

ORDINANCE NO. 05-19-22-01

**AN ORDINANCE AMENDING THE JOHNSON COUNTY UNIFIED DEVELOPMENT
ORDINANCE TO CREATE A NEW ZONING DISTRICT AND REVISE CERTAIN
REQUIREMENTS RELATED TO UTILITY SCALE SOLAR ENERGY SYSTEMS, BATTERY
ENERGY STORAGE SYSTEMS, AND PUBLIC UTILITY FACILITIES**

Section I. Purpose. The Purpose of this ordinance is to further the stated purpose to the Unified Development Ordinance for Johnson County by creating a new zoning district to be known as the RE-Renewable Energy district and also revising certain requirements for utility scale solar energy systems, battery energy storage systems, and public utility facilities.

Section II. Amendments.

A. Article 8:1.4.B. is hereby amended by deleting subsections 8:1.4.B.194 and 8:1.4.B.195 and replacing them with the following:

194. Solar Energy Systems, Private. An energy system that uses one or more interconnected solar arrays to convert solar energy to usable thermal, mechanical, chemical, or electrical energy for the primary purpose of immediate onsite use of generated electricity. Generated electricity may also be stored onsite and/or fed back to the electrical grid.

195. Solar Energy Systems, Utility Scale. An energy system that uses one or more interconnected solar arrays to convert solar energy to usable thermal, mechanical, chemical, or electrical energy for the primary purpose of wholesale or retail sales of generated electricity. Utility scale solar energy systems do not include concentrating solar power (CSP) systems. This definition does not apply to private scale solar installations that are constructed primarily to provide power for use on-site.

B. Article 8:1.6.C.21 is hereby amended by adding subsection 8:1.6.C.21.a to read as follows:

- a. Limited to systems with a total use area of twenty (20) acres or less. For the purposes of administering this section, the “use area” shall include all areas associated with the utility scale solar use including, but not limited to, the furthest extent of fences, structures, stormwater infrastructure, parking, landscape screening, or other areas used in association with the use as determined by the Zoning Administrator.

C. Article 8:1.23.D1 is hereby amended by deleting the introduction paragraph of subsection 8:1.23.D1 and replacing it with the following (said deletion does not include any subsections within 8:1.23.D1):

D1. Battery Energy Storage Systems, Tier 2. Tier 2 Battery energy storage systems are allowed as primary uses in the RE district, accessory uses in the ML and MH districts, and are conditionally permitted in the A and CH districts. All Tier 2 Battery Energy Storage Systems are subject to the following conditions regardless of district in which they are located:

D. Article 8:1.23.D1.3 is hereby amended by replacing the word “Applicants” with the words, “The applicant, owners of the facility, and their contractors”.

E. Article 8:1.23.D1.3 is hereby amended by replacing the words “Zoning Board Adjustment” with the words “approving authority”.

F. Article 8:1.23.D1.3 is hereby amended by deleting subsections 8:1.23.D1.3.b and 8:1.23.D1.3.c in their entirety and replacing them with the following (said deletion includes both subsections under 8:1.23.D1.3.c):

- b. Documentation of Road Conditions. Prior to construction, the Johnson County Engineer or a third party consultant selected by the Johnson County Engineer shall document the current conditions of the roads identified for use, with all associated costs paid for by the applicant or owners of the facility. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
- c. Road Preparation and Damage. Any road preparation or maintenance necessitated by the proposed solar energy system as identified by the County Engineer or the third party consultant shall be promptly completed at the applicant's expense. Any damage caused by the applicant, owner of the facility, or its contractors during construction or decommissioning shall be promptly repaired at the applicant or owner's expense.
 - i. The applicant shall demonstrate that it has appropriate financial assurance to ensure the repair of damaged roads.
 - ii. At the discretion of the approving authority, the applicant or owners of the facility may also be required to a financial surety instrument to cover all costs of potential damage to roads at the time of permitting or rezoning consideration.
- G. Article 8:1.23.D1.5.d is hereby amended by adding the words "be located immediately adjacent to and outside the use area and shall" between the words "shall" and "extend".
- H. Article 8:1.23.D1.5.e is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".
- I. Article 8:1.23.D1.5.f is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".
- J. Article 8:1.23.D1.7.a is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".
- K. Article 8:1.23.D1.8 is hereby amended by replacing the words "a Conditional Use Permit" with the word approval".
- L. Article 8:1.23.D1.8.a.iii is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".
- M. Article 8:1.23.D1.12.c is hereby amended by adding the words, "Estimates for the total cost for decommissioning the site shall be determined by a Licensed Engineer." following the word "available".
- N. Article 8:1.23.D1.12.g is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".
- O. Article 8:1.23.BB is hereby amended by deleting the introduction paragraph of subsection 8:1.23.BB and replacing it with the following (said deletion does not include any subsections within 8:1.23.BB):

