEM: A ground-mounted solar energy system with the primary purpose of generating electricity for the principal use on site.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system mounted on racking that is attached to or ballasted on the roof or wall of a building or structure, or which serves as an integral part of a primary or accessory building or structure by replacing or substituting for an architectural or structural component of the building or structure. Building-mounted systems include, but are not limited to, photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

DUAL USE: A solar energy system that employs one or more of the following land management and conservation practices throughout the project site:

- a) Pollinator Habitat: Solar sites designed to meet a score of seventy-six (76) or more on the Michigan Pollinator Habitat Planning Scorecard for solar sites.
- b) Conservation Cover: Solar sites designed in consultation with conservation organizations that focus on restoring native plants, grasses, and prairie with the aim of protecting specific species (e.g., bird habitat) or providing specific ecosystem services (e.g., carbon sequestration, soil health).
- c) Forage: Solar sites that incorporate rotational livestock grazing and forage production as part of an overall vegetative maintenance plan.
- d) Agrivoltaics: Solar sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system mounted on support posts, like a rack or pole that are attached to or rest on the ground.

MAXIMUM TILT: The maximum angle of a solar array (i.e., most vertical position) for capturing solar radiation as compared to the horizon line.

MINIMUM TILT: The minimal angle of a solar array (i.e., most horizontal position) for capturing solar radiation as compared the horizon line.

NON-PARTICIPATING LOT(S): One or more lots for which there is not a signed lease or easement for development of a principal-use solar energy system associated with the applicant project.

PARTICIPATING LOT(S): One or more lots under a signed lease or easement for development of a principal-use solar energy system associated with the applicant project.

PHOTOVOLTAIC (PV) SYSTEM: A semiconductor material that generates electricity from sunlight.

PRINCIPAL-USE SOLAR ENERGY SYSTEM: A commercial, ground-mounted solar energy system that converts sunlight into electricity for the primary purpose of off-site use through the electrical grid or export to the wholesale market.

REPOWERING: Reconfiguring, renovating, or replacing a solar energy system to maintain or increase the power rating of the system within the existing project footprint.

SOLAR ARRAY: A photovoltaic panel, solar thermal collector, or collection of panels or collectors in a solar energy system that collects solar radiation.

SOLAR ENERGY SYSTEM (SES): A photovoltaic system or solar thermal system for generating and/or storing electricity or heat, including all above and below ground equipment or components required for the system to operate properly and to be secured to a roof surface or the ground. This includes necessary operations and maintenance building(s), but does not include any temporary construction offices, substation(s) or other transmission facilities between the SES and the point of interconnection to the electric grid.

SOLAR THERMAL SYSTEM: A system of equipment that converts sunlight into heat.

WILDLIFE-FRIENDLY FENCING: A fencing system with openings that allow wildlife to traverse over or through a fenced area.

Section 2. The Barry County Zoning Ordinance is hereby amended by the addition of Section 505 in Article 5 to read in its entirety as follows:

SECTION 505 ACCESSORY USE SOLAR ENERGY SYSTEMS

- A. **Applicability.** Building-mounted SES and accessory ground-mounted SES are an accessory use of property subject to Section 504 of this Ordinance as well as the provisions of this section. This section does not apply to solar energy collectors mounted on fences, poles, or on the ground with collector surfaces less than ten (10) feet, nor shall it apply to a solar energy system used to power a single device or specific piece of equipment such as a lawn ornament, light, weather station, thermometer, clock or other similar device.

