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KOSSUTH COUNTY ORDINANCE 320-C

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE KOSSUTH COUNTY ZONING ORDINANCE FOR THE PURPOSE OF REGULATING AND RESTRICTING THE USE OF LAND FOR THE CONSTRUCTION AND OPERATION OF UTILITY-SCALE SOLAR ENERGY SYSTEMS IN THE UNINCORPORATED AREA OF KOSSUTH COUNTY, IOWA

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BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF KOSSUTH COUNTY, IOWA:

WHEREAS, the regulation of the siting, construction, operation, and eventual discontinuance of Utility-Scale Solar Energy System (USSES) projects is necessary to protect the health, safety, welfare of residents of the County, to protect public infrastructure, and to ensure proper land use within the County that is consistent with the current comprehensive plan; and

WHEREAS, the County has undertaken a legislative study process to determine appropriate regulations for the siting, construction, operation, and eventual discontinuance of USSES projects; and

WHEREAS, during the course of the legislative study period, the County consulted with residents, interest holders, and professional consultants, including the County's engineers and legal counsel; and

WHEREAS, the County has received and considered the Planning and Zoning Commission's recommendations for a USSES ordinance; and

WHEREAS, the Board has considered the County's comprehensive plan and the objectives set forth in Iowa Code section 335.5; and

WHEREAS, pursuant to Iowa Code section 335.6, the Board scheduled a public hearing on this ordinance and caused notice of said hearing to be published in accordance with Iowa Code section 331.305; and

WHEREAS, the Board now finds it to be in the best interests of the County to amend its Zoning Ordinance to permit and establish supplemental standards applicable to the construction of USSES projects in the "A-1" Agriculture District.

**Section 1.** The Kossuth County Zoning Ordinance, Article VI – "A-1 Agricultural Districts," Section 6.1, is hereby amended by adding the following new subsection, 6.15, as follows:

6.15 Utility-Scale Solar Energy Systems, which may be considered by the Board of Adjustment in accordance with the standards and requirements of Article XXVI, Utility Scale Solar Energy Systems, and all other applicable considerations for special exceptions and variances in the Zoning Ordinance.

**Section 2.** The Kossuth County Zoning Ordinance, Articles XXVI, XXVII, XXVIII, and XXIX, are renumbered as Articles XXVII, XXVIII, XXIX, and XXX, respectively, and all of their numbered sections and subsections are renumbered accordingly.

**Section 3.** The Kossuth County Zoning Ordinance is amended by adding the following new Article XXVI in place of the former Article XXVI which is being renumbered:

## ARTICLE XXVI - UTILITY SCALE SOLAR ENERGY SYSTEMS

**26.1 Purpose** – The purpose of this Ordinance is to promote the public health, safety, and general welfare, by regulating the construction, installation, and operation of utility-scale solar energy system projects in the unincorporated areas of Kossuth County in a manner which balances the County’s goals of encouraging the development and use of alternative and renewable energy with the protection of public health and welfare, and limiting adverse impacts to protected areas of the County such as agricultural land, conservation areas, drainage tile, and public infrastructure. This ordinance shall be construed and implemented consistent with the County’s Comprehensive Plan and all applicable state and federal laws.

The County finds the construction of utility-scale solar energy system projects may impact private landowners, County infrastructure, and drainage systems, and because of these potential impacts, the Kossuth County Board of Supervisors believes that it is in the public’s best interest to review and regulate construction permits for these projects.

**26.2 Definitions** –

**Decommissioning** means the complete removal of all components of a USSES project, including solar arrays, accessory structures, and disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations, following the discontinuance of operations, and restoration of the site to its previous condition.

**Occupied Residence** means a building designed for, and actually occupied on a permanent basis as, an abode.

**Project Area** shall mean the geographic area encompassing all components of a utility-scale solar energy system project.

**Property Line** shall mean the legal boundary between separately-owned real estate parcels, and between privately-owned parcels and publicly-owned land or public right-of-way.

**Setback** means the minimum distance from a certain object, structure or other point of reference to the edge of any part or component of the USSES.

**Utility-Scale Solar Energy System (USSES)** has the same meaning as “facility” under Iowa code chapter 476A (as may be amended from time to time), except that this ordinance

is applicable to projects with a total capacity of ten (10) megawatts or more or projects which span a total of 30 acres of contiguous land within the unincorporated part of the county, which is used primarily for transmission through the electrical grid for offsite use or wholesale and/or retail sale. Utility-scale solar energy systems do not include small-scale solar panels or technologies installed at individual residential, municipal, or commercial locations that are not utilized for the commercial resale of any energy, except for the sale of surplus energy back to the electrical grid.

**26.3** **Applicability** – It shall be prohibited to construct and operate a USSES project within unincorporated Kossuth County without first obtaining a USSES Special Use Permit from the Board of Adjustment in accordance with this Ordinance. USSES’s may be located in an A-1 Agricultural zoning district within the County with a Special Use Permit and a building permit approved by the Board of Supervisors.

