

Article 19, Solar Energy Systems

Section 1900 – Purpose & Intent

The purpose of this Article is to regulate the placement, construction, and modification of Solar Energy Systems of all types in Dearborn County. The regulations set forth herein have been formulated to provide opportunities for solar harvesting operations while ensuring that specific conditions are met to protect the health, safety, and welfare of the public as these improvements are commissioned. The provisions of this Article will:

1. Establish a reasonable and efficient process for the review and approval of Solar Energy System (SES) applications;
2. Prescribe required distances for setbacks for SES from buildings, property lines, and easements;
3. Institute minimum performance regulations for SES;
4. Create standards for the removal of SES and their appurtenant structures.

Section 1902 - Definitions

Agrivoltaics: A solar energy system co-located on the same parcel of land as agricultural production, including crop production, grazing, apiaries, or other agricultural products or services.

Ground Mounted Solar Energy System: An SES that is structurally mounted to the ground and does not qualify as an Integrated SES. For purposes of the County zoning code, any solar canopy that does not qualify as an Integrated SES shall be considered a Ground Mounted SES, regardless of where it is mounted.

Ground Mounted SES, Small: A ground mounted SES with a site size of less than or equal to two (2) acres. **See also Solar Energy System–Accessory (SES-A)*

Ground Mounted SES, Medium: A ground mounted SES with a site size of larger than two (2) acres but less than or equal to twenty (20) acres. **See also Solar Energy System–Commercial (SES-C)*

Ground Mounted SES, Large: A ground mounted SES with a site size of larger than twenty (20) acres. **See also Solar Energy System–Commercial (SES-C)*

Integrated Solar Energy System: An SES where solar materials are incorporated into building materials, such that the two are reasonably indistinguishable, or where solar materials are used in place of traditional building components, such that the SES is structurally an integral part of a house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building facade, skylight, shingles, canopy, light, or parking meter. **See also Solar Energy System–Accessory (SES-A)*

Rooftop Solar Energy System: An SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES. **See also Solar Energy System–Accessory (SES-A)*

Site Size: The calculated area that includes the perimeter of the outermost panels together with any and all equipment necessary for the function of the SES, including transformers and inverters but not including perimeter fencing and landscaping buffers.

Solar Energy System (SES): A device or structural design feature that provides for the collection of solar energy for electricity generation, consumption, or transmission, or for thermal applications. SES refers only to (1) photovoltaic SESs that convert solar energy directly into electricity through a semiconductor device or (2) solar thermal systems that use collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling. SES excludes concentrated solar power, which uses mirrors to focus the energy from the sun to produce electricity.

Solar Energy System–Accessory (SES-A): A Small Ground Mounted SES, Integrated SES, or Rooftop SES.

Solar Energy System–Commercial (SES-C): A Medium Ground Mounted SES or Large Ground Mounted SES.

Section 1904 – Solar Energy Systems (SES) Not Requiring a Zoning Permit

Rooftop Solar Energy Systems and Integrated Solar Energy Systems, both Solar Energy Systems–Accessory (SES-As), may be established to serve permitted uses. Roof-mounted SES-As and Integrated Solar Energy Systems may exceed the maximum allowed building height of the building or structure in which it is located by up to three (3) feet in all zoning districts; however, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built, unless the collector and mounting system has been explicitly engineered to safely extend beyond the edge, and an extension in these circumstances meets all applicable zoning setback standards. Although a Zoning Permit meeting the criteria in this Section may not be required for Roof-mounted Solar Energy Systems–Accessory (SES-As) and Integrated Solar Energy Systems and appurtenant structures of this type, a Building Permit is required and must be applied for and approved prior to any site work.

Section 1906 – General Requirements for all Solar Energy Systems (SES)

The design and construction of all Solar Energy Systems (SES) shall meet the following standards:

1. All applicants shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted system in strict compliance with all current applicable technical, safety and safety-related codes adopted by Dearborn County, the State of Indiana, or the United States. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply;
2. All applicants shall obtain, at their own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by Dearborn County or any other governmental entity or agency having jurisdiction over the applicant;

3. All applicants shall notify the County of any intended modification of a Solar Energy System (SES) and shall apply to the County to modify the height, relocate or rebuild such structure or appurtenant facilities and associated improvements;
4. All Solar Energy System (SES) shall conform to applicable industry standards of the American National Standards Institute (ANSI) and be approved by a solar certification program recognized by the American Council on Renewable energy (ACORE) or the Solar Energy Industries Association (SEIA). All SES that are over twenty (20) feet in height, when oriented at maximum tilt, must be designed by a professional engineer. The engineer must certify that the structures that are intended to be built for the Solar Energy System is within acceptable code and industry standards—given local soil and climate conditions.

