

**OGDEN TOWNSHIP
ORDINANCE NO. 2021-2
SOLAR ORDINANCE**

The Township of Ogden ordains:

SECTION 1: Permit for Commercial Solar Energy Facilities

The purpose and intent of this ordinance is to establish a permitting process for commercial solar energy facilities development in Ogden Township, for the review and permitting of such facilities, and to protect the health, welfare, safety, and quality of life of the general public. Commercial solar energy systems must be ground mounted arrays of panels and are subject to this ordinance.

SECTION 2: Conflicting Regulations

Whenever any provisions of this Ordinance impose more stringent requirements, regulations, restrictions, or limitations than are imposed or required by the provisions of any other law or ordinance, the provisions of this Ordinance must govern.

SECTION 3: Definitions

Abandonment: Any Commercial Solar Energy facility that does not produce power for a period of twelve months or more.

Decibel: a unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale.

Decommission: To remove or retire from active service.

Height: The height of the Commercial Solar Energy Facility to its highest point at maximum tilt.

Commercial Solar Energy Facility: A Solar Energy System where the principal design, purpose, or use of such system is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.

Commercial Solar Energy Facility Permit: A permit issued upon compliance with standards of this Ordinance.

Non-Participating Parcel: A property that is not subject to a Commercial Solar Energy Facility lease or easement agreement at the time an application is submitted for the purposes of constructing a Commercial Solar Energy facility.

Participating Parcel: A property that participates in a lease or easement agreement, or other contractual agreement, with an entity submitting an application for the purposes of developing a Commercial Solar Energy facility.

SECTION 4: Permit Required

The Township Board may grant a permit to allow a Commercial Solar Energy Facility, subject to the restrictions contained in this Ordinance. A new permit will be required for any renewals or extensions past the approved timeframe on the Commercial Energy Facility's original permit.

SECTION 5: Application Fee

An applicant for a Commercial Solar Energy Facility must remit an application fee and required escrow fee to the Township in the amount specified in the fee schedule adopted from time to time by resolution of the Township Board.

An escrow account must be set up when the applicant applies for a permit for a Commercial Solar Energy Facility. The monetary amount filed by the applicant with the Township must be in accordance with the fee schedule set by the Township Board. These funds are used to cover all 3rd party resources necessary for the Township to consider the application, along with expenses associated with the review and approval process. Costs can include, but are not limited to fees of the Township Attorney, and any reports or studies which the Township anticipates it may have done related to the particular application. At any point during the process, the Township may require that the applicant place additional monies into escrow with the Township should the existing escrow amount filed by the applicant prove insufficient. If the escrow account needs replenishing and the applicant refuses to do so within fourteen (14) days after receiving notice, the review and approval process must cease until and unless the applicant makes the required escrow deposit. Any escrow amounts which are in excess of actual costs shall be returned to the applicant.

SECTION 6: Application Procedures

- A. The application must be submitted to the Township Clerk and accompanied by the required fees and information as requested in this Ordinance.
- B. If the Clerk determines that the application is incomplete, the Clerk must advise the applicant accordingly, within 30 days. If the Clerk determines that the application is complete, the Township Board must schedule a public hearing at a regular or special meeting of the Township Board. The Township Board will give

notice of the application and the public hearing and may give additional notice as it deems reasonable and proper.

- C. At the public meeting, the Township Board must afford the applicant an opportunity to present comments and relevant information regarding the application, and also afford any interested party an opportunity to present comments and relevant information. Before making a decision on the application, the Township Board may request additional information it deems relevant to its decision. Following the public hearing, the Township Board will decide whether to grant or deny the application with or without conditions based on the standards in this Ordinance.
- D. Throughout the permit review process, the applicant must promptly notify the Township in writing within 5 business days of any changes that have arisen that make the information in the application no longer completely accurate.

SECTION 7: Application Requirements

An applicant proposing a Commercial Solar Energy Facility must submit the following materials with the Application:

- A. Applicant Identification: Applicant's name and address in full, a statement that the applicant is the owner involved or is acting on the owner's behalf, the address of the property involved in the application, including any and all parcel identification numbers, and any additional contact information.
- B. Project Description: A general description of the proposed project including a legal description of the property or properties on which the project would be located and an anticipated construction schedule.
- C. Insurance: Proof of the applicant's public liability insurance for at least Ten Million (\$10,000,000.00) dollars to cover the Commercial Solar Energy Facility, the Township, and the Participating Parcel's landowner.
- D. Certifications: Certification that the applicant has complied and will comply with all applicable state and federal laws and regulations. Note: Land enrolled in the Michigan Farmland Preservation Program through Part 361 of the Natural Resources and Environmental Protection Act, 1994 Act 451 as amended, more commonly known as PA 116, must receive approval from the Michigan Department of Agriculture to locate a Commercial Solar Energy Facility on the property prior to construction.
- E. Environmental Impact: Copy of the Environmental Impact analysis.
- F. Avian and Wildlife Impact: Copy of the Avian and Wildlife Impact analysis.