BB. Solar Energy Systems, Utility Scale. Utility Scale Solar Energy Systems with a total use area of twenty (20) acres or less are allowed as a primary use in the RE district, and are conditionally permitted in the A district. Utility scale solar energy systems with a total use area of greater than twenty (20) acres are allowed as primary uses in the RE district. All utility scale solar energy systems are subject to the following conditions regardless of use area size:

P. Article 8:1.23.BB is hereby amended by adding a new subsection 8:1.23.BB.0A to read as follows:

0A. For the purposes of administering this section, the “use area” shall include all areas associated with the utility scale solar use including, but not limited to, the furthest extent of fences, structures, stormwater infrastructure, parking, landscape screening, or other areas used in association with the use as determined by the approving authority.

- a. At the discretion of the Zoning Administrator, non-adjacent use areas located within one-half (0.5) mile may be considered cumulatively when determining whether approval requires a Conditional Use Permit or rezoning approval.
- b. At the discretion of the Zoning Administrator, non-adjacent use areas smaller than twenty (20) acres in size may be required to obtain approval through rezoning if they will be located within one-half (0.5) mile of an existing utility scale solar facility, regardless of ownership.

0B. The applicant shall submit detailed drafts of all materials contained in this subsection at the time of application for either a Conditional Use Permit or Zoning Map Amendment.

- a. Documents must be of sufficient detail for the approving authority to adequately review the proposal for compliance with these regulations at the time of submittal, but may remain yet-to-be finalized at the time of approval.
- b. Final plans shall be approved by the Zoning Administrator prior to commencement of any site disturbance or issuance of any grading or building permits for the site and shall substantially conform to the draft plans and material submitted at the time of review and approval by the approving authority.
- c. The use(s) outlined in the application shall be established in accordance with the draft plans considered by the approving authority within five (5) years of approval. Any portion of the development plan not completed within five (5) years of approval by the approving authority shall not be installed until the development plan has been reauthorized by the approving authority. Reauthorization shall be subject to the regulations in effect at the time reauthorization is requested.

Q. Article 8:1.23.BB.1 is hereby amended by adding the words, “At the discretion of the approving authority, additional setbacks may be required as a condition of approval.” Following the word “located.”.

R. Article 8:1.23.BB.2.a.i is hereby amended by replacing the words “Zoning Board Adjustment” with the words “approving authority”.

S. Article 8:1.23.BB.4 is hereby amended by replacing the word “Applicants” with the words, “The applicant, owners, and their contractors”.

T. Article 8:1.23.BB.4 is hereby amended by replacing the words “Zoning Board Adjustment” with the words “approving authority”.

U. Article 8:1.23.BB.4 is hereby amended by deleting subsections 8:1.23.BB.4.b and 8:1.23.BB.4.c in their entirety and replacing them with the following (said deletion includes both subsections under 8:1.23.BB.4.c):

- b. Documentation of Road Conditions. Prior to construction, decommissioning, or implementation of a repowering plan, the Johnson County Engineer or a third party consultant selected by the Johnson County Engineer shall document the current conditions of the roads identified for use, with all

associated costs paid for by the applicant or owners of the facility. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.

- c. Road Preparation and Damage. Any road preparation or maintenance necessitated by the solar energy system as identified by the County Engineer or the third party consultant shall be promptly completed at the applicant's expense. Any damage caused by the applicant, owner of the facility, or its contractors during construction, decommissioning, or implementation of a repowering plan shall be promptly repaired at the applicant or owner's expense.

