

Ordinance No. _____, 2024

An ordinance of the County of Erie to amend certain provisions of the County of Erie Ordinance 76 of 2010, also known as the Erie County Subdivision and Land Development Ordinance.

Whereas, the County of Erie first adopted the Erie County Subdivision and Land Development Regulations on November 10, 1965 and has administered such regulations since January 3, 1966; and

Whereas, such regulations were last updated on May 28, 2019 in accordance with the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, and in response to the changing needs of Erie County; and

Whereas, it is the duty and function of the Erie County Planning Commission to prepare and recommend subdivision and land development regulations in Erie County, Pennsylvania; and

Whereas, the Erie County Planning Commission determined that development and adoption of Ordinance Amendments are necessary to promote the use of solar energy and to provide for the land planning, installation, construction and decommissioning of solar energy facilities, subject to reasonable conditions that will protect public health, safety and welfare; and

Whereas, on April 13, 2023, the Erie County Planning Commission recommended adoption of Ordinance Amendments; and

Whereas, the Erie County Department of Planning and Community Development recommends adoption of the Ordinance Amendments; and

Whereas, a 30-day review and comment period was held in accordance with Act 247 of 1968, as amended, and no adverse public comments were received; and

Whereas, pursuant to public notice, Erie County Council held a public hearing regarding the Ordinance Amendments on **(insert date)**; and

Whereas, Erie County Council, after consideration of comments received (or lack thereof, as the case may be), has determined that the Ordinance Amendments should not be substantially revised in whole or in part.

NOW THEREFORE, Be It Enacted, by the County Council of the County of Erie, Pennsylvania, pursuant to Article II, Sections 1A, 1C (8), and 3B (1) of the Home Rule Charter of the County of Erie, and in accordance with the provisions of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, that County of Erie

Ordinance 76, 2010, also known as the Erie County Subdivision and Land Development Ordinance, is hereby amended, as follows:

Section 102, Purpose is hereby amended to add the following purpose.

To promote the use of solar energy and to provide for the land planning, installation, construction and decommissioning of solar energy facilities, subject to reasonable conditions that will protect public health, safety and welfare.

Section 602.1 – Waiver Eligibility Criteria is hereby amended to add the following:

Land development plan submittal shall not be waived for a new solar energy facility, unless specifically exempted from this ordinance. See Section 612.2

Renumbering of Ordinance Sections – In order to provide for the insertion of solar energy facilities regulations as Section 612, the following sections shall be renumbered.

Section 612 Acceptance and Maintenance of Improvements shall be renumbered as Section 613.

Section 612.1 Acceptance of Improvements shall be renumbered as Section 613.1.

Section 612.2 Maintenance of Improvements shall be renumbered as Section 613.2.

Article 6, Land Development Standards, shall be amended to add Section 612, Solar Energy Facilities, to provide as follows:

Section 612 – Solar Energy Facilities

Solar energy facilities (SEF) shall be considered a land development. Site plans shall be submitted as a land development and shall comply with the requirements of this section as well as all other applicable provisions of this ordinance.

612.1 – Applicability

- A. This section applies to all land development plans which provide for freestanding or ground-mounted solar energy facilities to be constructed or installed after (insert adoption/effective date of this ordinance amendment), unless specifically exempted from this ordinance.
- B. No land development plan providing for the construction or installation of a freestanding or ground-mounted solar energy facility shall be approved unless such plan has complied with the requirements of this ordinance.
- C. Any physical modification or alteration to an existing and permitted freestanding or ground-mounted solar energy facility that materially alters the size, type or components shall require land development approval under this ordinance. Like-kind replacements shall not require a new land development approval.

612.2 – Exemptions

- A. Solar energy facilities with a solar project area of less than one (1) acre are exempt from this ordinance.
- B. Solar energy facilities constructed prior to (insert adoption/effective date of this ordinance amendment) shall not be required to meet the requirements of this ordinance; provided that any physical modification or alteration to an existing freestanding or ground-mounted SEF that materially alters the size, type or components of the SEF shall comply with the provisions of this ordinance. Routine maintenance or like-kind replacements shall not require a new land development approval.

612.3 – Definitions Specific to Solar Energy Facilities

The following words, terms and phrases, when used in this ordinance, unless the context indicates otherwise, shall have the following meanings ascribed to them:

Accessory Solar Energy Facility (ASEF): A solar energy facility used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for on-site use. An accessory solar energy facility is intended to primarily reduce on-site consumption of utility power or fuels.

Facility Owner: The individual, group, entity or entities having an equity interest in the solar energy facility, including their respective successors and assigns.

Ground-Mounted Solar Energy Facility: A solar energy facility that includes a solar energy system that is anchored to the ground via a pole or other mounting system, detached from any other structure.

