

ORDINANCE # 2023-07

AN ORDINANCE AMENDING THE
WHITLEY COUNTY ZONING CODE

WHEREAS, pursuant to the requirements of Indiana Code 36-7-4-600 et seq., the Whitley County Advisory Plan Commission (the "Plan Commission") initiated an amendment to the Whitley County Zoning Code; and

WHEREAS, the Plan Commission held a public hearing, as prescribed by law, and have certified to the Board of Commissioners of Whitley County its findings and recommendations in writing concerning the proposed amendment; and

WHEREAS, the Board of Commissioners, upon certification by the Plan Commission of its favorable recommendation, considered and examined the proposed amendment giving regard to the Comprehensive Plan, the current conditions and the character of current structures and uses in each district, the most desirable use for which the land in each district is adapted, the conservation of property values throughout the jurisdiction, and the responsible development and growth of Whitley County; and

WHEREAS, the Board of Commissioners of Whitley County deems it in the best interest of the community that such amendment to the zoning code be enacted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF WHITLEY COUNTY, INDIANA, that the Code of Ordinances, Title XV, Chapter 153, be amended as follows:

Section 1. The following amends and replaces the text of the existing Section 5.23:

See attached Exhibit A.

Section 2. This Ordinance shall be in full force and effect from and after its passage and after the occurrence of all other actions required by law.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF WHITLEY COUNTY,
INDIANA, ON THIS 5th DAY June, 2023.

ATTEST:

Tiffany Deakins
Tiffany Deakins, Auditor

Chad Banks
Chad Banks

Theresa Baysinger
Theresa Baysinger

Robert Schuman
Robert Schuman



Exhibit A

5.23 Solar Energy Collection Systems (SECS) Overlay District

This section establishes special land use and development requirements for Solar Energy Collection Systems. Specifically, it creates a supplemental overlay zone that lies on top of an existing zoning district and is intended to add additional design standards and restrictions beyond those of the underlying zoning district. The purpose of this district is to protect the public interests related to solar energy collection at a large scale. It may cover parts of several zones or only a portion of a single zone. The overlay district does not regulate small scale, private solar panels used for private, on-site energy production and consumption.

SECS-1: Definitions.

- A. Solar Energy Collection System (SECS). A solar collection system principally used to capture solar energy, convert it to electrical or thermal energy that is used to produce electrical or thermal energy for consumption.
- B. Commercial Solar Energy Collection System (CSECS). A solar energy collection system that generates energy primarily for use off-site, for wholesale to the electrical grid, or for utility use.
- C. Private Solar Energy Collection System (PSECS). A solar energy collection system that generates energy primarily for private energy consumption on the site.
- D. Concentrated Solar Thermal Power. A SECS that uses lenses or mirrors to focus or reflect a large area of sunlight into a concentrated small area. The concentrated energy is used as a heat source for power generation.
- E. Solar Photovoltaic (PV) System. A SECS consisting of photovoltaic cells made with semiconductive materials that produce electricity when they are exposed to sunlight.
- F. Battery Energy Storage System (BESS). A battery system that stores electrical energy, making the electricity available for later use.
- G. Agrivoltaics System. A Solar Photovoltaic SECS that is co-located on the same parcel of land as agricultural uses, including, but not limited to, crop production, grazing, and apiaries.
- H. Dwelling. As applied in this section, "dwelling" may include a primary residence structure, approved Secondary Dwelling Unit, or approved apartment or multi-family unit. The definition does not include a residential accessory structure, camping unit, seasonal cabin, or other temporary or non-residence structure.
- I. Nonparticipating property. Any property that is not part of a CSECS overlay, whether or not it abuts properties participating in the overlay. Nonparticipating properties may waive certain standards of this section, as described below.

SECS-2: Private SECS.

This subsection provides regulations for Private Solar Energy Collection Systems. Unless otherwise stated, the remaining subsections regulate Commercial Solar Energy Collections Systems.