**26.4** **Application Requirements** – The County Zoning Administrator will supply the written application forms to be used by any person seeking a permit to construct a USSES project. A pre-application meeting may be held upon request at least 30 days prior to submission of the final application. Each project shall require a separate application. The application shall contain:

**26.41** The name, address, and EIN of the applicant, as well as the proposed owners or operators of the project, including the contact information (name, address, telephone, and email) of their authorized representatives. The application shall designate the entity that will be the permit holder.

**26.42** A list of the names and addresses of all property owners, located within the project area. Applicant shall provide proof of verification by the County Auditor.

**26.43** A project development timeline which includes a plan for notification to adjacent property owners and interested stakeholders.

**26.44** A Development Plan (“Plan”) for the project, which shall contain:

- 26.441** Legal descriptions of all properties identified as part of the project
- 26.442** The location and size of all structures and facilities
- 26.443** The location and layout of access and parking areas
- 26.444** The number of, location of, and distance between solar panels
- 26.445** The location of underground or overhead electric lines
- 26.446** Flood hazard area designations
- 26.447** Aerial photographs or a site plan of the entire proposed project area, showing:
  - 26.4471** the approximate proposed location of the facilities
  - 26.4472** private access roads
  - 26.4473** substations and all other components of the project
  - 26.4474** property lines and setback distances as specified in this Ordinance

- 26.4475** all public roads and public and private drainage district facilities (i.e., ditches and underground tiles) in the project area
- 26.4476** all lakes, permanent water courses, and public conservation areas within three (3) miles of the project area boundaries
- 26.448** Grading and Landscaping Plan prepared and certified by an Iowa licensed qualified engineer or architect.
- 26.449** An Emergency Response Plan.
- 26.45** Project details, including the name of the project and generating capacity.
- 26.46** Documentation of applicant's legal control over all of the private property interests necessary for the project, signed by the property owner.
- 26.47** A description of the county roads, bridges, and culverts anticipated to be used during all phases of construction, as well as for access to material storage sites and staging areas. Before construction commences on a project, all public road crossings and drainage district crossings must be provided to the County Engineer and reviewed for compliance with the County's Road Use and Public Drainage System Protection Agreements.
- 26.48** Any Federal Aviation Administration (FAA), Federal Communications Commission (FCC), or other State or federal permits or approvals that are necessary for the project. Applicant shall submit a copy of the actual permit application, or proof that the permit has been filed with the appropriate agency.
- 26.49** All Ancillary Agreements and plans required by this Ordinance.
- 26.410** Such additional information as the County may request due to unique circumstances with the project. Applicants are encouraged to have ongoing discussions with the Zoning Administrator and County's engineers (County & Drainage District) during preparation of the application.
- 26.411** Any property owner setback distance requirement waivers.
- 26.412** A waiver request for specific application requirements, upon showing of impossibility or hardship, may be requested at the time of application. Applications that lack any required information in this ordinance and which do not make an express waiver request will be deemed incomplete and will be returned to the applicant.
- 26.413** A permit fee in the amount of \$1,000 per MW (Mega Watt) per application

**26.5 Development Plan Siting Requirements** – The Development Plan shall be subject to the following requirements and standards and included in the Application:

- 26.51** A security fence must be installed along all exterior sides of the project area. Security fences shall be constructed of material approved by the County building official. Fences and any associated gates and warning signs must be maintained in good condition until the project is discontinued and decommissioned. Emergency access shall be available to the site and a description of the access shall be provided to the County.
- 26.52** All structures other than fences shall be developed within minimum setbacks shown below:
  - 26.521** Public Drainage Tile under the supervision of the Board of Supervisors: one hundred (100) feet from center of tile
  - 26.522** Public Open drainage district ditches under the supervision of the Board of Supervisors: three hundred (300) feet
  - 26.523** Occupied residence: five hundred (500) feet, unless a written waiver and consent from all affected property owners adjacent to the proposed structure site is provided as part of a variance application to the Board of Adjustment
  - 26.524** Property lines: One Hundred (100) feet, unless a written waiver and consent from all affected property owners adjacent to the proposed structure site is provided as part of a variance application to the Board of Adjustment
  - 26.525** Public right-of-way: 60 feet from County right-of-way line and 80 feet from primary highway right-of-way line
  - 26.526** Airports: As required by federal law
- 26.53** No structure or component part shall exceed the height requirement of the zoning district in which the USSES is constructed.
- 26.54** USSES projects shall be designed to minimize glare impact to adjacent property, including right-of-way.
- 26.55** The applicant shall be solely responsible for repairs or replacement of public or private drainage tile systems due to construction, operation, or maintenance of the USSES.
- 26.56** A soil and erosion mitigation plan shall be included as part of the Development Plan.
- 26.57** An Emergency Response Plan, including procedures for safe operation in the event of emergency, including fire, natural disaster, structure or facility collapse, personal injury on site, or other emergency shall be submitted as part of the Development Plan. The Emergency Response Plan is subject to review and approval by local fire departments and the Kossuth County Emergency Management Agency as a condition of USSES Permit approval.