Section 1916 – Design and Construction

The design and construction of all Solar Energy Systems shall meet the following standards:

- A. The foundation and attachments shall meet all local, County, State and Federal structural requirements for loads, including wind and ice loads. Footing inspections shall be required by the Building Commissioner for all SES having footings;
- B. All utilities at a Solar Energy Systems site—except for transformers, inverters, substation, and controls—shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the County;
- C. Ground-mounted SES shall not be located over an existing or planned septic field, unless approval is obtained by the Dearborn County Health Department;
- D. Ground-mounted SES shall not be located over an existing utility easement, unless approval is obtained by the applicable utility providers;
- E. Solar Energy Systems, and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with and/or to harmonize with the natural surroundings;
- F. All Solar Energy Systems using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties, and must adhere to Article 25, Section 2530 with respect to Glare.
- G. Roof-mounted SES on pitched roofs that are visible from the nearest edge of the front road right-of-way shall have the same finished pitch as the roof on the structures on which they are intended to be mounted, and be no more than three (3) feet above the existing roof(s)—whether it is a pitched or flat roof.
- H. All Solar Energy Systems and supporting structures must consist of a non-reflective, unobtrusive color. No advertising signage shall be permitted; however, the manufacturer's identification with ratings and the owner's contact information is allowed.

- I. At Solar Energy Systems—Commercial (SES-C) project sites, an acceptable access and turn-around area shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- J. If an easement is required for location of a SES on the property, the easement shall be staked by a licensed and registered Indiana land surveyor so as to provide proof that the improvements have been constructed within the easement.
- K. As set forth in Article 25, Section 2578 of this Ordinance, the outside storage of materials, vehicles, products, parts or other similar items shall be prohibited unless approved through Site Plan Review (See Article 23). In situations where outside storage exists or is proposed, the Planning Director or designee shall have the authority to determine the appropriate screening.

Section 1920 - Solar Energy Systems – Accessory (SES-As)

This Section applies to all zoning districts in Dearborn County.

- A. Permits: An Improvement Location Permit, as set forth in article 17 of this Ordinance, shall be required prior to the construction, erection, placement, modification, or alteration of a Solar Energy System—Accessory (SES-A), ***except where exempted as applicable by Section 1904 of this Article.*** A building permit may also be required.
- B. Applicability: Any lawfully established Solar Energy System—Accessory (SES-A), as defined, shall meet the Solar Energy System standards set forth in this Section.
- C. Location:
 - 1. Roof-mounted solar energy systems shall be placed only on the roof of a structure.
 - 2. Ground-mounted solar energy systems shall be placed within areas that meet the permitted setback requirements for accessory structures, in the applicable zoning district associated with the property.
- D. Height Limit: The height of any ground-mounted solar equipment is limited to twenty (20) feet, as measured from the natural grade below each panel to the top of each panel at its maximum tilt in the vertical direction. Roof-mounted SES-As and Integrated Solar Energy Systems may exceed the maximum allowed building height of the building or structure in which it is located by up to three (3) feet in all zoning districts.
- E. Residential Design: In areas zoned Residential, ground-mounted solar energy systems shall be located behind the front of the primary structure.
- F. Decommissioning: SES-As that are no longer producing viable energy for consumption using electricity shall be removed no later than six (6) months after final energy production occurs.

- G. Declaration of Public Nuisance: Any SES-A, structure or portion thereof declared to be unsafe by the Dearborn County Building Commissioner or the Board of Zoning Appeals, or their designees, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with best practices.

Section 1925 - Pre-Application Meeting

Prior to the submittal of an application that does not involve an exempt SES structure (as set forth in Section 1904 of this Article) or a Solar Energy Systems – Accessory (SES-A), the applicant is required to contact the County and its designated representatives to schedule a pre-application meeting. The purpose of this meeting is to address potential issues, which will help expedite the review and permitting process. The pre-application meeting shall include a site visit, if there has not been a prior site visit for the proposed site. It shall also be determined at the pre-application meeting, the number of copies necessary for the applicant to submit a completed application. The applicant shall pay any and all costs that are associated with the preparation and attendance of the pre-application meeting.

Section 1930 - Solar Energy Systems – Commercial (SES-Cs)

This Section applies to all Industrial (I-1, I-2, I-3) zoning districts and the Community Business zoning (B-2) district. For Solar Energy Systems—Commercial that are proposed to be located in other zoning districts, a Conditional Use must be obtained (first).

- A. Permits: A Site Plan Review, in accordance with criteria set forth of Article 23 of this Ordinance, shall be required prior to the construction, erection, placement, modification, or alteration of any Solar Energy System—Commercial (SES-C). *A building permit shall also be required.*
- B. Applicability: Any lawfully established Solar Energy System—Commercial (SES-C), as defined, shall meet the Solar Energy System standards set forth in this Section.
- C. Location:
1. Minimum Setback from Adjacent Non-Participating Properties: Any SES-C equipment, excluding perimeter fencing, poles, and wire necessary to connect the facility to an electric utility, must be setback at least one-hundred-and-fifty feet (150) feet from any property line of a non-participating landowner—unless a landscape bufferyard 2 is placed between the SES-C equipment and the adjacent non-participating property line(s). **If a landscape bufferyard 2 is installed, then the setback may be reduced to seventy-five (75) feet.*
 2. Minimum Setbacks from Adjacent Primary Structures for Non-Participating Properties: Any SES-C equipment, excluding perimeter fencing, poles, and wire necessary to connect the facility to an electric utility, must be setback at least two-hundred (200) feet from any primary structure(s) on property that is not part of the SES-C.

