

**NEWBERRY TOWNSHIP
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO. ____

**AN ORDINANCE OF NEWBERRY TOWNSHIP, YORK
COUNTY, AMENDING THE TOWNSHIP’S CODE OF
ORDINANCES TO PROVIDE REGULATIONS FOR
ACCESSORY SOLAR ENERGY SYSTEMS (ASES) AND
PRINCIPAL SOLAR ENERGY SYSTEMS (PSES).**

WHEREAS, Newberry Township, York County, Pennsylvania (“**Township**”) is a second class township duly organized and existing under the Second Class Township Code, 53 P.S. §35101 *et seq*;

WHEREAS, the Township is empowered by the Second Class Township Code and the Municipalities Planning Code, 53 P.S. § 10101 *et seq*, to regulate the use of property and the conservation of energy through access to and use of renewable energy resources within the Township;

WHEREAS, the Township has previously adopted a Zoning Ordinance, which is codified in Chapter 308 of the Township of Newberry Code of Ordinances (“**Code**”) and a Zoning Map which is incorporated in the Code;

WHEREAS, the Township believes it to be in the best interest of the health, safety and well-being of the residents of the Township to provide regulations for Accessory Solar Energy Systems (ASES) and Principal Solar Energy Systems (PSES) in Chapter 323 of the Code.

NOW, THEREFORE, be it ordained and enacted by the Board of Supervisors of the Township, as follows:

SECTION 1: The Code shall be amended by adding a new Chapter 323, titled “Solar Energy”.

SECTION 2: The Code shall be amended by adding a new §323-1, titled “Short title”, as follows:

§ 323-1 Short Title.

This Chapter shall be known as the “Newberry Township Solar Energy Ordinance of 2023.”

SECTION 3: The Code shall be amended by adding a new §323-2, titled “Purpose”, as follows:

§323-2 Purpose.

The purpose of this chapter is to promote health, safety and welfare within the Township by providing regulations for Accessory Solar Energy Systems (ASES) and Principal Solar Energy Systems (PSES).

SECTION 4: The Code shall be amended by adding a new §323-3, titled “Definitions”, as

follows:

§323-3 Definitions.

For the purposes of this Part the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

ACCESSORY SOLAR ENERGY SYSTEM (ASES)

(Often referred to as residential solar, but does not rule out commercial installations) An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power the majority of which is for on-site use. An accessory solar energy system consists of one (1) or more free-standing ground, or roof mounted, solar arrays or modules, or solar related equipment and is intended to primarily reduce on-site consumption of utility power or fuels.

APPLICANT

The individual or entity seeking approval for a solar energy system pursuant to this Chapter. The owner of the real property upon which the solar energy system shall be erected, as well as the Applicant, shall be responsible for compliance with this Chapter.

BOARD

The Board of Supervisors of Newberry Township.

CODE

The Township of Newberry Code of Ordinances.

PRINCIPAL BUILDING

A building or structure in which is conducted in the principal use of the lot on which the building or structure is located.

PRINCIPAL SOLAR ENERGY SYSTEM (PSES)

(Also referred to as Solar Farms or Commercial Solar Facilities) An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power and supply electrical or thermal power primarily for off-site use. Principal solar energy systems consist of one (1) or more free-standing ground, or roof mounted, solar collector devices, solar related equipment and other accessory structures and buildings including light reflectors, concentrators, and heat exchangers; substations; electrical inverters; electrical infrastructure; battery storage; on-

site transmission lines; and other appurtenant structures. Off-site transmission lines will not be considered part of the PSES for the purposes of zoning applications, but must be shown on land development plans submitted for approval.

SOLAR EASEMENT

A solar easement means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

SOLAR ENERGY

Radiant energy (direct, diffuse and/or reflective) received from the sun.

SOLAR ENERGY OVERLAY DISTRICT

This overlay district was created by the Newberry Township Solar Energy Ordinance of 2023 and is identified on the Newberry Township Zoning Map, and may be amended as needed in the future.

SOLAR ENERGY SYSTEM

A solar photovoltaic cell, module, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat.

- **SOLAR ARRAY**

A grouping of multiple solar modules with the purpose of harvesting solar energy.

- **SOLAR MODULE**

A grouping of solar cells with the purpose of harvesting solar energy.

- **SOLAR PHOTOVOLTAIC CELL**

The smallest basic solar electric device which generates electricity when exposed to light.

SOLAR RELATED EQUIPMENT

Items including a solar photovoltaic cell, module, or array, or solar hot air or water collector device panels, lines, pumps, storage batteries, mounting brackets, framing and possibly foundations or other structures used or intended to be used for collection, storage, and transmission of solar energy.

SECTION 5. The Code shall be amended by adding a new §323-4, titled “Accessory Solar Energy Systems (ASES)”, as follows:

§ 323-4 ACCESSORY SOLAR ENERGY SYSTEMS (ASES).

