

**Publication Notice for Ordinance 2022-487 adding Section 152.043, of Chapter 152, of Title XV of the Code of Ordinances for the Charter Township of Clayton, Solar Energy Ordinance, to Provide for the Regulation of the Installation and Operation of Solar Energy Systems**

The Charter Township of Clayton introduced and conducted a first reading of proposed Clayton Township Ordinance 2022-487 on May 11, 2023, at its regularly scheduled meeting at the Charter Township of Clayton Hall located at 2011 S. Morrish Road, Swartz Creek, Michigan 48473. Proposed Clayton Township Ordinance 2022-487 will amend Section 152.043, of Chapter 152, of Title XV of the Clayton Township Ordinances and will regulate the installation and operation of Solar Energy Systems constructed in the Charter Township of Clayton. The Clayton Township Board of Trustees conducted a second reading of, and adopted by majority vote, Ordinance 2022-487, at its regularly scheduled meeting on July 13, 2023, at the Clayton Township Hall located at 2011 S. Morrish Road, Swartz Creek, Michigan 48473. Clayton Township Ordinance 2022-487 will become effective thirty (30) days following final publication. A complete copy of Ordinance 2022-487 with all corresponding documents and a copy of all Clayton Township Ordinances can be obtained at the Clayton Township Hall located at 2011 S. Morrish Road, Swartz Creek, Michigan 48473 during regular business hours and at [www.claytontownship.org](http://www.claytontownship.org).

**CHARTER TOWNSHIP OF CLAYTON  
GENESEE COUNTY, MICHIGAN**

**ORDINANCE NO. 2022-487**

**AN ORDINANCE ADDING SECTION 152.043, OF CHAPTER 152, OF TITLE XV OF  
THE CODE OF ORDINANCES FOR THE CHARTER TOWNSHIP OF CLAYTON,  
SOLAR ENERGY ORDINANCE, TO PROVIDE FOR THE REGULATION OF THE  
INSTALLATION AND OPERATION OF SOLAR ENERGY SYSTEMS**

**THE CHARTER TOWNSHIP OF CLAYTON ORDAINS:**

As used in this Ordinance, Section 152.043, Solar Energy Systems Regulations, Chapter 152 of Title XV of the Code of Ordinances for the Charter Township of Clayton, shall be added to provide as follows:

**SECTION 1**

**PURPOSE**

The Charter Township of Clayton promotes the use of solar energy as a clean alternative energy source. Commercial and personal use of ground-mounted or structure-mounted solar energy systems will be permitted subject to the regulations set forth herein to protect the public health, safety, and welfare of the residents of Clayton Township.

**SECTION 2**

**DEFINITIONS**

1. Abandoned Solar Energy System – A residential or commercial solar energy system shall be deemed abandoned when the solar energy system ceases operations for a continuous period of 180 days.
2. Abandonment Hearing – A hearing conducted by the Clayton Township Planning Commission to determine if a commercial solar energy system has been abandoned pursuant to the terms set forth in Section (4)(q).
3. Annual License – An operating license that shall be renewed by the landowner, lessee of the land, and/or owner/operator of a commercial solar energy system no later than January 31<sup>st</sup> of each year.

4. Annual Production Report – A report prepared by the landowner, lessee of the land, and/or owner/operator of a commercial solar energy system and submitted to the Clayton Township Building Department no later than January 31<sup>st</sup> of each year indicating the percentage of the solar energy system that remains in use at the time of the report.
5. Building-Mounted Solar Energy System – Solar energy collector(s) attached to a structure on the roof, wall, or window of a structure. Building-mounted solar energy collectors shall include solar roofing shingles.
6. Commercial Solar Energy System – Commonly referred to as a “Solar Farm.” A utility scale or commercial operation facility of solar energy systems for the primary purpose of wholesale or retail sales of generated electricity.
7. Decommissioning Account – A decommissioning costs escrow account administered by the Charter Township of Clayton with funds deposited by the landowner, lessee of the land, and/or owner/operator of a commercial solar energy system to ensure the proper decommissioning of any abandoned commercial solar energy system.
8. Decommissioning Plan – A document submitted by the owner, and/or lessee of the property, and/or the owner of the commercial solar energy system containing a detailed plan to remove all surface and subsurface materials and equipment and restoring the property on which a commercial solar energy system is installed to its original natural state including an estimated cost for completion of the decommissioning plan.
9. Ground-Mounted Solar Energy System – Solar energy collector(s) not attached to a structure and separate from any building on the parcel of land where the solar collector is located.
10. Security Bond – An insurance bond or security financing to ensure adequate financing of the cost of decommissioning the site.
11. Solar Collector – A panel or panels or combination of devices or equipment, structure, that collect, store, distribute, or transforms solar, radiant energy into thermal, chemical, or electrical energy.
12. Solar Collector Racking System – Any structure or building material used to mount a solar collector or solar energy system.
13. Solar Energy – Direct, diffuse, and reflected radiant energy received from the sun.
14. Solar Energy System – A structure comprised of a solar collector and all other equipment that is designed to collect, distribute, or store solar energy for the purpose of generating electrical power for principal use on the land on which the solar energy system is located or for the sale and distribution of excess available electricity to an authorized public utility.