- i. The applicant shall demonstrate that it has appropriate financial assurance to ensure the repair of damaged roads.
- ii. At the discretion of the approving authority, the applicant or owners of the facility may also be required to a financial surety instrument to cover all costs of potential damage to roads at the time of permitting or rezoning consideration.

V. 8:1.23.BB.5.c is hereby amended by adding a new subsection 8:1.23.BB.5.c.iii to read as follows:

- iii. Seeding zones and their selected seed mixes should be clearly mapped on a site plan.

W. Article 8:1.23.BB.5.d is hereby amended by replacing the words "Zoning Board Adjustment" with the words "approving authority".

X. Article 8:1.23.BB.5.f is hereby amended by adding the words "The plan must include provisions for replacement of any required vegetative cover that fails to establish or dies during the life of the project." following the word "years."

Y. 8:1.23.BB.5 is hereby amended by adding a new subsection 8:1.23.BB.5.g to read as follows:

- g. Reporting to the County on ground cover management and maintenance activities shall be on an annual basis for a minimum of five (5) years, after which point reduced frequency can be requested, and approved at the discretion of the Zoning Administrator.

Z. Article 8:1.23.BB.6 is hereby amended by replacing all references to "Zoning Board Adjustment" and "Zoning Board" with the words "approving authority".

AA. Article 8:1.23.BB.6 is hereby amended by deleting 8:1.23.BB.6.d in its entirety and replacing it with the following:

- d. The planting area shall be located immediately outside and adjacent to - and shall extend no further than fifty (50) feet beyond - the furthest extent of the onsite infrastructure required or proposed with the development. Onsite infrastructure includes, but is not limited to, the solar arrays, security fence, required parking areas, and required stormwater infrastructure.

BB. Article 8:1.23.BB.6.g is hereby amended by adding the words "The plan must include provisions for replacement of any required landscaping that fails to establish or dies during the life of the project." following the word "years."

CC. 8:1.23.BB.6. is hereby amended by adding the subsection h. to read as follows:

- h. Reporting to the County on landscaping management and maintenance activities shall be on an annual basis for a minimum of five (5) years, after which point reduced frequency can be requested, and approved at the discretion of the Zoning Administrator.

DD. Article 8:1.23.BB is hereby amended by adding a new subsection 8:1.23.BB.6A to read as follows:

6A. Agricultural Impact Mitigation Plan. The applicant shall submit a plan detailing mitigation strategies that will be used to support agricultural use of the land at the end of the functional life of the project. The plan should include, but not be limited to, the following information:

- a. Project Overview. Provide general background, list of project components, and construction timeline.
- b. Topsoil Protection and Preservation Plan. The plan should include the following components.
 - i. Describe best practices and methods to be used during each stage of construction for protecting and preserving topsoil. Practices and methods should address, at a minimum, topsoil removal, segregation, stockpiling, replacement during backfill, and respreading, grading minimization, compaction prevention, and decompaction of otherwise undisturbed topsoil impacted by heavy equipment or storage of materials, and wet weather conditions.
 - ii. Prior to construction, provide results of a soil analysis conducted and assessed by a qualified professional to determine topsoil depths as well as identify any limitations for construction and mitigation that may require special consideration.
 - iii. Describe environmental monitoring that will be used during construction to ensure adherence to the best practices contained in the plan. The monitoring should be done by an environmental professional. The monitoring reports shall be submitted to the County every thirty (30) days during construction.
- c. Construction Best Management Practices. Describe best management practices to be used during construction to address, at a minimum, invasive species prevention, erosion and sediment control, and debris removal.
- d. Drain Tile Identification, Avoidance and Repair. Describe the general procedures to be used for identification, avoidance, and repair of any underground drainage tile lines located within the project site before, during, and after construction.
- e. Sensitive Areas Protection. Describe the procedures to be used to monitor and adhere to Limits of Disturbance for limiting or preventing impacts to identified sensitive areas, in accordance with the approved Sensitive Areas Report and Sensitive Areas Exhibit.
- f. Vegetation Management. Incorporate or make reference to both the separately required Ground Cover Plan and Landscaping Buffer Plan. Seeding zones and their selected seed mixes should be clearly mapped on the site plan.
- g. Decommissioning and Site Reclamation. Incorporate or make reference to the separately required Decommissioning and Site Reclamation Plan.