3. Minimum Setbacks from Adjacent Properties for Participating Properties: Property line setbacks between separate parcels of different ownership—both or all of which are participating as part of an SES-C—may be waived upon agreement of the landowners.
4. Minimum Zoning Setbacks from Adjacent Properties for Participating Properties: Any SES-C equipment, excluding perimeter fencing, poles, and wire necessary to connect the facility to an electric utility, must be setback at the same distance as a primary structure in the zoning district in which it is located—except for any pieces of equipment (such as inverters) that create an objectionable sound levels during normal operations, which must meet the 150-foot setback set forth in item C1 of this Section for Adjacent Non-Participating Properties.
5. Minimum Setbacks from Adjacent Structures for Participating Properties: Any SES-C equipment, excluding perimeter fencing, poles, and wire necessary to connect the facility to an electric utility, must be setback at least thirty (30) feet from primary structures and at least ten (10) feet from all other structure(s) on a participating landowner’s property that is part of the SES-C.
6. Agricultural Zones and Uses: For areas zoned Agricultural or that contain uses that would be Principally Permitted uses in Agricultural Districts, projects that demonstrate that the proposed SES can co-locate with agricultural uses shall be considered a higher priority.
**Where a Conditional Use Permit is required for SES-Cs, the Board of Zoning Appeals can make the Conditional Use Permit time-limited, to coincide with the proposed length of time that the SES-C will remain on the site—and with a condition that the site be returned to an agricultural use at the end of the life of the solar installation.*

D. Design:

1. Height Limit: The height of any SES-C ground-mounted solar equipment is limited to twenty (20) feet, as measured from the natural grade below each panel to the top of each panel at its maximum tilt in the vertical direction. Roof-mounted SES-As and Integrated Solar Energy Systems may exceed the maximum allowed building height of the building or structure in which it is located by up to three (3) feet in all zoning districts.
2. Fencing: All SES-Cs and their appurtenant structures shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. SES-C sites must have a completely fenced perimeter that is wildlife-friendly and can include clearance at the bottom of six (6) inches or less. The fencing for the perimeter must be at least six (6) feet in height with locking gate access and be designed to be harmonious with the natural surroundings to the extent feasible. *Alternative fencing can be requested as part of the Site Plan Review process if the site is either incorporating agrivoltaics, or if the applicant is proposing alternative fencing and / or other barriers—including those that are natural—that are determined to be equal to or better than the ordinance requirements and the intent of this Article.*
3. Access: The operator of a SES-C must provide an emergency (knox) box with keys to the site and equipment lockers on site at the main entrance or an alternative emergency access solution to the site approved by the Planning Director, or designee.
4. Visual Buffers: A SES-C shall have, to the extent reasonably practicable, a visual buffer of natural vegetation, plantings, earth berms, and/or fencing that provides a reasonable visual and lighting screen to reduce the view of the SES-C **from non-participating residential uses and structures on adjacent lots, including those lots located across a road right-of-way** (as set forth earlier in this Section in Item C). **Bufferyards shall be required in accordance with Article 22 (Section 2270, Table 22.1) where applicable, depending on the proposed site, site layout, and adjacent uses, and will be determined during the Site Plan Review process. For street frontages where there are non-participating properties next to, or across from, a proposed SES-C, landscaping shall also be required in accordance with Article 22, Sections 2240 and 2260. Any visual buffer must be established and maintained in accordance with the most recent landscaping and bufferyard plan approved by the Technical Review Committee.*
5. Ground Cover: Pollinator-friendly seed mixes and native plants are required around ground-mounted SES. *For reference best practices, and maintenance information, see Technical Guide: Establishment and Maintenance of Pollinator-Friendly Solar Projects (2020) – Northern Indiana – Michiana Area Council of Governments, as amended, the 2020 Indiana Solar Site Pollinator Habitat Planning Scorecard developed by Purdue University, or another pollinator-friendly checklist developed by a third party as a solar-pollinator standard designed for Midwestern ecosystems, soils, and habitat.* *The Technical Review Committee may approve the redistribution of some of the required ground cover landscaping to other locations on the site, including required bufferyards.

6. Drainage: All Solar Energy Systems must meet the requirements of the Dearborn County Code of Ordinances regarding drainage and erosion control. Stormwater design and calculations must be done in accordance with Article 3, Section 325 of the Dearborn County Subdivision Control Ordinance. Additionally, an Erosion Control permit or Stormwater Construction Permit must also be obtained where applicable, and submitted as part of the Site Plan Review process.
7. Lighting: Exterior lighting for a SES-C site shall be limited to that required for safety and operational purposes. If lighting is required, the Applicant shall provide a detailed lighting plan that meets all applicable County, State and Federal regulations.
8. Noise: The Applicant shall submit a Noise Evaluation Report for each grouping of solar panels and any substation or facility that emits noise in the project. The report shall state, at minimum, the daytime and nighttime base-line noise level at a point on the property line closest to the primary dwelling on an adjoining non-participating parcel; the potential noise level generated by the solar panels and inverters and any substation associated with the project; and the manufacturer's technical documentation of the proposed solar energy generating equipment noise levels. The Noise Evaluation Report shall include the projected maximum levels of infrasonic sound, ultrasonic sound, impulsive noise and prominent discrete tones generated and measured at a point on the property line closest to the primary dwelling on an adjoining non-participating parcel. The report shall include a map depicting the noise study area radius, project boundaries, sound level monitoring locations and the nearest receptor locations. The Noise Evaluation Report shall include any potential mitigation measures to minimize sound levels above 40 decibels and 55 decibels—the former of which is considered an accepted noise level in a quiet rural setting and the latter of which is considered an accepted noise level in a quiet urban area—at the aforementioned property line point(s).
9. Signage: All Solar Energy Systems – Commercial (SES-Cs) and their appurtenant structures shall contain a standard metal road sign no larger than four (4) square feet in order to provide the name(s) of the owner(s) and operator(s) of the SES-C as well as emergency phone number(s) and the address of the site. This sign shall be visible from the access point of the site—but shall be located just outside of the road right-of-way, outside of the sight triangles in either direction—and shall not be lighted, unless lighting is required by applicable law, rule or regulation. A four (4) square-foot warning sign concerning voltage must also be placed at the base of all pad-mounted transformers and substations in a conspicuous location. No other signage, including advertising, shall be permitted.
10. Safety and Security: A safety and security plan must be submitted and must contain adequate provisions for site security and safety—including those involving emergency service responders. The plan must be submitted to the all affected service providers and written acknowledgments from the proper authorities indicating that they are aware of their roles for the proposed safety and security plan and that they are capable of performing them must be included in the final plan and permit submittal. If necessary, the Applicant will be responsible for providing any necessary training to ensure that adequate services can be provided to the SES-C site and surrounding area.

