

ORDINANCE NO. 01-2023

**AN ORDINANCE FOR THE TOWNSHIP OF BRUSH CREEK, FULTON COUNTY,
PENNSYLVANIA REGULATING THE CONSTRUCTION, OPERATION, AND
DECOMMISSIONING OF SOLAR ENERGY SYSTEMS AND PROVIDING
PENALTIES FOR THE VIOLATION THEREOF.**

WHEREAS, the Board of Supervisors of Brush Creek Township, Fulton County, Pennsylvania believes it is in the best interests of the Township and the health, welfare, and safety of its citizenry to regulate the construction, operation, and decommissioning of Solar Energy Systems, and to pass an Ordinance in accordance with law;

WHEREAS, it is hereby expressly declared that it is not the purpose or intention of the Board of Supervisors of this Township or the Township itself to discriminate against or in any way to impose undue hardship upon any individual, company, firm, association, corporation, or other business entity in passing such an Ordinance;

NOW, THEREFORE, be it ordained and enacted by the Board of Supervisors of the Township of Brush Creek, Fulton County, Pennsylvania, pursuant to the authority granted to it under Pennsylvania's Second Class Township Code, and in particular 53 P.S. Sections 66506, 66516, and 66601(a), and it is hereby ordained and enacted by authority of the same:

SECTION 1: TITLE

This Ordinance shall be known as the Solar Energy System Ordinance for Brush Creek Township.

SECTION 2: PURPOSE

The purpose of the Ordinance is to provide requirements for the construction, operation, and decommissioning of Solar Energy Systems in Brush Creek Township, subject to reasonable conditions that will protect the public health, safety, and welfare.

SECTION 3 -DEFINITIONS

The following terms and phrases as used in this Ordinance shall have the meaning subscribed to them as set forth herein:

ACCESSORY SOLAR ENERGY SYSTEM: An area of land or other area used for a solar collection system used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for on-site use. An accessory solar energy system consists of one (1) or more free-standing ground, or roof mounted solar arrays or modules, or solar related equipment and is intended to primarily reduce on-site consumption of utility power or fuels.

GLARE: The effect produced by light with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

PERSON: Any natural person, corporate entity, business entity, or association of persons or entities.

PRINCIPAL SOLAR ENERGY SYSTEM: An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for off-site use. Principal solar energy systems consist of one (1) or more free-standing ground, or roof mounted solar collector devices, solar related equipment and other accessory structures and buildings including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures.

SOLAR EASEMENT: A solar easement means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

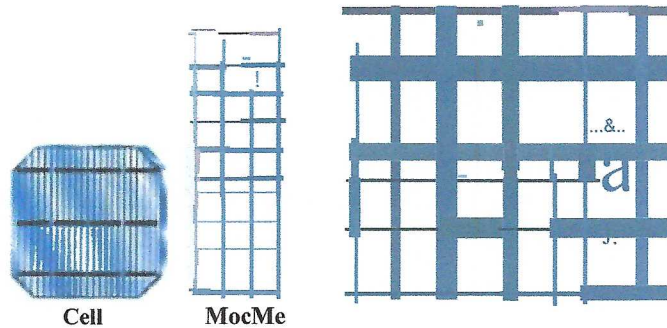
SOLAR ENERGY: Radiant energy (direct, diffuse and/or reflective) received from the sun.

SOLAR PANEL: That part or portion of a solar energy system containing one or more receptive cells or modules, the purpose of which is to convert solar energy for use in space heating or cooling, for water heating and/or for electricity.

SOLAR RELATED EQUIPMENT: Items including a solar photovoltaic cell, module, panel, or array, or solar hot air or water collector device panels, lines, pumps, batteries, mounting brackets, framing and possibly foundations or other structures used for or intended to be used for collection of solar energy.

1. **SOLAR ARRAY:** A grouping of multiple solar modules with purpose of harvesting solar energy.
2. **SOLAR CELL:** The smallest basic solar electric device which generates electricity when exposed to light.
3. **SOLAR MODULE:** A grouping of solar cells with the purpose of harvesting solar energy.

TOWNSHIP: The Township of Brush Creek, Fulton County, Pennsylvania.