15. Solar Shingles – Any roofing product or roofing material manufactured and installed to collect solar energy and convert the solar energy into thermal, chemical, or electrical energy.

### **SECTION 3**

#### **REGULATIONS**

##### **1. All Solar Energy Systems**

- a. A building permit issued by the Clayton Township Building Department to the parcel owner, and/or lessee of the parcel, and/or the owner of a solar energy system shall be obtained as a requisite to the installation of any solar energy system in any Clayton Township zoning district.
- b. All solar energy systems shall be subject to a Special Conditional Use Permit and a solar energy system site plan and applicable fee pursuant to the Clayton Township Fee Schedule shall be submitted by the owner of any parcel, and/or the lessee of the parcel, and/or the owner of a solar energy system upon which a proposed solar energy system will be installed. All site plans shall be reviewed pursuant to the terms of Clayton Township Ordinances 152.150 through 152.152.
- c. A solar energy system shall comply with all industry standards, including, but not limited to, the standards set forth by the American National Standards Institute (ANSI).
- d. A solar energy system shall comply with all Clayton Township ordinances.
- e. A solar energy system shall comply with all applicable local, state, and federal building codes and shall require the approval of the Clayton Township Building Official.
- f. The installation and inspection of all solar energy systems shall only be performed by properly licensed and certified personnel that are in compliance with all local ordinances, and state and federal statutes and regulations.
- g. A solar collector racking system shall be constructed from material that is dull or dark in color, non-glossy, and non-reflective and shall not create a nuisance to adjacent properties.
- h. The installation of a solar energy system shall not alter the existing parcel topography except as pursuant to an approved site plan by the Charter Township of Clayton.

- i. A solar energy system shall be installed, maintained, and operated according to the strict directions of the manufacturer. A copy of the manufacturer's instructions on the installation and operation of the solar energy system shall be submitted to the Clayton Township Building Official with a building permit application.
- j. The building permit application for a solar energy system shall be reviewed by all applicable Clayton Township inspectors.
- k. A solar energy system site plan shall provide that all solar panels are properly secured to the solar collector racking system and that the racking system will properly support the solar energy system.
- l. A solar energy system shall be comprised of tempered, non-reflective materials and surfaces.
- m. The installation of any solar energy system shall not negatively impact adjacent properties, including, but not limited to, additional or excessive storm water runoff or drainage.
- n. The noise level for any solar energy system shall not exceed forty (40) dBA as measured at any property line for the solar energy system.
- o. A solar energy system that is damaged and in disrepair shall be repaired to operational condition within 180 days of being damaged or it shall be deemed by Clayton Township officials to be abandoned.
- p. A solar energy system shall be considered abandoned if it has not operated for a continuous period of 180 days or longer.
- q. A solar energy system that is abandoned shall be removed and the structure or parcel shall be restored to its previous condition prior to the installation of the solar energy system within 180 days of the solar energy system deemed abandoned.

## 2. **Building-mounted Solar Energy Systems**

- a. A building-mounted solar energy system shall be allowed in all Clayton Township zoning districts subject to a Special Conditional Use Permit and all provisions set forth in Clayton Township Ordinances 152.150 through 152.152.
- b. All building-mounted solar energy systems shall only be installed on the roof, wall, or window of an existing structure.
- c. All building-mounted solar energy systems shall be permanently attached to the structure.

- d. All building-mounted solar energy systems shall not be located within 3 (three) feet of a peak, eave, or valley of the structure.
- e. All building-mounted solar energy systems shall be constructed of material and of such a weight that the system is safely supported by the structure and approved by the Clayton Township Building Official.
- f. All building-mounted solar energy systems shall comply with all Clayton Township building height regulations and shall not project above the highest point of a roof on the structure that the building-mounted solar energy system will be installed.
- g. All building-mounted solar energy systems shall not project higher than the existing building roof line if installed on the wall of a structure.
- h. A building-mounted solar energy system shall not exceed a maximum of 40% of the total square feet of the surface of the structure.
- i. A building-mounted solar energy system may be attached to a sign and shall not exceed a maximum of 40% of the total square feet of one side of the sign.

