

MASON COUNTY SOLAR ENERGY SYSTEMS ZONING ORDINANCE

December 2020

Section 1. Purpose

The purpose of this ordinance is to facilitate the siting, development, construction, installation, and decommissioning of solar energy systems (SESs) in Maysville/Mason County in a predictable manner that promotes and protects the safety, health, and welfare of the community. This ordinance encourages the appropriate siting of SESs to bolster local economic development and job creation, diversify the state's energy portfolio, strengthen energy and grid security, and reduce other environmental impacts. The appropriate siting of SESs considers, avoids to the extent possible, and mitigates any adverse impacts to wildlife, productive and nationally important agricultural lands, forests, endangered species habitat, and historic, natural, and other sensitive lands. The appropriate siting of SESs also establishes standards and requirements to assure that the use and enjoyment of lands located adjacent to and in the proximity of SESs are fully protected.

The requirements of this Ordinance are intended to be supplemental to any safety, health, or environmental requirements of federal, state, or local laws, and regulations.

Section 2. Definitions

Solar Energy System (SES) means 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 the existing land use:

Integrated Solar Energy System means 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 an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building façade, skylight, shingles, canopy, light, or parking meter.

Rooftop Solar Energy System means an SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.

Ground Mounted Solar Energy System means an SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:

- ***Small Scale Ground Mounted Energy System (Small Scale SES)*** which is a Ground Mounted SES with a Footprint of less than 2,500 square feet
- ***Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)*** which is a Ground Mounted SES with a Footprint of between 2,501 square feet and ten (10) acres.

- **Large Scale Ground Mounted Solar Energy System (Large Scale SES)** means a Ground Mounted SES with a Footprint of more than ten (10) acres.

Exempt Solar Energy System (Exempt SES) means a 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.

Footprint of the SES is 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.

Siting Board Regulated SES means a SES that constitutes a “merchant electric siting 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. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

3. Applicability

(a) This ordinance applies to the siting, construction, installation, and decommissioning of any new SES within the jurisdiction of Maysville/Mason County after the effective date of this ordinance.

(b) An SES in operation, or which has begun physical construction prior to adoption of this ordinance, shall be considered to have legal nonconforming status in accordance with KRS 100.253.

(c) The following are not subject to this ordinance:

i. Modification to an existing SES that alone or in combination increases the total SES Footprint by no more than 5% of the original Footprint.

ii. Routine maintenance and repair, including replacement of solar panels, not increasing the SES Footprint.

(d) Any Exempt SES shall provide the Mason County Joint Planning Commission, the appropriate Board of Adjustment, the City of Maysville Board of Commissioners, and the Mason County Fiscal Court with information concerning service facilities which have been located on and relocated on private property in accordance with KRS 100.324(3).

(e) An SES shall comply with all applicable federal, state, and local laws, regulations, and permitting and other requirements, and applicable building, fire, electrical, and plumbing codes.

4. Conditional Use Permit Requirements and Allowed Uses

Refer to Section 406.62 Allowable Land Uses for guidance on where SESs are permitted, conditional, and prohibited land uses. Permitted uses are allowed in a district without the necessity of obtaining a zoning permit or prior planning approval, provided that the applicable requirements below are met. Conditional uses are those subject to the requirements set forth below and only if the applicant first obtains a conditional use permit in accordance with the Maysville/Mason County Land Use Management Ordinance. Small/Intermediate/Larger Scale SES will be considered an accessory use if a primary use and/or existing structure is present on the property. Accessory uses are limited to no more than 25% of the yard area.

Industrial / Manufacturing	R-1	R-2	R-3	R-4	TH-1	B-1	B-2	B-3	D-1	P-1	A-1	A-2	I-1	I-2	MH	C	RR-1	RR-2	I-3	
Solar Energy System																				
Integrated	P	P	P	P	P	P	P	P	P*	P	P	P	P	P	P	P	P	P	P	P
Rooftop	P	P	P	P	P	P	P	P	P*	P	P	P	P	P	P	P	P	P	P	P
Small Scale	C	C	C	C	X	C	C	C	X	C	C	C	P	P	C	C	C	C	C	P
Intermediate Scale	X	X	X	X	X	X	X	X	X	X	X	C	P	P	X	X	X	X	X	P
Large Scale	X	X	X	X	X	X	X	X	X	X	X	C	P	P	X	X	X	X	X	P

*Integrated/Rooftop SES proposed to be within either historic district may require a Certificate of Appropriateness.

