

SOLAR FARM ORDINANCE FOR CLAY COUNTY, NORTH CAROLINA

THAT WHEREAS, Clay County has the authority by the provisions of N.C. Gen. Stat. § 153A-121 to make ordinances to define, regulate, prohibit, or abate acts, omissions or conditions detrimental to the health, safety and welfare of its citizens and the peace and dignity of Clay County; and

WHEREAS, the Clay County Board of County Commissioners is informed and has determined that the amount of electrical power generated by a Solar Farm could be dangerous, injurious and/or deadly to a person who came into contact with the same; and

WHEREAS, the Clay County Board of County Commissioners is aware that there have recently been a number of Solar Farms developed in Clay County, North Carolina; and

WHEREAS, the Clay County Board of Commissioners has determined that there will likely be a number of additional Solar Farms developed in Clay County, North Carolina; and

WHEREAS, the Clay County Board of Commissioners has determined that requiring the installation and maintenance of proper fences, gates and locks in connection with Solar Farms will be helpful in protecting the health, safety and welfare of the Citizens of Clay County, North Carolina; and

WHEREAS, the Clay County Board of Commissioners has determined that the appearance of Solar Farms without setbacks and screening of the same can have adverse impacts on the value of properties adjacent thereto as well as other properties located nearby; and

WHEREAS, much of Clay County's economy is driven by the tourism industry and the second home industry due the natural mountainous beauty of the area; and

WHEREAS, it is important for Clay County to reasonably preserve the natural beauty of the area in order to protect the economy of Clay County, North Carolina; and

WHEREAS, this the Clay County Board of Commissioners has determined that this Ordinance would aid in the preservation of natural mountainous beauty of Clay County, North Carolina, protection of property values, promotion of tourism, preservation of character and integrity of the community and promotion of the comfort and happiness of area residents; and

WHEREAS, the North Carolina Supreme Court has specifically recognized the authority of North Carolina Counties to adopt reasonable regulations based on aesthetic considerations and that the same can constitute a valid basis for the exercise of the police power; and

WHEREAS, the Clay County Board of Commissioners has determined that requiring

appropriate setbacks for Solar Farms and requiring the installation and maintenance of reasonable evergreen vegetative buffers around the perimeter of a Solar Farm will aid in lessening the adverse impacts on the value of properties adjacent thereto as well as other properties located nearby; and

WHEREAS, the Clay County Board of Commissioners has determined that requiring appropriate setbacks for Solar Farms and requiring the installation and maintenance of reasonable evergreen vegetative buffers around the perimeter of a Solar Farm as set forth in this Ordinance sets an appropriate and reasonable balance between the public interests in regulation against the individual property owner's interest in the use of his property free from regulation.

NOW, THEREFORE, BE IT ORDAINED by the Clay County Board of Commissioners for Clay County that the following Ordinance shall be in place and effective in Clay County, North Carolina, in accordance with its terms:

SOLAR FARM ORDINANCE FOR CLAY COUNTY, NORTH CAROLINA

Section 1. Title.

This Ordinance shall be known and cited as the *Solar Farm Ordinance for Clay County, North Carolina*.

Section 2. Authority and Jurisdiction.

- A. Authority. This Ordinance is established by the Clay County Board of Commissioners pursuant to the authority conferred in N.C. Gen. Stat. §§ 153A-121 (general ordinance-making power), 153A-122 (territorial jurisdiction), and 153A-123 (enforcement).
- B. Jurisdiction. The provisions of this Ordinance shall apply to all unincorporated areas of Clay County, North Carolina, lying outside of the corporate limits and the extraterritorial jurisdiction of any municipality lying within Clay County, North Carolina.

Section 3. Purpose.

The purpose of this Ordinance is to promote the health, safety and general welfare of the citizens of Clay County, North Carolina, and the peace and dignity of Clay County, North Carolina, by:

- A. Requiring fencing, gates and locks on gates on *Solar Farms* in order to limit access to *Solar Farms* by unauthorized individuals so as to provide safety and lessen the chance of injury to the citizens of Clay County, North Carolina, due electrical shock or otherwise;

- B. Requiring appropriate setbacks for Solar Farms and requiring the installation and maintenance of reasonable evergreen vegetative buffers around the perimeter of a Solar Farm in order to aid in lessening the adverse impacts on the value of properties adjacent thereto as well as other properties located nearby and aid in the preservation of natural mountainous beauty of Clay County, North Carolina, protection of property values, promotion of tourism, preservation of character and integrity of the community and promotion of the comfort and happiness of area residents.

Section 4. Applicability.

The provisions of this Ordinance shall apply to the use of any land or portion thereof for a *Solar Farm* as further defined in Section 5 of this Ordinance.

Section 5. Interpretations and Definitions.

