

**EVERGREEN TOWNSHIP
MONTCALM COUNTY, MICHIGAN
(Ordinance No. 2621)-2**

THE SOLAR FARM ORDINANCE

At a Regular meeting of the Township Board for Evergreen Township held at the Township Hall on Nov 2, 2021 at 7:30 p.m., the following Ordinance was offered for adoption by Township Board Member Heintzelman and was seconded by Township Board Member Baker :

THE TOWNSHIP OF EVERGREEN (the "TOWNSHIP") ORDAINS:

Section 1. Intent and Purpose

- (a) The most common and prevalent land use in Evergreen Township is agricultural, and its preservation has been an ongoing goal within the community for many years. This Ordinance is intended to protect the health, safety and welfare of the residents of the Township and to encourage the safe, effective, efficient and orderly operation of solar panel resources within the Township while preserving and protecting the character and the stability of residential, agricultural, recreational, commercial and other areas and uses within the Township.
- (b) To regulate solar farm operations within the Township, this Ordinance requires that the operator obtain a permit from the Township Board to ensure that solar farm sites are appropriately regulated to preserve and protect the Township's environmental and ecological assets, open space, viewscapes and aesthetics, wetlands, and other ecological and environmentally sensitive assets.

Section 2. Definitions

The following words and terms shall mean the following for purposes of this Ordinance:

- A. Abandonment: To give up, discontinue, or withdraw from any solar farm that ceases to produce electricity or energy on a continuous basis for a period of 180 days or longer. Such solar farm or facility will be considered abandoned.
- B. Decommissioning Plan: A document that details the planned shut down or removal of a solar farm or similar facility from operation or usage, including abandonment as defined in this Ordinance.
- C. Fence: A continuous barrier extending from the surface of the ground to a uniform height (to be established through the permit process), constructed of steel, or other metal, or any substance of a similar nature and strength.

- D. Gate: A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.
- E. Residential Area: Any area within one quarter (1/4) of a mile of a solar farm having ten or more dwellings.
- F. Solar Farm: Land designated, designed, constructed or used for producing solar or photovoltaic electricity or energy, which includes, but is not limited to, the use of one or more solar panels or other solar energy systems where more than 50% of the power generated is sold or transferred off site to electric companies or other third parties for distribution. A solar farm is comprised of solar panels, photovoltaic cells, or similar facilities that comprise or occupy 3 acres or more on a given parcel or lot.

Section 3. Prohibitions

It shall be unlawful after the effective date of this Ordinance for any person, firm, corporation, or other legal entity to install, operate, maintain, establish or use in the Township a solar farm or similar facility without approval by the Township Board and issuance of a permit as further set forth herein. Modifications to an existing lawful solar farm (which existed as of the effective date of this Ordinance) that increases the area by more than 10% of the original footprint or changes the solar panel type shall be fully subject to this Ordinance and shall require Township Board approval and issuance of a permit.

Section 4. Solar Farm Development and Design

- A. Township Board Approval Required. Solar farms may only be operated in the Township with the express approval of the Township Board and issuance of a permit thereafter by the Township Clerk.
- B. Minimum Lot Size: Solar farms shall not be constructed on lots or parcels under 20 acres in size.
- C. Height Restrictions: All photovoltaic panels located in a solar farm shall be restricted to a maximum height of 14 feet.
- D. Setbacks: All photovoltaic solar panels and support structures associated with solar farms (excluding perimeter security fencing) shall be located a minimum of 20 feet from any side or rear property line and a minimum of 50 feet from any road or highway right-of-way or easement.
- E. Safety/Access: A security fence (with the height and material to be established through the Township Board permit process) shall be installed and maintained around the perimeter of the solar farm and electrical equipment shall be locked. Knox boxes and keys shall be provided at locked gated entrances for emergency personnel access.
- F. Noise: The noise from a solar farm shall not exceed 55 dB as measured at any property line.
- G. Landscaping: The Township Board may require landscaping or screening, depending

upon the topography and existing plant material on the site, proximity to any residential area, and similar matters. Trees required shall be a minimum of six (6) feet tall when planted and must be reasonably maintained so long as the solar farm is in operation.