- G. Manufacturers' Material Safety Data Sheet(s): Documentation must include the type and quantity of all materials used in the operation of all equipment.
- H. Decommissioning: Copy of the decommissioning plans and a description of how any surety bond, if required, is applied to the decommissioning process.
- I. Complaint Resolution: A detailed description of the complaint resolution process.
- J. Fire suppression plan: A plan describing the fire suppression process and procedure, as well as training for emergency personnel. Plans shall be kept on-site for emergency responders to have access to and updated regularly. Commercial Solar Energy Facilities may be subject to an annual fire safety review.
- K. Map:
 - 1. Survey of the propert(ies) showing existing features such as contours, large trees, buildings, structures, roads (rights-of-way), utility easements, land use, zoning district, ownership of property, and vehicular access;
 - 2. Water bodies, waterways, wetlands, and drainage channels;
 - 3. Lighting plan & electrical connection systems
 - 4. Plan(s) showing the location of proposed Commercial Solar Energy Facility, underground and overhead wiring (including the depth of underground wiring), new and existing drainage facilities (if any), access drives (including width), substations and accessory structures;
 - 5. A description of the routes to be used by construction and delivery vehicles and of any road improvements that will be necessary in the Township to accommodate construction vehicles, equipment or other deliveries, and an agreement or bond which guarantees the repair of damage to public roads and other areas caused by construction;
 - 6. Anticipated construction schedule;
 - 7. A complete description of the proposed technology to include type of solar panel and system, fixed mounted versus tracking, number of panels and angles of orientation;
 - 8. A complete set of printed 8X10 photos of the entire development area, Including an ariel view, prior to construction.

- L. Copy of permit from the Lenawee County Road Commission and/or Michigan Department of Transportation (MDOT) for permission to connect access roads to existing County roads and from the Lenawee County Drain Commission for any culverts or other drainage facilities.
- M. Any other relevant studies, reports, certificates, or approvals as may be required by the Township
- N. Copy of the agreement between the applicant and the utility company that will be purchasing electricity from the proposed Commercial Solar Energy Facility
- O. An affidavit or evidence of an agreement between the Participating Parcel's landowner and applicant confirming the applicant has the permission of the landowner to apply for the necessary permits for construction and operation of a Commercial Solar Energy Facility

SECTION 8: Commercial Solar Energy Facility Standards

A. Construction Requirements

The following requirements apply to all Commercial Solar Energy Facilities:

1. **Location.** Any structures or other improvements associated with a Commercial Solar Energy Facility must be located at least three hundred (300) feet from any Non-Participating Parcel property line.
2. **Minimum acreage.** Commercial Solar Energy Facilities must not be located on parcels of land less than 20 acres in size, unless continuous with other parcels
3. **Noise.** No operating large solar energy facility shall produce noise that exceeds Thirty (30) Decibels (dBA) as measured at the property line of any adjacent property or any neighboring residence in existence at any time the Solar Facility is granted conditional use approval. At no time shall the noise produced by the Solar facility exceed Thirty (30) decibels (dBA) at any project line boundary.
4. **Height.** The maximum height for a solar panel shall be no more than Fourteen (14) feet high at peak tilt.
5. **Landscape Buffer.** All Commercial Solar Energy Facilities must have a minimum landscape buffer of 20 feet in depth. The buffer must contain evergreen trees or bushes planted no more than 8 feet apart and be at least 4 feet tall at time of planting. The buffer must obtain a height of 10 feet within 3

growing seasons. The trees may be trimmed but to no lower than a height of 10 feet. This buffer is required to start 20 feet from the road or existing drainage ditch, whichever is applicable.

Good husbandry techniques shall be used with respect to all vegetation, including but not limited to proper pruning, proper fertilizer, and proper mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage. Dead or diseased vegetation must be removed and must be replanted at the next appropriate planting time. Plants or grasses not part of the buffer area must be maintained at a height of not more than 12 inches.

The Solar site should be designed and planted to achieve a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites. The pollinator habitat area must allow for replanting when the useable life of the pollinator habitat expires. Any portion of the site not included in the pollinator plantings must maintain United States Department of Agriculture Natural Resource Conservation Service Conservation Cover standard 327.

