

**ORDINANCE NO. 02-24-25**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE VILLAGE OF CLAYTON BY REGULATING THE LOCATION, CONSTRUCTION AND USE OF SOLAR ENERGY SYSTEMS WITHIN THE VILLAGE OF CLAYTON AND WITHIN A MILE AND A HALF OF THE VILLAGE LIMITS OF THE VILLAGE OF CLAYTON**

**WHEREAS**, the Village of Clayton, Illinois has adopted in December 1987 an Ordinance establishing a Zoning Ordinance for the Village of Clayton, which has been amended from time to time; and

**WHEREAS**, the Village of Clayton Planning/Zoning Commission, after public hearing held and conducted in accordance with said Zoning Ordinance, has recommended to the Board of Trustees of the Village of Clayton, that said Zoning Ordinance be amended as hereinafter provided.

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Trustees of the Village of Clayton, Adams County, Illinois, as follows:

**SECTION 1. AMENDMENT:** That the Village of Clayton Zoning Ordinance be amended to include a new and additional Article, being Article, 15B, entitled Solar Energy Systems which shall read as follows:

**ARTICLE 15B  
SOLAR ENERGY SYSTEMS**

**Section 1. Purpose and Intent.** This Ordinance is intended to promote the safe and efficient construction, installation, and operation of Commercial Solar Energy Systems within the Village of Clayton, and where applicable to those areas within a mile and a half of the corporate limits of the Village of Clayton.

This Ordinance applies to newly constructed, installed, substantially modified, or relocated Commercial Solar Energy Systems after the effective date of this Ordinance. To the extent that the provisions of this Ordinance shall conflict with any other Ordinance as concerns the siting, use and operation of Commercial Solar Energy Systems, the provisions of this Ordinance shall apply and supersede those Ordinances.

**Section 2. Definitions**

- A. "Applicant" means the entity who submits to the Village an application for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to Applicant in this Ordinance shall include Applicant's successors-in-interest and assigns, which includes a Commercial Solar Energy Facility Permittee (as defined herein),
- B. "Commercial Operation Date" means the calendar date on which the Commercial Solar Energy Facility produces power for commercial sale, not including test power.
- C. "Commercial Solar Energy Facility" or "Commercial Solar Energy System" means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property.

- D. "Commercial Solar Energy Building Permit" means a permit necessary for the commencement of work performed toward the construction, erection or installation of an approved Commercial Solar Energy Facility, Substation, Supporting Facilities, or operations and maintenance building in connection with a Commercial Solar Energy Facility. A Commercial Solar Energy Building Permit may be issued by the Village after a Commercial Solar Energy Facility has obtained a Special Use Permit from the Village and the Village determines that all conditions, if any, have been satisfied that are imposed by the Special Use Permit. The Commercial Solar Energy Building Permit shall require the Applicant to deliver a written "Notice to Proceed" for the Commercial Solar Energy Facility to the Village prior to commencement of construction of the Commercial Solar Energy Facility. The term "commencement of construction", as used in this Ordinance, includes any site development work (e.g., demolition, grubbing, grading, excavation, road work, construction of Project-related structures and infrastructure improvements, etc.) regarding the Commercial Solar Energy Facility.
- E. "Commercial Solar Energy Facility Permittee" means an Applicant who applies for and receives a Special Use Permit under this Ordinance for the siting and operation of any Commercial Solar Energy Facility or Substation. All references to a Commercial Solar Energy Facility Permittee in this Ordinance shall include a Commercial Solar Energy Facility Permittee's successors-in-interest and assigns.
- F. "Financial Assurance" or "Financial Security" or "Decommission Security" means assurance from a credit worthy party, examples of which include a surety bond (e.g., performance and payment bond), trust instrument, cash escrow, or irrevocable letter of credit.
- G. "Notice to Proceed" means a written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a Commercial Solar Energy Facility and identifying the date on which the construction activities are scheduled to commence.
- H. "Nonparticipating property" means real property that is not a participating property. "Nonparticipating residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the Commercial Solar Energy Facility is filed with the Village.
- I. "Occupied community building" means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the Commercial Solar Energy Facility is filed with the Village: a school, place of worship, day care facility, public library, or community center.
- J. "Operator" means the person or entity responsible for the day-to-day operation and maintenance of a Commercial Solar Energy Facility, including any third-party subcontractors. The Operator must be a qualified solar power professional. All references to Operator in the Ordinance shall include Operator's successors-in-interest and assigns.