- B. **Permit Required.** No building-mounted SES or accessory ground-mounted SES shall be installed or operated without obtaining a zoning compliance permit from the Zoning Administrator prior to installation.
- C. **Application.** Applications for a Accessory use SES shall include equipment renderings, horizontal and vertical elevation drawings, a sketch drawing depicting the location of all devices and such other materials as may be required by the Zoning Administrator.
- D. **Compliance with Other Codes.** All building-mounted SES and accessory ground-mounted SES shall be constructed, installed, used, operated, and maintained in strict accordance with the Michigan Building Code, the National Electric Code, and the manufacturer's specifications.
- E. **Height and Protrusion.** Building-mounted SES attached to the roof or wall of a structure shall be attached directly to the structure and shall not be higher than the peak of the building to which they are attached or extend more than 5 feet above or outside of the structure. Nor may a building-mounted SES extend beyond the eaves of the building's roof. Accessory ground-mounted SES shall not exceed sixteen (16) feet measured from the ground to the top of the system when oriented at maximum tilt.
- F. **Noise.** The sound pressure level of a building-mounted SES and all ancillary solar equipment shall not exceed fifty-five (55) dBA at the property line of an adjoining non-participating lot or at a public or private road or right-of-way or easement.
- G. **Glare.** All components of the system shall be designed, maintained and operated to avoid glare and reflection of sunlight and other artificial lighting which may affect navigation by air, water, and roadway. Solar energy system designs shall comply with all Federal Aviation Administration siting requirements. Glare and reflection of sunlight from any component of a solar energy system shall not have a negative impact on any non-participating property.
- H. **Wiring.** On-site power lines between solar panels, buildings, and inverters shall be placed within the underlying structure or underground.
- I. **Visibility.** An accessory ground-mounted SES in the RL, RR, LDR, MDR, or HDR, zoning districts shall be located in the side or rear yard to minimize visual impacts from the public rights-of-way.
- J. **Decommissioning.** Following the operational life of the building-mounted SES or accessory ground-mounted SES, or the abandonment or cessation thereof (whichever occurs first), the property owner or lessor shall promptly

perform decommissioning and removal of the solar energy system and all components and parts. At all times, while any of the building-mounted SES components or parts are present on the property, broken solar panels shall be promptly repaired or removed from the site. There shall be no on-site storage of broken or malfunctioning solar panels.

- K. **Nonconformities.** The installation of a building-mounted SES or accessory ground-mounted SES on a nonconforming building, structure, lot, or use shall not be considered an expansion of the nonconformity.

Section 3. Section 1102 Special Land Uses in the RR Rural Residential District shall be amended to add the following as a special land use:

“Principal-Use Solar Energy Systems, subject to Section 2370.”

Section 4. Section 1702 Special Land Uses in the LI Light Industrial District shall be amended to add the following as a special land use:

“Principal-Use Solar Energy Systems, subject to Section 2370.”

Section 5. Section 1802 Special Land Uses in the GI General Industrial District shall be amended to add the following as a special land use:

“Principal-Use Solar Energy Systems, subject to Section 2370.”

Section 6. Section 1902 Special Land Uses in the A Agricultural District shall be amended to add the following as a special land use:

“Principal-Use Solar Energy Systems, subject to Section 2370.”

Section 7. The Barry County Zoning Ordinance is hereby amended by the addition of Section 2370 to read in its entirety as follows:

SECTION 2370 PRINCIPAL-USE SOLAR ENERGY SYSTEMS

- A. Definition.** A commercial, ground-mounted solar energy system that converts sunlight into electricity for the primary purpose of off-site use through the electrical grid or export to the wholesale market.

B. Regulations. The Planning Commission may only approve a Principal-Use SES as a special land use in the RR, LI, GI, and A Districts subject to the procedures and standards for special land uses in this ordinance and all of the following requirements:

- a. Prime Farmland. Not more than 20% of any principal-use SES may occupy Prime Farmland as designated by the United States Department of Agriculture and identified on the Preserved Land and Prime Farmland Locations Maps in the County's Master Plan.
- b. Minimum Lot Size. A principal-use SES shall not be constructed on parcels less than eighty (80) acres in size in the Agricultural and Rural Residential zoning districts and twenty (20) acres in size in the Light Industrial and General Industrial zoning districts provided, however, that the Planning Commission may consider a joint application of adjacent properties so long as the total acreage of all participating parcels is not less than the minimum acreage provided for in this section.
- c. Height. Total height for a principal-use SES shall not exceed sixteen (16) feet measured from the ground to the top of the system when oriented at maximum tilt. However, other structures aside from a solar panel (such as a substation) shall not exceed forty-five (45) feet measured from the ground to the highest point on the structure.
- d. Setbacks. Setback distance shall be measured from the property line or road right-of-way to the closest point of the solar array at minimum tilt or any SES components and as follows:
 1. One hundred (100) feet from any property line of a non-participating lot.
 2. For Principal-Use SES with a output capacity greater than 50 megawatts, one hundred (100) feet from any public or private right-of-way or easement.
 3. For Principal-Use SES with a total output capacity of 50 megawatts or less, one hundred fifty (150) feet from any public or private right-of-way or easement.
 4. Three hundred (300) feet from any existing non-participating dwelling unit.
 5. A principal-use SES is not subject to property line setbacks for common property lines of two or more participating lots, except that road right-of-way setbacks shall apply.

