

ORDINANCE #2020-01A

AN ORDINANCE AMENDING GRANT COUNTY ORDINANCE #2004-1, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR GRANT COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

BE IT ORDAINED by the Board of Grants County Board of County Commissioners:

That Article II Definitions be amended to include the following new definitions:

Section 215: Array/Solar Array: Is the collection of two or more connected solar modules or panels.

Section 230a: Decommissioning: To return the property to its pre-installation state or better as approved in the decommissioning plan.

Section 242a: Ground-Mount: A solar energy system mounted on a rack or pole that rests or is attached to the ground.

Section 259a: Photovoltaic System: An active solar energy system that converts solar energy directly into electricity.

Section 277a Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Section 277b: Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Section 277c: Solar Energy System (SES): A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage, and distribution of solar energy.

That Article 12 General Requirements be amended to include the following new Chapter:

Chapter 1217. Solar Energy Systems (SES)

Section 1217.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare. These regulations will not impede personal or business solar collector development for the primary use of self-sustaining energy. These regulations are not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of these regulations shall not nullify any provisions of local, state, or federal law.

Section 1217.02. Private Solar Energy System (PSES).

A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power. PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district in which they are located.

Section 1217.03. Permitting.

1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.
2. Application(s) for SES Conditional Use Permits shall be accompanied by:
 - a. Site plan detailing the following:
 - i. Property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, structures, proposed array, boundaries of the site, setbacks;
 - b. A location map of all occupied structures and other solar arrays within one-half (1/2) mile of proposed SES to include setbacks from said structures and arrays;
 - c. Map of easements for SES, if applicable;
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable;
 - e. Screening or buffering plans to include grading and/or landscape plantings proposed along public roads or abutting residential properties;
 - f. Aviation/Airport protection if required. See Section: 1217.05 (4);
 - g. The fencing and gates required to be around the exterior perimeter. See Section: 1217.05 (6);
 - h. The storm water pollution and prevention/drainage plan identifying specific erosion control, sedimentation control or stabilization measures to address soil limitations during and after project construction. See Section: 1217.04 (1);
 - i. Grading Plan;
 - j. Preliminary Decommissioning Plan. See Section: 1217.06;
 - k. Weed/Grass control plan See Section: 1217.05 (10);
 - l. Haul roads identified. See Section: 1217.05 (11);
 - m. Project schedule;
 - n. Any other information requested by the Administrative Official.

3. All copies of the plans must be submitted, signed, and sealed by a professional engineer, licensed in the State of South Dakota.
4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

Section 1217.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.
2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.
3. An emergency contact name and phone number must be posted at the point of access on all SES sites.
4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.
5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

Section 1217.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. Ground Cover and Buffer Areas. Ground Cover shall be maintained according to the approved weed/grass plan. Topsoils shall not be removed post-construction unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. Foundations, gravel, or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.
2. Power and Communication Lines. Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.

3. Separation Distances/Setbacks

- a. Separation Distances: Solar panels will be kept at least five hundred (500) feet from a residence, business, church, and building owned and/or operated by a governmental entity. Distance to be measured from the wall line of the neighboring principal building to the base of the solar panel.
 - b. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
 - c. Every SES shall meet the minimum front yard setback of the applicable zoning district in which they are located.
 - d. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream, or river.
 - e. Except for front yard setbacks, all setback distances set forth herein shall be measured from the exterior of the fencing and gates which are required around the perimeter of all SES. Setbacks for front yards shall be measured from the base of the solar panel.
 - f. Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties.
 - g. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified if the applicant obtains waivers from owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
4. Aviation/Airport Protection: If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
5. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
6. Safety Fencing/Gates and Locks.
- a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
 - c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.

- d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
 - f. Fences may be constructed on property and right-of-way lines.
7. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.
8. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
9. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed.
10. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
11. Roads.
- a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
 - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.
 - c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
 - d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
 - e. Final haul road agreements to be submitted thirty (30) days prior to construction.

12. Signs. No advertising signs or elaborate logos will be permitted on the SES. One (1) project sign identification not to exceed sixteen (16) square feet.
13. Permit Expiration. The permit shall become void if no substantial construction has been completed within two (2) years of issuance. In the event of an appeal, said permit does not expire for a period of two years following completion of any final appeal of the decision.

Section 1217.06. Decommissioning/Restoration/Abandonment.

1. Cost Responsibility. The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.
2. Decommissioning Plan. At least thirty (30) days prior to construction, the applicant shall file a final decommissioning plan for Board of Adjustment approval in accordance with the requirements of paragraphs (2), (3) and (4) below. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation. A SES shall be deemed inoperable if it has not generated power for 12 consecutive months.
3. Financial Assurance. The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. The financial assurance plan is subject to the following provisions:
 - a. A decommissioning account is to be funded by the project owner annually at a rate of two thousand five hundred dollars (\$2,500) per megawatt of installed DC capacity per year for the first 30 years, or until the funds within said account are sufficient to meet the cost of decommissioning as identified in the decommissioning plan. Funding of the decommissioning account to commence no later than the commercial operation date. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.
 - b. All interest earned by any financial assurance account remains in the account.
 - c. A financial assurances statement is to be provided upon request to the administrative official.
 - d. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.
 - e. The financial assurance plan follows ownership of the SES.
 - f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy. Owner of the SES shall, within sixty (60) days after it receives notice thereof, provide a bond or other security or remove any such liens or other judgements from the Financial Assurance, pursuant to applicable law.

- g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
 - h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the SES owner.
 - i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
 - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county shall waive its required financial instrument.
 - k. Failure to Decommission. If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.
4. Site Restoration. The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Planning and Zoning Department and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities.
5. Abandoned SES facilities. The permittees shall advise the County of any equipment that is abandoned prior to termination of operation of the SES. The County may require the permittees to decommission any abandoned equipment that is not being used.