

ORDINANCE NUMBER 23-O-164

AN ORDINANCE TO AMEND CHAPTER 31, UNIFIED DEVELOPMENT ORDINANCE OF THE CODE OF THE CITY OF SUFFOLK, ARTICLE 7, SUPPLEMENTAL USE REGULATIONS, SECTION 31-724, SOLAR ENERGY FACILITIES; OTA2023-008

WHEREAS, the City of Suffolk, Virginia has initiated the aforementioned amendments to Chapter 31, Unified Development Ordinance, for the purpose of updating and improving clarity and consistency due to a change in circumstance; and

WHEREAS, the specified amendments to the Unified Development Ordinance as shown in Exhibit "B" are in compliance with the 2035 Comprehensive Plan, as adopted; and

WHEREAS, the Planning Commission has made a recommendation as stated in Exhibit 'A'; and

WHEREAS, the procedural requirements for the consideration of this request by the Planning Commission have been met.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Suffolk, Virginia, that:

- Section 1. That Exhibit "B, Amendments to Chapter 31, Unified Development Ordinance, Article 7, Supplemental Use Regulations, Section 31-724, Solar Energy Facilities, of the Code of the City of Suffolk, Virginia" which is attached hereto, is hereby incorporated as part of this ordinance.
- Section 2. That Chapter 31, Unified Development Ordinance, Article 7, Supplemental Use Regulations, Section 31-724, Solar Energy Facilities, of the Code of the City of Suffolk, Virginia, 1998, is hereby amended to read as referenced in Exhibit "B," attached.
- Section 3. All phrases, clauses, sentences, paragraphs, subsections, sections and chapters of the Code not amended hereby remain in full force and effect. This ordinance shall be effective upon passage and shall not be published.

READ AND PASSED: DECEMBER 20, 2023

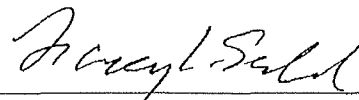
TESTE: 
Tracey L. Sanford, CMC, Deputy City Clerk

Exhibit "A"

RESOLUTION NO. 23-11-1

CITY OF SUFFOLK PLANNING COMMISSION
A RESOLUTION TO PRESENT A REPORT AND RECOMMENDATION
TO CITY COUNCIL RELATING TO
OTA2023-008
AN ORDINANCE TO AMEND CHAPTER 31, UNIFIED DEVELOPMENT ORDINANCE OF
THE CODE OF THE CITY OF SUFFOLK, ARTICLE 7, SUPPLEMENTAL USE
REGULATIONS, SECTION 31-724, SOLAR ENERGY FACILITIES

WHEREAS, the City of Suffolk, Virginia has initiated the aforementioned amendments to Chapter 31 of the Unified Development Ordinance for the purpose of updating and improving clarity and consistency due to a change in circumstance; and

WHEREAS, the specified amendments to the Unified Development Ordinance as shown in Exhibit "B" are in compliance with the 2035 Comprehensive Plan, as adopted; and

WHEREAS, the procedural requirements for the consideration of this request by the Planning Commission have been met.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Suffolk, Virginia, that:

Section 1. Findings.

The Suffolk Planning Commission finds that the proposed ordinance amendments are reasonable and warranted.

Section 2. Recommendation to City Council.

The Planning Commission recommends to the City Council of the City of Suffolk, Virginia that the proposed amendments be;

- a. Adopted as submitted without modification.
- b. Denied, and that Council not pass the proposed ordinance.
- c. Adopted with the modifications set forth on the attached listing of specific recommendations, and that Council adopt the proposed Ordinance with such modifications.

READ AND ADOPTED: November 21, 2023

TESTE: 

“Exhibit B”

**“Amendments to Chapter 31, Unified Development Ordinance, Article 7, Supplemental Use
Regulations, Section 31-724, Solar Energy Facilities of the Code of the City of Suffolk,
Virginia”**

SEC. 31-724. SOLAR ENERGY FACILITIES.**(a) PURPOSE.**

The purpose of this section is to ensure the compatibility of such uses with the land use and growth management policies of the most recent adopted comprehensive plan of the City of Suffolk, the purpose statements of the land use districts as prescribed in the plan, and purpose statements of the zoning districts wherein such uses are permitted. These regulations establish requirements for the siting, design, installation, and decommissioning of solar energy facility in order to safeguard public safety, health, and welfare; maintain the agricultural and forestal character of rural areas of the City; and minimize effects to natural, historic, and scenic resources, as well as adjacent residential uses.

(b) CONSISTENCY WITH COMPREHENSIVE PLAN.