### **3. Ground-mounted Solar Energy Systems**

- a. A ground-mounted solar energy system shall be allowed in all Clayton Township zoning districts subject to a Special Conditional Use Permit and all provisions set forth in Clayton Township Ordinances 152.150 through 152.152.
- b. Ground-mounted solar energy systems shall only be installed in rear or side yards and shall not be installed in any parcel setback. The installation of all ground-mounted solar energy systems shall be subject to all Clayton Township setback ordinances.
- c. Ground-mounted solar energy systems shall not exceed 9 (nine) feet in height as measured from the ground at the base of the system to the highest point of the system.
- d. Ground-mounted solar energy systems shall be subject to and regulated by the Clayton Township accessory building ordinances.
- e. Ground-mounted solar energy systems shall not exceed a maximum of 40% of the total square feet allowed in the Clayton Township Accessory Building Ordinances.

### **4. Commercial Solar Energy Systems**

- a. Commercial solar energy systems shall only be constructed in the Clayton Township Industrial District (M-1) subject to a Special Conditional Use Permit and all provisions set forth in Clayton Township Ordinances 152.150 through 152.152.

- b. Commercial solar energy systems shall only be constructed on Clayton Township Industrial District (M-1) parcels with a minimum of 20 (twenty) acres.
- c. Commercial solar energy systems shall be constructed on Clayton Township Industrial District (M-1) parcels with a maximum of 40 (forty) acres.
- d. Commercial solar energy systems shall be subject to all Clayton Township Zoning Ordinances, including, but not limited to, setback requirements, screening and landscaping requirements, and all site plan requirements.
- e. Commercial solar energy system site plans shall be subject to all requirements set forth in Clayton Township Ordinances 152.130 through 152.138, Site Development and Clayton Township Ordinances 152.150 through 152.152, in addition to all requirements set forth herein.
- f. The site plan for a commercial solar energy system shall include verification that adequate infrastructure exists to transport the electricity generated into the grid system.
- g. Commercial solar energy systems shall be installed a minimum of 100 (one hundred) feet from the property line or right-of-way line.
- h. Commercial solar energy systems shall be screened from residential dwelling units and/or residential zoning districts as determined by the Clayton Township Building Official and the Clayton Township Planning Commission.
- i. Commercial solar energy systems shall be restricted to a maximum height of 15 (fifteen) feet.
- j. An earth berm with a minimum height of 8 (eight) feet shall be constructed around the perimeter of the commercial solar energy system property and centered within 75 (seventy-five) to 100 (one hundred) feet of the property line or security fence.
- k. The landowner, lessee of the land, and/or the owner/operator of the commercial solar energy system may elect to construct a security fence around the commercial solar energy system property which shall be constructed with a minimum height of 6 (six) feet shall be constructed pursuant to the Clayton Township site plan ordinances.
- l. The commercial solar energy system property shall have a maximum of two (2) access points which shall be limited to a maximum width of thirty-three (33) feet.
- m. All screening and landscaping shall be installed and properly maintained as required by Clayton Township ordinances and pursuant to site plan approval.
- n. All commercial solar energy systems shall be subject to the provisions of the Clayton Township Lawn Maintenance and Noxious Weeds Ordinance §91.45 through §91.99.

- o. The noise level for any commercial solar energy system shall not exceed 40 (forty) dBA as measured at any property line for the solar energy system.
- p. Power and communication lines in the commercial solar energy system between solar panels may be placed above ground provided that the lines are installed no higher than the top of the system structure.
- q. Power and communication lines in the commercial solar energy system to electric substations or interconnections with buildings shall be buried underground unless otherwise approved by the Clayton Township Planning Commission.
- r. If the commercial solar energy system is located within 2 (two) miles of an airport, the applicant must provide approval from the FAA and/or local airport authority for the project.
- s. The applicant for a commercial solar energy system and all subsequent owners of the solar energy system or the property on which the solar energy system is installed shall notify the Clayton Township Building Official in writing within 30 days of any change in the ownership of the property or the solar energy system.
- t. A commercial solar energy system may be considered abandoned when 50% or more of the system ceases operations for a continuous period of 180 days as determined by the Clayton Township Building Department and subject to the approval of the Clayton Township Board of Trustees. If the commercial solar energy system is deemed abandoned by the Clayton Township Building Department and approved by the Clayton Township Board of Trustees, the commercial solar energy system shall be immediately decommissioned according to the Decommissioning Plan approved by Clayton Township through the site plan approval process and according to following guidelines:
  - 1) The parcel on which the commercial solar energy system was constructed and installed shall be returned to its original natural state by the property owner, and/or the lessee of the property, and/or the owner of the commercial solar energy system.
  - 2) The landowner, lessee of the land, and/or the owner/operator of the commercial solar energy system shall apply for and obtain all necessary permits from the Charter Township of Clayton to decommission the property.
  - 3) All surface and subsurface materials and equipment shall be removed.
  - 4) The property on which the commercial solar energy system was constructed and installed shall be returned to a final grade including a minimum of 4 (four) inches of topsoil.

