

Ovid Township, Branch County, Michigan

DRAFT Resolution

Recommended by Planning Commission March 2, 2021

**Revised based on Recommendations by Township Attorney May 4, 2021**

**An Ordinance amending the Zoning Ordinance for Ovid Township to revise the regulations on Solar Energy Facilities (Section 15.38) and the duration of Special Land Use Approvals.**

The Ovid Township Board hereby ordains that the following changes shall be made to the Ovid Township Zoning Ordinance, originally adopted January 9, 2006.

**SECTION 1. Section 20.05.B shall be removed and replaced with the following text:**

- B. **Effective Duration of Special Use Approval.** Special use approvals shall be valid for the duration of the approved use, provided that the use is operated in compliance with all regulations of this Ordinance and all conditions of approval. However, the Township Board may, as a condition of approval, impose a specific time period for the Special Use, after which the Special Use must be renewed in order to continue operations. If an approved Special Use ceases operation for a period longer than six months, the Special Use shall be considered void.

The sale, transfer, or conveyance of the entity granted the Special Use Permit shall not void the Special Use. However, the Township Board may impose a condition of approval requiring the Township to be notified of any change in ownership impacting the Special Use.

**SECTION 2. A new Section 20.02.C shall be added, reading as follows.**

- C. For Special Uses proposed to be located on more than one lot or parcel of land, any individual parcel may be removed from the application, and not approved for the Special Use, as a condition of the approval of the remaining parcels in the application.

**SECTION 3. A new Section 20.06, entitled "Other Procedures and Requirements for Special Uses" shall be added, reading as follows.**

- A. **Abandonment.** Any Special Use that ceases operations for more than 6 months shall be deemed "abandoned" under this Ordinance, and the Special Use permit shall be considered void. In the event of abandonment, the following process shall be required for campgrounds, wireless communications facilities, composting centers, outdoor recreation facilities, wind energy conversion systems, solar farms, mineral/soil/gravel extraction, junk yards, salvage yards, and any other use that, in the opinion of the Township Board, includes outdoor facilities, equipment, storage, or activities.

1. All outdoor equipment, structures, or stored material must be removed from the site, including, but not limited to, wind energy conversion systems, solar panels, wireless communication towers, equipment, vehicles, and any remaining items within an outdoor storage area. The removal shall be at the expense of the owner of the equipment, structures, or stored material (meaning, in the case of a solar farm, wind energy conversion system, or wireless telecommunications facility, the owner of the solar farm, wind energy conversion system, or wireless telecommunications facility). The Township Board may approve specific fences or accessory structures to remain in place. However, in the absence

of such approval, fences and accessory structures must be removed.

2. The removal process must begin within 3 months of the cessation of operations at the site, and must be completed within 12 months, unless a time extension is approved by the Township Board.
3. The Township Board shall require a performance bond to guarantee all required equipment, structures, and/or stored materials are removed. At the time of the Special Use application, the applicant shall submit two third-party contractor bids for removal of all panels and related equipment, and the bond shall be the higher of the two bids. The Township shall review the bond every two years, including submission of two updated third-party contractor removal bids by the owner of the special use (meaning, in the case of a solar farm, wind energy conversion system, or wireless telecommunications facility, the owner of the solar farm, wind energy conversion system, or wireless telecommunications facility), and shall require an additional deposit if the amount is no longer sufficient to cover removal costs.
4. A copy of the relevant documents (including the signed lease, deed, license, or land contract) which allows the installation of the special use, and which requires the special use applicant to remove all equipment, structures, and/or stored materials upon cessation of operations shall be submitted at the time of application. In the event that any equipment, structures, and/or stored materials are not removed within the twelve (12) months of the cessation of operations at a site, the panels and facilities shall be removed by the Township and the costs of removal assessed against the real property.

B. **Setback Alteration.** The required setbacks for any Special Use may be increased or decreased by the Township Board during the Special Use approval process, based on the following criteria. If the Township Board alters a setback requirement, the alteration shall be listed as one of the conditions of approval.