Non-Participating Landowner: Any landowner except those on whose property all or a portion of a solar energy facility is located pursuant to an agreement with the facility owner or operator.

Principal Solar Energy Facility (PSEF): A solar energy facility principally used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for off-site use.

Solar Energy Facility (SEF): An area of land used for a solar energy system used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power for either on-site or off-site use. Solar energy facilities consist of one (1) or more free-standing, ground-mounted, or roof or wall mounted solar collector devices, solar related equipment and other accessory structures and buildings including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures.

Solar Energy System: A solar photovoltaic cell, module/panels, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for

collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat.

1. Solar Array: A grouping of multiple solar modules or panels with the purpose of harvesting solar energy.
2. Solar Cell: The smallest basic solar electric device which generates electricity when exposed to light.
3. Solar Module: A grouping of solar cells with the purpose of harvesting solar energy.
4. Solar Panel: That part or portion of a solar energy system containing one or more receptive cells or modules, the purpose of which is to convert solar energy for use in space heating or cooling, for water heating and cooling, and/or for electricity.

Solar Project Area: The total area of land including the solar energy system, the space between solar arrays, stormwater management area, access drives, solar related equipment, fencing and internal access roads. The solar project area does not include any area set aside exclusively for agricultural uses and designed to be adequate for the maneuverability of typical farm equipment.

Solar Related Equipment: Items including a solar photovoltaic cell, module, panel, or array, or solar hot air or water collector device panels, lines, pumps, batteries, mounting brackets, framing and possibly foundations or other structures used for or intended to be used for collection of solar energy.

612.4 – Additional Plan Requirements

The land development plan, in addition to the other requirements of this ordinance shall contain the following:

- A. A narrative describing the proposed solar energy facility, including an overview of the project; the project location; the approximate generating capacity of the SEF; the approximate number, representative types and height or range of heights of the panels or other solar related equipment to be constructed or installed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
- B. An affidavit or similar evidence of agreement between the landowner(s) of the real property on which the solar energy facility is to be located and the facility owner, demonstrating that the facility owner has the permission of the landowner(s) to apply for necessary permits or approvals for construction and operation of the solar energy system.
- C. Identification of the property, properties or portions thereof on which the proposed SEF will be located, and the properties adjacent to where the SEF will be located.

- D. A site plan showing the planned location of solar related equipment, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the solar energy system to the substation(s), ancillary equipment, buildings, and structures, including associated distribution and/or transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
- E. The facility owner shall provide written confirmation that the public utility company to which the SEF will be connected has been informed of the facility owner's intent to install a grid connected system, and has approved such connection.
- F. The facility owner shall provide the name and phone number of a person responsible for the public to contact with inquiries and complaints related to the SEF. The facility owner shall make reasonable efforts to respond to the public's inquiries and complaints.
- G. An affidavit by the facility owner acknowledging that approval of the land development plan shall not and does not create in the property owner(s), its, his, her or their successors and assigns in title or, create in the property itself : (a) the right to remain free of shadows and/or obstructions to solar energy caused by development of adjoining or other property or the growth of any trees or vegetation on such property; or (b) the right to prohibit the development on or growth of any trees or vegetation on such property.
- H. Documents related to decommissioning, including a decommissioning agreement with the local municipality or the County, a schedule for the decommissioning, and financing security.
- I. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the County to ensure compliance with this ordinance.

612.5 – Design and Installation

- A. The layout, design and installation of the solar energy facility shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), , Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), Florida Solar Energy Center (FSEC) or other similar certifying organizations, and shall comply with the PA Uniform Construction Code and with all other applicable fire and life safety requirements. The manufacturer specifications for the key components of the facility shall be submitted as part of the application.
- B. The SEF shall comply with all applicable municipal ordinances, including but not limited to, municipal zoning ordinances, solar ordinances, and stormwater management ordinances.

- C. All on-site utility, transmission and plumbing lines shall be placed underground to the extent feasible.
- D. Solar energy systems shall not be placed within any legal easement or right-of-way location, or be placed within any storm water conveyance system or in any other manner that would alter or impede storm water runoff from collecting in a constructed storm water conveyance system.

612.6 – Stormwater Management

- A. The applicant shall provide written confirmation from the local municipality that the SEF complies with the municipal stormwater management ordinance. If a stormwater management plan is required, a copy of the approved plan shall be submitted with the application.
- B. Facility owners are encouraged to use low maintenance and low growing vegetative surfaces under the system as a best management practice for storm water management.
- C. Unless specified otherwise by an applicable municipal ordinance, the area beneath the ground mounted solar arrays shall be considered pervious cover. However, use of impervious construction materials under the system may cause the area to be considered impervious and subject to stormwater management requirements and the impervious surfaces limitations within the underlying municipal zoning district.