- H. Local, State, and Federal Permits: Solar farms shall obtain all necessary state, federal, and Township permits and approvals, and shall comply with all of the standards of the State of Michigan codes.
- I. Electrical Interconnections: All electrical interconnection or distribution lines shall comply with all applicable codes and standard commercial large-scale utility requirements. Use of above ground transmission lines shall be prohibited within the site.
- J. Batteries: If the solar farm or energy facility has or consists of batteries or the storage of batteries, adequate design and operations must be implemented to ensure that all Township, state, and federal requirements regulating outdoor battery storage have been met.
- K. Stormwater Review and Runoff Controls: Prior to issuance of a permit a developer shall submit to the Township a stormwater plan as set forth herein which plan contains a description of an adequate, temporary stormwater detention/retention system to prevent construction site stormwater runoff, satisfying the requirements of state law. The developer shall install stormwater runoff facilities so as to prevent construction site stormwater runoff and off-site sedimentation. All stormwater runoff facilities shall be designed in accordance with the then-current BMPs.

Without limiting the foregoing, the stormwater plan shall also include: the location of the property and water bodies that will receive stormwater runoff; the existing and proposed topography of the development site, including the alignment and boundary of the natural drainage courses; calculations for the final peak discharge rates and any facility or structure size and configuration; a drawing showing all proposed stormwater runoff facilities with existing and final grades; and, any other information reasonably necessary for the Township to verify that the drainage plan complies with BMPs in terms of design and performance standards for drains and stormwater management systems.

L. Criteria: No solar farm shall be approved by the Township Board unless the Township Board considers all of the following criteria (and that the following requested items or information is supplied to the Township by the applicant):

1. Project description: Identify the time frame, project life, development phases, likely markets for the generated energy, and possible future expansions.
2. Analysis of on-site traffic: Estimated construction jobs, estimated permanent jobs associated with the development.
3. Visual impacts: Review and demonstrate the visual impact using photos or renditions of the project or similar projects with consideration given to tree plantings and setback requirements.
4. Wildlife: Review of the potential impact on wildlife on the site.

5. Environmental analysis: Identify impact analysis on the water quality and water supply in the area, and dust from project activities.
6. Waste: Identify any solid waste or hazardous waste generated by the project.
7. Lighting: Provide lighting plans showing all lighting within the facility. No light may adversely affect adjacent parcels. Lighting must be shielded from adjoining parcels, and light poles are restricted to 18 feet in height.
8. Transportation plan: Provide an access plan during construction and operation phases. Show the proposed project service road ingress and egress access onto primary and secondary routes, layout of the plant service road system. Due to infrequent access to such facilities after construction is completed, it is not required to pave or curb solar panel access drives. It will be necessary to pave and curb any driveway and parking lots used for occupied offices that are located on-site.
9. Public safety: Identify emergency and normal shutdown procedures. Identify potential hazards to adjacent properties, public roadways, and to the community in general that may be created.
10. Sound limitations and review: Identify noise levels at the property line of the project boundary when completed.
11. Telecommunications interference: Identify electromagnetic fields and communications interference generated by the project.
12. Life of the project and final reclamation: Describe the decommissioning and final land reclamation plan after anticipated useful life or abandonment or termination of the project, including evidence of an agreement with the property owner that ensures proper and environmentally safe final removal of power generating equipment within one year of decommissioning. At a minimum, the decommissioning plan must address and require provisions for removal of all structures (including equipment, fencing, and roads), foundations, and restoration of soil and vegetation to the condition prior to development.
13. Affidavit: An affidavit or evidence of an agreement establishing that the applicant has the permission of the property owner to apply for the necessary permits for the construction and operation of the solar energy facility.
14. Site plan: The applicant shall submit a site plan to the Township. The site plan shall include the following:
 - i. The location of all buildings and structures on the property involved, as well as on all adjoining parcels or lots.
 - ii. Access drives within the property involved.
 - iii. Fencing and security measures sufficient to prevent unauthorized trespass

and to protect the public health, welfare and safety.

- iv. A written maintenance and repair program.
- v. Any site lighting.
- vi. The location, setback, height and side view of all proposed solar panels and related facilities.
- vii. Such additional details and information as is required by the Township.

Section 5. Evergreen Township Board Review and Approval

- A. No solar farm shall be installed, used or maintained unless and until approved by the Evergreen Township Board, and the Township Clerk issues a Township permit based on the Township Board's approval.
- B. The Township Board shall not approve a solar farm unless it finds that all of the standards set forth in this Ordinance are met.