EE. Article 8:1.23.BB.8 is hereby amended by replacing the words “a Conditional Use Permit” with the word “approval”.

FF. Article 8:1.23.BB.8.a.iii is hereby amended by replacing the words “Zoning Board Adjustment” with the words “approving authority”.

GG. Article 8:1.23.BB.8. is hereby amended by adding a new subsections 8:1.23.BB.8.b and 8:1.23.BB.8.c to read as follows.

- b. The site plan shall provide proposed land use and development information for the entirety of the property(ies) included in the conditional use permit or zoning map amendment request.

- c. At the discretion of the approving authority the development proposal may include a phasing plan. Where phasing is proposed, it shall be clearly indicated on the site plan. In no instance shall phasing be allowed to extend a development plan beyond five (5) years from the date of approval by the approving authority.

HH. Article 8:1.23BB.9 is hereby amended by adding a new subsection 8:1.23.BB.9.c to read as follows:

- c. The site operator will coordinate with the local fire department and Emergency Management Agency (EMA) to offer or provide for training on an annual basis for five (5) years following completion of construction. Thereafter, the site operator shall offer or provide for training if requested by the local Emergency Management Agency (EMA) on a basis not to exceed once annually.

II. Article 8:1.23.BB is hereby amended by adding a new subsection 8:1.23.BB.9A to read as follows:

9A. Repowering. At the discretion of the Zoning Administrator, proposals to replace more than twenty five percent (25%) of the panels in a facility within a twelve (12) month period may be required to submit a plan for review and approval.

- a. The plan shall include updated information for some or all of the reports and plans required by this section, as determined necessary by the Zoning Administrator.
- b. The Zoning Administrator shall review and approve, conditionally approve, or deny the repowering plan.

JJ. Article 8:1.23.BB.10 is hereby amended by deleting subsection 8:1.23.BB.10.b in its entirety and replacing it with the following:

- b. The applicant shall provide estimates for the total cost for decommissioning the site as determined by a Licensed Engineer. Decommissioning costs shall not take salvage value into account.

KK. Article 8:1.23.BB.10 is hereby amended by deleting subsection 8:1.23.BB.10.e in its entirety and replacing it with the following (said replacement includes the addition of three additional subsections):

- e. At the time of permitting, the applicant, facility owner, or site operator shall provide a Performance Agreement and accompanying financial surety instrument to cover the cost of decommissioning in accordance with the following:
 - i. Decommissioning funds shall be an amount equal to the total costs for decommissioning the site, plus a ten percent (10%) contingency.
 - ii. Decommissioning funds shall be maintained in the form of cash, certificate of deposit, performance bond, escrow account, surety bond, letter of credit, or other form of financial assurance as agreed to by the approving authority. Any financial document evidencing the maintenance of the decommissioning funds shall include provisions for releasing the funds to the County in the event decommissioning is not completed in a timely manner.
 - iii. Prior to any ground disturbance, grading or construction activity on the site, fifty percent (50%) of total estimated decommissioning costs shall be provided by any of the means listed above. An additional twenty five percent (25%) shall be provided within five (5) years of the date of initial approval, and the remaining twenty five percent (25%) of the total re-estimated decommissioning costs shall be provided within eleven (11) years of the date of initial approval. From that point forward, 100% of the total estimated decommissioning costs as determined by the most recent re-estimation shall be maintained in the decommissioning fund until the end of the functional life of the project.

- iv. Financial surety shall be maintained for the life of the project.
- v. Proof of recertification of the financial surety instrument must be submitted to the County annually.
- vi. Every ten (10) years, the facility owner or operator shall retain an independent Licensed Engineer to re-estimate the total cost of decommissioning and attest that the value of the financial surety instrument is appropriate. This report shall be filed with the County.
 - a. The required amount of the decommissioning fund shall match the re-estimated cost of decommissioning. Within ninety (90) days of filing the re-estimation report with the County, the facility owner or operator shall cause the fund balance of the financial surety instrument to be adjusted to ensure that it matches the re-estimated decommissioning cost.