612.7 – Setback Requirements

- A. Property setback lines shall be as specified by the local municipality's zoning ordinance, solar ordinance, or other applicable municipal ordinance.
 - 1. Principal solar energy facilities (PSEF) shall comply with the setback requirements for principal structures within the underlying zoning district, unless specified otherwise by a municipal ordinance.
 - 2. Accessory solar energy facilities (ASEF) shall comply with the setback requirements for accessory structures within the underlying zoning district, unless specified otherwise by a municipal ordinance.
- B. Where no local municipal zoning ordinance, solar ordinance, or other applicable ordinance is in effect, the following standards shall apply.
 - 1. Front setback lines shall not be less than fifty (50) feet.
 - 2. Side setback lines shall not be less than forty (40) feet.
 - 3. Rear setback lines shall not be less than forty (40) feet.
 - 4. Required fences shall not be located within the required minimum setback areas.
 - 5. If the solar energy facility occupies two or more contiguous properties, setbacks between the contiguous properties shall be waived along the

shared property boundaries so that the facility may be installed continuously and make the most efficient use of the project area.

6. Batteries and other electricity storage equipment shall be located a minimum of one hundred and fifty (150) feet from the property line of a non-participating landowner's property.

612.8 – Buffer and Screening Requirements

Freestanding or ground mounted solar energy facilities shall be buffered and screened from adjacent residential zoning districts, residential uses on surrounding properties, platted residential lots, and public roads in accordance with the following requirements:

- A. Vegetative buffering shall be installed to screen and buffer adjacent residential zoning districts, residential uses on surrounding properties, platted residential lots, and public roads from the SEF. The County Planning Commission may waive or modify this requirement in areas where it determines that the retention of existing trees within the vegetative buffering area may constitute the required vegetative buffer or where the Commission determines that the solar panels cannot be viewed from adjacent residential zoning districts, residential uses on surrounding properties, platted residential lots, and public roads.
- B. The vegetative buffering shall be installed along the exterior side of the fencing. All required vegetative buffering shall be located within fifty (50) feet of the required fencing.
- C. Vegetative buffering should be designed to emulate the mix of native species and appearance of existing tree lines, hedge rows, and wooded areas already in existence within the landscape where the SEF is proposed. The Applicant shall access the species mix and characteristics found in existing tree lines, hedge rows, and wooded areas surrounding the SEF and document that the vegetative buffering is designed to emulate these characteristics.
- D. Vegetative buffering shall be selected to provide year-round buffering and shall be of sufficient height, density, and maturity to screen the facility from visibility, as set forth herein within thirty-six (36) months of the installation of the SEF.
- E. A combination of natural topography and vegetation may serve as a buffer, provided that the SEF will not be visible from adjacent residential zoning districts, residential uses on surrounding properties, platted residential lots, and public roads. Earthen berms may not be created to serve as a buffer.
- F. The buffering requirements of this section shall supersede the provisions of Section 607.4 (A) Types of Screening, and Section 607.4 (B) General Design Standards of this Ordinance as they may pertain to SEF.
- G. The requirements of Section 607.4 (C) Planting Requirements, Section 607.4 (D) Landscaping and Buffer Yard Maintenance, and Section 607.4 (E) Relief from Buffer Requirements of this Ordinance shall apply, as applicable.

612.9 – Access

- A. Stabilized access drives, with a dust-free surface, shall be installed from a state or local road in order to allow maintenance and emergency management vehicles to access the SEF site. The minimum cartway width shall be fourteen (14) feet. The SEF developer shall obtain a permit from the appropriate jurisdiction for the construction of the access road.
- B. Solar arrays and other solar related equipment shall be setback a minimum of twenty (20) feet from the inside of the perimeter fencing to allow for maintenance and emergency access.
- C. Spacing between solar array rows shall allow access for maintenance and emergency vehicles.

612.10 – Public Safety

- A. The applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer fire department(s) and the Erie County Department of Public Safety.
- B. Upon request, the applicant shall cooperate with emergency services and emergency management to develop and coordinate implementation of an emergency response plan for the SEF.
- C. Freestanding or ground mounted SEF shall be enclosed by a fence of a minimum 8 ft in height, to prevent or restrict unauthorized persons or vehicles from entering the property.
- D. A clearly visible warning sign, informing individuals of potential voltage hazards, shall be placed at the base of all pad-mounted transformers and substations and on the fence surrounding the SEF.