- A. PSECS shall provide energy primarily to an on-site user.
 1. Energy that is not used by the on-site user and is surplus may be:
 - a. Stored using a battery system for later usage on-site
 - b. Provided to users off-site or to the utility grid through net metering, distributed generation compensation, or a similar system.

2. PSECS shall not commercially produce energy for wholesale to a utility or off-site user.
- B. PSECS are permitted accessory uses in all zoning districts.
- C. On-building. A PSECS that is installed on an existing or permitted building shall comply with the development standards for structures in the zoning district in which it is installed.
- D. Ground-mounted. A PSECS that is constructed as free-standing shall comply with the development standards for accessory structures in the zoning district in which it is constructed.
 1. The area of solar panels in a ground-mounted PSECS shall not be included in the calculation of impervious surface for the purpose of lot coverage if the soil under the panels is maintained in vegetation and is not compacted.

SECS-3: Approval Process.

The following shall be the process for establishing a Commercial Solar Energy Collection System (CSECS) facility.

- A. Zone map amendment. A SECS Overlay District is reviewed and may be adopted as with any other zone map amendment request, subject to the regulations of this Section. If adopted, the SECS Overlay District provides additional regulations and provisions on the properties over which it is placed.
- B. Development Plan approval. A proposed CSECS shall have a Development Plan approved prior to the issuance of any permits. In addition to those requirements for Development Plans in Chapter 7, the following items shall be required, reviewed, and approved by the Plan Commission as a whole (not the Development Plan Committee) at a public hearing:
 1. Site plan
 2. Panel location plan and specifications
 3. Vegetation/landscape plan
 4. Stormwater management plan
 5. Environmental assessment (EA)
 6. Construction period plan, including at least:
 - a. Traffic management and parking
 - b. Laydown and staging areas
 - c. Temporary storage areas
 7. Decommissioning and site restoration plan
 8. Items for review, but are subject to final approval by others:
 - a. Economic Development Agreement
 - b. Road Usage and Repair Agreement/Bond
 - c. Erosion Control Plan
 - d. Emergency Response Plan
- C. Amendments to an approved Development Plan shall follow the process in Section 7.9. Minor changes and reconfigurations of panels and equipment within the setbacks and separations approved in the Development Plan are non-substantial deviations.
- D. Costs of review. The applicant, developer, and/or operator of a CSECS shall be responsible for the costs of any outside engineering, legal counsel, environmental, or

similar reviews found necessary to ensure compliance with the process and development standards of this Section.

E. Process abandonment and expiration.

1. If a Development Plan is not approved after a period of three (3) years from the date the properties were approved to be part of the Overlay District, the properties shall be removed from the Overlay District.
2. A Development Plan approval expires if an Improvement Location Permit (ILP) is not issued within three (3) years from the date of approval. Upon request, and with good cause shown, the time period within which an ILP must be issued may be extended by the Zoning Administrator for a time period not to exceed one (1) year.
3. If, within two (2) years from the expiration of a Development Plan, a new Development Plan is not approved, the properties shall be removed from the Overlay District.

SECS-4: Permitted zoning districts.

A. A SECS overlay district may be established over any of the following zoning districts:

1. AG, Agricultural
2. AGP, Agricultural Production
3. IPM, Industrial Park/Manufacturing
4. IN, Intensive Use

B. In the event that the underlying zoning district is changed from those districts listed in (A), an established SECS overlay district shall continue in effect.

C. A SECS overlay district may be of any size that is sufficient to permit the proposed CSECS facility in conformance with the requirements herein.

1. A SECS overlay district shall exclude an area of twenty (20) acres or more adjacent to any nonparticipating property containing one (1) or more existing dwelling(s) or which is zoned RR, LR, MR, or MP.
2. The nonparticipating property owner(s) may submit a waiver of this standard as part of the review in establishing the SECS overlay district.

D. A SECS overlay district may be established only where the density of the area within 1,320' of the proposed district is equal to or less than eighteen (18) dwelling units per square mile.

SECS-5: Uses.