- A. For purposes of this Ordinance, certain words shall be interpreted as follows:
 - 1. The word, "County" shall mean Clay County, North Carolina;
 - 2. The word, "Ordinance" shall mean the *Solar Farm Ordinance for Clay County, North Carolina*;
 - 3. Words used in the singular in this Ordinance include the plural and words used in the plural include the singular;
 - 4. Words used in the present tense include future tense;
 - 5. The word, "person" includes a firm, association, organization, corporation, company, trust, partnership, individual or any other form of business;
- B. The following words shall be specifically defined as follows:
 - 1. **Solar Farm** - Except as limited hereinafter, for purposes of this ordinance, the term "Solar Farm" includes a use of land where a series of one or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of at least 15 kilowatts (kW) direct current (DC) or more when operating at maximum efficiency. Solar farm is also referred to as solar power plant and solar photovoltaic farm. "Solar collector" means 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.

However, notwithstanding anything to the contrary contained herein, the term “Solar Farm” shall not be construed to include, so as to prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property;

Further, notwithstanding anything to the contrary contained herein, the term “Solar Farm” shall not be construed in such a way that would cause a person to be denied permission by Clay County to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property.

As used herein, “residential property” means property where the predominant use is for residential purposes.

Further, notwithstanding anything to the contrary contained herein, the term “Solar Farm” shall not be construed in such a way as to prohibit the installation or mounting of a series of one or more solar collectors upon the roofs of residential and/or commercial structures regardless of whether the said series of one or more solar collectors collectively has a total nameplate generation of at least 15 kilowatts (kW) direct current (DC) or more when operating at maximum efficiency.

Section 6. Regulations Applicable to Solar Farms.

No parcel or parcels of land may be used as a *Solar Farm* and no *Solar Farm* shall be permitted, constructed, operated, or maintained except in accordance with the following standards:

A. Safety Fencing.

All *Solar Farms* shall be fenced around the exterior of the *Solar Farm* with an opaque or semi opaque fence of earth tone colors which shall be at least 6 feet in height and which shall additionally have at least three strands of barbed wire run above such six feet.

All fencing shall be constructed so as to substantially lessen the likelihood of entry into a *Solar Farm* by unauthorized individuals.

The fencing and barbed wire required hereunder shall be maintained in good condition. Failure to maintain the fencing and barbed wire required hereunder shall constitute a violation of this ordinance.

The fencing and barbed wire requirements specified hereunder shall continue notwithstanding the fact that a Solar Farm is no longer operational and/or falls into disuse unless and until the Solar Farm is dismantled and removed from the parcel or parcels of land upon which it was constructed.

B. Gates and Locks.

All gates to the fences of all *Solar Farms* shall be at least 6 feet in height and which shall additionally have at least three strands of barbed wire run above such six feet.

All gates to the fences of all *Solar Farms* shall be equipped with locks and shall be remain locked at all times 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 *Solar Farm(s)*.

All gates to fences of all Solar Farms shall be constructed so as to substantially lessen the likelihood of entry into a *Solar Farm* by unauthorized individuals.

The gates and barbed wire required hereunder shall be maintained in good condition. Failure to maintain the gates required hereunder shall constitute a violation of this ordinance.

The gate, barbed wire and lock requirements specified hereunder shall continue notwithstanding the fact that a Solar Farm is no longer operational and/or falls into disuse unless and until such Solar Farm is dismantled and removed from the parcel or parcels of land upon which it was constructed.

C. Setbacks.

Every *Solar Farm* shall be setback at least 100 feet from all property lines of the parcel land upon which the *Solar Farm* is located or to be located.

Every *Solar Farm* shall be setback at least 100 feet from the margin of any public road.

Every *Solar Farm* shall be setback at least 100 feet from the high water mark of any lake available for public use.

Every Solar Farm shall be setback at least 100 feet from the stream banks of any navigable stream.

All setbacks set forth herein shall be measured from the exterior of the fencing and gates which are required around the perimeter of all *Solar Farms*.

D. Evergreen Vegetative Buffer.

A continuous evergreen vegetative buffer shall be present and maintained at all times around the perimeter of the exterior of the fencing and gates which are required around the perimeter of all *Solar Farms*. Nothing contained herein shall be construed so as to require such continuous evergreen vegetative buffer to block reasonable access to a *Solar Farm*.

The evergreen vegetative buffer shall be composed of evergreen trees or shrubs of a type which at planting shall be a minimum of 4 feet in height and which shall be maintained at maturity at a height of not less than 6 feet in height. The evergreen trees or shrubs shall be spaced no more than ten feet apart (from the base of tree or shrub to the base of tree or shrub).

The evergreen vegetative buffer shall be carefully planted and shall be maintained in good condition. Failure to maintain the evergreen vegetative buffer shall constitute a violation of this ordinance.

The evergreen vegetative buffer requirements specified hereunder shall continue notwithstanding the fact that a Solar Farm is no longer operational and/or falls into disuse unless and until such Solar Farm is dismantled and removed from the parcel or parcels of land upon which it was constructed.