SECTION 3 -ACCESSORY SOLAR ENERGY SYSTEMS ASES)

A. Regulations Applicable to All Accessory Solar Energy Systems:

1. ASES shall be permitted in the Township, provided that a person desiring to construct and use ASES shall first obtain a permit from the Township and pay its applicable administrative fee for issuance of the same, which fee may be established by the Township by Resolution and amended thereafter by subsequent Resolution as determined necessary by the Board of Supervisors, unless such ASES are exempt herefrom as more fully set forth in Section 3, Paragraph A (2) below.

2. Exemptions

ASES constructed prior to the effective date of this Ordinance or which do not encompass greater than one-fourth (0.25) of an acre in size shall not be required to meet the terms and conditions of this Ordinance. Any physical modification to an existing ASES whether or not existing prior to the effective date of this Section that materially alters the ASES shall require approval under this Ordinance. Routine maintenance or like-kind replacements do not require a permit.

3. The ASES layout, design, installation, and ongoing maintenance shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), Florida Solar Energy Center (FSEC) or other similar certifying organizations, and shall comply with the PA Uniform Construction Code and its supporting regulations, as amended, and with all other applicable Federal, State, and local laws and regulations. The manufacturer specifications for the key components of the system shall be submitted as part of the application. Upon completion of installation, the ASES shall be maintained in good working order in accordance with standards established by any applicable Federal, State, or local law, rule, or regulation, as amended. Failure of the property owner to

maintain the ASES in good working order is grounds for appropriate enforcement actions by the Township.

4. ASES installers must certify that they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP-approved installer by meeting or exceeding one of the following requirements:
 - a. Is certified by the North American Board of Certified Energy Practitioners (NABCEP).
 - b. Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited PV training program or a PV manufacturer's training program and successfully installed a minimum of three PV systems.
 - c. For residential applications, a registered home improvement contractor with the Pennsylvania Attorney General's office.
5. All on-site utility, transmission lines, and plumbing associated with any ASES shall be placed underground to the extent feasible.
6. The owner of an ASES shall provide the Township with written confirmation that the public utility company to which the ASES will be connected has been informed of the customer's intent to install a grid connected system and approved of such connection. Off-grid systems shall be exempt from this requirement.
7. The display of advertising is prohibited except for reasonable identification of the manufacturer of the system.
8. Glare
 - a. All ASES shall be placed such that concentrated solar radiation or glare does not project onto nearby structures or roadways.
 - b. The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
9. Solar Easements
 - a. Where an applicable subdivision or land development involves the use of solar energy systems, solar easements may be provided. Said easements shall be in writing, and shall be subject to the same conveyance and instrument recording requirements as other easements.
 - b. Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating solar easement shall include but not be limited to:

- i. A description of the dimensions of the easement including vertical and horizontal angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed;
 - ii. Restrictions on the placement of vegetation, structures, and other objects which may impair or obstruct the passage of sunlight through the easement;
 - iii. Enumerate terms and conditions, if any, under which the easement may be revised or terminated;
 - 1v. Explain the compensation for the owner of the real property subject to the solar easement for maintaining the easement and for the owner of the real property benefiting from the solar easement in the event of interference with the easement.
 - c. If required, an ASES owner and/or operator must obtain any solar easements necessary to guarantee unobstructed solar access by separate civil agreement(s) with adjacent property owner(s).
10. Prior to the issuance of a permit by the Township, applicants must acknowledge in writing that the issuing of said permit for a solar energy system shall not and does not create in the property owner, its, his, her or their successors and assigns in title or, create in the property itself : (a) the right to remain free of shadows and/or obstructions to solar energy caused by development of adjoining or other property or the growth of any trees or vegetation on such property; or (b) the right to prohibit the development on or growth of any trees or vegetation on such property.

11. Decommissioning

- a. Before a permit may be approved and/or issued to an ASES Owner and/or Operator, the said Facility Owner and/or Operator must submit to the Township financial security (which shall be in addition to any other financial security required pursuant to any applicable Subdivision and Land Development Ordinance) which shall be deposited with the Township in an amount sufficient to cover the costs of decommissioning all improvements or common amenities including, but not limited to, the solar panels and any base and footing, storm water detention and/or retention basins and other related drainage facilities, and electrical apparatus and restoration of the land to its original condition including forestry plantings of the same type and density as the original.
 1. Such financial security shall be in the form of a bond, satisfactory in form to the Township Solicitor whose review of same shall be reimbursed to the Township by the Facility Owner and/or Operation, and posted with a bonding company chosen by the party posting the financial security, provided said bonding company is authorized to

conduct such business with the Commonwealth.