1. **Setback Increase.** The Township Board may increase a required setback to up to 200% of the minimum (meaning the minimum times 2), upon determining that one or more of the following criteria are met. The Township Board shall not be permitted to increase the setbacks to the point where the lot in question would become unusable for the Special Use in question, based on the other requirements of this Ordinance and the operational needs of the Special Use.

- i. The minimum required setback is insufficient to protect a specific parcel from the negative impacts of the proposed Special Use, including, but not limited to, noise, glare, water runoff/drainage, and /or restricting the ability of the non-participating parcel to be used for a use permitted in the Zoning District.

- ii. Applying the setbacks as written would cause a residential home to be completely surrounded by the proposed Special Use on all sides, with insufficient setback to mitigate the negative impacts of the complete surrounding, in the opinion of the Township Board.

- iii. Additional setbacks are required to protect a natural feature or wildlife corridor.

2. **Setback Decrease.** The Township Board may decrease a required setback to no less than 50% of the minimum (meaning the minimum divided by 2) described in Subsection 2, upon determining that the setback, when applied to the Special Use in question, is not necessary to protect an adjacent parcel from negative impacts, including, but not limited to, noise, glare, water runoff/drainage, and /or restricting the ability of the non-participating parcel to be used for a use permitted in the Zoning District, in the opinion of the Township Board. In addition, at least one of the following criteria must also be met.

- i. The required setbacks render a participating parcel unusable for the Special Use in question.
- ii. Topography, natural features, or other physical aspects of the parcel in question, render the setback impractical.
- iii. Imposing the setback creates a negative impact on agricultural production on the parcel in question.

C. **Compliant Resolution.** The purpose of this section is to provide the public with a mechanism to file a complaint with the Zoning Administrator regarding a Special Use, and receive a timely response regarding alleged ordinance violations or violations of the Conditions of Approval.

1. Upon receiving a complaint of an alleged Ordinance violation, the Zoning Administrator shall notify the owner and operator of the Special Use (meaning, in the case of a solar farm, wind energy conversion system, or wireless telecommunications facility, the owner of the solar farm, wind energy conversion system, or wireless telecommunications facility), and, if they are separate entities, the owner of the lot in question.
2. Upon notification by the Zoning Administrator, the Special Use owner and operator shall have 60 days to investigate the complaint, and respond with either a mitigation plan or a statement requesting that the matter be reviewed by the Zoning Board of Appeals. If the Special use owner and operator believes that the Special Use is not in violation, it shall request a review by the Zoning Board of Appeals.
  - i. If the Special Use owner and operator does not respond within 60 days, the Zoning Administrator shall notice a public hearing at the Planning Commission (as described in Section 20.03.C) for the purpose of discussing a revocation of the Special Land Use Permit. The Special Use owner and operator shall be notified of the hearing. If the Special Use owner and operator responds to the complaint prior to the hearing date, the hearing shall be cancelled.
  - ii. If the Special Use owner and operator submits a mitigation plan, the Zoning Administrator shall review it and determine if it is satisfactory to mitigate the complaint.
    1. The Zoning Administrator may consult outside experts, the Township Attorney, or the Township Planner, in making a determination.
    2. If the mitigation plan is determined to be satisfactory, the Special Use owner

and operator must implement the mitigation within 60 days. The Zoning Administrator may extend the deadline upon determining that is not practical for the mitigation to be accomplished in 60 days due to circumstances beyond the applicant's control.

3. If the Special Use owner and operator fails to implement the mitigation plan, the Zoning Administrator shall notice a public hearing at the Planning Commission (as described in Section 20.03.C) for the purpose of discussing a revocation of the Special Land Use Permit. The Special Use owner and operator shall be notified of the hearing. If the Special Use owner and operator implements the mitigation plan prior to the hearing date, the hearing shall be cancelled.

