

MARSHALL COUNTY FISCAL COURT
SOLAR ENERGY SYSTEM INSTALLATION REQUIREMENTS
ORDINANCE NO. 2024-04

AN ORDINANCE ESTABLISHING LICENSURE REQUIREMENTS FOR SOLAR ENERGY SYSTEMS IN MARSHALL COUNTY, KENTUCKY

WHEREAS, pursuant to KRS 67.083, the Marshall Fiscal Court is granted the authority to undertake all necessary governmental actions for the welfare of the county, and specifically is endowed pursuant to KRS 67.083(3)(h) and KRS 67.083(3)(m) for the regulation of commerce for the protection and convenience of the public, and with the power to protect and conserve the county's natural resources, including but not limited to soil and wildlife, to safeguard the livelihoods and well-being of its residents; and

WHEREAS, KRS 278.718 became effective June 29, 2023, and further provides that an ordinance, permit, or license issued by a local government and enacted under the provisions of home rule under KRS Chapter 67.080, 67.083, 67.850, 67.922, 67A.060, 67C.101, and 82.082, shall have primacy over the state provisions, including setback requirements, set forth in KRS 278.700, 278.704, 278.706, 278.708, and any conflict between an order of the board and a local ordinance, permit, or license shall be resolved in favor of the local government's ordinance, permit, or license; and

WHEREAS, the Marshall County Fiscal Court finds it necessary and appropriate to provide reasonable safeguards which mitigate potential nuisances such as soil erosion, water runoff, and erosion, impact to agricultural land, and impacts to local flora and fauna, among others, created by Intermediate-Scale and Large-Scale Ground Mounted Solar Energy Systems as defined herein in order to protect adjoining properties and public rights-of-way;

NOW THEREFORE BE IT ORDAINED BY THE MARSHALL COUNTY FISCAL COURT AS FOLLOWS:

SECTION 1:
DEFINITIONS

A. MERCHANT ELECTRIC GENERATING FACILITY – an electricity generating facility or facilities (except for a qualifying facility as defined in KRS 278.700(7)) that, together with all associated structures and facilities:

1. Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more; and
2. Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission.

B. SOLAR ENERGY SYSTEM (SES) – 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 existing land use:

- 1. INTEGRATED SOLAR ENERGY SYSTEM (INTEGRATED SES)** – 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 and integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building facade, skylight shingles, canopy, light, or parking meter.
- 2. ROOFTOP SOLAR ENERGY SYSTEM (ROOFTOP SES)** – an 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, (GROUND MOUNTED SES)** – an SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are further sub-categorized as follows:
 - a. *Small-Scale Ground Mounted Energy System (Small-Scale SES)*** – a Ground Mounted SES with a footprint of less than 2,500 square feet.
 - b. *Intermediate-Scale Ground Mounted Energy System (Intermediate-Scale SES)*** – a Ground Mounted SES with a footprint of between 2,501 square feet and up to and including forty (40) acres and which does not constitute a Merchant Electric Generating Facility as provided in KRS 278.700(2).
 - c. *Large-Scale Ground Mounted Solar Energy System (Large-Scale SES)*** – a Ground Mounted SES with a footprint of more than forty (40) acres. This term also includes any non-exempt SES that, irrespective of footprint size or configuration, constitutes a Merchant Electric Generating Facility as defined by the terms of KRS 278.700(2) and is otherwise subject to review and approval by the Kentucky State Board of Electric Generation and Transmission Siting.

C. DECOMMISSIONING PLAN FOR GROUND MOUNTED SES – a plan prepared by a licensed engineer that establishes the party responsible for the decommissioning, the anticipated life of the project, the estimated cost for removal of the SES facility, the costs for restoring the land to its original condition, and all other plan information required by this ordinance.