- a. Such bond shall provide for and secure to the Township the decommissioning of any improvements.
- b. The amount of the bond to be posted for the decommissioning of any improvements shall be equal to One Hundred and Ten (110%) Percent of the estimated cost thereof. The Township may adjust the required amount of the bond by Resolution every three (3) years. Subsequent to said adjustment, the Township may require the ASES Owner and/or Operator to post additional security in the form of an increased bond in order to assure that the financial security equals said One Hundred Ten (110%) Percent. Any additional security shall be posted by the ASES Owner and/or Operator in accordance with this subsection, and any additional review of any future bond form by the Township's Solicitor shall be reimbursed by the ASES Owner and/or Operator to the Township.
- c. The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by the ASES Owner and/or Operator and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the ASES Owner and/or Operator or developer and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Township and the ASES Owner and/or Operator. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the ASES Owner and/or Operator.
- d. As the work of decommissioning of any improvements proceeds, the party posting the bond may request the governing body to release, or authorize the release, from time to time, such portions of the bond(s) necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Supervisors and the Board of Supervisors shall request the Township engineer to certify, in writing, to the Board of Supervisors that such portion of the decommissioning of any

improvements has been completed. Upon such certification, the Board of Supervisors shall authorize release by the bonding company of an amount as estimated by the Township engineer fairly representing the value of the decommissioning of any improvements.

- e. The owner of any participating property which is subject to decommissioning shall be given the option to keep the road(s) created on such owner's property by or in connection with construction of any ASES.
 - f. When the ASES Owner and/or Operator has completed the decommissioning of all improvements, such Owner and/or Operator shall notify the Board of Supervisors, in writing, by certified or registered mail, of the completion of the aforesaid decommissioning of all improvements and shall send a copy thereof to the municipal engineer. The Board of Supervisors shall direct and authorize the Township engineer to inspect the site. The Township engineer shall indicate to the Township approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township engineer, said report shall contain a statement of reasons for such non-approval or rejection.
 - g. The Board of Supervisors shall notify the ASES Owner and/or Operator as to the Township Engineer's acceptance or rejection of the decommissioning. If the decommissioning is acceptable, the Township shall release the bond. If the decommissioning is not acceptable, the ASES Owner and/or Operator shall, within thirty (30) days of notice by the Township of the deficiencies, correct the same and in the event the said deficiencies are not so corrected within the said time period, or in the event the decommissioning is not commenced, the Township may utilize the bond to accomplish the same as set forth herein.
 - h. If the components of the Facility being decommissioned are disposed of by the ASES Owner and/or Operator, such disposal shall be in accordance with all applicable Federal, state, and local laws, rules, and regulations.
- b. In the event that any decommissioning of improvements which are required have not been completed as provided in this ordinance and permit, the Board of Supervisors of the Township is hereby granted the power to

enforce any corporate bond by appropriate legal and equitable remedies. If proceeds of such bond are insufficient to pay the cost of decommissioning of improvements covered by said security, the Board of Supervisors of the Township may, at its option, proceed with decommissioning of all improvements and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements.

- c. The ASES Owner and/or Operator shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of decommissioning of improvements, including review of any plans, documents, or materials by the Township's engineer and/or Solicitor in connection therewith, as well as view of the site, if necessary. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township engineer or consultant for work performed for similar services performed for the Township, as well as any attorney's fees incurred by the Township in connection therewith.
- d. Where herein reference is made to the municipal engineer, said engineer shall be a duly registered professional engineer employed by the Township or engaged as a consultant thereto.
- e. Each ASES and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by system owner and/or operator, or upon termination of the useful life of same.
- f. The ASES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months.
- g. The ASES owner shall, at the request of the Township provide information concerning the amount of energy generated by the ASES in the last 12 months.

12. Permit Requirements

- a. ASES permit applications shall document compliance with this Section and Section 12 above and shall be accompanied by drawings showing the location of the system on the building or property, including property lines. Permits must be kept on the premises where the ASES is constructed.
- b. The ASES permit shall be revoked if the ASES, whether new or pre-existing, is moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the ASES not to be in conformity with this Ordinance.