**26.6 Ancillary Agreements Required** – Issuance of a USSES Permit is conditioned upon the applicant executing all of the following Ancillary Agreements in a form acceptable to the Board:

- 26.61** Kossuth County Road Use and Repair Agreement.

- 26.62 Kossuth County Public Drainage System Protection Agreement approved by the Trustees of each affected drainage district, which shall include provisions for repair or replacement of infrastructure and land restoration for any damages caused by the construction, operation, or maintenance of the USSES project.
- 26.63 Emergency Response Plan.
- 26.64 Decommissioning Plan.
- 26.65 Proof of Insurance. Evidence of general liability insurance coverage in the form of a certificate of coverage in an amount satisfactory to the Board for the construction and operation of the USSES.

26.7 **Transferability** – Only the holder of a USSES Permit shall own the Project and shall be the entity responsible for all requirements of this Ordinance. The Permit Holder shall be responsible for maintenance and compliance with all Ancillary Agreements.

No USSES Permit may be transferred or assigned without the written approval of the Kossuth County Board of Supervisors.

26.8 **Discontinuance of Operations and Decommissioning Plan** –

26.81 Discontinuance – Any USSES that has not been in operation and producing electricity for at least one hundred and eighty (180) consecutive days, excluding a natural catastrophic event, shall be removed. The County Engineer shall notify the owner to remove the system. Within ninety (90) days, the owner shall either submit evidence showing that the system has been operating and producing electricity or remove it.

A USSES shall also be discontinued upon permit revocation.

In the case of a natural catastrophic event, a detailed restoration plan to return to operational status must be provided to the County within sixty (60) days of the cessation of said event.

26.82 Decommissioning – Upon discontinuance of use or at the end of the useful life of the USSES, the owner and Permit holder shall be required to follow the Decommissioning Plan on file with the County.

The Decommissioning Plan shall contain:

26.821 A description of the project components, and a sequence and description of the activities required to remove the same in compliance with this section.

26.822 A report prepared by a qualified third-party (to be approved by the Board in advance), setting forth the procedures and estimated net cost associated with the removal of the components (other than feeder lines) and the accompanying restoration of the surface to the original elevation with soil content similar to that of the immediate area of each site. The cost estimate shall include all costs associated

with decommissioning (including deconstruction, transportation, disposal of all components, site clean-up, anticipated cost of public infrastructure repair, and liability insurance coverage).

- 26.823** Cash, an irrevocable letter of credit, or a performance bond guaranteeing performance of decommissioning plan running in favor of the County in an amount no less than the total estimated net costs as determined by the report required under section 2. The financial security must be in place at the time the project is completed, and must remain in effect until decommissioning is completed. No such security shall be cancelable without notice to the County. Each year, the permit holder shall provide proof that such security is in effect at the same time as the annual report to the assessor for purposes of the real estate tax assessment.
- 26.824** The report prepared under Paragraph B above shall be updated and provided to the County (i) at least once every five years; and (ii) upon any proposed transfer of the USSES Permit. Should any update indicate a change in the decommissioning costs, the security required under section 3 shall be adjusted accordingly, with proof provided to the County within sixty (60) days.
- 26.825** No transfer/assignment of the USSES Permit shall be effective without a corresponding transfer or assignment of the obligations and financial security required under the decommissioning plan, as approved by the Board of Supervisors.
- 26.826** The owner of a USSES may apply to the County for an extension of the decommissioning period for either removal or reactivation, which may be granted or denied at the Board's discretion.
- 26.827** Failure to comply with this section constitutes a material violation of this Ordinance subject to penalties.

**26.9 Penalties** – Any material violation of any provision of this Ordinance that remains uncured after thirty (30) days' written notice from the County to the USSES Permit holder shall be grounds for revocation or other legal action. Failure to comply following notice from the County shall be subject to all additional enforcement action available to the County. In addition to any other penalty provided under state law, County Code or County Zoning Code, a violation of this Ordinance shall constitute a County Infraction punishable by a civil penalty not to exceed \$750.00 for a first offense and not to exceed \$1,000.00 for each repeat offense. Each day that a violation occurs or is permitted to exist constitutes a separate offense.


**Section 4: Severability.** If any provisions of this Ordinance are for any reason illegal or void, then the lawful provisions of this Ordinance are separable from the unlawful provisions and shall remain in full force and effect in the same manner as if the Ordinance contained no illegal or void provisions.

**Section 5: Repealer.** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 6: Effective Date.** This Ordinance shall become effective upon its passage by the Board at three meetings and published as required by law.

First Reading: 3.17.26  
Second Reading: 3.24.26  
Approved: 3.24.26  
Published: 4.1.26 + 4.3.26

Adopted this 24 day of March 2026.

  
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Chairperson  
Kossuth County Board of Supervisors

ATTEST:

  
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TAMMY EDEN  
KOSSUTH COUNTY AUDITOR