(1) In accordance with Section 15.2-2232(A) of the Code of Virginia, the Planning Commission shall certify by its resolution recommending approval of any conditional use permit for a solar energy facility that the facility's general or approximate location, character, and extent is substantially in accord with the most recent adopted comprehensive plan of the City. A solar facility subject to Section 15.2-2232(A) may be deemed to be substantially in accord with the comprehensive plan if it meets the conditions of Section 15.2-2232(H) of the Code of Virginia. Unless otherwise directed by the City Council, a public hearing required or conducted by the Planning Commission for a substantial accord review of solar energy facilities shall be advertised and conducted concurrently with the public hearing for the conditional use permit.

(c) APPLICATION AND PROCEDURES.

(1) In addition to any general application and submission requirements, the applicant shall provide the following at the time of application for conditional use permit:

- A. A conceptual plan showing the proposed layout of solar panels and related equipment, transmission lines, structures, screening, landscaping, forested areas, access roads, easements, historic resources, critical areas, and natural and environmentally-sensitive features, including but not limited to water quality stream buffers, steep slopes, and wildlife corridors;
- B. A visual impact analysis shall be required depicting the facility as viewed from adjacent public roads and residential properties. The visual analysis shall contain such information as necessary to allow the City to reasonably evaluate the visual impacts of the solar facility from such roads and properties, and shall include, at a minimum, accurate, to-scale photographic simulations showing the visual relationship of the solar facility to its surroundings, both during construction and following ten (10) years of growth of required vegetative buffers, relative to the site currently. Photographic simulations shall not be required where existing vegetation or topography create a visual barrier of the facility from adjacent roads and properties, unless such features are to be demolished during site design. The analysis shall include any proposed mitigation, if necessary, so that the impacts of the solar facility on the visual character of the surrounding area, and on scenic and historic landscapes, viewsheds and vistas, are minimized during site design.

- C. An archaeological and/or architectural resource impact analysis, where a solar energy facility or any component thereof is proposed within five hundred (500) linear feet of a structure or site listed, or eligible for listing, on the National Register of Historic Places (NRHP). The archaeological and/or architectural resource impact analysis, as applicable, shall be submitted concurrently to the City and Virginia Department of Historic Resources (DHR) for review. The analysis shall include any proposed or recommended mitigation, as necessary, so that impacts of the solar facility on such historic resources are minimized.
- D. A transportation plan showing proposed vehicular entrances, parking areas, laydown yards, and construction traffic travel routes to the site from the closest arterial street. The plan shall identify all weight-restricted bridges, narrow road sections, sharp curves, steep grades, and similar road safety issues and hazards for expected construction traffic.
- E. A noise study demonstrating that typical audible sound from the solar energy facility shall not exceed the performance standards for noise for residential receiving properties lying adjacent to, or within five hundred (500) feet of any component of, such facility, in accordance with Section 31-608 (c)(8) and Table 608-1, as measured at the nearest property line, for any adjacent non-participating property owner.
- F. An estimated construction schedule covering the time period from the start of construction until final inspection by the City at the completion of construction.

(ad) DIMENSIONAL STANDARDS.

- (1) Ground-mounted solar energy facilities and systems shall meet the following dimensional standards:

| Facility Type | Minimum Lot Size | Minimum Setbacks | Maximum Height |
|-------------------------------|---|---|----------------|
| Accessory solar energy system | Underlying zoning district or 10,000 square feet whichever is greater | Underlying zoning district or 25 feet whichever is greater | 12 Feet |
| Solar energy facility | 5 Acres | <u>Adjacent to a public street: 150 feet</u> <u>Adjacent to a residential use or district: 100 feet</u> <u>Adjacent to other use or district: 50 Feet</u> | 25-15 Feet |

- (2) The total area of all solar energy facilities approved on parcels zoned Agricultural (A) shall not, in the aggregate, exceed one percent (1%) of the total land area in the City zoned Agricultural (A). For the purpose of administering this provision, the area of a

solar energy facility shall mean the total land area enclosed by the security fencing of such facility.

(b) INSTALLATION AND DESIGN.