- K. "Owner" means the person or entity or entities with an equity interest in a Commercial Solar Energy Facility, including their respective successors-in-interest and assigns. The Owner does not mean (i) the property owner from whom land is leased for locating a Commercial Solar Energy Facility (unless the property owner has an equity interest in a Commercial Solar Energy Facility); or (ii) any person holding a security interest in a Commercial Solar Energy Facility solely to secure an extension of credit, or a person foreclosing on such security interest, provided that after foreclosure, such person seeks to sell a Commercial Solar Energy Facility at the earliest practicable date. This definition includes the definition of Facility Owner as defined in 55 ILCS 5/5-12020.
- L. "Participating property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a Commercial Solar Energy Facility or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a Commercial Solar Energy Facility or supporting facilities.
- M. "Participating residence" means a residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the Commercial Solar Energy Facility is filed with the Village.
- N. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in any state in the United States. Where a structural engineer is required to take some action under terms of this Ordinance, a Professional Engineer may serve as the structural engineer if he or she has the appropriate structural engineering certification.
- O. "Protected lands" means real property that is subject to a permanent conservation right consistent with the Real Property Conservation Rights Act or registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.
- P. "Public Conservation Lands" means land owned in fee title by County, state or federal agencies and managed specifically for conservation purposes, including but not limited to County, state and federal parks, state and federal wildlife management areas, state scientific and natural areas, and federal wildlife refuges and waterfowl protection areas. Public conservation lands do not include private lands upon which conservation easements have been sold to government agencies or non-profit conservation organizations. Public conservation lands also do not include private lands for which the owners have entered into contractual relationships with government or non-profit conservation organizations for conservation purposes.
- Q. "Special Use Permit" means a permit approved by the Village Board, after a public hearing, allowing a particular use at a specified location subject to compliance with certain specified special conditions as may be required by the Village Board.

- R. "Substation" means the apparatus that collects and connects the electrical collection system of the Commercial Solar Energy Facility and increases the voltage for connection with the utility's transmission lines.
- S. "Supporting Facilities" means the transmission lines, substations, access roads, storage containers, and equipment associated with the generation and storage of electricity by the Commercial Solar Energy Facility.

**Section 3.    Applicability**

- A. This Ordinance governs the siting of Commercial Solar Energy Facilities and Substations that generate electricity to be sold to wholesale or retail markets.

**Section 4.    Prohibition**

- A. No Commercial Solar Energy Facility or Substation governed by this Ordinance shall be constructed, erected, installed, or located within the Village or within a mile and a half of the corporate limits of the Village, unless prior siting approval has been obtained for each individual Commercial Solar Energy Facility or for a group of Commercial Solar Energy Facilities under a joint siting application pursuant to this Ordinance. No Commercial Solar Energy Facility shall be constructed in areas zoned R-1, R-2, R-3, B-1, or M-1.

**Section 5.    Special Use Permit Application**

Due to the unique nature and special requirements of Commercial Solar Energy Facilities and their potential impacts to adjoining properties and government services, commercial solar power facilities shall be required to submit and obtain approval on the following items, or any special conditions by the Village. The applicant shall submit ten (ten) copies of the Special Use Permit Application to the Village and at least one (1) copy in electronic format.

- A. To obtain siting approval, the Applicant must first submit a Special Use Permit application to the Village.
- B. The Special Use Permit application shall contain or be accompanied by the following information:
  - 1. A Commercial Solar Energy Facility Summary, including, to the extent available: (a) a general description of the project, including (i) its approximate overall name plate generating capacity, (ii) the potential equipment manufacturer(s), (iii) type(s) of solar panels, cells and modules, (iv) the number of solar panels, cells and modules, (v) the maximum height of the solar panels at full tilt, (vi) the number of Substations, (vii) a project site plan, project phasing plan and project construction timeline plan, and (viii) the general location of the project;