ASES shall be permitted in all zones as an accessory use secondary to the primary use of a property, upon receipt of a use certificate to be issued by the Zoning Officer, so long as all of the following criteria are met:

A. All ASES must adhere to the following performance standards:

- (1) ASES with an aggregate collection and/or focusing area of 100 square feet or less are exempt from these terms and conditions.
- (2) ASES constructed prior to the effective date of this Section shall not be required to meet the terms and conditions of this Chapter. Any physical modification to an existing ASES, whether or not existing prior to the effective date of this Section, must adhere to the provisions in Section 403.42 of the Uniform Construction Code concerning permit requirements and exemptions.
- (3) Upon installation, the ASES shall be maintained in good working order in accordance with standards of the Township provisions under which the ASES was constructed. Failure of the property owner to maintain the ASES in good working order is grounds for appropriate enforcement action by the Township. The Township may perform the services required and charge the owner appropriate fees or costs. Nonpayment of these fees or costs may result in a municipal lien against the property.
- (4) The display of advertising is prohibited except for reasonable identification of the manufacturer of the system.
- (5) Solar panels shall be located to minimize glare on adjacent properties or streets. The Township may require reasonable corrective actions after installation of the ASES to eliminate glare to adjacent residences or streets which causes a risk to public health or safety.
 - (a) The Township may require a glare study to be completed and submitted with the final land development plan and then again six months after operation of the ASES.
- (6) All on-site transmission and plumbing lines shall be attached flush to the Solar Array racking system or placed underground to the extent feasible. Any off-site transmission lines must be placed within legal rights-of-way, and proof of the right-of-way shall be provided to the Township prior to land development plan approval. Privately-owned off-site transmission lines proposed to be in a public street right-of-way shall require Township approval and a right-of-way agreement with provisions indemnifying the Township from all liability related to the transmission lines.
- (7) The ASES must be properly maintained and be kept free from all hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition, or detrimental to public health, safety or general welfare. In the event of a violation of any of the foregoing provisions, the Zoning Officer shall give written notice specifying the violation to the owner of the ASES to conform or to remove the ASES.
- (8) Each ASES and all other solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by system owner and/or operator, or upon termination of the useful life of same.

- (9) The ASES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of six (6) continuous months.

B. Ground Mounted Accessory Solar Energy Systems.

- (1) ASES installers must certify they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP approved installer by meeting or exceeding one of the following requirements:
 - (a) Is certified by the North American Board of Certified Energy Practitioners (NABCEP).
 - (b) Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited PV training program or a PV manufacturer's training program and successfully installed a minimum of three PV systems.
- (2) For residential applications, the ASES installer must also be a registered home improvement contractor with the Pennsylvania Attorney General's office.
- (3) The owner of a ground mounted ASES shall provide the Township written confirmation that the public utility company to which the ASES will be connected and has been informed of the customer's intent to install a grid connected system and approval of such connection. Off-grid systems shall be exempt from this requirement.
- (4) The minimum setbacks from side and rear property lines shall be equivalent to the building setbacks in the applicable zoning district.
- (5) Ground mounted ASES are prohibited in front yards.
- (6) Freestanding ground mounted ASES solar panels shall not exceed the applicable maximum height requirements in the underlying zoning district.
- (7) The following components of an ASES shall be considered impervious coverage and shall be included as part of the impervious coverage limitations for the underlying zoning district:
 - (a) Foundation systems for ASES, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
 - (b) Any impervious foundations installed for accessory mechanical equipment of the ASES, including any foundation structure to hold batteries or storage cells.
 - (c) Gravel or paved access roads and parking areas servicing the ASES.

- (8) Appropriate safety/warning signage concerning voltage shall be placed at ground mounted electrical devices, equipment, and structures. All electrical control devices associated with the ASES shall be locked to prevent unauthorized access or entry.
- (9) The applicant shall demonstrate compliance with the Newberry Township Stormwater Management Ordinance, Chapter 23 of the Code. ASES owners are encouraged to use low-maintenance and/or low-growing native species and pollinators under the system as a best management practice for stormwater management, or other acceptable vegetation and/or pollinators acceptable to the Township.
- (10) No grass or weeds shall be permitted at any time to exceed 12 inches in length or height from the surfaces under or surrounding the ASES. Any noxious weeds, as listed on Pennsylvania's Noxious Weed Control List (as amended), shall be immediately eradicated and removed.
 - (a) A violation of this provision also constitutes a violation of the Township's Weed Control provisions and the Township has the power to enforce this provision as set out in chapter 143, §§143-5 and 143-6, of the Code. Additionally, the Township may perform the eradication and removal services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.
- (11) Ground mounted ASES shall not be placed within any legal easement or right-of-way location unless agreed to by easement or right-of-way holder.
- (12) If a ground mounted ASES is removed, any earth disturbance as a result of the removal of the ground mounted solar energy system shall be returned to an environmentally stable condition. All development, including but not limited to panels, fencing, roadways and placement of aggregate, shall be removed unless other arrangements have been approved by the Township in writing.
- (13) Zoning /building permit applications shall document compliance with this Section and shall be accompanied by drawings showing the location of the system on the building or property, including property lines. Permits must be kept on the premises where the ASES is constructed.
- (14) The zoning/building permit shall be revoked if the ASES, whether new or pre-existing, is moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the ASES not to be in conformity with these provisions.