- (1) The installation and design of any solar energy system or facility shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI) and American Society for Testing and Materials (ASTM), as applicable.
- (2) All electrical and mechanical components of any solar energy system or facility shall conform to relevant and applicable local, state, and national codes.
- (3) Any on-site transmission or power lines shall be placed underground.
- (4) Any proposed solar energy system or facility shall be designed and operated to prevent the direction of concentrated solar radiation or glare onto neighboring property, public roads or other areas accessible to the public.
- (5) A proposed solar energy facility shall be designed and operated to protect public safety, including the installation of perimeter security fencing and appropriate warning signs in compliance with all applicable sections of this ordinance.
- (6) Any solar energy facility shall be required to have a minimum 15-foot vegetated buffer or a 50-foot buffer where adjacent to a public road, or residential use or zoning district, in accordance with the following landscaping standards:
 - A. Where existing forest or vegetation surrounding the facility achieves the required visual screen as viewed from adjacent residential properties and public roads, the applicant shall preserve such forest or vegetation at the minimum widths prescribed herein in lieu of planting the required buffer. The City may require at its sole discretion that the applicant provide evidence or documentation of fee-simple ownership, lease, easement, agreement, or other legally binding arrangement acceptable to the City, ensuring that such buffers are not cleared or removed during the life of the solar energy facility by the landowner, owner, or operator, or any contractor or agent thereof.
 - B. In those instances where the existing natural vegetation and topography are insufficient to achieve a continuous opaque-screen visual buffer at the minimum widths prescribed herein, a planted-buffer sufficient landscaping shall be installed so that within two (2) years of planting the screening shall be complete as necessary to supplement such natural vegetation. If the plantings fails to provide achieve the required of visual screening of the solar energy facility by the end within of that time two (2) years following installation thereof, the City may require at its sole discretion the installation of additional screening measures, including but not limited to screening fabric or slats on the security fencing enclosing such facility, to ensure adequate visual screening of the facility and its components during the life of the solar energy facility. the solar farm developer shall be required to install a full height green heavy-duty, UV-stabilized, knitted polyethylene screening fabric on the portion of the fence not being completely screened.

BC. With the exception of any required planting, buffers shall remain undisturbed.

CD. Materials and ratios.

~~1(i).~~ Plant materials. Buffers shall contain a maximum of 25 percent of deciduous plant materials.

~~2(ii).~~ Planting for the entire length of the unvegetated buffer area shall provide:

~~a1.~~ ~~Plant material~~ Evergreen trees having a height of not less than 6 feet at the time of planting, ~~and~~ planted in a minimum of two rows, with staggered on-center spacing to provide a continuous visual barrier at the time of installation as viewed from adjacent roads and properties; or

~~b2.~~ A minimum of one row of evergreen screening trees spaced 8 feet on center, and 20 shrubs ~~planted a minimum of~~ spaced 5 feet on center in a minimum of two rows, per Appendix C; and

~~c.~~ For every 50 linear feet of unvegetated buffer area, ~~2 large canopy trees planted a minimum of 25 feet apart and 3 understory trees planted a minimum of 15 feet apart per Appendix C.~~

~~3(iii).~~ Alternate layouts that achieve the same degree of performance level in terms of buffering and screening may be approved by the Director.

~~(iv)~~ A landscape maintenance bond required by Section 31-603(c)(3) of the Ordinance for a solar energy facility shall be held for a period of 24 months following the date of Certificate of Occupancy issuance or final inspection by the City.

- (7) ~~Exterior lighting of large-scale ground-mounted solar photovoltaic installations~~ energy facilities shall be consistent with local, state and federal law. Freestanding and wall-mounted lighting of other parts of the installation on buildings and structures, such as accessory structures, shall be limited to that the minimum required for safety and operational purposes. Lighting fixtures shall protect the night sky by using full-cutoff fixtures that focus light downward to minimize off-site glare. No solar energy facility shall produce glare that would constitute a nuisance to the public during construction or general operation.
- (8) Solar energy facilities shall be designed and constructed in substantial compliance with the approved conceptual plan. Notwithstanding any provision of the Ordinance to the contrary, a conditional use permit issued for a solar energy facility shall be valid for a period of five (5) years, or such other time period as specified by the conditions of the permit, provided that Aa complete site plan application which substantially complies with the approved conceptual plan detailing all proposed changes to the property, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting and screening vegetation or structures shall be provided submitted for review prior to expiration of such time period.
- (9) A proposed solar energy facility shall not be located adjacent to, or within, the control zone of any airport.

(10) All accessory structures shall meet the setback requirements for principal structures in the applicable zoning district.

(11) The solar facility owner or operator shall conduct soil testing for any contaminants directly attributable to solar panels, racking systems, and related equipment prior to construction and every five (5) years following initial testing until such time as the facility is decommissioned or abandoned. The owner or operator must file an initial baseline report at the time of application for a site plan, and shall file subsequent reports, to the Director. Should a finding indicating contamination by one or more components of the solar energy facility occur, the owner or operator shall remedy the same to applicable state and/or federal standards within one (1) year or such other timeframe as prescribed by law.