- and (b) a description of the Applicant, Owner and Operator, including their respective business structures;
2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, and documentation demonstrating land ownership or legal control of the property.
  3. A site plan for the Commercial Solar Energy Facility showing the planned location of solar panels, including legal descriptions for each site, Participating and Non-participating Residences, Occupied Community Buildings, parcel boundary lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), operations and maintenance buildings, electrical cabling to the Substation(s), ancillary equipment, third party transmission lines, the location of any wetlands, flood plain, drainage structures including surface ditches and subsurface drainage lines, underground mines, scenic and natural areas within one thousand five hundred (1,500) feet of the proposed Commercial Solar Energy Facility, and the layout of all structures within the geographical boundaries of any applicable setback.
  4. A proposed Decommissioning Plan for the Commercial Solar Energy Facility.
  5. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance.
  6. An Agricultural Impact Mitigation Agreement (AIMA) executed between the Applicant and the Illinois Department of Agriculture.
  7. The topographic map shall include the Commercial Solar Energy Facility site and the surrounding area.
  8. Any other information normally required by the Village as part of its permitting requirements for siting buildings or other structures.
  9. Waivers from the setback requirements executed by the occupied community building owners and/or the non-participating property owners bearing a file stamp from the County Recorder of Deeds Office confirming that the waiver was recorded against title to the affected real property.
  10. Results and recommendations from the Illinois Dept. of Natural Resources obtained through the Ecological Compliance Assessment Tool or a comparable successor tool.
  11. Results of any United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable United States Fish and Wildlife Service's solar wildlife guidelines.
  12. Information demonstrating that the Commercial Solar Energy Facility will avoid protected lands.

13. Any other information requested by the Village or the Village consultants that is necessary to evaluate the siting application and operation of the Commercial Solar Energy Facility and to demonstrate that the Commercial Solar Energy Facility meets each of the regulations in this Ordinance, including the Special Use Permit standards set forth below.
- C. Material changes to the application are not permitted once the notice of the public hearing has been published, unless requested or permitted by the Village; and
- D. The Applicant shall submit ten (10) copies of the Special Use Permit application to the Village, and at least one (1) copy in electronic format.

## **Section 6. Design and Installation**

### **A. Design Safety Certification**

1. Commercial Solar Energy Facilities shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), or an equivalent third party. All solar panels, cells and modules; solar panel mounts and racking, including any helical piles, ground screws, ballasts, or other anchoring systems shall be new equipment commercially available; no used or experimental equipment shall be used without the approval of a variance by the Village Board.
2. Following the granting of siting approval under this Ordinance, a structural engineer shall certify, as part of the Commercial Solar Energy Facility Building Permit application process, that the design of the Commercial Solar Energy Facility is within accepted professional standards, given local soil, subsurface and climate conditions.

### **B. Electrical Components**

All electrical components of the Commercial Solar Energy Facility shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

### **C. Height**

1. No component of a solar panel, cell or modules may exceed twenty (20) feet in height above the ground at full tilt.

### **D. Aesthetics and Lighting**

1. Vegetative Screening: A vegetative screen shall be provided for any part of the Commercial Solar Energy Facility that is visible to Non-participating Residence. The landscaping screen shall be located between the required fencing and the property line of the participating parcel upon which the facility sits. The vegetative screening shall include a continuous line of native evergreen foliage and/or native shrubs and/or native trees and/or any existing wooded area and/or plantings of tall native grasses and other native flowering plants.
  2. Lighting: If lighting is provided at the Commercial Solar Energy Facility, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
  3. Intra-project Power and Communication Lines: All power lines used to collect power and all communication lines shall be buried underground at a depth in accordance with the Agricultural Impact Mitigation Agreement until same reach the property line or a substation adjacent to the property line.
- E. Fencing
1. A fence of at least six (6) feet and not more than twenty-five (25) feet in height shall enclose and secure the Commercial Solar Energy Facility.
- F. Warnings
1. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.
  2. Visible, reflective, colored objects, such as flags, plastic sleeves, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground.
- G. Setback Requirements
1. The Commercial Solar Energy Facility shall be sited as follows, with setback distances measured from the nearest edge of any component of the facility:
    - a. Occupied Community Buildings and Dwellings on Nonparticipating Properties: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.
    - b. Nonparticipating Residences: one hundred fifty (150) feet to the nearest point on the outside wall of the structure.
    - c. Boundary Lines of Participating Property: None.
    - d. Boundary Lines of Nonparticipating Property: fifty (50) feet to the nearest point on the property line of the nonparticipating property.
    - e. Public Road Rights-of-Way: fifty (50) feet the nearest edge of the public road right-of-way.
  2. The setback requirements for Nonparticipating properties may be waived by the written consent of the owner(s) of each affected

Nonparticipating property.