- B. **Site Security.** Commercial Solar Energy Facilities shall be surrounded by a Six (6) foot tall chain link fence woven with a green opaque material to restrict the view into the facility. The fence will be designed to restrict unauthorized access. The gate will be the same height and constructed of the same material as the fencing.
- C. **Manufacturer Information.** The manufacturers or installer's identification and appropriate warning sign must be posted on or near the panels in a clearly visible manner. An information sign must be posted at all the entrances listing the name and phone number of the applicant.
- D. **Drainage:** The Solar Facility owner agrees to maintain the existing drainage tiles on the property during the life of the project, including all Main Drainage tiles that are shared with adjacent land owners. Proper right of way of a minimum 100 feet shall be required to be left so that adjacent land owners can access any shared Main tiles.

The Solar Facility agrees to maintain existing draininage on the property for the duration of the project, following all guidelines above, and ensuring no draininage issues on the property cause draininage issues for any non - participating members' draininage.

Any and all Commercial Solar Facilities shall adhere to the Lenawee County Drain Commission Drain Code- Including Design criteria for Stormwater Management systems" (pg 33-47)

E. Safety

1. The Commercial Solar Energy Facility must be designed and operated in compliance with all applicable provisions of local, state, and federal laws and regulations.
2. All collection system wiring must comply with all applicable safety and stray voltage standards.
3. All access doors to the Commercial Solar Energy Facility and electrical equipment must be kept locked at all times when service personnel are not present.
4. A sign must be posted near the entrance to the Commercial Solar Energy Facility with emergency contact information. Appropriate warning signage shall also be posted at safe intervals at the entrance and perimeter of the solar facility.
5. The applicant is responsible for maintaining the access roads. All access roads must be gated.
6. The Commercial Solar Energy Facility must not have any on-site battery storage and/or any type of onsite energy storage of any kind
7. All electrical connection systems and lines from the Commercial Solar Energy Facility to the electrical grid connection must be located and maintained a minimum of 6 feet underground both on the property where the solar energy facility is located and off site.
8. A safety plan shall be in place and updated regularly with both the Township Board and the fire department having jurisdiction over the Solar Farm.

F. Avian Analysis

The applicant must have a third-party qualified professional conduct an analysis to identify and assess any potential impacts on wildlife and endangered species. The applicant must take appropriate measures to minimize, eliminate, or mitigate adverse impacts identified in the analysis. The applicant must identify and evaluate the significance of any net effects or concerns that will remain after

mitigation efforts. A full & complete copy of the study needs to be provided to the Township clerk so it is available for public review & inspection.

1. Sites requiring special scrutiny include wildlife refuges, other areas where birds are highly concentrated, bat hibernacula, wooded ridge tops that attract wildlife, sites that are frequented by federally and/or state listed endangered species of birds and bats, significant bird migration pathways, and areas that have landscape features known to attract large numbers of raptors.
2. At a minimum, the analysis must include a thorough review of existing information regarding species and potential habitats in the vicinity of the project area. Where appropriate, surveys for bats, raptors, and general avian use should be conducted. The analysis must include the potential effects on species listed under the federal Endangered Species Act and Michigan's Endangered Species Protection Law. The applicant must follow all pre-construction and post-construction recommendations of the United States Fish and Wildlife Service.
3. The analysis must indicate whether a post construction wildlife mortality study will be conducted and, if not, the reasons why such a study does not need to be conducted. Power lines should be placed underground, when feasible, to prevent avian collisions and electrocutions. All above-ground lines, transformers, or conductors should follow any Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) guidelines to prevent avian mortality.

G. Environmental Impact

1. The applicant must have a third-party qualified professional conduct an analysis to identify and assess any potential impacts on the natural environment including, but not limited to, wetlands and other fragile ecosystems, historical and cultural sites, and antiquities. The applicant must take appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis.
2. The applicant must identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts. The applicant must comply with applicable parts of the Michigan Natural Resources and Environmental Protection Act (Act 451 of 1994, MCL 324.101 et seq.) including but not limited to Part 31 Water Resources Protection (MCL 324.3101 et seq.), Part 91 Soil Erosion and Sedimentation Control (MCL 324.9101 et seq.), Part 301 Inland Lakes and Streams (MCL 324.30101 et seq.), Part 303 Wetlands (MCL 324.30301 et seq.), Part 323 Shoreland Protection and Management (MCL 324.32301 et seq.), Part 325 Great

Lakes Submerged Lands (MCL 324.32501 et seq.), and Part 353 Sand Dunes Protection and Management (MCL 324.35301 et seq.). The applicant is responsible for making repairs to any public roads, drains and infrastructure damaged by the construction of the Commercial Solar Energy Facility.