- c. ASES shall comply with the Township subdivision and land development requirements. The installation of ASES shall be in compliance with all other applicable Federal, State, and local laws, rules, codes, and regulations.
- d. The ASES owner and/or operator shall repair, maintain and replace the ASES and related solar equipment during the term of the permit in a manner consistent with industry standards as needed to keep the ASES in good repair and operating condition. The ASES must also be properly maintained and kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare. In the event of a violation of any of the foregoing provisions, the Township shall give written notice to the ASES owner and/or operator specifying the violation to the owner and/or operator of the ASES and permitting thirty (30) days for the ASES to conform to the law or to remove the ASES.

B. Roof Mounted and Wall Mounted Accessory Solar Energy Systems:

- 1. A roof mounted or wall mounted ASES may be located on a principal or accessory building.
- 2. ASES mounted on roofs or walls of any building shall be subject to any applicable Airport Hazard Zoning Ordinance or similar Ordinance so as not to provide any obstruction to any flight into or out of any airport within a 10-mile radius of the ASES.
- 3. Solar panels shall not extend beyond any portion of the roof edge.
- 4. Roof mounted solar panels shall be located only on rear or side-facing roofs as viewed from any adjacent street unless the applicant demonstrates that, due to solar access limitations, no location exists other than the street-facing roof, where the solar energy system can perform effectively.
- 5. For roof and wall mounted systems, the applicant shall provide evidence that the plans comply with the Uniform Construction Code and adopted building code of the Township that the roof or wall is capable of holding the load imposed on the structure.

C. Ground Mounted Accessory Solar Energy Systems:

1. Setbacks

- a. The minimum setbacks from front, side, and rear property lines shall be those which comply with the Brush Creek Township Subdivision and Land Development Ordinance. The minimum setback for any ground-mounted ASES from any public highway shall be fifty (50) feet as measured from the base thereof.

2. Coverage

- a. Regardless of the mounted angle of any solar panels, all ground mounted ASES shall be considered impervious and calculated in the lot coverage of the lot on which the system is located.
- b. The applicant shall submit a Stormwater Management Plan that demonstrates compliance by the ground-mounted ASES with any applicable municipal stormwater management regulations.

3. Screening

- a. Ground mounted ASES shall be screened from any adjacent property that is a residence. The screen shall consist of plant materials which provide a visual screen. In lieu of a planting screen, a decorative fence may be used.

4. Appropriate safety/warning signage concerning voltage shall be placed at ground mounted electrical devices, equipment, and structures. All electrical control devices associated with the ASES shall be locked to prevent unauthorized access or entry.

5. Ground-mounted ASES shall not be placed within any legal easement or right of-way location, or be placed within any storm water conveyance system or in any other manner that would alter or impede storm water runoff from collecting in a constructed storm water conveyance system.

SECTION 4- PRINCIPAL SOLAR ENERGY SYSTEMS (PSES)

A. Regulations Applicable to All Principal Solar Energy Systems:

1. PSES shall be permitted in the Township, provided that a person desiring to construct and use PSES shall first obtain a permit from the Township and pay its applicable administrative fee for issuance of the same, which fee may be established by the Township by Resolution and amended thereafter by subsequent Resolution as determined necessary by the Board of Supervisors, unless such PSES are exempt herefrom as more fully set forth in Section 3, Paragraph A (2) below.

2. Exemptions

- a. PSES constructed prior to the effective date of this Ordinance or which as constructed are a quarter (0.25) of any acre or less in size shall not be required to meet the terms and conditions of this Ordinance. Any physical modification to an existing PSES, whether or not existing prior to the effective date of this Ordinance that materially alters the PSES shall require approval under this Ordinance. Routine maintenance or like-kind replacements do not require a permit.
3. The PSES layout, design and installation shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM),), Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), Florida Solar Energy Center (FSEC) or other similar certifying organizations, and shall comply with the PA Uniform Construction Code as enforced by the Township and with all other applicable fire and safety requirements. The manufacturer specifications for the key components of the system shall be submitted as part of the application.
4. PSES installers must demonstrate they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP approved installer by meeting or exceeding one of the following requirements:
 - a. Is certified by the North American Board of Certified Energy Practitioners (NABCEP).
 - b. Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited PV training program or a PV manufacturer's training program and successfully installed a minimum of three PV systems.
5. All on-site transmission and plumbing lines shall be placed underground to the extent feasible.
6. The owner of a PSES shall provide the Township with written confirmation that the public utility company to which the PSES will be connected has been informed of the customer's intent to install a grid connected system and approved of such connection.
7. No portion of the PSES shall contain or be used to display advertising. The manufacturer's name and equipment information or indication of ownership shall be allowed on any equipment of the PSES provided they comply with the prevailing sign regulations.