- E. Decommissioning: A decommissioning plan shall be provided indicating the method and payment of the anticipated cost of removing the SES-C at the end of their serviceable life or upon their becoming a discontinued or abandoned use to ensure that the commercial solar energy systems are properly decommissioned.
1. Content: The decommissioning plan shall include, at a minimum, the following:
 - a. Assurance: Written assurance that SES-C will be properly decommissioned upon the expiration of its serviceable life or in the event of their discontinuance or abandonment.
 - b. Cost Estimates: For all SES-C, an estimate of the costs of decommissioning and removing the SES-C upon the expiration of their useful life, or in the event of their discontinuance or abandonment shall be provided by the Applicant. The cost estimates shall be made by a professional engineer, contractor, or other person with expertise or experience in decommissioning and removal of SES-C.
 2. Financial Assurance: The cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the SES-C and to restore the site, the following steps shall be followed:
 - a. For each SES-C, the applicant, owner, and/or operator shall determine an amount of money equal to the estimated removal (see Discontinuation and Abandonment subsections) and restoration cost. The final amount shall include a twenty percent (20%) contingency for any unforeseen expense(s).
 - b. The Planning Director or designee, in consultation with other County officials (which may include a consultant for expert assistance as set forth herein), shall independently verify the adequacy of this amount.
 - c. This money shall be deposited in an escrow account specified by Dearborn County, which may be an interest-bearing account. Alternatively, a bond may be posted for the necessary amount.
 3. Discontinuation and Abandonment:
 - a. Abandonment: Verification under penalties for perjury, that all easements and/or leases for the SES-C contain terms that provide financial assurances to the property owners to ensure that the SES-C are properly decommissioned within one (1) year of the expiration of their serviceable life or in the event of their discontinuance or abandonment, must be provided in writing.

- b. Discontinuation: Any SES-C shall be considered abandoned and a discontinued use, if at any time, any of the following apply:
 - i. The system has been abandoned for a period of one hundred-eighty (180) days in any three hundred-sixty-five (365) day period. For properties involving foreclosure, vacant residential structures, or for other unusual or extreme circumstances, a waiver may be requested to extend this time period. All waiver requests of this specific type must be submitted in writing to the Planning Director or designee and may be issued only if the waiver is determined to be necessary and if the requested waiver does not adversely affect the other requirements of this Article;
 - ii. The system falls into such a state of disrepair that it creates a health or safety hazard;
 - iii. The system has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required permit, or any other necessary authorization;
 - iv. The Board of Zoning Appeals determines that the health, safety, and welfare interests of the County warrant and require the removal of the SES-C.
- c. Removal: An applicant's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level. Said work shall be completed within 365 days of the discontinuation or abandonment of the SES-C. The restoration of the project area shall result in as near as practicable the condition of the site immediately before construction of such improvements.
- d. Waste Management: All solid waste, whether generated from supplies, equipment, parts, packaging, operation, or maintenance of the system and associated facilities (including old parts and equipment) shall be removed from the site in a timely manner consistent with industry standards. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, cleaning materials, batteries, etc. shall be handled in a manner consistent with local, State, and Federal waste disposal rules and regulations and shall not be allowed to seep into the ground or come into contact with any open water.
- e. Written Notices: Prior to implementing procedures to resolve any alleged failure to comply with the decommissioning plan, the appropriate County body shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period, not to exceed sixty (60) days, to resolve the alleged default(s)—or otherwise all of the provisions set forth in this Ordinance shall be at the County's disposal.

- f. **Costs Incurred by the County:** If Dearborn County removes a SES-C and/or appurtenant facilities, it may sell the salvage to defray the costs of removal, in addition to drawing on money held in escrow or via a bond or other acceptable financial guarantee as set forth herein. Each permittee, by virtue of the issuance of its construction permit or inspection certificate grants a license to Dearborn County to enter the property and to remove all commercial solar energy systems and/or appurtenant facilities pursuant to the terms of its approved decommissioning plan.