- 5) All decommissioning work shall be completed within 180 days of the commercial solar energy system being deemed abandoned.
  - 6) If the landowner, lessee of the land, and/or the owner/operator of the commercial solar energy system fails, neglects, or refuses to decommission the commercial solar energy system and return the property to its natural state within 180 days of the commercial solar energy system being deemed abandoned, Clayton Township officials and all necessary designees of Clayton Township, may enter the property and proceed to decommission the commercial solar energy system and restore the property to its natural state.
  - 7) Any and all costs incurred by Clayton Township to decommission the commercial solar energy system shall be paid by the property owner, and/or the lessee of the property, and/or the owner of the commercial solar energy system jointly and severally.
  - 8) Any and all cost incurred by Clayton Township to decommission the commercial solar energy system shall be assessed to the commercial solar energy system parcel.
- u. Decommissioning Plan - The applicant for a commercial solar energy system shall submit a decommissioning plan for the removal of the commercial solar energy system once deemed abandoned. The decommission plan shall include, but is not limited to:
- 1) Provisions for the removal of all structures, foundations, electrical equipment, internal or perimeter access roads, restoration of soil and vegetation, and evidence that financial resources are available to fully decommission the site and return the site to its original natural state.
  - 2) An estimate of the cost to restore the property on which the commercial solar energy system was installed to its original natural state.
  - 3) Video and/or photos, to be determined by the Clayton Township Planning Commission, of the original state of the property where the commercial solar energy system will be installed.
  - 4) The anticipated manner in which the project will be decommissioned, and the property restored to its original natural state as indicated in video and/or photos submitted by the landowner, lessee of the land, and/or owner/operator of the commercial solar energy system, including a description of which above-grade and below-grade improvements will be removed, retained (e.g. access drive, fencing), or restored.

- 5) The projected decommissioning costs for removal of the commercial solar energy system, excluding the salvage value of any material, and including the cost of soil stabilization and to return the property to its original state. PA 116 lands are subject to all local, state, and federal statutes and requirements.
- 6) Decommissioning Account - Funds shall be deposited in a Charter Township of Clayton escrow account for site decommissioning and stabilization subject to the following:
  - i) The Decommissioning Account funds shall be calculated at 10% of the lease amount paid to the landowner per year OR \$200.00 per acre of total leased acres per year, whichever is greater and shall be payable by the landowner, lessee of the land, and/or the owner/operator of the commercial solar energy system.
  - ii) The Decommissioning Account Funds shall be deposited with the Charter Township of Clayton on or before January 31<sup>st</sup> of each year.
  - iii) The Decommissioning Account funds shall be used for the decommissioning of the commercial solar energy system after an abandonment hearing.
  - iv) All costs not covered by the Decommissioning Account funds shall result in a lien on the property.
  - v) Any excess accumulated funds shall be returned to the landowner, lessee of the land, and/or the owner/operator of the commercial solar energy system, less interest which shall be retained by the Charter Township of Clayton as an administrative cost.
  - vi) **FAILURE TO PAY THE YEARLY DECOMMISSIONING ACCOUNT FEES SHALL RESULT IN THE COMMERCIAL SOLAR ENERGY SYSTEM BEING DEEMED ABANDONED.**
- 7) A Decommissioning Account funds review shall be completed every 3 years, by the Charter Township of Clayton Planning Commission, for the life of the project, and adjusted accordingly based on the projected cost of decommissioning the commercial solar energy system and returning the property to its original natural state. The Decommissioning Accounts review and any amendments to the Decommissioning Plan or Decommissioning Account shall be approved by the Charter Township of Clayton Board of Trustees.

- 8) A commercial solar energy system owner may at any time:
- i) Proceed with the Decommissioning Plan reviewed by the Charter Township of Clayton Planning Commission and approved by the Charter Township of Clayton Board of Trustees and remove the commercial solar energy system as indicated in the most recent approved Decommissioning Plan; or
  - ii) Submit an amended Decommissioning Plan to the Charter Township of Clayton Planning Commission for review and approval by the Charter Township of Clayton Board of Trustees.
- 9) Decommissioning a commercial solar energy system must be completed within 12 months after it is declared abandoned by either the Charter Township of Clayton Planning Commission or the abandonment declaration approved by the Charter Township of Clayton Board of Trustees.