8. Glare

- a. All PSES shall be placed such that concentrated solar radiation or glare does not project onto nearby structures or roadways.
- b. The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.

9. A noise study will be performed and included in the application. The noise study will be performed by an independent noise study expert and paid for by the applicant. Noise from a PSES shall not exceed 60 dBA as measured at the property line, excluding noise caused or contributed to by natural sources thereof such as wind, rain, hail, flowing water, or otherwise.

10. No trees or other landscaping otherwise required by the municipal ordinances or attached as a condition of approval of any plan, application, or permit may be removed for the installation or operation of a PSES.

11. The PSES owner and/or operator shall maintain a phone number and identify a person responsible for the public to contact with inquiries and complaints throughout the life of the project and provide this number and name to the Borough/Township. The PSES owner and/or operator shall make reasonable efforts to respond to the public's inquiries and complaints.

12. Decommissioning

- a. Before a permit may be approved and/or issued to an PSES Owner and/or Operator, the said Facility Owner and/or Operator must submit to the Township financial security (which shall be in addition to any other financial security required pursuant to the Township's Subdivision and Land Development Ordinance) which shall be deposited with the Township in an amount sufficient to cover the costs of decommissioning all improvements or common amenities including, but not limited to, the solar panels and any base and footing, storm water detention and/or retention basins and other related drainage facilities, and electrical apparatus and restoration of the land to its original condition including forestry plantings of the same type and density as the original.

1. Such financial security shall be in the form of a bond, acceptable in form to the Township's Solicitor, posted with a bonding company chosen by the party posting the financial security, provided said bonding company is authorized to conduct such business with the Commonwealth.

- a. Such bond shall provide for and secure to the public the decommissioning of any improvements.

- b. The amount of the bond to be posted for the decommissioning of any improvements shall be equal to One Hundred and Ten (110%) Percent of the estimated cost. The Township may adjust the required amount of the bond by Resolution every three (3) years. Subsequent to said adjustment, the Township may require the PSES Owner and/or Operator to post additional security in the form of an increased bond in order to assure that the financial security equals said One Hundred Ten (110%) Percent. Any additional security shall be posted by the PSES Owner and/or Operator in accordance with this subsection.

- c. The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by the PSES Owner and/or Operator and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the PSES Owner and/or Operator and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Township and the PSES Owner and/or Operator. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the PSES Owner and/or Operator.

- d. As the work of decommissioning of any improvements proceeds, the party posting the bond may request the governing body to release, or authorize the release, from time to time, such portions of the bond(s) necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Supervisors and the Board of Supervisors shall request the Township engineer to certify, in writing, to the Board of Supervisors that such portion of the decommissioning of any improvements has been completed. Upon such certification, the Board of Supervisors shall authorize release by the bonding company of an amount as estimated by the Township engineer fairly representing the value of the decommissioning of any improvements.

- e. The owner of any participating property which is subject to decommissioning shall be given the option to keep the road(s) created on such owner's property by or in connection with construction of any PSES.

- f. When the PSES Owner and/or Operator has completed the decommissioning of all improvements, such Owner and/or Operator shall notify the Board of Supervisors, in writing, by certified or registered mail, of the completion of the aforesaid decommissioning of all improvements and shall send a copy thereof to the municipal engineer. The Board of Supervisors shall direct and authorize the Township engineer to inspect the site. The Township engineer shall indicate to the Township approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township engineer, said report shall contain a statement of reasons for such non-approval or rejection.
 - g. The Board of Supervisors shall notify the PSES Owner and/or Operator as to the Township Engineer's acceptance or rejection of the decommissioning. If the decommissioning is acceptable, the Township shall release the bond. If the decommissioning is not acceptable, the PSES Owner and/or Operator shall, within thirty (30) days of notice by the Township of the deficiencies, correct the same and in the event the said deficiencies are not so corrected within the said time period, or in the event the decommissioning is not commenced, the Township may utilize the bond to accomplish the same as set forth herein.
- b. In the event that any decommissioning of improvements which are required have not been completed as provided in this ordinance and permit, the Board of Supervisors of the Township is hereby granted the power to enforce any corporate bond by appropriate legal and equitable remedies. If proceeds of such bond are insufficient to pay the cost of decommissioning of improvements covered by said security, the Board of Supervisors of the Township may, at its option, proceed with of decommissioning of all improvements and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements.
- c. The PSES Owner and/or Operator shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of decommissioning of improvements, including review of any plans, documents, or materials by the Township's engineer and/or Solicitor in connection therewith. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township engineer or consultant for work performed for similar services performed for the Township, as well as any attorney's fees incurred by the Township in connection therewith.