3. The applicant must produce written plans for disposal of fuels, oils, and other hazardous waste materials that may derive from the construction, operation or maintenance of a Commercial Solar Energy Facility.

H. Responsibility for Erosion and Flooding

Any erosion or flooding of property as a result of the construction of Commercial Solar Energy Facility structures or access roads is the responsibility of the applicant.

F. Complaint Resolution

1. The Commercial Solar Energy Facility applicant must submit a detailed, written complaint resolution process to resolve complaints from the Township Board or any property owners or residents concerning the construction or operation of the Commercial Solar Energy Facility. The complaint resolution process must be approved by the Township Board as a condition of approval.
2. The Township Board must appoint a three-member complaint resolution committee to oversee and participate in all complaint resolution discussions or meetings between the Township, complainant, Participating Parcel's landowner and the applicant.
3. The applicant must inform the Township of all complaints in writing within 30 days, and must provide a report outlining the issues, the progress, and the resolution of each such complaint.

SECTION 9: Abandonment and Decommissioning

- A. Abandonment: A Commercial Solar Energy Facility that ceases to produce energy on a continuous basis for 12 months will be considered abandoned. It is the responsibility of the applicant to remove all equipment and facilities and completely restore the parcel to its original condition prior to the installation of the solar facility.
1. Upon determination of abandonment, The land shall be returned to prior condition at the end-of the deferment period and will continue to be subject to the requirements of the Farmland Development Rights Agreement.

Decommissioning the site must be completed in time for normal agricultural operations for the following growing season, or within 6 months. Whichever is first. “

2. If the applicant fails to comply, the participating parcel's landowner is then responsible for removal of the facility and any sanctions as set forth in section 10 of this ordinance.
 3. If the facility is not removed and the land restored to its prior condition within the 6-month time period, the Township may remove the Commercial Solar Energy Facility, sell any removed materials, and initiate judicial proceedings or take any other steps legally authorized against the responsible parties to recover costs required to remove the solar facility and restore the site to a non-hazardous pre-development condition.
 4. A metering system approved by the Township must be part of the project showing that the system is operational.
 5. A bond or irrevocable letter of credit as a surety tool is obtained and maintained in the amount sufficient enough to decommission the solar array and return the property to prior condition. The surety shall be calculated by a licensed engineer and approved by MDARD. The surety must be payable to the Ogden Township. MDARD expects this will be the Solar Company's responsibility under the Commercial Solar Agreement. An engineering study must be completed & submitted to the township every 4th year for review to ensure the bond is of appropriate value should decommissioning be necessary.
 6. In the event of a sale of transfer of ownership and/or operation of the Solar Facility, the security bond or escrow or irrevocable letter of credit shall be maintained throughout the entirety of the process and the new owner shall be required to provide a new security bond of escrow or irrevocable letter of credit. If at any time during the operation of the solar facility or prior to, during, or after the sale of transfer of ownership, and/or operation of the Solar Facility the security bond or escrow or irrevocable letter of credit is not maintained, the Township may take any action permitted by law, revoke the special land use, order a cessation of operations and order removal of the structure and reclamation of the site.
- B. Decommissioning: A decommissioning plan signed by the applicant and the Participating Parcel's landowner addressing the following must be submitted prior to issuance of the permit which must include:
1. The anticipated life of the project;
 2. The estimated decommissioning costs net of salvage value in current dollars; and

3. The anticipated manner in which the project will be decommissioned and the site restored.

SECTION 10. Violations.

Any person, firm or corporation who violates, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance, is responsible for a municipal civil infraction and shall be punished by a fine not to exceed One Hundred \$500 dollars, attorneys fees and costs. Each day that a violation is permitted to exist must constitute a separate offense. The imposition of any sentence must not exempt the offender from compliance with the requirements of this Ordinance. Activities on land in violation of any provision of this Ordinance, are hereby declared to be a nuisance per se.

The Court may order such nuisance abated and the applicant, landowner and/or agent in charge of such land may be adjudged guilty of maintaining a nuisance per se, and same may be abated by order of any court of competent jurisdiction.

SECTION 11. Validity and Severability.

Should any portion of this Ordinance be found invalid for any reason, such holding must not be construed as affecting the validity of the remaining portions of this Ordinance.

SECTION 12. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

SECTION 13. Effective Date.

This Ordinance must be published and take effect thirty days after publication as provided by law.

Approved this 14th day of December, 2021.