4. If the Special Use owner and operator requests that the Zoning Board of Appeals review the matter, the Zoning Board of Appeals shall hold a public hearing (as described in Section 20.03.C), and shall hear evidence from both the complainant, and the Special Use owner and operator. Following the public hearing, the Zoning Board of Appeals shall make one of the following determinations:

a. The Special Use is in compliance with the Ordinance and all Conditions of Approval, and no further action is needed.

b. The Special Use is out of compliance with either the Ordinance, or the Conditions of Approval, or both, and the Special Use owner and operator must submit a mitigation plan to the Zoning Administrator within 60 days. If no mitigation plan is submitted, the Zoning Administrator shall notice a public hearing of the Planning Commission for the purpose of revoking the Special Use Permit. If the Special Use permit is revoked, the abandonment process described in Section 20.06.A shall begin.

**SECTION 4. Section 15.38 shall be removed and replaced with the following text:**

- A. **Purpose and Intent.** In order to preserve the natural, rural beauty of the Township, the viability of the Township's farmland, the precious ecosystems contained within the Township, and the health, safety, and welfare of the Township's residents, the regulations of this section shall govern the development of solar energy facilities within Ovid Township.
1. **Renewable energy** is important for the sustainability of ecosystems, food systems, economies, and communities. However, the large-scale positive impacts must be weighed against local negative impacts, including the health, safety, and welfare of the residents of Ovid Township.
  2. **On-site solar energy systems** provide ecological and economic benefits, at a scale that is desirable in a rural community and with fewer impacts on the immediate surroundings than utility-scale solar energy systems. However, the impacts that they do have must be managed through zoning regulations.

3. **Utility-scale solar energy systems (“solar farms”)** should be developed with careful consideration of the impacts on local ecosystems, farmland, rural beauty, and the health, safety, and welfare of the Township’s residents.
- B. **Accessory solar energy systems** capable of producing a maximum of 5,000 kWh per month shall be subject to the following regulations:
1. All solar panels and other structures associated with the solar energy system shall be set back at least 20 feet from all lot lines.
  2. No more than 20% of any lot may be covered by an accessory solar energy system.
  3. Solar energy systems shall be designed and located to avoid glare or reflection onto adjacent lots and adjacent roadways, and shall not interfere with traffic or create a safety hazard off-site.
  4. A building permit shall be required for any solar energy system.
  5. No homeowners’ agreement, covenant, common interest community, or other contract between multiple lot owners within a subdivision shall restrict or limit accessory solar energy systems.
- C. The following shall apply to all solar energy facilities, regardless of the maximum kWh capacity:
1. Rooftop and building mounted solar energy systems are subject to the following regulations:
    - i. Roof mounted systems shall not extend more than 4 feet above the surface to which it is affixed. Roof mounted systems that do not extend more than 3 inches above the surface of the roof shall be accessory solar energy systems, regardless of the kWh capacity.
    - ii. No solar energy system may protrude beyond the edge of the roof.
  2. Ground mounted and freestanding solar energy systems are subject to the following regulations:
    - i. All solar energy systems shall have a defensible space for fire protection, as required by the fire department with jurisdiction over the site.
    - ii. **Height.**
      1. The height of the solar panel and any mounts shall not exceed 14 feet when oriented at maximum tilt.
      2. If the solar energy system is an accessory use is located in the front yard between the required front setback line and front building wall of the principal building, the maximum height for the system shall be 42 inches (3.5 feet). Evergreen landscaping that is sufficient to completely block the

equipment from view from dwelling units or public right-of-way located within a quarter-mile but that will not obstruct the energy collecting surface from solar energy shall be provided.

