

STATE OF INDIANA
BEFORE THE BOARD OF CLARK COUNTY COMMISSIONERS

ORDINANCE NO. 24 -2022

**AN ORDINANCE APPROVING TEXT AMENDMENTS TO THE 2020
UNIFIED DEVELOPMENT ORDINANCE (“UDO”) ON RECOMMENDATION
BY THE CLARK COUNTY PLAN COMMISSION**

WHEREAS, the Board of Commissioners of Clark County, Indiana (the “Board”), is the executive body of Clark County Government pursuant to the provisions of Ind. Code § 36-2-2-2; and,

WHEREAS, the Board is also the legislative body of Clark County Government pursuant to the provisions of Ind. Code 36-1-2-9; and,

WHEREAS, the Clark County Plan Commission has advisory authority regarding zoning pursuant to Ind. Code 36-7-4, *et al*; and,

WHEREAS, on the 25th day of October, 2022, the Clark County Plan Commission passed Resolution 10-2022, (see the said Resolution 10-2022 attached hereto as **Exhibit “A”**) to amend the text of the 2020 Unified Development Ordinance (“UDO”) as identified in the said Resolution.

NOW, THEREFORE, BE IT ORDAINED by the Board of Clark County Commissioners as follows:

1. That the Clark County Plan Commission Resolution 10-2022, dated October 25, 2022, as attached hereto, is hereby approved, and the text of the 2020 Unified Development Ordinance (“UDO”) is amended pursuant to the attached Resolution.

2. This Ordinance shall be in full force and effect upon its passage and promulgation as evidenced by the affirmative signatures of the undersigned as the majority of the duly elected and serving members of this Board.

So Ordained this 10th day of November, 2022.

Members voting "NO":

Bryan Glover, Commissioner

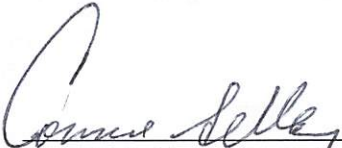
Connie Sellers, Commissioner

Jack Coffman, Commissioner


Members voting "YES":



Bryan Glover, Commissioner

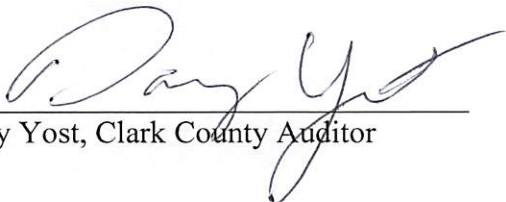


Connie Sellers, Commissioner



Jack Coffman, Commissioner

Attested by:



Danny Yost, Clark County Auditor

BY THE CLARK COUNTY
PLAN COMMISSION

PC RESOLUTION 10-2022

**A RESOLUTION FOR A TEXT AMENDMENT TO THE 2020 UNIFIED DEVELOPMENT ORDINANCE (“UDO”)
TO CLARK COUNTY BOARD OF COMMISSIONERS**

WHEREAS, the Clark County Plan Commission (Plan Commission) pursuant to Ind. Code 36-7-4-600 et seq., has identified a need to amend the text of the current Clark County Unified Development Ordinance (UDO) and,

WHEREAS, the Plan Commission, in conjunction with the Board of Commissioners of Clark County (County Commissioners), caused to amend the text of the Clark County UDO drafted for consideration in an effort to make the development laws of the county more efficient and streamlined for the general public; and

WHEREAS, the UDO text amendments are described in Exhibit A, attached herewith and made part hereof, is now complete and has been available for inspection by the general public since the 14th day of October, 2022; and,

WHEREAS, on the 25th day of October, 2022, the Plan Commission conducted a public hearing, for which the public was invited and was properly noticed pursuant to Indiana law, to consider certification of the UDO text amendment to the County Commissioners.

WHEREAS, THE Plan Commission heard the presentation and relevant evidence presented by the general public and the objection, comments, remonstrations and other relevant information presented by those in attendance at the hearing, if any, and deliberated on such evidence in a public hearing.

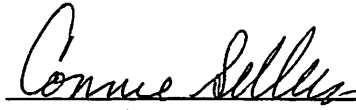
NOW, THEREFORE, BE IT RESOLVED BY THE Plan Commission a favorable recommendation and certification of the Clark County UDO text amendments, attached hereto and incorporated herein, to the County Commissioners for the amendment of the current Clark County UDO.



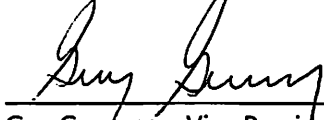
Dated the 25th day of October, 2022

I hereby certify that this is a true and correct copy of the Resolution passed by the Clark County Plan Commission on October 25th, 2022.