- D. ENLARGEMENT** – to increase the size of an SES footprint or relocate an SES footprint to an area of land not included as part of an original license’s approval or any change which would exceed the scope (increased height or decreased setback or buffer) of the original license’s approval. SES enlargement does not include the repair, modification, retrofitting, or enhancement of a licensed facility provided such repair, modification, retrofitting, or enhancement does not violate the terms of this ordinance or a condition of the license’s approval.
- E. EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES)** – an 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.
- F. PARTICIPATING PROPERTY** – a property on which a Solar Energy System (SES), as regulated by the terms of this ordinance, is to be constructed in whole or part. This includes any property for which the owner(s) has provided their signature(s) on a written and recorded agreement, explicitly consenting to be a party to the licensure application for the construction of an SES. Such signature(s) shall constitute prima facie evidence of the owner(s)’ consent and/or agreement to any terms set forth in the licensure application, including the waiver of any setback requirements from non-participating properties as subsequently defined herein.
- G. PHYSICAL CONSTRUCTION (SES FACILITY)** – the excavation or movement of earth, erection of forms or structures, or similar activities undertaken in the construction of an SES Facility. This term does not include any activity or construction undertaken prior to the issuance of all required certificates, approvals and permits, if any, as required under KRS Chapter 278 and other applicable state statutes.
- H. RESPONSIBLE ENTITY** – the owner of the Solar Energy System and related improvements irrespective of land ownership by fee simple title, lease agreement, or other instrument. The responsible entity is the applicant under the terms of this ordinance.
- I. SES FOOTPRINT** – an area 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.
- J. SETBACK** – the minimum distance established by this ordinance measured from the property line of a non-participating property or boundary of a public roadway or rail-line to the nearest portion of an SES Footprint or other regulated SES feature. The setback distance required by this ordinance is to be contained within the boundary of a participating

property and is the minimum distance from a non-participating property or public roadway or rail-line boundary that an SES Footprint or other regulated SES feature is allowed to be constructed.

- K. SITING BOARD REGULATED SES** – an SES that constitutes a “merchant electric generating 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.

**SECTION 2:
APPLICABILITY OF ORDINANCE**

- A. APPLICABILITY OF ORDINANCE.** This ordinance and its requirements for licensure shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Intermediate-Scale SES and Large-Scale SES facilities in all unincorporated areas of Marshall County, Kentucky. The requirements of this ordinance shall not apply to the following:

1. Integrated SES;
2. Rooftop SES;
3. Small-Scale SES; and
4. Intermediate-Scale SES and Large-Scale SES where physical construction began prior to the effective date of this ordinance provided:
 - a. Physical construction is completed within one (1) year of the effective date of this ordinance; and
 - b. The Intermediate-Scale SES or Large-Scale SES footprint is not thereafter enlarged.

**SECTION 3:
APPLICATION PROCESS FOR
INTERMEDIATE- AND LARGE-SCALE SES**

- A. LICENSE REQUIRED AND RENEWAL LICENSE.** Prior to the commencement of physical construction or enlargement of an Intermediate-Scale SES or Large-Scale SES, the responsible entity (applicant) must obtain a Marshall County Solar Energy System License. Additionally, a renewal license shall be required concomitant with the updating of the decommissioning plan, as stipulated below. All applications and supporting documents for licensure shall be submitted by the applicant to the Marshall County Fiscal

Court at the Judge/Executive's Office for a determination of conformance with the requirements of this ordinance. A request for licensure shall contain the following:

- 1.** An application for licensure shall include:
 - a.** The name of the applicant and owner(s) of participating property (if different);
 - b.** The street address and tax map parcel number of the property for which a license is sought to include all participating property;
 - c.** The current mailing address and phone number of the applicant and the owner(s) of participating property;
 - d.** A copy of deeds and lease agreements for participating property;
 - e.** A listing of the names, mailing addresses, and property addresses (including tax map parcel number) of all adjoining non-participating property owners to include all owners within 2,500 feet of the proposed SES footprint;
 - f.** A written description of the proposed facility that includes a statement of conformance with the requirements of this ordinance; and
 - g.** The signed statement of the applicant and all participating property owners attesting to the truthfulness and exactness of information supplied in the application.