6. One hundred (100) feet from a stream, river, pond, lake, wetland, drain, or lands located within a 100-year floodplain as identified by the Federal Emergency Management Agency.
- e. Fencing. A principal-use SES shall be secured with perimeter fencing to restrict unauthorized access. Perimeter fencing shall be eight (8) feet in height. All access doors to principal-use SES and related components and structures shall be locked to prevent entry by unauthorized persons. Fencing is not subject to setbacks as a component of the principal-use SES. The Planning Commission may require wildlife-friendly fencing with openings that allow wildlife to traverse over or through a fenced area or Knox boxes and keys for emergency personnel access.
 - f. Screening/Landscaping. A principal-use SES shall be buffered by installed trees and/or native vegetative plantings to provide for a visual buffer between the solar facility and (a) an adjacent public right of way, and (b) any adjacent, occupied residential structure existing on a non-participating parcel as of the date of Planning Commission approval of the principal-use SES. Any required screening and landscaping shall be placed outside the perimeter fencing.
 1. When current zoning district screening and landscaping standards are determined to be inadequate based on a legitimate purpose consistent with County planning documents, the Planning Commission may require substitute screening.
 2. The Planning Commission may reduce or waive screening requirements provided that any such adjustment is in keeping with the intent of this Ordinance.
 3. Screening and landscaping detail shall be submitted as part of the site plan that identifies the type and extent of screening for a principal-use SES, which may include planting, strategic use of berms, and fencing.
 - g. Ground Cover. A principal-use SES shall include the installation of ground cover vegetation maintained for the duration of the operation until the site is decommissioned. The application shall include a ground cover vegetation establishment and management plan as part of the site plan. The following standards apply:
 1. Sites bound by Farmland Development Rights (PA 116) Agreement must follow the Michigan Department of Agriculture and Rural Development's Policy for Allowing Commercial Solar Panel Development on PA 116 Lands.
 2. Ground cover at sites not enrolled in PA 116 must implement one or more of the four types of Dual Use defined in this ordinance:

- i. Pollinator Habitat
 - ii. Conservation Cover
 - iii. Forage
 - iv. Agrivoltaics
- 3. Project sites that are included in a brownfield plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, that contain impervious surface at the time of construction or soils that cannot be disturbed, are exempt from ground cover requirements.
- h. Lot Coverage. Principal-use SES are subject to the following lot coverage restrictions:
 - 1. The total area of a single principal-use SES, including all components, shall not exceed 1500 acres in total size on all participating lots.
 - 2. Consistent with the County's Master Plan, principal-use SES shall not occupy or cover more than the "solar limit" of 10,300 acres within the land area of Barry County under the County's zoning jurisdiction.
- i. Land Clearing. Land disturbance or clearing shall be limited to what is minimally necessary for the installation and operation of the SES and to ensure sufficient all-season access to the solar resource given the topography of the land. Topsoil distributed during site preparation on the parcel shall be retained on site.
- j. Environmental Impact. The Planning Commission shall review potential impacts on wildlife, water, and other environmental factors present on the site and may impose additional requirements to preserve and protect endangered species or prevent negative impacts to adjacent parcels.
- k. Access Drives. The principal-use SES applicant must maintain an emergency access road to the site that is accessible to Fire Department response apparatus. All access drives within the SES shall be designed to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises. The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary drives during the construction of the SES is permitted, provided that the geotextile fabrics and gravel are removed once the SES is in operation.
- l. Wiring. SES wiring, including communication lines and distribution lines, must be buried underground. Any above-ground wiring components within the footprint of the SES shall not exceed the height of the solar array at maximum tilt.
- m. Lighting. Principal-use SES lighting shall be limited to inverter and/or substation locations only. Light fixtures shall have downlit shielding and be placed to keep

light on-site and glare away from adjacent properties, bodies of water, and adjacent roadways. Flashing or intermittent lights are prohibited.