5. General Requirements Applicable to Integrated and Rooftop Solar Energy Systems

- (a) **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for an Integrated or Rooftop SES. Such easements shall be recorded.
- (b) **Tree Removal.** The removal of trees or natural vegetation for an Integrated or Rooftop SES shall be limited to the extent practicable and shall comply with all the requirements of the Maysville/Mason County Land Use Management Ordinance regarding tree removal.
- (c) **Height Restrictions.** Height limitations shall not apply to Rooftop SESs, provided that any features extending beyond zoning district height restrictions are limited to that height necessary for their proper functioning.
- (d) **Lighting.** Integrated and Rooftop SESs shall not be illuminated and shall be designed and installed to prevent off-site glare. SESs shall be subject to light trespass regulations.
- (e) **Historic Preservation.** Where an integrated or rooftop SES is proposed to be installed on a property located within either historic district, the proposed installation may require a Certificate of Appropriateness issued by the Maysville/Washington Board of Architectural Review.

6. General Requirements Applicable to Ground Mounted SESs

- (a) **Solar Access.** Consistent with KRS 381.200(2), a property owner may obtain a solar easement from another property owner for the purpose of ensuring adequate exposure to sunlight for a Ground Mounted SES. Such easement shall be recorded.

(b) Tree Removal. The removal of trees or natural vegetation for a Ground Mounted SES shall comply with all the requirements of the Maysville/Mason County Land Use Management Ordinance regarding tree removal and mitigation.

(c) 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 and shall be subject to light trespass regulations.

(d) Height Requirements for Ground Mounted SES. A Ground Mounted SES shall not exceed twenty (20) feet in height as measured from the highest natural grade below each solar panel without approval by the appropriate Board of Adjustment. The height restriction excludes utility poles, storage batteries, and antennas constructed for the project, provided any features extending beyond twenty (20) feet in height are limited to that height necessary for their proper functioning. A Ground Mounted SES may exceed twenty (20) feet in height upon a finding that the SES would be more productive, use less land, or provide other environmental, economic, or other benefits if the height limitation is increased.

(e) Siting Restrictions for Ground Mounted SES

a. An Intermediate or Large Scale Ground Mounted SES, measured from the closer of the outer edge of the nearest panel or perimeter fencing, shall be located at least fifty (50) feet from the property line of any adjacent property, and one hundred (100) feet from a property line shared by a public road.

b. Setbacks are not required where the property line is shared by two or more participating landowners.

c. Setback requirements may be reduced with dimensional variances issued by the appropriate Board of Adjustment. Applications for dimensional variances must adhere to all requirements set forth in KRS Chapter 100.243 and Section 404 of the Maysville/Mason County Land Use Management Ordinance.

d. Setback requirements may be expanded by the appropriate Board of Adjustment, as a condition of approval of a Conditional Use Permit, where deemed necessary to assure effective screening.

(f) Screening. Ground Mounted SESs shall be effectively screened from neighboring properties other than that on which the SES is to be constructed.

a. Ground Mounted SESs approved as a conditional use shall have or install a visual buffer of natural vegetation, plantings, earth berms, and/or fencing that provides an effective visual and lighting screen between the SES and neighboring properties. Existing buffers along an SES perimeter shall be preserved when reasonably practicable.

(g) Signage. A Ground Mounted SES may include such signage as is required by law to provide safety information, and other signage as may be allowed under this Ordinance and the Maysville/Mason County Land Use Management Ordinance.

(h) Decommissioning. Other than as specifically approved by the appropriate Board of Adjustment upon application and notice, decommissioning shall begin no later than twelve (12) months after a Ground Mounted SES has ceased to generate electricity or thermal energy:

a. If the Ground Mounted SES was a permitted use without a conditional use permit, 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 consistent with the zoning classification of the property. Removal entails either complete removal of all foundations and below-grade equipment or removal to a depth of no less than five feet below-grade.

b. If the Ground Mounted SES was allowed under a conditional use permit, the SES shall be decommissioned according to the decommissioning plan approved in the Conditional Use Permit.

c. A performance bond shall be secured and provided to cover the costs for local municipalities or a designated party or parties to remove the SES facility in the case of bankruptcy of the owner of the facility. The bond shall be refunded once decommissioning and removal of equipment consistent with this Ordinance is completed.