The Applicant does not need to obtain a variance from the Village upon waiver by the property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded with the Recorder of Deeds of the Village.

H. Compliance with Additional Regulations

Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

I. Use of Public Roads

1. An Applicant proposing to use any County, municipality, township, or village road(s), for the purpose of transporting Commercial Solar Energy Facility or Substation parts and/or equipment for construction, operation, or maintenance of the Commercial Solar Energy Facility or Substation(s), shall:

- a. Identify all such public roads; and
- b. Obtain applicable weight and size permits from relevant government agencies prior to construction.

2. To the extent an Applicant must obtain a weight or size permit from the County, municipality, township or village, the Applicant shall:

- a. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
- b. Any proposed public roads that will be used for construction purposes shall be identified and approved in writing by the respective Road District Commissioner and the County Engineer prior to the granting of the Special Use Permit. Traffic for construction purposes shall be limited to these roads. All overweight and/or oversized loads to be transported on public roads may require a permit from the respective highway authority. Any road damage caused by the transport of the facility's equipment, the installation, maintenance, or removal, must be completely repaired to the reasonable satisfaction of the Road District Commissioner and the County Engineer. The Road District Commissioner and County Engineer may choose to require either remediation of road repair upon completion of the Community Solar Energy Facility or are authorized to collect fees for overweight and/or oversized load permits. Further, financial assurance in an amount to be fixed by the Road District Commissioner to ensure the Road District or the County that future repairs are completed to their reasonable satisfaction shall be provided. Applicant shall submit a draft form of said financial assurance with application for Special Use Permit.

- c. Enter into a road use agreement with the County and each



affected Road District that includes the following provisions, at a minimum:

- i. Project layout map;
- ii. Transportation impact analysis;
- iii. Pre-construction plans'
- iv. Project traffic map;
- v. Project scope of repairs;
- vi. Post-construction repairs;
- vii. Insurance;
- viii. Financial Security in forms and amounts acceptable to the Village;

The road use agreement shall require Applicant to be responsible for the reasonable cost of improving roads used to construct Commercial Solar Energy Facility and the reasonable cost of repairing roads used by the facility owner during construction of the Community Solar Energy Facility so that those roads are in a condition that is safe for the driving public after the completion of the Commercial Solar Energy Facility construction. Roadways improved in preparation for and during the construction of the Community Solar Energy Facility shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities.

3. All repairs and improvements to public roads and roadway appurtenances shall be subject to the prior approval of the Village before being made and shall also be subject to inspection and acceptance by the Village after such repairs and improvements are completed. The Village's Road use agreement, and any further agreements contemplated therein, regarding the maintenance and repair of public roads and highways, must be approved by the Village prior to the Board's approval of any Commercial Solar Energy Facility Building Permit applications related to the construction of the proposed Commercial Solar Energy Facility.

J. Site Assessment

To ensure that the subsurface conditions of the site will provide proper support for the Commercial Solar Energy Facility and soil restoration, the Applicant, at its expense, shall provide soil and geotechnical boring reports to the Village Engineer as part of its Commercial Solar Energy Facility Building Permit. The Applicant shall follow the guidelines for Conservation Practices Impact Mitigation submitted by the County Soil and Water Conservation District (or equivalent regulatory agency). Also, the Applicant shall submit grading plans for the proposed Substations for review and comment by the County Soil and Water Conservation District prior to the issuance of any Commercial Solar

Energy Facility Building Permit for the construction of said substations.

K. Noise Levels

Noise levels from Commercial Solar Energy Facilities shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant shall submit manufacturer's sound power level characteristics and other relevant data regarding noise characteristics necessary for a competent noise analysis. The Applicant, through the use of a qualified professional, shall appropriately demonstrate compliance with the applicable noise requirements in its Special Use Permit application.

L. Agricultural Impact Mitigation

Pursuant to 505 ILCS 147/15(a), the Applicant, at its expense, shall enter into an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture prior to any public hearing required before a siting decision on the Commercial Solar Energy Facility application. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must, at a minimum, be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture. The Applicant shall submit the executed Agricultural Impact Mitigation Agreement to the Village as part of the Special Use Permit application.