LL. Article 8:1.23.BB is hereby amended by deleting subsection 8:1.23.BB.11 in its entirety and replacing it with the following:

- 11. Onsite Battery Energy Storage Systems. Where an applicant proposes to include battery storage in conjunction with the solar energy system, they may be required to obtain a separate Conditional Use Permit in accordance with the underlying zoning district. In all cases, Battery Energy Storage Systems shall comply with the applicable standards in subsection 8:1.23.D1 of this ordinance.

MM. Article 8:1.23.BB.12 is hereby amended by adding a new subsection 8:1.23.BB.12.a to read as follows (said addition includes two new subsections 8:1.23.BB.12.a.i and 8:1.23.BB.12.a.ii):

- a. Full stormwater management planning in accordance with section 8:3.6 of this ordinance shall be provided for all impervious surfaces, including internal access roads.
 - i. The designation of a surface type as impervious or pervious shall be in accordance with the Iowa Stormwater Management Manual. At the discretion of the approving authority, stormwater management planning may also be required for some or all pervious surfaces.
 - ii. The applicant, owner, or site operator shall provide as-built plans for all required stormwater management infrastructure within thirty (30) days of completion of on-site infrastructure or the start of energy generation from the site, whichever occurs first. As-built plans shall be certified by a Professional Engineer licensed in the State of Iowa.

NN. Article 8:1.23.DD is hereby amended by deleting the introduction paragraph of subsection 8:1.23.DD and replacing it with the following (said deletion does not include any subsections within 8:1.23.DD):

DD. Utility Facilities, Public. Public utility facilities are allowed as a primary use in the RE district, are conditionally permitted in all districts except for the ERP district, and are subject to the following conditions:

OO. Article 8:1.23.DD.3.d is hereby amended by adding the words “be located immediately outside and adjacent to the use area and shall” between the words “shall” and “extend”.

PP. Article 8:1.23.DD.3.e is hereby amended by replacing the words “Board of Adjustment” with the words “approving authority”.

QQ. Article 8:1.24.D.1 is hereby amended by adding a new subsection 8:1.24.D.1.m to read as follows:

- m. Certain signage exempt. Any security signage required by section 8:1.23 shall be exempt from the regulations of this section relating to the height, size, and/or number of signs and shall adhere to the

applicable requirements in section 8:1.23. Where security signage is required as a condition of approval by the Zoning Board of Adjustment, any reference to the height, size, and/or number of signs allowed as specified in said condition shall supersede the equivalent regulations of this subsection.

- RR. Article 8:1.24.D.3 is hereby amended by deleting the words “A and SF zoning district” and replacing them with the words “A, SF, and RE zoning districts”.
- SS. Article 8:1.24.D.3.a is hereby amended by deleting the words “A and SF zoning district” and replacing them with the words “A, SF, and RE zoning districts”
- TT. Article 8:2.5.E is hereby amended by adding a new subsection 8:2.5.E.4 to read as follows:
4. Development within the P-Public, RE-Renewable Energy, or SWDRR-Solid Waste Disposal and Resource Reclamation districts. At the discretion of the Zoning Administrator building permits may be issued to construct, enlarge, alter, or reconstruct any structure on property which has not been platted after December 31, 1976 in accordance with adopted subdivision regulations.
- UU. Article 8:3.5.J.2.b.ii is hereby amended by adding the words “At the discretion of the Zoning Administrator, impacts may also be allowed for construction of reasonable elements of utility scale solar energy systems located in the RE-Renewable Energy district.” following the word “infeasible”.
- VV. Article 8:3.6.A is hereby amended by deleting subsection 8:3.6.A.1 and replacing it with the following (said deletion does not include any subsections within 8:3.6.A.1):
1. The Board shall not approve any preliminary, combined, or final plat for any commercial or industrial subdivision; a residential subdivision with two (2) or more buildable lots; or a request to change the zoning designation of a property to RE-Renewable Energy, unless it includes a stormwater management plan that is adequate to serve the proposed development.
- WW. Chapter 8:1 is hereby amended by adding a new subsection 8:1.20A to read as follows:

8:1.20A RE – Renewable Energy Zoning District.