A. Permitted Uses

1. Commercial Solar Energy Collection System (CSECS), Photovoltaic System
2. Commercial Solar Energy Collection System (CSECS), Agrivoltaic System
3. Battery Energy Storage System (BESS)

B. Prohibited Uses

1. Solar Energy Collection System, Concentrated Solar Thermal Power

C. Permitted and Special Uses of the underlying zoning district shall continue in effect, except as may be modified by this Overlay District.

SECS-6: Development Standards.

- A. Development Standards of the underlying zoning districts shall continue in effect, except as may be modified by this Overlay District.
- B. Setbacks. Any structure or equipment used for electricity generation or distribution in a CSECS shall have the following minimum setbacks, or that of the underlying zoning district, whichever is more restrictive:
 - 1. 150' from the right-of-way of a principal arterial, plus buffer yard
 - 2. 150' from the right-of-way of other classes of public or private roads, plus buffer yard
 - 3. 50' from a side property line, plus buffer yard
 - 4. 50' from a rear property line, plus buffer yard

Setbacks do not apply to property lines between parcels that are participating in the CSECS.

- C. Buffering. A CSECS shall be screened from existing dwellings and residential areas and public buildings.
 - 1. The following buffering requirements apply to any CSECS facility:
 - a. A distance of 1,500' shall be required between a CSECS facility and the property line of any nonparticipating property.
 - b. Trees shall be planted along the buffered property lines at an average rate of:
 - i. One (1) deciduous canopy tree per thirty (30) lineal feet; or
 - ii. One (1) coniferous tree per twenty (20) lineal feet.
 - c. All trees must be planted within ten (10) to thirty (30) feet from the property line of the buffered property.
 - d. All deciduous trees must be at least 1.5" caliper at the time of planting; conifers must be at least 6' in height at the time of planting.
 - e. Trees must be properly maintained and be replaced if the tree dies, is diseased, or is damaged.
 - f. The developer or owner of the CSECS facility is responsible for installing the buffer yard.
 - g. The adjacent property owner shall not have to participate in installing the buffer yard.
 - 2. Additional buffering may be required to fully screen the CSECS facility from public roads, public buildings and properties, or other sensitive uses, as determined during Development Plan review.
 - 3. The minimum buffering requirements set forth in this subsection may be waived or modified with the written notarized consent of the owner(s) of a nonparticipating property or properties, which shall be recorded as a deed restriction on the nonparticipating property. Such waiver or modification is to be reviewed during Development Plan review.
- D. Setbacks for specific equipment. Any inverter, transformer, or BESS in a CSECS facility shall be separated from certain uses and structures, as follows:
 - 1. 900' to the property line of any nonparticipating property containing a dwelling in existence at the time of Development Plan approval
 - 2. 300' to the property line of any other nonparticipating property in existence at the time of Development Plan approval

E. Height.

1. Solar panels/electrical generation equipment and structures at maximum tilt:
Maximum height: 20'
Minimum clearance: 3'
2. Other structures: as permitted in the underlying zoning district

F. Lot Coverage.

1. The maximum lot coverage for a CSECS facility is that of the underlying zoning district.
2. The area of solar panels shall not be included in the calculation of impervious surface for the purpose of lot coverage if the soil under the panels is maintained in vegetation and is not compacted.