Section 6. Township Board Conditions and Postings

Because of the ever-changing technical capabilities of photovoltaic solar panels and of new technology in general, the Township Board, as part of the review process, shall have the authority to review and authorize the use of alternatives in both dimensional requirements as well as the physical development requirements found in this Ordinance.

- A. Performance Guarantee for Decommissioning: To ensure proper removal of each solar farm structure when it is abandoned or non-operational, as further set forth in Section 7, the application shall include proof of the financial security in effect before a permit is approved. The security shall be licensed in the State of Michigan and be in the form of 1) cash deposit or 2) performance (surety) bond selected by the Township Board and bonded by a top institution from the Department of the Treasury's Listing of Approved Sureties-Department Circular 570, T-list. The duration of the security shall be termed to the removal of any solar farm structure on site as stated in this Ordinance. Additionally, security shall be based on each solar farm and is to be backed by owner assets, operator assets, parent company assets, and leaseholder assets approved by the Township Board.
 - 1. The amount of each solar farm security guarantee (surety) shall be the average of at least two independent (of the applicant) demolition (removal) quotes, obtained by the Township and approved by the Board, plus 20%. If the quantity of quotes obtained is two, the formula shall be $(\text{quote 1} + \text{quote 2})/2 * 1.20$. The security guarantee shall be no less than \$800,000.00 per solar farm site. Quotes shall be based on removal and shall not group multiple solar farm simultaneous removals together. Quotes shall be ordered and obtained by the Township from established demolition/removal companies. The demolition/removal method shall be approved by the Township Board. Quotes shall not include salvage values. Security guarantee shall be updated every five (5) years at the rate of 1.5 times CPI (consumer price index) for each year.

2. Such financial guarantee as set forth herein shall be deposited or filed with the Township Clerk after a Township permit has been approved by the Township Board but before construction operations begin on the solar farm project. Failure to keep such financial security in full force and effect at all times while the structure exists shall constitute a material and significant violation of a Township approval and this Ordinance, and shall subject the applicant to all available remedies to the Township, including enforcement action, fines, revocation of the Township solar farm approvals and permits and solar farm removal.
 3. The applicant shall be responsible for the payment of all attorney fees and other costs incurred by the Township in the event that the solar farm structure(s) is not voluntarily removed and the Township has to enforce removal.
 4. In the event the solar farm owner, operator, parent company, performance bond defaults on any or all of the previously outlined decommissioning requirements, the owner upon which any solar farm is located shall be responsible and liable for the removal of all solar farm structures. Failure of the owner to comply with the removal and decommissioning guidelines shall result in the Township having the solar farm removed at the expense of the owner. The owner as a condition of issuance of the permit is deemed to grant to the Township and its agents an irrevocable license to enforce such remedies in a manner otherwise consistent with this Ordinance. If funding is not available to cover the costs of removal by the owner, legal action to pursue the seizure of property(ies) will take place to cover such costs.
 5. The surety shall remain in effect with the Township until the parcel or parcels have been reclaimed, inspected and all equipment, machinery, materials, buildings and other operation related improvements associated with the solar farm removed as required by this Ordinance and/or by the terms of the permit.
- B. Conditions: The Township Board may attach reasonable conditions to any solar farm approval.
- C. Insurance: Insurance shall be a pre-condition to commencement of operations and a pre-condition to the right to continue operations. Insurance shall be maintained in full force during the term of permit. The permit holder shall provide personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times when any reclamation is left to be done, and during all times that any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site, said insurance to name the Township, its officers and employees as co-insured or additional insureds. This insurance shall be carried in amounts no less than One Million Dollars (\$1,000,000.00) for injury and damage arising out of single occurrence. This insurance shall cover injury or damage occurring upon the site of the operations, as well as injuries or damage occurring upon adjoining property as the result of conditions or activities

conducted upon the subject property.

The insurance certificate shall contain a clause stating that coverage may not be cancelled, revoked or modified without a minimum of thirty days' notice to the Township.