- d. Where herein reference is made to the municipal engineer, said engineer shall be a duly registered professional engineer employed by the Township or engaged as a consultant thereto.
- e. Each PSES and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by system owner and/or operator, or upon termination of the useful life of same.
- f. The PSES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months.
- g. The PSES owner shall, at the request of the Township provide information concerning the amount of energy generated by the PSES in the last 12 months.

13. Solar Easements

- a. Where a subdivision or land development proposes a PSES, solar easements may be provided. Said easements shall be in writing, and shall be subject to the same conveyance and instrument recording requirements as other easements.
- b. Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating solar easement shall include but not be limited to:
 - c. A description of the dimensions of the easement including vertical and horizontal angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed;
 - d. Restrictions on the placement of vegetation, structures, and other objects which may impair or obstruct the passage of sunlight through the easement;
 - e. Enumerate terms and conditions, if any, under which the easement may be revised or terminated;
- f. Explain the compensation for the owner of the real property subject to the solar easement for maintaining the easement and for the owner of the real property benefiting from the solar easement in the event of interference with the easement.
- g. If necessary, a PSES owner and/or operator must obtain any solar easements necessary to guarantee unobstructed solar access by separate civil agreement(s) with adjacent property owner(s).

14. Permit Requirements

- a. PSES permit applications shall document compliance with this Section and shall be accompanied by drawings showing the location of the system on the building or property, including property lines. Permits must be kept on the premises where the PSES is constructed.
- b. A PSES permit shall be revoked if the PSES, whether new or pre-existing, is moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the PSES not to be in conformity with this Ordinance.
- c. PSES shall comply with the Brush Creek Township Subdivision and Land Development requirements. The installation of PSES shall be in compliance with all other applicable Federal, State, and local laws, rules, codes, and regulations.
- d. The PSES owner and/or operator shall repair, maintain and replace the PSES and related solar equipment during the term of the permit in a manner consistent with industry standards as needed to keep the PSES in good repair and operating condition. The PSES must also be properly maintained and kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare. In the event of a violation of any of the foregoing provisions, the Township shall give written notice to the PSES owner and/or operator specifying the violation to the owner and/or operator of the PSES and permitting thirty (30) days for the PSES to conform to the law or to remove the PSES.

B. Ground Mounted Principal Solar Energy Systems:

1. Setbacks

- a. The minimum setbacks from front, side, and rear property lines shall be those which comply with the Township's Subdivision and Land Development Ordinance. The minimum setback for any ground-mounted PSES from any public highway shall be fifty (50) feet as measured from the base thereof.

2. Coverage

- a. Regardless of the mounted angle of any solar panels, all ground mounted PSES shall be considered impervious and calculated in the lot coverage of the lot on which the system is located.
- b. The applicant shall submit a Stormwater Management Plan that demonstrates compliance by the ground-mounted PSES with any applicable municipal stormwater management regulations.

3. Screening

a. Ground mounted PSES shall be screened from any adjacent property that is a residence. The screen shall consist of plant materials which provide a visual screen. In lieu of a planting screen, a decorative fence may be used.

4. Appropriate safety/warning signage concerning voltage shall be placed at ground mounted electrical devices, equipment, and structures. All electrical control devices associated with the PSES shall be locked to prevent unauthorized access or entry.

5. Ground-mounted PSES shall not be placed within any legal easement or right-of way location, or be placed within any storm water conveyance system or in any other manner that would alter or impede storm water runoff from collecting in a constructed storm water conveyance system.