G. Fencing. Perimeter fencing may be installed. If perimeter fencing is installed, the following apply:

1. Razor wire and/or electric fences shall be prohibited.

H. Ground cover. A CSECS shall have ground cover in any combination of the following:

1. Perennial vegetation
 - a. Ground around and under solar panels and in project site buffer areas shall be planted, established, and maintained for the life of the solar project in perennial vegetated ground cover.
 - b. To the maximum extent feasible for site conditions, pollinator-friendly perennial vegetation ground cover shall be based on a diverse seed mix of native species consistent with guidance specific to the local area provided by the Soil and Water Conservation District office or the Indiana Native Plant Society. The quality of the pollinator habitat shall be demonstrated by using guides such as Purdue University 2020 Indiana Solar Site Pollinator Habitat Planning Scorecard, or other third party solar-pollinator scorecards designed for Midwestern ecosystems, soils, and habitat.
 - c. The owner/operator shall demonstrate site maintenance that is intended to remove invasive or noxious species, as listed by the Indiana Invasive Species Council, without harming perennial vegetation.
 - d. No insecticide use is permitted on the site. This provision does not apply to insecticide use in on-site buildings, in and around electrical boxes, or as otherwise may be deemed necessary to protect public health and safety.
 - e. Plant material must not have been treated with systemic insecticides, particularly neonicotinoids.
2. Agriculture
 - a. Agrivoltaic CSECS projects shall establish agricultural ground cover (e.g. crops, pasture, etc.) as may be necessary for the adequate colocation of productive agriculture and electricity generation.
 - b. The use of agriculture may modify buffering requirements in subsection (CSECS-1:A), as determined during Development Plan review. However, the distance specified in (C.1.a) is not subject to modification.

I. Cables

1. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exception may be approved for agrivoltaic installations to permit cultivation of the soil.
2. Power and communication lines between the facility and the point of interconnection with the transmission system are not required to be buried, including main transmission lines and associated substations.

J. Emergency and fire safety

1. A sign shall be posted at the entrance(s) of the CSECS that includes the CSECS owner name, operator name, facility name, emergency contact phone number, physical site address, and gate number (if applicable).
2. An emergency response plan shall be required.
 - a. A feasibility analysis of using an on-site fire suppression system will be a component of the plan.
 - b. The plan shall be developed in conjunction with and approved by:
 - i. The Fire Department(s) serving the CSECS facility;
 - ii. The Whitley County Fire Chiefs Association;
 - iii. The Emergency Management Agency; and/or
 - iv. The County Sheriff.
3. The CSECS shall have reasonable accessibility for maintenance and emergency service vehicles.

K. Equipment.

1. At initial installation, all components necessary for the CSECS shall be new and commercially available, including solar panels, inverters, DC/AC disconnect, meters, wiring, racking, mounting, charge controllers, batteries, or any such equipment necessary.
2. Subsequent upgrades of equipment may reuse existing equipment components on the property.
3. Best available technology is to be used for all equipment.

L. Maintenance and repair/replacement of CSECS:

1. CSECS owner must maintain the facility in accordance with the Zoning Ordinance, the approved Development Plan, the Improvement Location Permit, and any conditions thereof. There shall be no outdoor storage of damaged, broken, or nonworking parts or components on the site.
 - a. Damaged, broken, or faulty components of a CSECS facility shall be repaired to working order or removed within three (3) months of the damage occurring.
 - b. Panels damaged in such a way as to expose the internal components and any debris from such damage shall be removed within one (1) week of the damage occurring.
2. The replacement of a CSECS with new or updated equipment shall be permitted if the substantive terms of the approved Development Plan continue to be met. Whenever possible, it is encouraged that a CSECS site be renovated as technology changes to avoid repetitive creation of new SECS Overlay Districts.

M. Damage to infrastructure:

1. If the construction, installation, maintenance, and/or decommissioning and restoration of a CSECS causes damage to waterways, public or regulated drains or ditches, private or mutual drains, county tiles, or any other drainage system which adversely affects drainage on nonparticipating properties, such damage shall be repaired by the CSECS owner to the original or better condition.
 - a. Repair may include rerouting, detention, resizing, or other measure as appropriate to resolve the adverse effects on nonparticipating properties.
 - b. Damage must be reported to the Drainage Board or its representative within one (1) week of damage occurring.
 - c. Repairs shall be approved by the Drainage Board or its representative and completed within six (6) months of the damage occurring.
2. Any damage to streets, county roads, highway infrastructure, and/or public utilities caused by the construction, installation, maintenance, and/or decommissioning and restoration shall be completely repaired by the CSECS owner to the original or better condition. All repairs must be compliant and approved by the County Highway Superintendent, Indiana Department of Transportation, and/or County Commissioners.
3. Bond or surety for damage. The following are required:
 - a. Financial surety that will cover damage to the drainage infrastructure, public or private, that may occur during the construction process. Such surety would commence upon completion of each phase of construction of the CSECS. Such performance surety may be released after no less than two (2) years and upon satisfactory inspection by the Drainage Board that any damage has been repaired.
 - b. Financial surety that will cover the reconstruction of public infrastructure due to construction activity related to the CSECS that will be approved in association with the Traffic Management Plan. Such surety would commence upon completion of each phase of construction of the CSECS. Such performance surety may be released after no less than two (2) years and upon satisfactory inspection by the Highway Department that any damage has been repaired.
 - c. Upon release of either performance surety, a maintenance bond covering any repair work done shall be provided and be in effect for two (2) years. The maintenance bond may be waived by the reviewing agency.
 - d. The amount of bonds required shall be determined by an engineer's estimate of the costs to repair any anticipated damages, subject to modification by the reviewing agency.