- F. **Declaration of Public Nuisance:** Any SES-C, structure or portion thereof declared to be unsafe by Dearborn County Building Commissioner or Board of Zoning Appeals, or their designees, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved decommissioning plan.

Section 1940 - Solar Energy Systems – Commercial (SES-Cs) Requiring Conditional Uses

For Solar Energy Systems – Commercial (SES-Cs) applications that require approval for a Conditional Use, (in accordance with Article 3, Section 315 of this Ordinance), the County may disapprove an application for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with the historic nature or character of a neighborhood or historical district;
3. Conflict with a purpose of an existing, specific zoning or land use designation;
4. The placement and location of the Solar Energy System would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers;
5. Conflicts with the provisions of this ordinance.

Section 1950 - Retention of Expert Assistance and Reimbursement by Applicant

The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating an SES-C Application, including new construction or significant modification of the site.

Applicants for SES-C shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including new construction or significant modification of the site. The initial deposit shall be \$8,500.00. *The placement of the \$8,500.00 with the County shall precede the pre-Application meeting.* The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services in reviewing the Application, including new construction or significant modification of the site. If at any time during the process the escrow account has a balance of less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant.

The total amount of the funds needed for consulting purposes may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Section 1960 – Maintenance & Inspections

The owner or operator of a SES-C must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the County reasonably requests. Any physical modification to the SES-C must be reported to the Planning Director and Building Commissioner or their respective designees to determine if it is necessary to have the SES-C re-certified by a professional Engineer licensed in the State of Indiana and to determine if a new Zoning Permit or Building Permit is required.

The Dearborn County Planning Director and Building Commissioner or their designees will be responsible for contacting all owners or operators of a SES-C that does not meet local, State, or Federal codes and regulations. Once notified in writing, the owner or operator of a SES-C will be required to address any repairs or alterations within thirty (30) days after receiving notice—or within a longer period of time mutually acceptable to both parties. During this time period, the owner or operator of a SES-C may retain a licensed 3rd party professional engineer familiar with SES-C systems to prepare and submit to the appropriate Dearborn County officials a written report which addresses the repairs or alterations required, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary. The Dearborn County Planning Director and Building Commissioner or their designees will consider any such written report and determine whether the repairs or alterations should be made as originally requested, or as suggested in the written report.

Section 1965 - Liability Insurance

The owner or operator of any SES-C will provide proof of liability coverage; shall maintain a current general liability policy covering bodily injury and property damage; and may be required to name Dearborn County as an additional insured with dollar amount limits per occurrence, in the aggregate, and a deductible, which is suitable and in an acceptable form to the Dearborn County Attorney.

Section 1970 - Indemnification

Any application for a Solar Energy System that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said SES, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County. An indemnification provision will not be required in those instances where the County itself applies for and secures a permit for SES.

Section 1975 - Avoidance and Mitigation of Damages to Public Infrastructure

Applicants of all Solar Energy Systems – Commercial (SES-Cs) shall identify all roads to be used for the purpose of transporting system materials, parts, and / or equipment for the construction, operation, or maintenance of the SES-C and shall:

1. Conduct a pre-construction baseline survey in coordination with the impacted transportation authorities to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility as the SES-C is being constructed;
2. Obtain any applicable weight and size permits from all impacted transportation authorities prior to construction;
3. Prepare a written statement that acknowledges that the Applicant will be responsible for addressing on-going road maintenance, drainage, erosion control, or dust issues identified by the Dearborn County Engineer, the Indiana Department of Transportation (INDOT), the Indiana Department of Environmental Management (IDEM), or another applicable public agent during all phases of the construction process. All such issues must be addressed in the prescribed time(s) and manner(s) set forth by the applicable governmental entity.

Section 1980 - Variances

Any requirement of this Article may receive a variance by the Board of Zoning Appeals if it is determined that such action is warranted given the nature of an individual project and such action will serve to preserve the purpose and intent of these regulations.

ARTICLE 18

WIND ENERGY CONVERSION SYSTEMS

Section 1800 – Purpose & Intent

The purpose of this Article is to regulate the placement, construction, and modification of Mini WECS, SWECS, and Wind Energy Conversion Systems (WECS) in Dearborn County. The regulations set forth herein have been formulated to facilitate economic opportunities for the local economy and to protect the health, safety, and general welfare of the public as these improvements are commissioned. The provisions of this Article will:

1. Establish a reasonable and efficient process for the review and approval of Mini WECS, SWECS, and WECS applications;
2. Prescribe required distances for setbacks for Mini WECS, SWECS, and WECS from buildings, property lines, and easements;
3. Institute minimum performance regulations for Mini WECS, SWECS, and Wind Energy Conversion Systems;
4. Create standards for the removal of Mini WECS, SWECS, and WECS and their appurtenant structures.

Section 1802 – Definitions

For the purposes of this Ordinance, the defined words, terms, phrases, abbreviations, and their derivations shall have the meanings given in this Section.