C. Roof Mounted and Wall Mounted Accessory Solar Energy Systems.

- (1) A roof mounted or wall mounted ASES may be located on a principal or accessory building.
- (2) ASES mounted on roofs or walls of any building shall be subject to the maximum height regulations specified for buildings within each of the applicable zoning districts.

- (3) Wall mounted ASES shall comply with the building setbacks in the applicable zoning districts.
- (4) Solar panels shall not extend beyond any portion of the roof edge.
- (5) The applicant shall provide evidence that the plans comply with the Uniform Construction Code and adopted building code of the Township that the roof or wall is capable of holding the load imposed on the structure.

SECTION 6. The Code shall be amended by adding a new §323-5, titled “Principal Solar Energy Systems (PSES)”, as follows:

§ 323-5 PRINCIPAL SOLAR ENERGY SYSTEMS (PSES).

PSES shall be permitted in the Solar Energy Overlay District as established by the Newberry Township Solar Energy Ordinance of 2023, upon receipt of a use certificate to be issued by the Zoning Officer, so long as all of the following criteria are met:

A. All PSES must adhere to the following performance standards:

- (1) PSES constructed prior to the effective date of this Section shall not be required to meet the terms and conditions of this Section. Any physical modification to an existing PSES, whether or not existing prior to the effective date of this Section must adhere to the provisions in Section 403.42 of the Uniform Construction Code concerning permit requirements and exemptions
- (2) No person shall install or construct a PSES without first obtaining approval pursuant to the plan review procedures of Chapter 22 of the Code, Subdivision and Land Development.
- (3) The PSES layout, design and installation shall conform to good industry practice. “Good industry practice” shall mean the practices, methods, standards, and acts (engaged in or approved by a significant portion of the solar power industry for similar facilities in similar geographic areas that are similar in size and complexity) as the same may change from time to time, that, at a particular time, in the exercise of reasonable professional judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable law, regulation, codes, good business practices, reliability, safety, environmental protection, economy, expedition, and shall comply with the PA Uniform Construction Code and with all other applicable fire and life safety requirements.
- (4) The application shall include a construction transportation plan that shows all roadways that will be utilized to access the site, which shall be forwarded to the Township for review and approval.
- (5) Upon completion of installation, the PSES shall be maintained in good working order in accordance with standards of the Township codes under which the PSES was constructed. Failure of the property owner to maintain the PSES in good working order

is grounds for appropriate enforcement action by the Township in accordance with applicable ordinances or Code provisions. The Township may perform the services required and charge the owner appropriate fees. Nonpayment of these fees may result in a municipal lien against the property.

- (6) PSES installers must certify they are listed as a certified installer on the PA Department of Environmental Protection's (DEP) approved solar installer list or that they meet the criteria to be a DEP approved installer by meeting or exceeding one of the following requirements:
 - (a) Is certified by the North American Board of Certified Energy Practitioners (NABCEP).
 - (b) Has completed an Interstate Renewable Energy Council (IREC) Institute for Sustainable Power Quality (ISPQ) accredited PV training program or a PV manufacturer's training program and successfully installed a minimum of three PV systems.
 - (c) PSES installers of projects rated at 5 MW or greater must demonstrate that they have installed at least two (2) utility-scale solar projects in the last three (3) years.
- (7) All on-site AC transmission and plumbing lines shall be placed underground to the greatest extent feasible. DC transmission and plumbing lines may be attached flush to the Solar Array racking systems.
- (8) Any off-site transmission lines must be placed within legal rights-of-way, and proof of the right-of-way shall be provided to the Township prior to land development plan approval. Privately-owned off-site transmission lines proposed to be in a public street right-of-way shall require Township approval and a right-of-way agreement with provisions indemnifying the Township from all liability related to the transmission lines.
- (9) The owner of an PSES shall provide the Township written confirmation that the public utility company to which the PSES will be connected and has been informed of the customer's intent to install a grid connected system and approval of such connection. Off-grid systems shall be exempt from this requirement.
- (10) The display of advertising is prohibited except for reasonable identification of the manufacturer of the system.
- (11) Solar panels shall be located to minimize glare on adjacent properties or streets. The Township may require reasonable corrective actions after installation of the ASES to eliminate glare to adjacent residences or streets which causes a risk to public health or safety.
 - (a) The Township may require a glare study to be completed and submitted with the final land development plan and then again six months after operation of the ASES.