6. Security

a. All ground-mounted PSES shall be completely enclosed by a minimum eight (8) foot high fence with a self-locking gate.

b. A clearly visible warning sign shall be placed at the base of all pad-mounted transformers and substations and on the fence on the surrounding the PSES informing individuals of potential voltage hazards.

7. Access

a. At a minimum, a 25-foot wide access road must be provided from a state or Township roadway into the site and a cui de sac built on-site sufficient in size to permit large and emergency vehicles to turn around and exit the same. To the extent that the Township's Subdivision and Land Development Ordinance provides dimensions or size of turning radius for a cui de sac in any land development, such dimensions or size as used therein shall control here.

b. Access to the PSES shall comply with the municipal access requirements in the Township's Subdivision and Land Development Ordinance.

8. The ground mounted PSES shall not be artificially lighted except to the extent required for safety or applicable federal, state, or local authority.

9. If a ground mounted PSES is removed, any earth disturbance resulting from the removal must be graded and reseeded.

C. Roof and Wall Mounted Principal Solar Energy Systems:

1. For roof and wall mounted systems, the applicant shall provide evidence that the plans comply with the Uniform Construction Code and adopted building code of the Township that the roof or wall is capable of holding the load imposed on the structure.

2. PSES mounted on roofs or walls of any building shall be subject to any applicable Airport Hazard Zoning Ordinance or similar Ordinance so as not to provide any obstruction to any flight into or out of any airport within a 10-mile radius of the PSES.
3. Solar panels shall not extend beyond any portion of the roof edge.
4. Roof mounted solar panels shall be located only on rear or side-facing roofs as viewed from any adjacent street unless the applicant demonstrates that, due to solar access limitations, no location exists other than the street-facing roof, where the solar energy system can perform effectively.
5. For roof and wall mounted systems, the applicant shall provide evidence that the plans comply with the Uniform Construction Code and adopted building code of the Township that the roof or wall is capable of holding the load imposed on the structure.

SECTION 5: REMEDIES

1. It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of the ordinance, or any permit issued under the ordinance, or cause another to violate or fail to comply, or to take any action which is contrary to the terms of the ordinance or any permit issued under the ordinance.
2. If the Township determines that a violation of the Ordinance or the permit has occurred, the Township shall provide written notice to any person, firm, or corporation alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, the Township and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiation shall be conducted within thirty (30) days of the notice of violation.
3. If after thirty (30) days from the date of the notice of violation the Township determines, in its discretion, that the parties have not resolved the alleged violation, the Township may institute civil enforcement proceedings or any other remedy at law or in equity, including but not limited to injunctive relief, to ensure compliance with the Ordinance or permit. In the event that civil enforcement proceedings are required to be instituted by the Township, any party determined to be in violation of this Ordinance and enjoined or required by Court Order to comply therewith shall reimburse the Township for all attorney's fees, costs, and expenses incurred in such litigation.

SECTION 6: ENFORCEMENT AND PENALTIES

1. Any person authorized by the Township may enforce the provisions of this Ordinance. The Township's Solicitor may institute summary proceedings to enforce this Ordinance without prior approval from the District Attorney. Any person found not be in compliance with this Ordinance or any part of portion hereof shall be responsible for all attorney's and expenses incurred by the Township in connection therewith. The Township may institute legal proceeds in equity to seek a court order requiring compliance with this Ordinance or prohibiting non-compliance, the costs of which and attorney's fees incurred by the Township in connection therewith shall be the responsibility of the person found to be in non-compliance with this Ordinance.
2. Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, by sentenced to pay a fine of One Thousand (\$1,000.00) Dollars plus the cost of prosecution, including but not limited to attorney's fees, and/or be sentenced to imprisonment for a term not to exceed ninety (90) days. Every day that a violation of this Ordinance continues shall constitute a separate and distinct offense which shall be subject to the aforesaid penalties.

SECTION 7: SEVERABILITY

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance.

SECTION 8: EFFECTIVE DATE

This Ordinance shall become effective within five (5) days of its passage.

ORDAINED AND ENACTED By the Board of Supervisors of Brush Creek Township this 23 day of May, 2023.


ATTEST:




Tina L. Crawford Secretary

BRUSH CREEK TOWNSHIP


BOARD OF SUPERVISORS



Robert E. Crawford, Chairman



David M. Whiteside, Supervisor



Delmas F. Bard, Supervisor