“Mini Wind Energy Conversion System” or “Mini WECS” means the system by which wind energy is converted to electricity using a wind turbine, tower, support system, blades, and associated control and conversion electronics which has a rated capacity less than ten (10) kW and a system height of less than forty-five feet (45’). For the purposes of this Ordinance, a roof-mounted structure shall be considered a Mini WECS if it meets the rated capacity and height requirements set forth in this Section. **Only one (1) Mini Wind Energy Conversion System may be permitted per principle structure. Mini WECS shall be considered an accessory use in all Zoning Districts.**

“Small Wind Energy Conversion System” or “SWECS” means the system by which wind energy is converted to electricity using a wind turbine, tower, support system, blades, and associated control and conversion electronics which has a rated capacity of less than, or equal to, one-hundred (100) kW and a system height of less than eighty feet (80’). **Only one (1) Small Wind Energy Conversion System may be permitted per principle structure. SWECS shall be considered a Principally Permitted Use in all agricultural (A), commercial (B-1, B-2) and industrial (I-1, I-2, I-3) zones and as a Conditional Use in all Residential Districts.**

“Wind Energy Conversion System” or “WECS” means the system by which wind energy is converted to electricity using a wind turbine, tower, support system, blades, and associated control and conversion electronics which has a rated capacity of more than one-hundred (100) kW or a system height of more than eighty feet (80’). **WECS shall be considered a Principally Permitted Use in intense commercial (B-2) and industrial (I-1, I-2, I-3) zones and as a Conditional Use in all Agricultural (A), Residential (R), and Local Business (B-1) Districts.**

“Applicant” means the entity or person who submits to the County, pursuant to this Article, an application for the siting of any WECS or substation or thereafter operates or owns a WECS.

“Financial Assurance” means an insurance performance bond or one irrevocable, unconditional letter of credit, either one of which must be obtained from a single financial institution licensed in the State of Indiana.

“Free Fall Area” means the area in the shape of a circle surrounding the WECS whose radius is the height of the structure plus ten percent (10%) of the height of the WECS or structure.

“Modification” means the addition, removal or change of any of the physical and visually discernable components or aspects of a Wind Energy Conversion System. A modification shall not include the replacement of any components of a Wind Energy Conversion System where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a Wind Energy Conversion System without addition, removal or discernable change.

“Operator” means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.

“Owner” means the entity or entities with an equity interest in the WECS, including their respective successors and assigns.

“Permit” means a Zoning Permit, unless specifically noted otherwise in this Article.

“Professional Engineer” means a qualified individual who is licensed as a professional engineer in the State of Indiana.

“Primary Structure” means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

“State” means the State of Indiana.

“WECS Project” means the collection of WECSs and substations as specified in the siting approval application pursuant to this Ordinance.

“WECS Tower” or “Tower” means the support structure to which the nacelle and rotor are attached, free standing or guyed structure that supports a wind turbine generator.

“WECS Tower Height” means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

Section 1804 – Wind Energy Conversion Systems Not Requiring a Zoning Permit

Mini WECS or SWECS structures may be established to serve an existing agricultural use. These structures may not exceed 45 feet in height and must be situated fifty (50) feet from both all property lines and overhead utility easements to be exempt from the provisions set forth later in this Article. **Although a Zoning Permit may not be required for Mini WECS or SWECS and appurtenant structures of this type, a Building Permit is required and must be applied for and approved prior to any site work.**

Section 1806 – General Requirements for all Wind Energy Conversion Systems

The design and construction of all Mini WECS, SWECS, or Wind Energy Conversion Systems shall meet the following standards:

1. All applicants shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted system in strict compliance with all current applicable technical, safety and safety-related codes adopted by Dearborn County, the State of Indiana, or the United States. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply;
2. All applicants shall obtain, at their own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by Dearborn County or any other governmental entity or agency having jurisdiction over the applicant;
3. All applicants shall notify the County of any intended modification of a Mini WECS, SWECS, or Wind Energy Conversion System and shall apply to the County to modify the height, relocate or rebuild such structure;
4. All Wind Energy Conversion Systems shall conform to applicable industry standards of the American National Standards Institute (ANSI) and be approved by a wind certification program recognized by the American Wind Energy Association. **All WECS that are over twenty-five (25) feet in height must be designed by a professional engineer.** The engineer must certify that the foundation and tower constructed for the Wind Energy Conversion System is within acceptable code and industry standards—given local soil and climate conditions.

SECTION 1808 - Required Zoning Permit

All applicants involving a new Mini WECS, SWECS, or Wind Energy Conversion System, or an existing Mini WECS, SWECS, or Wind Energy Conversion System that involves a visible modification, are required to obtain the proper permit that is in accordance with the requirements of this Article. The individual zoning district articles indicate whether a Wind Energy Conversion System is a Principally Permitted Use or Conditional Use, which determines the required process. All Mini WECS and SWECS that are considered Principally Permitted Uses shall follow the Plot Plan Review procedure as detailed in Article 17 of this Ordinance. All WECS shall follow the Site Plan Review procedure as detailed in Article 23 of this Ordinance, in addition to a Conditional Use process, if necessary. All Conditional Uses shall follow the Conditional Use procedure as detailed in Article 3. Applications for the modification of an existing structure that does not increase the overall height or appearance shall be considered a Principally Permitted Use. If it is determined that the application meets the purpose and intent of this Article, the application shall be approved. If it is determined that the application does not meet the purpose and intent of this Article, the application shall be denied with the specific reasons detailed.