M. As-Built Map and Plans

Within sixty (60) calendar days of completion of construction of the Commercial Solar Energy Facility, the Applicant or Operator shall deliver "as-built" maps, site plan and engineering plans for the Commercial Solar Energy Facility that have been signed and stamped by a Professional Engineer and a licensed surveyor.

N. Engineer's Certificate

The Commercial Solar Energy Facility engineer's certificate shall be completed by a structural engineer registered in the State of Illinois or by a Professional Engineer with a certification from a structural engineer registered in the State of Illinois and shall certify that the specific soils and subsurface conditions at the site can support the apparatus, given local soil, subsurface and climate conditions. The Commercial Solar Energy Facility engineer's certificate shall be a public record and shall be submitted as part of the Special Use Permit application.

O. Terms and Conditions

- a. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)) and contained in the Special Use Permit Application shall be prepared and signed by an Illinois Professional Engineer (or structural engineer) for the relevant discipline.
  - b. The Village may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the Commercial Solar Energy Facility during and after construction and to

consult with the Village to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the Commercial Solar Energy Facility is performed in compliance with applicable electrical and building codes. The cost and fees so incurred by the Village in retaining said inspector or engineer shall be promptly reimbursed by the Applicant of the Commercial Solar Energy Facility.

- c. The Special Use Permit granted to the Applicant shall bind and inure to the benefit of the Applicant, its successors-in-interest and assigns. If any provision in this Ordinance, or conditions placed upon the operation of the Commercial Solar Energy Facility is held invalid, such invalidity shall not affect any other provision of this Ordinance that can be given effect without the invalid provision and, to this end, the provisions in this Ordinance are severable.
- d. The Applicant shall provide an executed road use agreement between the Applicant and the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation, to the Village showing approved entrances prior to the issuance of any Commercial Solar Energy Facility Building Permit.

## **Section 7. Operation**

### **A. Maintenance**

- 1. Annual Report. The Applicant must submit, on an annual basis on the anniversary date of the Special Use Permit application, an operation and maintenance report to the Village. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the Commercial Solar Energy Facility and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting and use of any public roads received by the Applicant concerning the Commercial Solar Energy Facility and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the Commercial Solar Energy Facility. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to Article XI (Remedies).
- 2. Re-Certification. Any physical modification to the Commercial Solar Energy Facility that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI (A)(1) of this Ordinance. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity identified in Design and Safety Certification section, paragraph 1, of this Ordinance to determine whether the physical modification requires re-certification.

- B. Coordination with Emergency Responders:
1. The Applicant shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), and any amendments to such documents, for the Commercial Solar Energy Facility so that the local law enforcement, fire protection district and rescue units, emergency medical service providers and emergency management service providers that have jurisdiction over each tower site may evaluate and coordinate their emergency response plans with the Applicant of the Commercial Solar Energy Facility.
  2. The Applicant, at its expense, shall provide annual training for, and the necessary equipment to, the Operator and local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the Commercial Solar Energy Facility.
  3. The Applicant and the Operator shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24-hour contact information (names, titles, email addresses, cell phone numbers) for the Applicant and the Operator and at least three (3) designated Commercial Solar Energy Facility representatives (a primary representative with two (2) alternate representatives, each of whom are on-call "24 hours per day / 7 days per week / 365 days per year"). Any change in the designated Commercial Solar Energy Facility representative or his/her contact information shall be promptly communicated to the Village. The content of the emergency response plan, including the 24-hour contact information, shall be reviewed and updated on an annually basis.
  4. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire / emergency laws and regulations.
- C. Water, Sewer, Materials Handling, Storage and Disposal
1. All solid wastes related to the construction, operation and maintenance of the Commercial Solar Energy Facility shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
  2. All hazardous materials related to the construction, operation and maintenance of the Commercial Solar Energy Facility shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.
  3. The Commercial Solar Energy Facility shall comply with existing septic and well regulations as required by the Village Health Department and the State of Illinois Department of Public Health.
- D. Signage
- Signage regulations are to be consistent with ANSI standards. A reasonably visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations, and at all entrances to the Commercial Solar Energy Facility.
- E. Drainage Systems
- The Applicant, at its expense, will repair, in a prompt and timely manner, all

waterways, drainage ditches, agricultural drainage systems, field tiles, or any other private and public infrastructure improvements damaged during construction, maintenance and operation phases of the Commercial Solar Energy Facility in accordance with the Agricultural Impact Mitigation Agreement.