"Aye"



Connie Sellers, President




Guy Guernsey, Vice President




Harold Hart

Wally Estes



Kevin Christman


Eric Morris



Bart Meyer

Janne Newland

ATTEST:



Secretary or Executive Director

"Nay"

Connie Sellers, President

Guy Guernsey, Vice President

Harold Hart

Wally Estes

Kevin Christman

Eric Morris

Bart Meyer

Janne Newland

CLARK COUNTY UDO PROPOSED TEXT AMENDMENTS

VERSION: Updated 10/25/2022 (As amended by the PC)

AMENDMENT 1: UPDATE REQUIREMENTS FOR ACCESS FOR LARGER SUBDIVISIONS.

Rationale: As larger developments are proposed throughout the county, subdivisions with more than 200 homes may need additional access for emergency response and traffic management.

PAGE 129, CHAPTER 6.C.3.a: Subdivision Entrances & Access Roads.

- a. All residential subdivisions shall provide at least the minimum number of required entrances onto a public road.
 - i. Less than fifty (50) Residential Units. At least one (1) entrance is required for the subdivision.
 - ii. Fifty (50) to two hundred (200) Residential Units. If the subdivision has fifty (50) or more residential units, there shall be At least two (2) separate entrances onto two (2) separate roads are required for the subdivision with the following exceptions:
 1. If the subdivision only fronts a single road, the subdivision shall have two (2) entrances onto the road provided there is appropriate distance, as determined by the County Engineer and/or PC, between entrances and other roadways and intersections.
 2. If there is not appropriate distance, as determined by the County Engineer and/or PC, between entrances and other roadways and intersections, then a single entrance with a median divider is allowed. Each lane of the single entrance with a median divider shall be at least sixteen (16) feet if roll curbs are used or eighteen (18) feet if barrier curbs are used. The median shall be twelve (12) feet in width to accommodate a separate left-turn lane if necessary. The median divider shall extend from the entrance of the intersection to the first crossroad or first intersection within the subdivision.
 - iii. More than two hundred (200) Residential Units. The number of separate entrances required and the location of those entrances shall be determined by the County Engineer and/or PC.

AMENDMENT 2: REMOVE BUILDING SETBACKS FROM THE SECONDARY PLAT CHECKLIST.

Rationale: If a setback is included on a secondary plat that is recorded and the setbacks for a zoning district in the Clark County UDO are amended in the future, the plat would determine the setback. A subdivider may include setbacks if they desire, but this would not be required in the plat checklist.

PAGE 155, CHAPTER 7.C.2.d.i.(d): Secondary Plat Checklist.

(d) Building setback lines, showing dimensions.



**AMENDMENT 3:
ADD STANDARDS FOR COMMERCIAL SOLAR ENERGY SYSTEMS.**

Rationale: As commercial solar facilities become more common, the county should consider additional standards to not only mitigate impacts to surrounding property owners but also ensure these facilities are remediated after they are not used. This amendment only impacts commercial facilities and does not change any standards for personal solar energy systems.

CHAPTER 2: Zoning Districts.

Commercial Solar Energy Facilities are currently permitted uses in the AG district and Special Exception Uses in the C and AE Districts.

The Permitted Uses and Special Exception Uses would be amended to include “Solar Energy System, Commercial” as a Special Exception in the following districts: AI, AG, M1, and M2. It would not be a permitted use in any district.

Page 205, CHAPTER 10: Definitions.

Update the term “Solar Energy Facility, Commercial” to be “Solar Energy System, Commercial” to align with the text below.

SOLAR ENERGY ~~SYSTEM-FACILITY~~, COMMERCIAL.

CHAPTER 4: Use Development Standards.

The following use standard would be added to Chapter 4: Use Development Standards and would apply regardless of the zoning district.

A. Solar Energy Systems (Commercial and Personal).

1. **Purpose.** Clark County has adopted this regulation for the following purposes in addition to ensuring impacts to adjacent parcels are properly mitigated:
 - a. **Comprehensive Plan Goals.** Clark County includes the following as goals in its Comprehensive Plan for growth and development.
 - b. **Infrastructure.** Distributed solar photovoltaic systems can enhance the reliability and power quality of the power grid and make more efficient use of Clark County’s electric distribution infrastructure.
 - c. **Local Resource.** Solar energy is an underused local energy resource and encouraging its use can diversify the community’s energy supply portfolio and reduce exposure to fiscal risks associated with fossil fuels.
 - d. **Improve Competitive Markets.** Solar energy systems offer additional energy choices to consumers and can improve competition in the electricity and natural gas supply markets.
 - e. **Land Use Conflicts.** Clark County encourages the development of commercial or utility-scaled solar energy systems where such systems do not create land use conflicts with current and future development patterns.

2. Solar Energy System (SES), Personal.

a. Development Standards, Personal SES.