No Wind Energy Conversion System of any type shall be installed or constructed until the application is reviewed and approved by the County, and a permit has been issued. The County may at its discretion delegate or designate other official agencies to accept, review, analyze, evaluate and make recommendations with respect to the approval, or denial, of proposed Wind Energy Conversion System. Any permit issued for Wind Energy Conversion System shall not be assigned, transferred or conveyed without the express prior written notification to the County.

SECTION 1810 - Pre-Application Meeting

Prior to the submittal of an application that does not involve an exempt Mini WECS or SWECS structure, the applicant is required to contact the County and its designated representatives to schedule a pre-application meeting. The purpose of this meeting is to address potential issues, which will help expedite the review and permitting process. The pre-application meeting shall include a site visit, if there has not been a prior site visit for the proposed site. It shall also be determined at the pre-application meeting, the number of copies necessary for the applicant to submit a completed application. The applicant shall pay any and all costs that are associated with the preparation and attendance of the pre-application meeting.

SECTION 1812 – Zoning Application Requirements

All applications for Mini WECS, SWECS, or Wind Energy Conversion Systems, or any modification of such facility, shall comply with the requirements set forth in this Section. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the County. The applicant shall be required to perform the following actions:

- ◆ Sign the application with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. Any individual signing the application shall be an authorized individual of the applicant. The landowner, if different than the applicant, shall also sign the application.
- ◆ Submit the following statement in writing:
 - "The proposed Mini WECS, SWECS, or Wind Energy Conversion System shall be maintained in a safe manner, and in compliance with all conditions of the Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations."

All applications for the construction or installation of new Mini WECS, SWECS, or Wind Energy Conversion Systems shall contain the information set forth in this Section. Where a certification is required, such certification shall bear the signature and seal of a *professional engineer*. At the discretion of the County, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

Applicants must submit all of the information required to obtain a Major Plot Plan Zoning Permit, as referenced in Article 17, Section 1720 of the Dearborn County Zoning Ordinance, to the Dearborn County Plan Commission. In addition to the information required to obtain a Zoning Permit, the applicant shall provide all of the information that is necessary to obtain a Conditional Use Permit from the Dearborn County Board of Zoning Appeals, if applicable.

Information that is also relevant to the following items must also be specifically supplied:

1. The location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed Mini WECS, SWECS, or WECS;
2. The location of all underground utility lines associated with the project site;
3. Dimensional representation of the structural components of the tower construction including the base and footings;
4. Manufacturer's specifications and installation and operation instructions or specific Mini WECS, SWECS, or WECS design information;
5. Certification by a registered professional engineer that the tower design, including all footers, is sufficient to meet all County, State, and Federal requirements;
6. Information relevant to any existing, or anticipated, access easements or utility easements;
7. Acknowledgement that no appurtenances other than those associated with the wind turbine operations may be connected to any wind tower except with express, written permission by the BZA;
8. A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation;
9. A re-vegetation plan that restores areas temporarily disturbed during construction;

10. For all Mini WECS, SWECS, or WECS sites involving one (1) acre or more of land disturbance, a drainage and erosion control plan must also be developed in consultation with the Dearborn County Soil and Water Conservation District.

SECTION 1814 - Location of Wind Energy Conversion Systems

An application for a Mini WECS, SWECS, or Wind Energy Conversion System may be approved in any zoning district of Dearborn County, provided that County officials find that the proposed site does not interfere with the health, safety and welfare of the County and its inhabitants and will not have a harmful effect on the nature and character of the community and neighborhood.

Notwithstanding that a potential application may require approval for a Conditional Use, the County may disapprove an application for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with the historic nature or character of a neighborhood or historical district;
3. Conflict with a purpose of an existing, specific zoning or land use designation;
4. The placement and location of Wind Energy Conversion System which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers;
5. Conflicts with the provisions of this ordinance.

SECTION 1816 - Structure Design and Construction

The design and construction of all Mini WECS, SWECS, or Wind Energy Conversion Systems shall meet the following standards:

1. The foundation and attachments shall meet all local, County, State and Federal structural requirements for loads, including wind and ice loads;
2. All utilities at a Mini WECS, SWECS, or Wind Energy Conversion Systems site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the County;
3. Mini WECS, SWECS, Wind Energy Conversion Systems, and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings;
4. At SWECS or Wind Energy Conversion System project sites, an acceptable access and turn-around area shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

SECTION 1818 - Height and Clearances of Wind Energy Conversion Systems

Mini WECS must have a system height of less than forty-five (45) feet.

No Wind Energy Conversion System Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, County, State, and/or any Federal statute, law, ordinance, code, rule or regulation.

The minimum distance between the ground and any protruding blade(s) utilized on a Mini WECS, SWECS, or WECS shall be fifteen (15) feet, as measured at the lowest point of the arc of the blades. This minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

SECTION 1820 - Appearance and Visibility of all Wind Energy Conversion Systems

All Mini WECS, SWECS, or Wind Energy Conversion Systems and their appurtenant structures shall be designed to minimize the adverse visual impacts of its surroundings. Specifically:

1. Mini WECS, SWECS, or Wind Energy Conversion Systems shall not be artificially lighted or marked, except as required by law.
2. All Mini WECS, SWECS, WECS and supporting structures must consist of a non-reflective, unobtrusive color—usually gray or white. No advertising signage shall be permitted; however, the manufacturer's identification with ratings is allowed.
3. If lighting is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

SECTION 1822 - Security of Wind Energy Conversion Systems

All Mini WECS, SWECS, and Wind Energy Conversion Systems and their appurtenant structures shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all Mini WECS, SWECS, and WECS and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.