(12) Notwithstanding any provision of the Ordinance to the contrary, the following areas shall be deemed unsuitable generally for the development of solar panels and equipment:

1. Critical areas, including jurisdictional wetlands delineated in the field as described and depicted in a wetland delineation report submitted at the time of application for a conditional use permit, and confirmed by a preliminary jurisdictional determination issued by the U.S. Army Corps of Engineers;
2. Water quality stream buffers;
3. Areas containing twenty (20) contiguous acres or more of mixed-species forest;
4. Steep slopes in excess of thirty percent (30%) unless proposed development and mitigation measures maintain or improve slope stability; and
5. Archaeologically, architecturally, and historically significant structures, sites, and places listed, or eligible for listing, on the National Register of Historic Places and Virginia Landmarks Register. Additional setbacks in excess of those in subsection (d)(1) of this section may be imposed by the City to mitigate the effects of a solar energy facility on such resources.

The design of solar energy facilities shall avoid impacts to such features, provided that access roads, tree clearing for shade management, and other construction activities which incidentally or reasonably cross or impact such areas while minimizing and mitigating impacts thereto to the extent feasible may be exempted from this provision by the Director.

(13) The owner or operator shall maintain the solar facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the equipment and structures, as applicable, and maintenance of the buffer areas and landscaping. Site access shall be maintained in accordance with applicable City standards. The owner and/or operator shall be responsible for the cost of maintaining the solar facility.

(e) DECOMMISSIONING OR ABANDONMENT.

(1) Solar energy facilities which have reached the end of their useful life, have not been in active and continuous service for a period of one year, or whose conditional use permit has been revoked by City Council, shall be removed at the owner's or operator's

expense within six (6) months of the expiration of such period, except if the facility is actively in the process of being repowered or a force majeure event has occurred requiring longer than six (6) months to make repairs. The City may require evidentiary support demonstrating that a longer repair period is necessary. The owner or operator shall notify the Director by certified mail of the proposed date of discontinued operations and plans for removal.

(2) Decommissioning of solar energy facilities shall include the following:

- A. Physical removal of all solar energy equipment, machinery, and structures from the property including, but not limited to, buildings, foundations, poles, pilings, racking systems, cabling, equipment shelters, security barriers, electrical components, access roads, and associated facilities.
- B. Decompanction of compacted soils, which shall be required unless otherwise agreed to by the owner or operator of the facility and the landowner.
- C. Grading, re-seeding, and revegetation of the property, as necessary, to restore it to its pre-existing condition, unless otherwise agreed to by the owner or operator of the solar energy facility and the landowner, subject to written request by the landowner and approval by the City Council.
- D. Proper disposal of all solid or hazardous materials and wastes from the property in accordance with local, state, and federal solid and hazardous waste disposal laws and regulations.
- E. Removal, grading, re-seeding, and revegetation of access roads on the property, and repairs to public roads attributable to solar facility traffic or operations. All areas disturbed for the construction of access roads shall be graded, re-seeded, and revegetated, unless the landowner requests in writing that such access roads not be removed, graded, or restored to their pre-existing condition, subject to approval by the City Council.

(3) A decommissioning plan shall be provided describing the removal of the solar energy facility and final land reclamation plan to be followed after the anticipated useful-life, or abandonment, or termination, of the projectsolar energy facility, including evidence of proposed commitments with affected parties (city, any lessor or property owner, etc.) that to ensure proper final reclamation of the property. Among other thingsIn addition to the activities described in subsection (2) above, revegetation and road repair activities should be addressed in the plan. the following shall be addressed in the plan:

- A. The anticipated life of the solar energy facility.
- B. The estimated decommissioning cost in current dollars, including a description regarding how the estimate was determined.
- C. The method for ensuring that adequate funds will be available for decommissioning the facility during and at the end of the anticipated life of the solar energy facility and that the estimated decommissioning cost will be kept current.

D. Identification of the party or parties responsible for decommissioning and how the City will be notified if changes are proposed in terms of solar energy facility ownership or the party operating the facility.

- (24) ~~In the event that no electricity is generated for a continuous period of twenty-four~~twelve (24/12) months, the solar energy facility ~~owner shall be deemed discontinued, and the owner and/or operator and/or property owner shall have three~~six (36) months to complete decommissioning of the facility, ~~or such other timeframe as agreed to in writing by the owner or operator and the City.~~
- (3) ~~Decommissioning shall include removal of all solar panels and support structures, buildings, cabling, electrical components, roads, and any other associated facilities.~~
- (4) ~~Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.~~
- (5) A performance agreement and surety, in a form approved by the city attorney and in an amount approved by the ~~director~~Director, shall be submitted by the applicant prior to the issuance of a building permit in order to ~~insure~~ensure removal of the solar energy facility when it is no longer to be used for solar energy generation.