3. **Batteries.** When batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure when in use, and when no longer used shall be disposed of in accordance with applicable laws and regulations.
- D. **Solar farms** shall be subject to the following regulations, in addition to the general standards for special uses:
1. **Definition of “Participating” and “Non-Participating”:** As used in this Section, the following terms shall have the following meanings:
    - i. **Participating Lot:** A lot where the landowner has leased land to the solar applicant, OR a landowner that has any other written and signed agreement with the solar applicant with regard to the solar farm, including “good neighbor” agreements and other agreements that do not necessarily allow the placement of solar panels on the lot.
    - ii. **Non-Participating Lot:** Any lot that does not meet the definition of “Participating Lot” in Subsection i.
  2. **Setbacks.** All solar panels and other structures associated with the solar farm shall meet the following minimum setback requirements. Fencing shall only be subject to this Section as described in Subsection 8. The setbacks described in this Section may be increased or decreased by the Township Board, based on the criteria in Subsection 3.
    - i. **From a lot line abutting a lot that is not participating in the solar project, is greater than 5 acres in area, and does not contain a residential dwelling unit:** 50 feet
    - ii. **From a lot line abutting a lot that is not participating in the solar project, and is EITHER under 5 acres are OR contains a residential dwelling unit:** Adjacent to no more than 2 lot lines for a given non-participating parcel, the minimum setback shall be 200 feet. For all other lot lines of the non-participating parcel, the setback shall be 1,000 feet. These setbacks shall not apply across public rights-of-way.
    - iii. **From a residential dwelling unit existing at the time of Special Use approval for the solar farm:** 500 feet from nearest corner of the dwelling unit. This setback requirement shall apply across public rights-of-way.
    - iv. **From a public or private roadway:** 50 feet, or the required front setback for the zoning district in question, whichever is greater. The requirements of Section 12.02, Footnote 6 must also be met.

- v. In order to create corridors through the solar farm for the passage of wildlife, there shall be a **10 foot setback requirement from the lot line of a participating parcel**. The Township Board may waive this setback entirely upon determining that the applicant has created sufficient wildlife corridors through the solar farm that the setback is unnecessary.
3. No solar panels associated with a solar farm shall be located within the boundaries of a wetland delineated by the State of Michigan.
  4. **Landscaping, Ground Cover, and Buffering:** The following requirements must be met for all solar farms:
    - i. **Buffering/Screening:**
      1. The following screening requirements must be met along all property lines meeting the following criteria:
        - a. The adjacent parcel is non-participating.
        - b. The adjacent parcel contains one or more residential dwelling units OR the adjacent parcel is under 5 acres in area.
        - c. The required setback from the property line in question, after any alterations by the Township Board under Subsection 3, is smaller than or equal to 1,000 feet.
      2. When landscape screening is required, it may be planted anywhere within the required setback, and shall meet the following requirements:
        - a. Evergreen trees, planted in a staggered double row designed to form a dense visual screen while still allowing for healthy development of the trees. The trees must be at least 6 feet in height at the time of planting in all areas where the solar panels will be visible from a residence (in the opinion of the Township Board), and at least 4 feet in height at the time of planting in all other areas.
        - b. The required evergreen trees shall be a mixture of some or all of the following species: White Cedar, White Pine, Colorado Blue Spruce, Norway Spruce, Black Hills Spruce, and White Spruce. The applicant must submit a description of the height and spread of each proposed species at maturity, as well as an estimated timeline for each species to reach maturity.
        - c. The Township Board shall determine at the time of approval whether the proposed plantings constitute a “dense visual screen” at the time of planting and whether the design also allows for the

“healthy development of the trees.” The Township Board may require additional plantings, or other design changes to the landscape plan, as a condition of Special Land Use Approval. In making their determination, the Township Board may request the opinion of a landscape architect, arborist, or other expert, with costs to be paid by the applicant.