N. Nuisance prevention

1. Equipment in a CSECS that creates objectionable sounds during normal operations shall be located as far as practicable away from any nonparticipating existing dwelling. Sound attributed to the CSECS shall not exceed an hourly average sound level of forty (40) decibels at the property line of any nonparticipating property. The requirement set forth in this subsection may be waived with the written notarized consent of the owner(s) of each nonparticipating property.
2. If used, proposed lighting shall be shown on the proposed Development Plan and be no more than the minimum necessary for security. Any such lighting shall be

shielded and/or oriented to prevent glare on a public road or nonparticipating dwelling. Light shall not exceed 0.5 foot-candles at a residential property line.

3. A CSECS at no time shall create glare on any nonparticipating property line, structure or right-of-way. Temporary laydown/staging areas shall be no less than 400 feet from the property line of any nonparticipating property.
4. Employee and equipment parking shall be prohibited along county roads.
5. A CSECS shall be constructed and operated so it does not interfere with television, internet, telecommunications, microwave, GPS, military defense radar, navigational or radio reception to neighboring areas.

SECS-7: Decommissioning. A decommissioning plan is vital to protect the general welfare from the burden of an inoperable and abandoned CSECS.

- A. A project operator may not install or locate a CSECS project unless the project operator submits as part of the Development Plan the *Decommissioning and site restoration plan* including the recycling of as much of the solar panels and other equipment as reasonably possible, and provides the property owner a financial surety in the form of a performance bond or equivalent means of surety.
- B. The financial surety must be equal to the decommissioning costs included in the Development Plan as calculated by a third party licensed or registered engineer or professional with suitable experience in the decommissioning of CSECS.
- C. Change in CSECS Operator or Owner. A new operator or owner shall agree to any and all provisions of any and all prior owner requirements and shall furnish a copy of the transfer to the Zoning Administrator before commencing business.
- D. Project operator must provide to the Zoning Administrator a written notice of the project operator's intent to decommission a CSECS no less than sixty (60) days before discontinuation of the facility.
 1. All solar panels, structures, foundations, roads, gravel areas, cables and all product, materials or other items associated with the CSECS project shall be removed to a depth of 36".
 2. The ground shall be restored to a condition reasonably similar to its condition before the start of construction.
 3. Decommissioning must be complete within 1 year of the start date, with the allowance of no more than a 6-month extension by the Zoning Administrator.

SECS-8: Abandonment.

- A. The CSECS operator must submit a letter of intent for decommission in writing to the Plan Commission and proceed with decommissioning within the time periods as stated in this section.
- B. A CSECS facility is considered abandoned 540 days after the date on which the CSECS last generated electricity. Once a CSECS is considered abandoned, decommissioning shall proceed
- C. Upon determination of abandonment of a CSECS, the properties shall be removed from the Overlay District.

SECS-9: Conflicts. Nothing in the SECS Overlay District shall preempt other applicable state and federal laws or regulations. This ordinance and the regulations contained within shall not interfere with, abrogate or annul any other ordinance, rule or regulation, statute or provision of law. In the event that any provision of the regulations contained within this ordinance impose restrictions different from other ordinances, rules or regulations, statutes or provisions

of the law, then the provisions that are more restrictive and/or impose a higher standard shall govern SECS.