Section 7. Enforcement, Permitting and Inspection.

- A. The provisions of this Ordinance shall be administered and enforced by personnel of the Clay County Building Inspections Office.
- B. No *Solar Farm* subject to this Ordinance shall be erected, built, or constructed without a Solar Farm Development Permit for the same having been issued by personnel of the Clay County Building Inspections Office.
- C. Applications for Solar Farm Development Permits shall be accompanied by plans for the *Solar Farm* in duplicate, drawn to scale, showing the actual dimensions and shape of the parcel or parcels of land upon which the *Solar Farm* is to be erected, built or constructed, the size and locations of any roads, lakes or streams touching on said parcel or parcels of land, the location and dimensions of the proposed *Solar Farm* and the fencing and gates required to be around the exterior perimeter of the same, and compliance with the standards established by this Ordinance.
- D. The Clay County Building Inspections Office shall maintain a record of all Solar Farm Development Permits and copies shall be furnished upon request to any

interested person.

- E. Any order, requirement, decision or determination of personnel of the Clay County Building Inspections Office adverse to the interest of an applicant for a Solar Farm Development Permit shall be provided to the applicant in writing by certified mail, return receipt requested.
- F. The failure to obtain any required Solar Farm Development Permit shall be a violation of this Ordinance. Further, Solar Farm Development Permits shall issue on the basis of applications approved by personnel of the Clay County Building Inspections Office and shall authorize only the use, arrangement, and construction applied for and approved. Any use, arrangement or construction not in compliance with that authorized shall be a violation of this Ordinance.
- G. There shall be a final inspection of *Solar Farms* by a Building Inspector of the Clay County Building Inspections Office. All provisions of this Ordinance must be met and complied with before final inspection of a *Solar Farm* by a Building Inspector of the Clay County Building Inspections Office and before the *Solar Farm* is connected to a power distribution system which operates outside the bounds of the parcel or parcel upon which the *Solar Farm* is constructed.

Section 8. Appeals and Penalties.


- A. Any order, requirement, decision or determination made by a Building Inspector of the Clay County Building Inspections Office adverse to the interest of an applicant for a Solar Farm Development Permit may be appealed to and decided by the Clay County Board of Commissioners.
- B. Notice of appeal to the Clay County Board of Commissioners shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the County Manager on behalf of the Clay County Board of Commissioners within 30 days of the receipt of the written decision by the Building Inspector of the Clay County Building Inspections Office.
- C. The Chairman of the Clay County Board of Commissioners shall fix a reasonable time for hearing the appeal, give notice to the parties, and shall decide the matter within a reasonable time. At the hearing, any party may appear in person, by agent or attorney. The Clay County Board of Commissioners shall give written notice of its decision, stating the basis of its decision with specificity, to the Building Inspector of the Clay County Building Inspections Office who made the order, requirement, decision or determination appealed, and to the applicant for a Solar Farm Ordinance by certified mail, return receipt requested.

- D. Any order, requirement, decision or determination made by the Clay County Board of County Commissioners may be appealed to the Superior Court of Clay County, North Carolina by proceedings in the nature of certiorari. The notice of appeal shall be in writing and shall be served upon the Clay County Manager in the same manner as required by Rule 5 of the North Carolina Rules of Civil Procedure and it must be so served within 30 days of the receipt of the written decision by the Clay County Board of Commissioners in order to be timely.
- E. A violation of any provisions of this Ordinance shall be a misdemeanor subject to the penalties and enforcement provisions of N.C. Gen. Stat. § 153A-123.
- F. Each day's continuing violation of any of the provisions of this Ordinance shall constitute a separate and distinct offense.
- G. The provisions of this Ordinance may be enforced by any one or more of the remedies authorized by N.C. Gen. Stat. § 153A-123.

Section 9. Miscellaneous Provisions.

- A. Notwithstanding anything to the contrary contained herein, this Ordinance shall not be construed to prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property.
- B. No person shall be denied permission by Clay County to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property.
- C. As used herein, "residential property" means property where the predominant use is for residential purposes.
- D. **The owner of the *Solar Farm* equipment placed upon a parcel or parcel of land and the owner of the land upon which a Solar Farm is located or to be located are responsible for compliance with the terms of this Ordinance.**
- E. Solar Farms which exist in Clay County, North Carolina, as of the effective date of this Ordinance shall be considered grand-fathered to the extent which they exist as of the effective date of this Ordinance.

Upon motion made by Commissioner McClamery, seconded by Commissioner Penland and passed, adopted and ordained by vote of the Clay County Board of Commissioners on this the 17th day of October, 2011, at continuation of the October 6, 2011, Regular Meeting of the Clay County Board of Commissioners which was duly recessed unto this date, time and place.


Chairman of the Clay County Board of Commissioners

Attest:

Clerk to the Clay County Board of Commissioners

(County Seal)