- 2.** Along with the application, required supplemental documents and exhibits shall include:
 - a.** Six (6) copies of a site plan, drawn to a scale of no greater than 1" to 100' which illustrates:
 - i.** A vicinity map denoting the location of the proposed facility;
 - ii.** Property lines of participating properties and adjacent nonparticipating properties, public rights-of-way, and rail-lines within 2,500 feet of the SES footprint (due to scale, this information may be provided on a separate sheet at a scale of not greater than 1' to 300');

- iii. Required setbacks with plan notes detailing the minimum distance to be provided from the SES Footprint to the boundary of non-participating properties and public streets and rail-lines;
- iv. Adjoining roads and points of proposed access to the facility;
- v. The proposed location of all building, panels, invertors, transformers, and other onsite supporting facilities with plan notes detailing the height of such features;
- vi. The proposed location of perimeter fencing with plan notes detailing type, height, and setback;
- vii. The proposed location of the vegetative buffer with plan notes detailing plant type, planting height and anticipated mature height, and capacity; and
- viii. Any additional site plan depictions or accompanying descriptions required to determine compliance with this ordinance.

b. A decommissioning plan and surety instrument.

3. State Approval. A statement of the proposed Intermediate-Scale SES (if applicable) or Large-Scale SES's conformance (or pending conformance) with the requirements of KRS 278.700 et seq. where the State Board of Electric Generation and Transmission Siting's approval is required.

4. Fee Entitlement for Review and Application. The Marshall County Fiscal Court is hereby authorized to impose a fee of two hundred fifty (\$250.00) dollars for the review and processing of licensure applications. This fee shall be payable upon submission of a licensure application and is non-refundable.

5. Review Timeline.

- a. Within sixty (60) days of its receipt of a complete licensure application, supplemental documents and exhibits, and fee, the Marshall County Fiscal Court shall review and recommend that the application for licensure be 1) approved, 2) approved with conditions or required modifications, or 3) denied, with cause stated. Such recommendation shall be recorded in the minutes of the Marshall County Fiscal Court. Notification of the Marshall County Fiscal Court's recommendation shall be provided to the applicant and the Marshall County Judge Executive.

- b.** Within thirty (30) days of receiving a recommendation from the Marshall County Fiscal Court regarding a licensure application, the Marshall County Judge-Executive's Office shall:

 - i.** Issue the requested license with or without conditions or modifications as deemed appropriate,
 - ii.** Deny the license request, providing the cause for denial in writing, or
 - iii.** Remand the matter back to the Marshall County Fiscal Court for additional review and findings. In such cases, the Marshall County Judge-Executive shall specify the reasons necessitating further review with particularity.
- c.** Should the matter be remanded, the Marshall County Fiscal Court is required to re-examine the application and submit a report to the Marshall County Judge-Executive within forty-five (45) days of the remand receipt. This report should address the specified reasons for remand and provide additional findings as requested.
- d.** When a license is issued, it shall remain in effect, unchanged, provided the applicant maintains compliance with the terms of this ordinance, any state or federal law, and the conditions of the original approval.
- e.** Upon the issuance of a Solar Energy System License by the Marshall County Judge-Executive's Office, it shall be recorded with the Marshall County Court Clerk's Office to provide notice to all interested or potentially interested parties of the existence of said license.
- f.** In the event of a denial, the Marshall County Judge-Executive will provide the decision in writing, which shall be sent via certified mail, with return receipt requested, to the applicant and all participating properties and any non-participating properties included within the application. Furthermore, the denial will be published in accordance with the provisions of Chapter 424 of the Kentucky Revised Statutes.
- g.** Any aggrieved party by either the issuance or denial of a license shall have a period of thirty (30) days from the date of the recording of the license or the publication of the denial of said license to file an action with a court of competent jurisdiction for judicial review.