- ii. **Existing Trees and Woodlands:** Existing trees shall be preserved within areas where screening is required. The Township Board may waive or alter Subsection i above upon determining that existing foliage on a participating lot provides a sufficient screen from neighboring residential uses (foliage on non-participating lots shall not count for screening requirements). If existing foliage is permitted to count for screening requirements, the solar farm owners shall be responsible for the maintenance of the existing foliage, including compliance with Subsection iv, and the planting of new landscaping to replace any areas that no longer form a sufficient screen due to death, disease, or destruction of plants.
  - iii. **Ground Cover:** Between the solar panels, the ground must be covered by natural vegetation which may include, but is not limited to:
    - 1. **Native Grasses,** including, but not limited to bluestem, sedge, and bottlebrush.
    - 2. **Grazing Grasses,** including, but not limited, to switchgrass, gamma, and Indiangrass.
    - 3. **Pollinator Habitat,** including, but not limited to, sunflower, milkweed, and black-eyed susan.
  - iv. **Maintenance:** All plantings shall be installed in a design that supports their long- term health and vitality. All plantings shall be maintained in a sound health and vigorous growing condition. The Township may require dead, diseased, damaged, or destroyed species within the required setback area to be replaced with new plantings. The new plantings must comply with this Ordinance and must result in an overall landscape screen that complies with this Ordinance.
5. **Noise.** Noise emanating from solar panels or other structures associated with the solar farm shall not exceed 55 decibels (dB), as measured at any residence on a non-participating lot.
6. **Drainage.**
- i. Prior to approval of the Special Use permit by the Township Board, the solar farm applicant must obtain written confirmation from the County Drain Commissioner that stormwater drainage will not be impacted, or that any impacts will be mitigated without negative impacts on any nearby lots (participating or non-participating).
  - ii. Any damage to underground drainage tiles, or other stormwater infrastructure



or County Drains caused during the installation of the solar farm shall be repaired by the solar farm owner within 90 days of discovery of the damage. The Township Board may extend this deadline upon determination that the solar farm owner has made good faith progress towards the repair.

7. **Glare.** No solar farm shall produce glare, as defined by this Ordinance, that causes negative impacts on any adjacent lot (participating or non-participating), or causes a danger to motorists on any roadway.
8. **Fencing.** Clusters of solar panels shall be surrounded by a six-foot-high fence with self-locking gate. The fence shall not be subject to setback requirements, except where necessary to preserve wildlife corridors. The design of the fence must be approved by the Township Board, and no design other than the approved design shall be installed.
9. The solar farm must be designed and operated to allow sufficient access for public safety vehicles in the event of an emergency, in the opinion of the fire department with jurisdiction.
11. All power transmission lines and other utility wires within the project boundary shall be located underground.
10. There shall be maintained a current general liability policy covering bodily injury and property damage (including damage to public roadways and non-participating properties) with limits of at least \$1 million per occurrence and \$1 million in the aggregate. The insurance policies shall be reviewed by the Township every five years, and the Township Board may require increases to the policy limits.
11. If the land on which the solar farm is proposed is to be leased, rather than owned, by the solar farm operator, all lots within the solar farm project boundary shall be included in a recorded easement, lease, or consent agreement specifying the applicable uses for the duration of the project. All necessary leases, easements, or other agreements between the solar farm operator and the affected parties shall be in place prior to commencing construction, unless specified otherwise by the special use permit conditions.
12. No solar farm shall be installed until evidence has been given to the Township that the electric utility company has agreed to an interconnection with the electrical grid or a power purchase agreement. The agreement must be submitted to the Township prior to construction.
13. The owner of the solar energy system shall submit, as part of the Special Use application, written documentation that the proposed project has a valid interconnection application in process with the regional or local transmission provider. Off-grid systems shall be exempt from this requirement. The Special Use application shall not be approved without the required documentation. A copy of the approved interconnection agreement must be submitted to the Township prior to the start of construction.
14. Abandoned or unused solar panels and associated facilities shall be removed, by the owner of the solar panels. The removal process for solar farms shall be consistent with the process for abandonment of Special Uses described in Section 20.06.A. All decommissioned

materials must be removed from Ovid Township within 1 month of the completion of the removal process. No permanent storage or disposal of decommissioned solar panels or related equipment shall be permitted in the Township.