**Section 8. Liability Insurance and Indemnification**

Commencing with the issuance of a Commercial Solar Energy Facility Building Permit, the Applicant shall maintain a current general comprehensive liability policy and automobile liability coverage covering bodily injury, death and illness, and property damage with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate; and, shall further maintain the above-stated lines of insurance from delivery of the Notice to Proceed by the Applicant for the Commercial Solar Energy Facility, in coverage amounts of at least Five Million Dollars (\$5,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate during the life of the Commercial Solar Energy Facility. The Applicant shall file the original certificate of insurance upon commencement of project construction prior to the issuance of a Commercial Solar Energy Facility Building Permit, corresponding policies and endorsements to be provided within sixty (60) days of issuance, and at each subsequent renewal, at least annually thereafter.

The Applicant shall defend, indemnify and hold harmless the Village and its officers, appointed and elected officials, employees, attorneys, engineers and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees relating to or arising out of the issuance of the Special Use Permit or the construction, operation, maintenance and removal of the Commercial Solar Energy Facility including, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence) or any acts or omissions of the Applicant, the Owner or the Operator under this Ordinance or the Special Use Permit, except to the extent any such claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities arise from the negligence or intentional acts of such Indemnified Parties. This general indemnification shall not be construed as limiting or qualifying the Village's other indemnification rights available under the law.

**Section 9. Decommissioning and Site Reclamation Plan Required**

Applicant (or Owner, if different from Applicant) must submit a Decommissioning Plan with cost estimation to the Village as part of the siting application and provide testimony supporting the calculation of costs provided in said plan during the public hearing on the application. Prior to receiving any building permit for the Commercial Solar energy Facility, the Applicant or Owner shall provide a Decommissioning Agreement and post the required Financial Assurances for the benefit of the Village. The Decommissioning Agreement and Financial Assurances shall comply with 55 ILCS 5/5-12020. Periodically, and as required by the Agricultural Impact Mitigation Agreement, the Owner must update the Decommissioning Plan, cost estimations and provide update Financial Assurances to the benefit of the Village.

**Section 10. Remedies**

- A. The Applicant's failure to materially comply with any of the provisions under the Special Use Permit, any conditions imposed on the project, and/ or failure to comply with any law or regulation shall be a default and shall be grounds for revocation of the Special Use Permit by the Village
- B. Prior to implementation of the applicable Village procedures for the resolution of default(s), the Village Board must first provide written notice to the Applicant and Operator, setting forth the alleged default(s) and provide an opportunity for the Applicant or the Operator to cure the default(s) within a thirty (30) calendar day period from the date of the notice. Should the Applicant commence the cure within that 30-day cure period, and diligently pursues a cure, then the Applicant shall receive an additional sixty (60) days to continue to pursue the cure before the Village pursues procedures for the resolution of default. If the default relates to a life safety issue or interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant or the Operator shall take all necessary and available commercial measures to immediately cure the default. If the Applicant or Operator cannot cure the default(s) or resolve the alleged default(s) within the cure period, then applicable Village ordinance provisions addressing the resolution of such default(s) shall govern.

**Section 11. Fee Schedule and Permitting Processes**

1. Application Fees

- a. Prior to processing any Application for a Commercial Solar Energy Facility, the Applicant must submit a certified check to the Village for the Application Fee equal to \$ 5000.00 per megawatt (mW) of proposed nameplate capacity, up to a maximum fee of \$ 100,000.00 These funds shall be placed in an FDIC insured account and will be used to cover the Village's cost incurred in processing the Application.
- b. Should the actual costs to the Village exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the Village within 15 days of receipt of a request from the Village. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to the Village.
- c. Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the Village rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the Village exist regarding the Commercial Solar Energy Facility, in which case any amounts owed to the Applicant shall be refunded within six months of the conclusion of the litigation, disputes or negotiations. An Applicant may request any unused Application Fee be applied toward the Building Permit Fees for the Facility.

2. Building Permit Fees

- a. Prior to the issuance of building permits, the Building Permit Applicant

must deposit a Building Permit Fee equating to \$ 3000.00 per megawatt (mW) of nameplate capacity. If the total nameplate capacity is less than 1 mW, the building permit fee shall be reduced pro rata.