**SECTION 4:
SPECIFIC REQUIREMENTS**

- A. The following standards shall apply to the siting, construction, installation, enlargement, operation, maintenance, and decommissioning of Intermediate-Scale SES and Large-Scale SES:
1. **Setbacks.** The SES footprint shall be setback no less than 2,000 feet from any non-participating property line and any right-of-way for a publicly maintained roadway or rail-line.
 2. **Perimeter Access and Screening.** Access to the site must be controlled by a fence of at least eight (8) feet in height with a vegetative landscape buffer provided between the fencing and the property line. The fence shall be equipped with screening to help shield the facilities and equipment from view. Screening shall consist of:
 - i. An eight (8) foot tall fence and a double row of staggered evergreen trees (minimum five (5) feet in height at planting and maturing to a minimum of fifteen (15) feet in height);
 - ii. Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
 - iii. Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
 - iv. Screening shall be installed within 180 days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
 - v. All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.
 3. **Lighting.** Lighting of a 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. Nothing in the section is intended to preclude installation of lighting required by the Federal Aviation Administration.
 4. **Decommissioning Plan Required.** The applicant shall be responsible for a decommissioning plan, prepared by a registered by a professional engineer at the

expense of the applicant, and updated not less than once every three (3) years, containing the following:

- i. The anticipated life of the project and defined conditions upon which decommissioning will be initiated;
- ii. The estimated decommissioning costs, including removal of the Solar Energy System and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate;
- iii. The manner in which the project will be decommissioned, including provision and a timetable (such timetable not to exceed five years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition;
- iv. The manner of SES component disposal including the estimated recycled value of components; and
- v. A copy of any contract containing specific agreements regarding decommissioning.

5. Surety Instrument Required. The applicant shall provide a surety instrument in an amount and form acceptable to the Marshall County Judge-Executive, upon recommendation of the Fiscal Court, sufficient to cover the costs of decommissioning the SES in accordance with the approved plan in the event the applicant defaults in its decommissioning obligations. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every three (3) years. A surety instrument shall be continuously maintained by applicant, their successors in interest and /or assigns, until such time as the Intermediate-Scale SES or Large-Scale SES is decommissioned and all disturbed areas are reclaimed, revegetated, and restored. The form and content of surety shall be in accordance with the requirements of KRS 278.706(2)(m)(5) and shall name the Marshall County Fiscal Court as secondary beneficiary.

6. For projects with an SES Footprint located within an airport's approach zones or airport imaginary surfaces as defined by the United States Code of Federal Regulations or within one-thousand (1,000) feet of an Accident Potential Zone (APZ 1 or APZ 2), the applicant must complete and provide the results of a glare analysis through a qualitative analysis of potential impact, field test demonstration, or geometric analysis of ocular impact in consultation with the Federal Aviation

Administration Office of Airports, the Kentucky Airport Zoning Commission, and the United States Army, Fort Campbell Directorate of Public Works.

SECTION 5: DECOMMISSION REQUIREMENT

- A. TIMELINE OF DECOMMISSIONING.** The applicant shall begin decommissioning no later than twelve (12) months after an Intermediate-Scale SES or Large-Scale SES has ceased to generate electricity or thermal energy. 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 to like-kind soil quality and overall condition as the areas were prior to the installation of the Intermediate or Large-Scale SES.
- B. FAILURE TO COMPLY.** Failure of the applicant to decommission an Intermediate-Scale SES or Large-Scale SES in accordance with this Ordinance and the approved decommissioning plan shall be grounds for the Marshall County Fiscal Court to invoke the surety instrument. The Marshall County Fiscal Court shall be entitled to recover from the surety instrument proceeds that are necessary to complete the decommissioning of the facility. Furthermore, should the costs of decommissioning exceed the value of the surety instrument, the Marshall County Fiscal Court shall be entitled to recover the excess amount necessary to complete the decommissioning process and may place a lien on the participating property to secure recovery of excess costs or expenses.
- C. REMEDIES.** A failure to decommission an Intermediate-Scale SES Large-Scale SES as required herein is a violation of this ordinance and is subject to the enforcement and penalties as provided herein. In the event of a failure to perform, default, or failure to extend a surety instrument, the Marshall County Fiscal Court reserves the right to take all available legal and administrative actions necessary to compel the completion of the decommissioning by the applicant. This includes securing all necessary easements and rights of entry, and/or to recoup any public funds expended by the Marshall County Fiscal Court in the fulfillment of the applicant's obligation.
- D. LICENSE REVOCATION.** The Marshall County Judge-Executive may revoke a license, subject to a 90-day written notice to the applicant, upon the occurrence of one (1) or more of the following:
1. The applicant has: 1) provided false or inaccurate information as part of the application for licensure; 2) the false or inaccurate information would result in the sitting, construction, or operation of an Intermediate-Scale SES or Large-Scale SES in violation of this ordinance or state or federal law; and 3) the applicant has failed to correct the violation through the resubmittal of an amended and approvable