SECTION 1824 - Signage

All Wind Energy Conversion Systems and their appurtenant structures shall contain a sign no larger than four (4) square feet in order to provide the name(s) of the owner(s) and operator(s) of the WECS as well as emergency phone number(s). This sign shall be visible from the access point of the site and shall not be lighted, unless lighting is required by applicable law, rule or regulation. A four (4) square-foot warning sign concerning voltage must also be placed at the base of all pad-mounted transformers and substations in a conspicuous location. No other signage, including advertising, shall be permitted.

SECTION 1826 - Lot Size and Setbacks

All proposed Mini WECS, SWECS, or Wind Energy Conversion Systems shall be set back from abutting parcels, recorded rights-of-way and existing or anticipated access or utility easements by the greater of the following distances: A distance equal to the height of the proposed Mini WECS, SWECS, or WECS structure plus ten percent (10%) of the height of the supporting structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated. Structures that are not being used in conjunction with the Mini WECS, SWECS, or Wind Energy Conversion Systems, with the exception of accessory structures, shall not be located within the free fall area unless otherwise approved by the Board of Zoning Appeals.

A transfer of ownership of an adjacent lot, held in combination and under common ownership at the time of Mini WECS, SWECS, or WECS installation, shall include a grant of easement equal to the required off-site setback encroachment; approved by the Planning Director; and recorded with the Dearborn County Recorder's Office to run with the deed.

Section 1832 – Maintenance & Inspections

The owner or operator of a WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the County reasonably requests. Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification by a professional Engineer licensed in the State of Indiana and it shall be necessary to apply for both a Zoning Permit and a Building Permit.

The Dearborn County Planning Director and Building Commissioner will be responsible for contacting all owners or operators of a WECS that does not meet local, State, or Federal codes and regulations. Once notified in writing, the owner or operator of a WECS will be required to address any repairs or alterations within thirty (30) days after receiving notice—or within a longer period of time mutually acceptable to both parties. During this time period, the owner or operator of a WECS may retain a licensed 3rd party professional engineer familiar with WECS systems to prepare and submit to the appropriate Dearborn County officials a written report which addresses the repairs or alterations required, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary. The Dearborn County Planning Director and Building Commissioner will consider any such written report and determine whether the repairs or alterations should be made as originally requested, or as suggested in the written report.

Section 1834 - Liability Insurance

The owner or operator of any WECS will provide proof of liability coverage; shall maintain a current general liability policy covering bodily injury and property damage; and may be required to name Dearborn County as an additional insured with dollar amount limits per occurrence, in the aggregate, and a deductible, which is suitable and in a form acceptable to the Dearborn County Plan Commission Attorney.

Section 1836 - Indemnification

Any application for Wind Energy Conversion Systems that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said WECS, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County. An indemnification provision will not be required in those instances where the County itself applies for and secures a permit for WECS.

Section 1838 - Removal of Wind Energy Conversion Systems

The holder of a permit for a Mini WECS, SWECS, or Wind Energy Conversion System, or its successors or assigns, shall dismantle and remove such facilities, and all associated structures, from the site and restore the site to as close to its original condition as is possible, if at any time any of the following apply:

1. The system has been abandoned for a period of one hundred-eighty (180) days in any three hundred-sixty five (365) day period. For properties involving foreclosure, vacant residential structures, or for other unusual or extreme circumstances, a waiver may be requested to extend this time period. All waiver requests of this specific type must be submitted in writing to the Planning Director and may be issued only if the waiver is determined to be necessary and if the requested waiver does not adversely affect the other requirements of this Article;
2. The system falls into such a state of disrepair that it creates a health or safety hazard;
3. The system has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required permit, or any other necessary authorization;

4. The Board of Zoning Appeals determines that the health, safety, and welfare interests of the County warrant and require the removal of the Mini WECS, SWECS, or Wind Energy Conversion System.

Section 1840 - Avoidance and Mitigation of Damages to Public Infrastructure

Applicants of all Wind Energy Conversion Systems shall identify all roads to be used for the purpose of transporting system materials, parts, and / or equipment for the construction, operation, or maintenance of the WECS and shall:

1. Conduct a pre-construction baseline survey in coordination with the impacted transportation authorities to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility as the WECS is being constructed;
2. Obtain any applicable weight and size permits from all impacted transportation authorities prior to construction;
3. Prepare a written statement that acknowledges that the Applicant will be responsible for addressing on-going road maintenance, drainage, erosion control, or dust issues identified by the Dearborn County Engineer, the Indiana Department of Transportation (INDOT), the Indiana Department of Environmental Management (IDEM), or another applicable public agent during all phases of the construction process. All such issues must be addressed in the prescribed time(s) and manner(s) set forth by the applicable governmental entity.

Section 1842 - Variances

Any requirement of this Article may receive a variance by the Board of Zoning Appeals if it is determined that such action is warranted given the nature of an individual project and such action will serve to preserve the purpose and intent of these regulations.