3. All Costs to be Paid by Applicant or Owner
  - a. In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by the Village, including but not limited to, those costs associated with all offices, boards and commissions of the Village, and third-party costs incurred by the Village. This includes, but is not limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations.

### **Section 12. Hearing Facilitator**

The Village may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and the Village but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois. The Applicant shall reimburse the Village for the fees and costs charged by the facilitator.

### **HEARING FACTORS**

The Village may approve a Commercial Solar Energy Facility Special Use Permit application, if it finds the evidence complies with state and federal law and regulations, and with the standards of this zoning code including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.

- a. The establishment, maintenance or operation of the Commercial Solar Energy Facility will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
- b. The Commercial Solar Energy Facility will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
- c. The establishment of the Commercial Solar Energy Facility will not impede the normal and orderly development and improvement of the surrounding properties;
- d. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
- e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
- f. The proposed Commercial Solar Energy Facility is not contrary to the objectives of the current comprehensive plan of the Village (if any); and
- g. The Commercial Solar Energy Facility shall, in all other respects, conform to the applicable regulations of this Ordinance and the

zoning district in which it is located (if a zoning ordinance is in effect), except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the Village Board.

1. Special Use Permit Conditions and Restrictions. The Village Board may stipulate conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the Commercial Solar Energy Facility as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance.
2. Revocation.
  - a. In any case where a Special Use Permit has been approved for a Commercial Solar Energy Facility, the Applicant shall apply for a Commercial Solar Energy Facility Building Permit from the Village and all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within thirty-six (36) months from the date of the granting of the Special Use Permit. If the Applicant fails to apply for a Commercial Solar Energy Facility Building Permit from the Village and all other permits required by other government or regulatory agencies prior to construction and/or fails to commence and actively pursue construction of the Project within the thirty-six (36) month period, then without further action by the Village Board, the Special Use Permit authorizing the construction and operation of the Commercial Solar Energy Facility shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the Village Board, in its sole discretion, may extend the above thirty-six (36) month period by passage of an ordinance that amends the Special Use Permit.
  - b. The Special Use Permit shall be subject to revocation if the Applicant dissolves or ceases to do business, abandons the Commercial Solar Energy Facility or the Commercial Solar Energy Facility ceases to operate for more than twelve (12) consecutive months for any reason.
  - c. Subject to the provisions of Article XI (Remedies), a Special Use Permit may be revoked by the Village Board if the Commercial Solar Energy Facility is not constructed, installed and/or operated in substantial conformance with the Village-approved Project plans, the regulations of this Ordinance and the stipulated Special Use Permit conditions and restrictions.



3. Transferability; Owner or Commercial Solar Energy Facility Permittee. The Applicant shall provide written notification to the Village Board at least thirty (30) days prior to any change in ownership of a Commercial Solar Energy Facility of any such change in ownership. The phrase "change in ownership of a Commercial Solar Energy Facility" includes any kind of assignment, sale; lease, transfer or other conveyance of Village or any portion thereof. The Applicant or successors-in-interest or assignees of the Special Use Permit, as applicable, shall remain liable for compliance with all conditions, restrictions and obligations contained in the Special Use Permit, the provisions of this Ordinance and applicable, state, and federal laws.
4. Modification. Any modification of a Commercial Solar Energy Facility that alters or changes the essential character or operation of the Commercial Solar Energy Facility in a way not intended at the time the Special Use Permit was granted, or as subsequently amended, shall require a new Special Use Permit. The Applicant or authorized representative shall apply for an amended Special Use Permit prior to any modification of the Commercial Solar Energy Facility.
5. Permit Effective Date: The Special Use Permit shall become effective upon approval of the ordinance by the Village Board.

**Section 13. Interpretation**

The provisions of these regulations shall be held to the minimum requirements adopted for the promotion and preservation of public health, safety, and general welfare of the Village of Clayton. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the Village of Clayton nor conflict with any statutes of the State of Illinois.

**Section 14. Severability**

If any section, paragraph, clause, phrase, or part of this Ordinance is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations.

**Section 15. Effective Date**

This Ordinance shall be in full force and effect from and after its passage, publication and approval as required by law.

Ayes: 6

*Samuel C Miller*  
President

Nayes: 0

Attest: *Loretta E Carroll*  
Village Clerk

Published in pamphlet form this 11th day of June 2024.