- D. Term: Permits shall be for a term not to exceed ten (10) years and may thereafter be renewed upon written application for additional ten (10) year periods.
- E. Road Damage: In addition to complying with any requirements imposed by the Montcalm County Road Commission for use of public rights of way, the applicant shall post with the Township a financial security in the form of a surety bond from a surety company that is listed as an acceptable surety on Federal Surety Bonds in circular 570 of the U.S. Department of Treasury, or irrevocable letter of credit from, or an escrow account established in, a financial institution licensed in the State of Michigan for the cost of repairs of Montcalm County roads within the Township, in an amount of at least \$500,000.00. The type, form, wording and amount of the surety bond or other security shall be approved by the Township. The amount and standards for road repair work shall be determined by a third party road inspector appointed by mutual agreement of the Township, the applicant and Montcalm County Road Commission. The bond or other security shall only be released (in whole or in part) when the Township Board, in consultation with the Montcalm County Road Commission and said third party inspector, determines that all required road work has been completed and approved by the road inspector in consultation with the Montcalm County Road Commission and/or MDOT. The Township may consult with the third party road inspector to verify the proposed bond or other security amount of \$500,000.00 or more. If the third party inspector determines that the amount needed for road repairs and upgrades is higher, the applicant will post a financial security in the amount determined by the third party inspector. All road repairs must be complete within ninety (90) days of project completion, or maintenance completion, but shall not exceed 365 days from project commencement or maintenance completion.

Section 7. Decommissioning, Abandonment and Removal

- (a) A solar farm (as well as all of its components) shall be decommissioned and be entirely removed from the property involved for whichever of the following events occurs first:
- i. The solar farm is abandoned;
 - ii. The solar farm does not produce electricity or power for at least 180 consecutive days;
 - iii. The solar farm is in substantial violation of a provision of this Ordinance and the violation has not been cured within a reasonable time period; or
 - iv. The time limit or expiration in the Township permit expires or it is reached.
- (b) When the solar farm is decommissioned or is abandoned (whichever occurs first), the solar farm (and all of its parts and components) shall be entirely removed from the

property involved and any and all parts thereof shall be lawfully disposed of off-site. The ground and area that formerly comprised the solar farm shall be fully restored to the condition that it was in before the solar farm was installed.

- (c) A solar farm (and all of its parts and components) shall be fully removed from the property on which it is located within 100 days of the date on which it is decommissioned or abandoned (whichever occurs first).
- (d) The applicant, the landowner and the owner of the solar farm shall be jointly and severally responsible and liable for ensuring that the solar farm (and all of its parts and components) is fully removed from the property involved, everything is disposed of lawfully off-site and the site is returned to its prior condition when the solar farm is either decommissioned or abandoned (whichever occurs first). Such obligation shall also constitute a lien on the property involved.
- (e) The Township may utilize the performance guarantee or other security posted by the applicant for the decommissioning and removal of the solar farm (and the disposal of all of its parts off-site), if the applicant, the landowner or the solar farm owner does not fully effectuate the decommissioning and removal of the solar farm (and all of its parts and components).

Section 8. Escrow Fee and Reimbursement Requirements

- A. Given the very technical aspects of any solar farm application, it may necessitate the Township Board obtaining guidance, technical or legal advice and potentially reports or opinions from the Township Attorney, Township Engineer and/or other Township consultants, which could involve significant costs. The taxpayers of the Township should not have to bear such costs, but such costs are rather more appropriately paid for and reimbursed to the Township by the solar farm applicant.
- B. In addition to a fixed fee as set by the Township Board for any solar farm application, the Township in its discretion may also require an applicant to submit to the Township (prior to Township review of an application or appeal) an amount of money determined by the Township to be a reasonable estimate of the fees and costs which may be incurred by the Township in reviewing and acting upon any such solar farm application. The Township shall not charge such escrow fees or assess costs to the applicant for the time expended by Township employees or for incidental costs and expenses but may charge or assess the applicant for all other reasonable costs and expenses incurred by the Township during and in connection with the review process, whether or not the application is granted or approved, either in whole or in part. Such costs and expenses to be charged or assessed to the applicant, for reimbursement of the Township's reasonable costs and expenses, may include, but shall not be limited to, Township attorney fees, costs and fees for the services of outside consultants, fees and expenses of other professionals who may assist the Township, costs and fees for studies and reports pertaining to the matters in question, special meeting costs and other reasonable costs and expenses. Such monies shall be retained by the Township for reimbursement of such costs and expenses. If insufficient monies are deposited by the applicant with the Township to cover the Township's reasonable costs and

expenses (as mentioned above), the applicant shall fully reimburse the Township for all such reasonable costs and expenses at any and all times demanded by the Township, whether during the review or after the process has been completed. Any monies paid or deposited by an applicant which are not used or spent by the Township shall be refunded.