- i. If the total square footage of any personal SES on a single parcel is larger than two-hundred (200) square feet, continuous vegetation, fencing, and/or berms that adequately screens the view of the solar panels and accessory equipment. Rooftop solar units are exempt from this standard.

3. Solar Energy System (SES), Commercial.

a. Structure Standards, Commercial SES.

- i. **Height.** No Commercial Solar Energy Facility shall not exceed twenty (20) feet in height as measured at maximum design tilt.
- ii. **Foundations.** A Professional Engineer licensed to practice in the State of Indiana shall certify that the foundation and design of the solar panel racking, foundations, and support is within accepted professional standards, given local soil and climate conditions prior to application for building permits.
- iii. **Power and Communication Lines.**
 - (1) All power and communication lines on the site shall be buried underground. Exemptions may be granted by the BZA in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines or distance makes undergrounding infeasible.
 - (2) Power and communication lines between the project and the point of interconnection with the transmission system may be overhead.
- iv. **Applicable Codes.** All projects shall comply with all applicable local, state, and federal regulatory codes, including the State of Indiana Uniform Building Code, as amended; and the National Electric Code, as amended.

b. Development Standards, Commercial SES.

- i. **Setbacks.** All Commercial Solar Energy Facility structures must comply with the following setbacks, as measured from the edge of the solar energy system array at maximum design tilt to the right-of-way or edge of pavement if right-of-way does not exist (excluding security fencing, screening, or berm).
 - (1) Non-Participating Landowner's Property Line. Setbacks must meet the minimum setbacks in the zoning district in which the parcel is located.
 - (2) Non-Participating Residential Dwelling. Setbacks shall be a minimum of one-hundred and fifty (150) feet from any non-participating residential dwelling, unless waived upon mutual agreement of all of the property owner(s).
 - (3) Roads and Right-of-Way. Setbacks shall be a minimum of fifty (50) feet from any public right-of-way. In the event right-of-way is not dedicated by written, recorded document, the setback shall be seventy-five (75) feet from edge of pavement.
- ii. **Screening.** All Commercial Solar Energy Facilities shall be fully screened year-round, including across any street or right-of-way, from existing residential dwellings, residentially-zoned parcels, or parcels platted for residential development. Screening shall not be required along property lines within the same zoning district unless the adjoining parcel has an existing residential use. Screening may

include continuous vegetation, fencing, and/or berms that adequately screens the view of the solar panels and accessory equipment. All screening shall comply with all standards of the UDO, including fence height.

- (1) A landscape plan shall be submitted that identifies the type and extent of proposed buffer and screening. Vegetation or another type of buffer can be proposed if it fully screens the facility year-round.
- (2) Screening shall be consistent with the bufferyard standards of the UDO.
- (3) Additional screening may be required if there is a clear community interest in maintaining a viewshed or to mitigate the impact on an adjacent parcel.

iii. **Ground Cover.**

- (1) Commercial Solar Energy Facilities that are mounted on the ground are required to install perennial ground cover (such as grass, pollinator meadow, or other plant materials) for the site around and under solar panels and within all setback or buffer areas. This shall be planted, established, and maintained for the life of the project and shall comply with the following standards:
- (2) Plans showing compliance with the ground cover standards shall be submitted as part of a Development Plan application.
- (3) The site shall be planted and maintained to be free of invasive or noxious species, as listed by the Indiana Invasive Species Council.
- (4) No insecticide use is permitted on the site. This provision does not apply to insecticide use in on-site buildings, in and around electrical boxes, spot control of noxious weeds, or as otherwise may be deemed necessary to protect public health and safety.

iv. **Fencing.** Barbed wire or woven wire fence designs for perimeter fencing are prohibited. Chain link fences are permitted.

v. **Emergency Response.** The site layout must accommodate adequate access for all first responders, such as EMS, fire, and police.

c. **Procedures, Commercial SES.**

- i. **Drainage Board Approval Required.** Commercial Solar Energy projects are subject to requirements of the Clark County Drainage Board.
- ii. **Aviation Protection Required.** For Commercial Solar Energy projects located within five hundred (500) feet of an airport or within any approach zones of an airport, the applicant must complete and provide the results of a glare analysis through a qualitative analysis of potential impact, field test demonstration, or geometric analysis of ocular impact in consultation with the Federal Aviation Administration (FAA) Office of Airports, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
- iii. **Decommissioning Plan and Surety Required.** The project owner shall provide a decommissioning plan for all parcels and easements related to the project prior to any commercial solar energy devices being installed. The decommissioning plan shall be approved by the County Commissioners and shall be updated every five (5) years or if any of the property owner(s), operator, or project owner changes. Except as otherwise required by Indiana Code, the decommissioning plan shall include, at a minimum, the following:

- (1) **Affidavit of Responsibility.** A signed and notarized affidavit that is recorded with the Clark County Recorder's Office shall be provided by all property owners acknowledging that the responsibility of decommissioning (including costs to decommission) is ultimately the responsibility of the property owner(s) even if that responsibility and cost is assigned to the operator through a separate agreement. If the operator fails to comply with any aspect of the decommissioning plan, the property owner(s) shall be ultimately responsible for all aspects of decommissioning and liable for all penalties for failure to comply.
- (2) **Commercial Liability Insurance Required.** The owner and operator of a Commercial Solar Energy Facility shall maintain a commercial general liability policy covering death, bodily injury, and property damage, which may be combined with umbrella coverage. The owner and operator shall be required to name Clark County, Indiana as an additional insured solely to the extent of liabilities arising under this UDO. This policy shall carry dollar amounts satisfactory to the County Commissioners and with agreed upon dollar amount limits per occurrence, aggregate coverage, and deductible amounts, all of which shall be agreed upon by the owner and operator and the County Commissioners and provided in the Decommissioning Plan.
- (3) **Continuity of Decommissioning Plan.** The written terms of the decommissioning plan shall include that the decommissioning plan is binding upon the property owner and operator as well as any of their successors, assignees, or heirs.
- (4) **Restoration of Site.** This shall outline how the site will be restored to a natural state that includes adequate provisions for removal of all structures and foundations to a depth of forty-eight inches (48") and restoration of soil and vegetation.
 - (a) Decommissioning of the system, or a component or portion of the system, must be completed within twelve (12) months of the project, or component or portion of the system, not producing energy. An owner may petition for an extension of this period upon showing of reasonable circumstances that have caused the delay in the start of decommissioning.
 - (b) Disposal of structures, materials, waste, and/or foundations (both hazardous and non-hazardous materials) shall meet the provisions of all local, state, and federal ordinances.
- (5) **Estimated Decommissioning Costs.** These shall be calculated by a third-party licensed or registered engineer (or by another person with suitable experience in the decommissioning of solar energy system) and agreed upon by the project owner and the County Engineer.
 - (a) The total estimated decommissioning costs shall be net of any estimated salvage value attributable to the solar device(s) at the time of decommissioning, unless the county and the project owner agree to include any such value in the estimated cost.
 - (b) The estimated decommissioning costs shall be reevaluated and agreed upon by the project owner and the County Engineer at the timelines outlined for the required surety bond.
- (6) **Surety Bond or Equivalent for Decommissioning.** The project owner shall provide a surety bond or an equivalent means of security acceptable to the County Engineer in an amount equal to 125% of the agreed-upon estimated cost of decommissioning the system (as outlined in section (5) above). The bond or equivalent shall be in place prior to the issuance of an ILP (building permit). The total amount of the bond or other security posted under this section shall be provided:
 - (a) Prior to the issuance of an ILP (building permit) for any structure or component of a Commercial Solar Energy Facility.

(b) Every five (5) years at the anniversary of the approval of the initial decommissioning plan based upon the reevaluated decommissioning cost.

(c) If any of the property owner(s), operator, or project owner changes.

(7) Failure to Comply with Decommissioning Plan. Any person or corporation who shall fail to comply with the decommissioning and/or bonding requirements herein shall for each and every violation of non-compliance be liable for civil penalties to the Plan Commission of up to the maximum amount allowed by state law. Each day that the violation exists or continues shall be deemed a separate offense. The Plan Commission's Attorney shall have the right to commence proceedings for an injunction, to restrain a person from violating this UDO and/or for a mandatory injunction requiring that a structure in violation of this UDO be removed. The remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law.

iv. **Development Plan Required.** All Commercial Solar Energy Facilities are required to obtain development plan approval. The project owner shall submit a complete application that includes:

(1) All required application information.

(2) A detailed site plan shall be submitted that includes both existing and proposed conditions, locations of all solar arrays and all other structures/equipment, property lines, rights-of-way, driving areas or service roads, floodplains, wetlands, protected natural resources, topography, and all other characteristics requested by the Administrator to determine compliance. The site plan should show all zoning districts and/or overlay districts of the subject and adjoining properties.

(3) A glare study shall be provided by the project owner that shows the Commercial Solar Energy Facility is situated to eliminate concentrated glare on other parcels and rights-of-way.

(4) An emergency response plan.

v. **Annual Permit Required.** The project owner shall obtain an annual permit in order to operate a Commercial Solar Energy Facility within Clark County. The project owner shall submit a complete application no later than March 15th of each calendar year that includes:

(1) All required application information.

(2) Updated Certificate of Insurance with Clark County, Indiana listed as additional insured.

(3) Proof of surety bond or equivalent.