application and perform any necessary site modification within the 90-day notification period;

2. The applicant has: 1) failed to construct or maintain the Intermediate-Scale SES or Large-Scale SES in accordance with this ordinance and the approved plan or state or federal law; and 2) the applicant has failed to correct the violation within the 90-day notification period;
3. The applicant has: 1) failed to decommission the Intermediate-Scale SES or Large-Scale SES in accordance with this Ordinance; and 2) the applicant has failed to correct the violation within the 90-day notification period;
4. The applicant has: 1) failed to submit an updated decommissioning plan and accompanying revised surety instrument within the three (3) year period as required; and 2) the applicant has failed to correct the violating within the 90-day notification period; or
5. The applicant has failed to transfer the license upon change of responsible entity in accordance with this ordinance.

E. REVOCATION RECORDING. Any license revocation issued under this section shall be recorded at the Marshall County Court Clerk's Office. Within 90 days of the recording of a revocation of a license, the Intermediate-Scale SES or Large-Scale SES shall cease operation and, within 12 months thereafter, be decommissioned in accordance with this ordinance.

SECTION 6: CHANGE IN OWNERSHIP

A. LICENSE TRANSFER AND RECORDING. A change in or transfer of the responsible entity's ownership, as contained on an Intermediate-Scale SES or Large-Scale SES application and accompanying license, shall require the issuance of an amended license that shall be recorded at the Marshall County Court Clerk's Office.

B. NOTICE AND EXHIBITS. No later than thirty (30) days following the sale or transfer of an Intermediate-Scale SES or Large-Scale SES, the responsible entity that has or is assuming ownership shall provide written notification to the Marshall County Judge-Executive and shall submit the following information:

1. The name and mailing address of the current, licensed responsible entity and license number;

2. The name and mailing address of the responsible entity assuming ownership with proof of ownership;
3. A statement that lease agreements for participating property, if any, are transferable with accompanying documentation;
4. A statement of conformance with this ordinance. If SES enlargement or change to the conditions of the original application (other than ownership) is to occur, a new application as provided in Section 3 is required; and
5. A revised surety instrument bearing the name of the new responsible entity.

C. RESPONSE TO NOTICE AND EXHIBITS. Within sixty (60) days of receipt of notification, the Marshall County Fiscal Court shall: 1) approve the issuance of the amended license; or 2) deny the issuance of the amended license with cause stated.

**SECTION 7:
MISCELLANEOUS**

A. STATE AND FEDERAL LAWS AND REGULATIONS. All other state or federal laws and regulations that are not specifically addressed by this ordinance remain in effect.

B. SEVERABILITY. If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

C. MISDEMEANOR PER DAY OF VIOLATION. Any person found in violation of this ordinance shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) dollars and not more than Five Hundred (\$500.00) dollars per violation. Each day of violation shall constitute a separate offense.

Date of First Reading: _____

Date of Second Reading: _____

Passed and Effective this the ____ of _____, 2024

Kevin Spraggs, Judge-Executive
Marshall County Fiscal Court

Attest: _____

_____ Date

Publication : _____