**A COMMERCIAL SOLAR ENERGY SYSTEM THAT HAS NOT  
PRODUCED ELECTRICAL ENERGY FOR 6 CONSECUTIVE  
MONTHS SHALL PROMPT AN ABANDONMENT HEARING.**

- v. The applicant for a commercial solar energy system shall submit a security bond to guarantee removal of the commercial solar energy system equal to 125% of the estimated cost to decommission and restore the site to its original natural state if the system is deemed abandoned. The Clayton Township Planning Commission shall determine the appropriate amount of the construction bond through the site plan approval process. A valid security bond equal to 125% of the estimated cost to decommission and restore the commercial solar energy system site to its original natural state if the system is deemed abandoned shall remain in place throughout the entire life of the commercial solar energy system project. Proof of the security bond shall be provided to the Clayton Township Building Department annually on or before January 31<sup>st</sup> of each year.
- w. The owner of any parcel requesting site plan approval for the operation of a commercial solar energy system shall sign any and all necessary documents and affidavits requested by Clayton Township officials rendering the property owner jointly and severally liable for all costs to remove all solar equipment and to restore the property to its original condition prior to the installation of the commercial solar energy system.
- x. The permit holder and/or operator of a commercial solar energy system shall submit an annual production report to the Clayton Township Building Department no later than January 31<sup>st</sup> each year. The production report shall indicate the percentage of the solar energy system that remains in use at the time of the report.

- y. An annual license from the Charter Township of Clayton shall be required for the operation of all commercial solar energy systems. The license fee shall be determined by a fee schedule set forth by resolution of the Charter Township of Clayton Board of Trustees. The permit holder and/or operator of a commercial solar energy system shall be responsible for filing an application for an annual license renewal and providing all necessary information with the application that the required security bond remains in place in an amount equal to 125% of the estimated cost to decommission and restore the site to its original state if the system is deemed abandoned. The Clayton Township Building Department shall find that the standards set forth herein have continued to be met and may require an inspection by the Clayton Township Building Department or its assignee.

#### **SECTION 4**

#### **CONFLICT OF LAWS**

The provisions of the Clayton Township Solar Energy Systems Ordinance shall not conflict with the terms and conditions of the Michigan Farmland and Open Space Preservation Program or PA 116. All terms and conditions of the Clayton Township Solar Energy Systems Ordinance not in conflict with the provisions of the Michigan Farmland and Open Space Preservation Program or PA 116 shall remain in full force and effect.

#### **SECTION 5**

#### **PENALTIES**

1. Failure to repair or remove a solar energy system within 180 days of the damage or the system being deemed abandoned shall subject the parcel owner and/or the owner of a solar energy system to a Clayton Township Municipal Civil Infraction and all applicable remedies, including fines and costs, as set forth in Sections 150.65 through 150.72 of the Clayton Township Code of Ordinances.
2. A violation of any provision of this ordinance shall subject the parcel owner and/or the owner of a solar energy system to a Clayton Township Municipal Civil Infraction and all applicable remedies, including fines and costs, as set forth in Sections 150.65 through 150.72 of the Clayton Township Code of Ordinances.

#### **SECTION 6**

All other provisions of Chapter 152 inconsistent with the provision of this Ordinance are hereby repealed. All other provisions of Chapter 152 shall be and are hereby ratified.

**SECTION 7**

This Ordinance shall be published in a newspaper of general circulation within the Township of Clayton, Genesee County Michigan, and shall become effective thirty (30) days following publication.

**SECTION 8**

A copy of this Ordinance may be reviewed and inspected at the Township Clerk's Office at the Clayton Township Hall, 2011 S. Morrish Rd., Swartz Creek, MI 48473, during regular business hours and at the Clayton Township web site at claytontownship.org.

**ORDINANCE DECLARED ADOPTED.**

Dated: \_\_\_\_\_, 2022

We hereby certify that the foregoing Ordinance was adopted on Second Reading by the Charter Township of Clayton Board of Trustees on \_\_\_\_\_.

Public Hearing: \_\_\_\_\_

First Reading Approved: \_\_\_\_\_

Second Reading Approved: \_\_\_\_\_

Adopted: \_\_\_\_\_

Published: \_\_\_\_\_

**CHARTER TOWNSHIP OF CLAYTON:**

\_\_\_\_\_  
Tom Spillane, Clayton Township Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dennis Milem, Clayton Township Clerk

\_\_\_\_\_  
Date