- n. Glare. All solar energy system location/tilt components shall be designed, maintained and operated to avoid glare and reflection of sunlight and other artificial lighting which may affect navigation by air, water, and roadway. Solar energy system designs shall comply with all Federal Aviation Administration siting requirements. Glare and reflection of sunlight from any component of a solar energy system shall not have a negative impact on any non-participating property.
- o. Public Safety. Principal-use SES shall have an emergency shutdown procedure in place and shall provide the local fire department site safety plans to include electrical, fire, smoke, and hazardous materials release, emergency response protocols and identification of typical hazards related to, electrical, fire, smoke and hazardous materials pertinent to the facility. Principal-use SES projects shall provide each affected local fire department with any special equipment reasonably required, in the discretion of the chief local fire official, to safely and efficiently extinguish fires at the facility site. At the County or any affected local unit's request, all principal-use SES facilities shall provide first responder training at the site.
- p. Signage. An area up to four (4) square feet may be used for signage at the project site. Any signage shall meet the setback, illumination, and materials/construction requirements of the zoning district for the project site. There must be a sign at each entrance containing the following language:
 - 1. The SES owner's and operator's names.
 - 2. Emergency contact information.
- q. Noise. The sound pressure level of a principal-use SES and all ancillary solar equipment shall not exceed fifty-five (55) dBA at the property line of an adjoining non-participating lot or at a public or private road right-of-way or easement.
- r. Inspection. The County shall have the right, upon approving any principal-use SES, to inspect the premises on which the SES is located at all reasonable times.
- s. Repowering. In addition to repairing or replacing SES components to maintain the system, a principal-use SES may at any time be repowered, without the need to apply for a new special land use permit, by reconfiguring, renovating, or replacing the SES to increase the power rating within the existing footprint. A proposal to change the project footprint of an existing SES shall be considered a new application, subject to the conditional use standards at the time of the request.

- t. Decommissioning. A decommissioning plan is required at the time of application.
1. The decommissioning plan shall include at a minimum:
 - i. A written description of the proposed service life of the principal-use SES.
 - ii. The anticipated manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained (e.g., access drive, fencing), or restored for viable reuse of the property consistent with the zoning district,
 - iii. The projected decommissioning costs for removal of the SES (net of salvage value in current dollars) and soil stabilization, less the amount of the surety bond posted with the State of Michigan for decommissioning of panels installed on PA 116 lands, and,
 - iv. The method of ensuring that funds will be available to cover 100% of the costs of site decommissioning and stabilization from an acceptable source as determined by the Planning Commission (in the form of surety bond, irrevocable letter of credit, or cash deposit).
 2. A review of the amount of the performance guarantee based on inflation, salvage value, and current removal costs shall be completed every three (3) years, for the life of the project, and approved by the Planning Commission. An SES owner may at any time:
 - i. Proceed with the decommissioning plan approved by the Planning Commission under this section and remove the system as indicated in the most recent approved plan, or,
 - ii. Amend the decommissioning plan with Planning Commission approval and proceed according to the revised plan.
 3. Decommissioning an SES must commence when the soil is dry to prevent soil compaction and must be complete within eighteen (18) months after abandonment. An SES that has not produced electrical energy for twelve (12) consecutive months shall prompt an abandonment hearing.
 - i. An abandonment hearing shall be held as a public hearing in the same manner the use was established at the Planning Commission. During the hearing, the Planning Commission will hear comments and make a determination if the SES has been abandoned. If the Planning Commission determines the SES has been abandoned, the decommissioning shall immediately proceed as described within the approved decommissioning plan.

Section 8. **Publication and Effective Date.** This Ordinance shall become effective August 23, 2024.

YEAS: Members: Smelker, Hatfield, Calton, Getty, Teunessen, Doster, Campbell

NAYS: Members: None

ABSTAIN: Members: None

Passed and adopted by the Board of Commissioners of the County of Barry, Michigan, on August 13, 2024.

A handwritten signature in cursive script that reads "Cynthia L. White".

Cynthia L. White, County Clerk

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Board of Commissioners of the County of Barry, Michigan, at a regular meeting held on August 13, 2024, and that public notice of said meeting was given pursuant to Act No. 267 of the Public Acts of Michigan of 1976, as amended, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

I further certify that said Ordinance has been recorded in the Ordinance Book of the County of Barry, Michigan.

Cynthia L. White

Cynthia L. White, County Clerk
County of Barry

CERTIFICATE OF PUBLICATION

I hereby certify that a summary of Ordinance No. A-3-2024, adopted by the Board of Commissioners of the County of Barry, Michigan, was published in the Hastings Banner on August 15, 2024.

Cynthia L. White

Cynthia L. White, County Clerk
County of Barry