(i) Conditional Use Permit Application Requirements

(1) Applications for an SES requiring a conditional use permit shall include the following information:

a. Name, address, telephone number, and email address (if available) of the applicant, the project owner, and the project operator.

b. The address of the property on which the SES will be located and the property owner's name, address, telephone number, and email address if available.

c. Documentation, such as a deed, lease, or other agreement with the landowner, demonstrating the applicant's right to use and control the property.

d. A topographic map that depicts vegetative cover, watersheds, floodplains, and other geographic information about the property and surrounding area.

e. A conceptual description of the project, including the maximum number of modules, mounting type (fixed-tilt or tracking), system height, system capacity, total land area covered by the system, and information about all associated structures or facilities such as transformers, substations, feeder lines, and battery storage. Plans for possible expansion of the facility must be declared at the conditional use permit application public hearing; if no expansion plans are presented in the public hearing, no subsequent expansions of the facility are permitted without the application and granting of subsequent conditional use permits.

f. A conceptual site plan including property lines, zoning classification of the property and all adjacent properties, existing buildings and proposed structures, the proposed location of the solar equipment, transmission lines, any associated structures and facilities, and substations. The conceptual site plan shall also identify existing and proposed temporary or permanent roads, drives, and parking, fencing or other methods to ensure public safety, and a visual buffer plan demonstrating how proposed visual buffers will effectively screen the proposed SES from neighboring properties.

g. Information demonstrating that approval of the SES will not result in any disproportionate individual or cumulative environmental burden on low-income communities or communities of color.

h. A decommissioning plan prepared by a registered professional engineer, and updated every five (5) years, containing the following:

1. The anticipated life of the project and defined conditions upon which decommissioning will be initiated;
2. The estimated decommissioning cost, including removal of the SES and related foundations, pads, underground collector lines and roads, and the salvage value of any equipment in current dollars and the calculations supporting the decommissioning estimate. The estimated salvage value of the material using current, publicly available material indices and/or firm quotes from a decommissioning or recycling company experienced in the decommissioning of SES, shall be provided, and the relevant Board of Adjustment shall consider the salvage value identified in subsection h(2) in computing the amount, if any, of financial assurance required under subsection h(5).
3. The manner in which the project will be decommissioned, including provision and a timetable for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition or a condition compatible with the zoning of the parcel(s);
4. The party or parties responsible for decommissioning;
5. A performance bond, letter of credit, or other financial assurance payable to either the City of Maysville or the Mason County Fiscal Court sufficient to cover the net costs identified in subsection h(2) and to assure that decommissioning of the site can be achieved by a third party in the event that a permittee defaults in that obligation;
6. A copy of any lease containing specific agreements regarding decommissioning with the landowner.

i. Proof of adequate casualty and liability insurance covering installation and operation of the SES;

j. An environmental impact study of the proposed SES facility, including its potential effects on local vegetation and wildlife, if any, as well as its potential effects on adjoining properties and public roads with respect to water runoff and drainage, and including a description of the measures that will be taken to minimize erosion and sedimentation, and to promptly stabilize and revegetate disturbed areas with native vegetation.

- k. Where the applicant for a Conditional Use Permit is also seeking a construction certification pursuant to KRS 278.700 – 278.716, the applicant may submit a copy of a complete state siting board application and site assessment report meeting the requirements of KRS 278.706 and 278.7008 in lieu of the above requirements of Section 6 a-g.

(2) A conditional use permit issued by the appropriate Board of Adjustment shall include, at a minimum, all requirements of Section 6 of this Ordinance, and any additional conditions deemed by the Board necessary or appropriate pursuant to KRS 100.237 to allow the proper integration of the proposed SES into the zone and location in which it is proposed.

7. Public Notice and Public Comment

Public notice of an application for a Conditional Use Permit for a Ground-Mounted SES shall conform to the public notice requirements generally applicable to conditional use permit applications. The public notice and hearing requirements of this Chapter shall be in addition to and independent of any local hearing conducted pursuant to KRS 278.712