612.11 – Use of Public Roads

- A. The facility owner shall provide a construction transportation plan that shows all roadways that will be utilized to access the site. The plan shall address conditions for repair or replacement if damage to municipal roads occurs during construction activities. The plan shall be provided to the municipality for review and comment.
- B. The local municipality may require that the facility owner bond the road in compliance with state and local regulations. In the event that the municipality declines to require bonding, the facility owner shall submit a copy of a letter from the municipality indicating the municipality's decision not to require said bonding.
- C. In the event that the municipality declines to require that the facility owner bond the road, the County may require that the facility owner bond the road.
- D. Any road damage caused by the facility owner or its contractors shall be promptly repaired at the facility owner's expense.
- E. The facility owner shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

612.12 - Decommissioning

- A. Prior to final approval of any plans for a SEF, the facility owner shall enter into a legally binding decommissioning agreement with the local municipality outlining the responsibility of parties under this agreement as to the decommissioning of the SEF. The decommissioning agreement shall be in a form suitable for execution by the municipality, and should include the following:
1. The facility owner is required to notify the local municipality immediately upon cessation or abandonment of the operation. The SEF shall be presumed to be discontinued or abandoned if no electricity is generated by such system for a period of twelve (12) continuous months. The SEF is not presumed to be discontinued or abandoned if the facility owner has temporarily ceased its operation, but is in the process of transferring ownership and management of the SEF.
 2. If it is determined that the SEF has permanently ceased its operation, or has been abandoned, the facility owner shall then have twelve (12) months in which to dismantle and remove the SEF including all solar related equipment or appurtenances related thereto, including but not limited to buildings, cabling, electrical components, roads, foundations and other associated facilities from the property.
 3. To the extent possible, the materials shall be re-sold or salvaged. Materials that cannot be re-sold or salvaged shall be disposed of at a facility authorized to dispose of such materials by federal or state law.
 4. Any soil exposed during the removal shall be stabilized in accordance with applicable erosion and sediment control standards.
 5. Any access drive paved aprons from public roads may remain for future use unless directed otherwise by the landowner.
 6. The SEF site area shall be restored to its pre-development condition, suitable for its prior use Except in the case that the landowner authorizes, in writing any buffer landscaping or access roads installed to remain.
 7. Any necessary permits, such as Erosion and Sedimentation and NPDES permits, shall be obtained prior to decommissioning activities.
 8. At the time of issuance of approval for the construction of the SEF, the facility owner shall provide financial security in the form and amount acceptable to the municipality and in favor of the municipality, to secure its obligations under this Section.
 9. The facility owner shall, at the time of the land development plan application, provide the municipality with an estimate of the cost of performing the decommissioning activities required herein. The facility owner shall provide financial security of 110% of the estimated cost of decommissioning. The estimate may include an estimated salvage and resale value, discounted by a factor of 10%. The decommissioning cost estimate formula shall be: gross

cost of decommissioning activities minus 90% credit of salvage and resale value equals the decommissioning cost estimate.

10. On every 5th anniversary of the date of providing the decommissioning financial security, the facility owner shall provide an updated decommission cost estimate, utilizing the formula set forth above with adjustments for inflation and cost and value changes. If the decommissioning security amount increases, the facility owner shall remit the increased financial security to the municipality within 30 days of the approval of the updated decommissioning security estimate by the municipality. If the decommissioning security amount decreases by greater than 10%, the municipality shall release from security any amount held in excess of 110% of the updated decommission cost estimate.
 11. Decommissioning security estimates shall be subject to review and approval by the municipality, and the facility owner shall be responsible for administrative, legal, and engineering costs incurred by the municipality for such review.
 12. The decommissioning security may be in the form of cash deposit, surety bond, irrevocable letter of credit, cashier's check, or escrow amount from a federal or Commonwealth chartered lending institution in the amount of 110% of the total proposed decommission cost estimate and in a form satisfactory to the municipality and its solicitor.
- B. In the event that the municipality indicates its desire not to participate or enter into a binding decommissioning agreement with the facility owner, then the County may enter into a decommissioning agreement with the facility owner. In such a case, the facility owner shall submit a copy of a letter from the municipality indicating the municipality's desire not to enter into said agreement.

The Erie County Department of Planning and Community Development is authorized to prepare and disseminate updated copies of the Erie County Subdivision and Land Development Ordinance reflecting the amendments enacted by this Ordinance.

Effective Date: This Ordinance shall become effective immediately upon adoption.

Ordinance No. _____, 2024

County Council of the County of Erie,
Pennsylvania

Attest:

Karen Chilcott

County Clerk

Date: _____

Terry M. Scutella, Chair

Chris Drexel, Vice Chair

Charlie Bayle

Approved by:

Brenton Davis
County Executive

Rock Copeland

Date: _____

Andre R. Horton

Ellen Schauerman

Jim Winarski