Section 9. Required Public Hearing

Before the Township Board reaches a decision on a solar farm application, the Township Board shall hold a public hearing regarding the application. Notice of the time, date, place and purpose of the public hearing shall be published in the local newspaper at least ten (10) days before the public hearing and the owners of all property within 1,320 feet of the proposed solar farm (with the landowners as shown on the most recent Township tax roll) also being mailed by first-class mail a copy of the public hearing notice at least ten (10) days before the public hearing.

Section 10. Liability and Responsibility

The solar farm owner, the applicant and the landowner shall all be jointly and severally liable and responsible for ensuring that the solar farm involved complies with all of the requirements of this Ordinance, the Township's permit for the solar farm and any conditions attached to the solar farm approval by the Township Board. Such joint and several liability and responsibility also applies to decommissioning and removal of the solar farm.

Section 11. Compliance and Information

- (a) A condition of any permit issued hereunder shall be compliance with all requirements of this Ordinance as well as all other applicable laws, ordinances, and rules of the federal, state, county, and Township governments.
- (b) A solar farm permit issued pursuant to this Ordinance, and the accompanying rights granted thereby, may not be assigned or encumbered without prior approval in the form of a resolution adopted by the Township Board. Such approval may be subject to all reasonable conditions relative to the assignment or encumbrance as determined necessary by the Township Board to ensure the assignee's compliance with the terms of all applicable local, state and federal laws.

Section 12. Enforcement and Remedies

- (a) A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in a violation of this Ordinance, shall also be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100.00) for the first offense and not less than two hundred

dollars (\$200.00) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within twenty-four (24) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

- (b) Any person in violation of this Ordinance shall be jointly and severally liable and responsible for complying with this Ordinance and for any and all violations of this Ordinance and any consequences thereof.
- (c) In addition to the above-mentioned remedies, the Township is also authorized (at its option and discretion) to pursue a civil lawsuit to enforce and/or ensure compliance with this Ordinance in the Montcalm County Circuit Court. The remedies and penalties provided in this Ordinance are cumulative and not exclusive.
- (d) This Ordinance may be enforced by authorized officials including the Township Supervisor, the Building official, the Township Enforcement Officer, a Deputy County Sheriff, a State Police officer, and such other Township officials or agents as the Township Board may designate from time to time. Any such official may also issue one or more civil infraction citations or tickets pursuant to this Ordinance.
- (e) A violation of this Ordinance is also hereby declared to be a nuisance *per se* subject to abatement and is also declared to be offensive to the public health, safety and welfare.
- (f) This Ordinance shall be administered and interpreted by the Township Supervisor.
- (g) Should the Township pursue a municipal civil infraction proceeding in the District Court and / or a conventional enforcement lawsuit or declaratory judgment action in the Circuit Court and should the Township prevail in whole or in part in any such court proceedings, then the Defendant shall pay and reimburse the Township for the Township’s reasonable attorney fees and costs pursuant to any such court proceeding (including, attorney fees and costs incurred by the Township before and leading up to the District Court or Circuit Court proceedings, the formal hearing or trial court proceedings and through any appeals).

Section 13. Validity and Severability.

Should any portion of this Ordinance be found to be invalid for any reason by a court of competent jurisdiction, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 14. Effective Date.

This Ordinance shall become effective upon the expiration of 30 days after this Ordinance or a summary thereof appears in the newspaper as provided by law.

The vote to adopt this Ordinance was as follows:

YEAS: Baker, Heintzelman, Greenhoe, Ross

NAYS: None

ABSENT/ABSTAIN: Fountan

THE ORDINANCE IS HEREBY DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance adopted by the Evergreen Township Board at the date, time, and place as specified above, pursuant to the required statutory procedures.

Respectfully submitted

By: Kelli Greenhoe

Kelli Greenhoe
Evergreen Township Clerk