**E. Required Application Information.** Solar farms shall be required to submit all information listed below as part of the Special Use application. The Zoning Administrator may waive information requirements for accessory solar energy systems (but not for solar farms), upon determining that the information is not relevant to determining compliance with this Ordinance for the application in question. The Township may seek the advice and consultation of third-party experts to review the information listed below, and may require the applicant to submit funds to cover the cost of the expert review.

1. All information required for Special Use Approvals, as described in Article 20, including, but not limited to, owner contact information, a complete Site Plan, stormwater drainage information, and a comprehensive landscape plan.
2. Operational information, including power output, safety/security provisions, interconnection to transmission grid, lighting, potential telecommunications interference, and projected number of permanent jobs created in Ovid Township.
3. Construction information, such as timeline, phasing, potential expansions, construction traffic/truck routes, temporary access roadways, and temporary construction jobs created.
4. Leases (and/or other agreements) for all participating parcels. Personal identifying information and financial information may be redacted.
5. Visual renderings of the proposed solar farm, as seen from all public roadways and non-participating parcels where the solar farm will be visible. Landscaping should be shown as it will appear at the time of planting, and as it is projected to appear 5 years after completion of construction.
6. A list of required approvals from County, State, and/or Federal entities with jurisdiction, and a description of the status of each approval. Proof of approval must be submitted prior to construction.
7. Information on hazardous waste storage, including battery locations and storage.
8. Insurance policies as required by Section D.10.
9. The information required in Sections D.11, D.12, and D.13.
10. All other information deemed necessary by the Township in order to determine whether the application meets the requirements of this Ordinance, including the Special Use Approval Criteria in Section 20.04.

**SECTION 5. Section 15.37.D.13 shall be removed and replaced with the following text:**

**13. Abandonment of Unused Turbines.** Abandoned or unused wind energy conversion systems shall be removed, by the owner of the wind energy conversion system. The removal process for wind energy conversion systems shall be consistent with the process for abandonment of Special Uses described in Section 20.06.A. All decommissioned materials must be removed from Ovid Township within 1 month of the completion of the removal process. No permanent storage or disposal of decommissioned wind turbines or related equipment shall be permitted in the Township.

**SECTION 6. Sections 15.36.I shall be removed and replaced with the following text:**

**I. Abandonment of Wireless Telecommunications Facilities.** Abandoned or unused wireless telecommunication facilities shall be removed, by the owner of the wireless telecommunications facilities. The removal process for wireless telecommunications facilities shall be consistent with the process for abandonment of Special Uses described in Section 20.06.A. All decommissioned materials must be removed from Ovid Township within 1 month of the completion of the removal process. No permanent storage or disposal of decommissioned wireless telecommunications facilities or related equipment shall be permitted in the Township.

**SECTION 7. A New Section 23.04.E shall be added, including the following text:**

**E. Special Use Complaint Resolution Process in Section 20.06.C.** A resident or property owner may file a complaint with the Zoning Administrator that an approved and operating Special Use is in violation of the Ordinance or the Special Use Conditions of Approval. In the event of such a complaint, the process described in Section 20.06.C shall be followed.

**SECTION 8. Repealer Clause**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**SECTION 9. Savings Clause**

This Ordinance shall in no manner affect pending litigation, either civil or criminal, founded or growing out of any Ordinance, Resolution, Order or parts hereof, hereby repealed, and this Ordinance shall in no manner affect any rights, claims, privileges, immunities or causes of action of the City, or other person, either criminal or civil, that may have already occurred, accrued or grown out of any Ordinance, Resolution, Order or policy, or any part thereof, hereby repealed.

**SECTION 10. Validity and Severability**

Should any portion of this Ordinance be found invalid for any reason, such a holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

**SECTION 11. Effective Date**

This Ordinance shall be effective seven (7) days from and after its adoption by the Ovid Township Board and after its publication.

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Greg Gemmill, Supervisor

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Amy Havasy, Clerk