The intent of the RE district is to allow for the orderly development of utility scale solar energy systems, including ancillary uses such as Battery Energy Storage Systems and public utility installations including substations. Requests to rezone property to the RE – Renewable Energy Zoning District must be accompanied by all materials listed in subsection 8:1.23.BB.

A. Primary Uses. The following primary uses are allowed in the RE district. Multiple primary uses are allowed on parcels in the RE district and all uses are subject to supplemental conditions found in subsection 8:1.23.

1. Utility Scale Solar Energy Systems.
 - a. Includes systems of all sizes.
2. Battery Energy Storage Systems, Tier 1.
3. Battery Energy Storage Systems, Tier 2.
4. Utilities, Public.

5. Agricultural uses.
6. Other uses similar in nature and intensity.

B. Accessory Structures and Uses. The following structures and uses are permitted in the CH district, provided that they are incidental to a primary or conditionally permitted use. Structures and uses may be subject to supplemental conditions found in subsection 8:1.23.

1. Parking Lots associated with a primary use.
2. Accessory structures associated with a primary use.
3. Residential Uses.
 - a. Includes Private garages, sheds, greenhouses, pergolas, ornamental gates, barbeque ovens, fireplaces, swimming pools, landscaping, gardens, and other uses and structures not open to the public that are customary to residential use. Can also include Private Solar Energy Systems or Private Wind Generators.

C. Conditional Uses. The following uses qualify for Conditional Use Permits, in compliance with 8:1.28, in the RE district. These uses may be subject to supplemental conditions found in 8:1.23 and such additional conditions as may be warranted to mitigate any deleterious effects of the proposed use.

1. Communication Towers, Commercial.
2. Special Events.

D. Bulk Regulations. The following bulk regulations apply to all properties located in the RE zoning district. Unless stated otherwise, all regulations are minimum standards.

Use/Structure	Lot Area*	Average Lot Width	Front Yard Setback	Rear Yard Setback	Side Yard Setback	Maximum Height
Primary and Accessory* Structures	None	None	50†	50†	50†	35 feet and 2 ½ stories

* See subsection 8:1.20A(E) for accessory structure regulations.

† Where abutting properties are used in conjunction with an approved utility scale solar energy system, the setback on shared side and rear lot lines may be reduced to zero (0) feet.

E. Accessory Structure Regulations. The following regulations apply to all accessory structures on properties located in the CH district:

1. Temporary structures for construction purposes are permitted as accessory structures during the course of construction.
2. Accessory structures accessed via an alley must be setback a minimum of ten (10) feet from the right-of-way or easement line.
3. With the exception of residential dwellings, accessory structures that are a minimum of sixty (60) feet from the right-of-way and ten (10) feet from the primary structure may be five (5) feet from the side and rear lot lines.

- a. Private solar energy systems may be five (5) feet from the rear and side lot lines if they are sixty (60) feet from the right-of-way.

F. Outlot Permitted Uses. Outlots may be used in accordance with their classification designated on the plat as described in subsection 8:2.7(I).

G. Yard and Area Regulations. See Yard and Area Regulations in subsection 8:1.24.

H. Off-Street Parking. See Off-Street Parking Regulations in subsection 8:1.24.

I. Sign Regulations. See Sign Regulations in subsection 8:1.24.

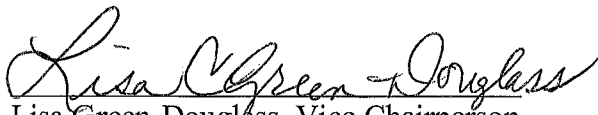
J. Fence Regulations. See Fence Regulations in subsection 8:1.24.

K. Building Code. See Building Code in Chapter 8:6.

Section III. Repealer. All other ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Savings Clause. If any section, provision, or part of this ordinance shall be adjudged invalid, illegal, or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged, invalid, illegal or unconstitutional.

Section V. Effective Date. This ordinance shall be in effect after its final passage and publication as part of the proceeding of the Board of Supervisors.


Lisa Green-Douglass, Vice Chairperson
Board of Supervisors
May 19, 2022
Date

ATTEST:


Travis Weipert, Auditor
Johnson County, Iowa