- (12) A baseline noise study shall be performed and submitted to the Township during the land development phase, and another noise study shall be performed and submitted to the Township within six (6) months after commencement of operations. The noise study will be performed by an independent noise study expert approved by the Township and paid for by the Applicant. Noise from a PSES, as measured at the property lines, shall not exceed 45dBA or otherwise creates excessive noise which constitutes a nuisance as determined by the Township. The applicant will install mitigation measures acceptable to the Township to mitigate any noise exceedance identified by the study.
- (13) Concerning tree removal and landmarks, the PSES owner and/or developer must comply with Chapter 22, §22- 516, Trees and Landmarks, of the Township's Code.
- (14) No more than twenty percent (20%) of the entire area for development shall consist of Class II or Class III prime agricultural soils as defined by the current version of the Newberry Township Soils Map, unless agrivoltaic production will be used in which case the area for agrivoltaic production will not count as part of the twenty percent (20%) allowed development.
- (15) The applicant shall include a dwelling rights chart on the land development plan, which identifies the number of dwelling rights on the property. Dwelling rights/development rights may not be transferred out from a property on which a PSES has been developed upon during the duration of the lease or subsequent leases.
- (16) The PSES owner and/or operator shall maintain a phone number and identify a person responsible for the public to contact with inquiries and complaints throughout the life of the project and provide this number and name to the Township, and also post the same at the entrances to the PSES. The PSES owner and/or operator shall respond to the public's inquiries and complaints within seventy-two (72) hours of receipt of a complaint.
- (17) An Emergency Response Plan shall be included with the land development plan application, which shall be reviewed and approved by the local fire and emergency services departments.
- (18) Decommissioning requirements.
 - (a) The PSES owner shall provide an annual report by January 31 of each year showing the energy generated of the PSES for the preceding calendar year.
 - (b) If a PSES remains nonfunctional or inoperative for a continuous period of six (6) months, the facility shall be deemed to be abandoned and shall constitute a public nuisance, unless the facility operator demonstrates a good-faith intent to sell the facility. Within six months of abandonment, the facility operator shall remove the system, after a demolition permit has been obtained, in accordance with the following:

- [1] Any aboveground mechanical equipment, wiring, and structural components shall be removed and disposed of in accordance with all legal requirements.
 - [2] Underground wiring and structural components shall be removed and disposed of in accordance with all legal requirements.
- (c) After a PSES has been determined to be abandoned or has been terminated by the PSES owner, the PSES owner must still secure the property pursuant to the applicable provisions of this Chapter until the PSES is completely decommissioned or returned to another allowed use.
 - (d) When the equipment comprising the PSES is removed, any disturbed earth as a result of the removal of the equipment shall be restored, graded and reseeded, or immediately returned to another allowed use.
 - (e) The PSES owner shall submit an estimate for the total cost of decommissioning without regard to salvage value of the equipment (gross decommissioning cost), and also an estimate of the cost of decommissioning net of the salvage value of the equipment (net decommissioning cost) to the Township for review and approval prior to obtaining a building permit for the PSES and the estimate shall then be updated and approved by the Township prior to occupancy of the PSES and every fifth year thereafter. Prior to the issuance of the building permit, the PSES owner shall post and maintain financial security in the amount of one hundred ten percent (110%) of the net decommissioning costs; provided that at no point shall the financial security be less than fifty percent (50%) of the gross decommissioning costs. The financial security shall be in the form of a bank-issued letter of credit or cash escrow or other form of financial security approved by the Board. Cash escrow funds shall be held in an interest-bearing escrow account for the benefit of the PSES owner. This financial security must be updated to the present value every five years.
 - (f) If the PSES owner fails to complete decommissioning within the required time period, then the landowner shall within six months complete decommissioning. The Township may draw on the financial security to reimburse the landowner or directly pay the decommissioning contractor for decommissioning costs upon the request of the landowner and submission of proof of costs in a form satisfactory to the Township.
 - (g) If neither the PSES owner nor the landowner complete decommissioning within the required periods, then the Township may take such measures as necessary to complete decommissioning. To the extent the Township incurs costs to rightfully perform any act in furtherance of decommissioning, it may draw on the financial security to pay for all costs and expenses. If the decommissioning costs and expenses are greater than the financial security, then the Township may charge the landowner and/or PSES owner for the excess costs and expenses, including reasonable attorneys' fees for collection, and such amounts shall be a special assessment against the property and shall constitute a municipal lien on the

property for the amount of the assessment plus an additional penalty of ten percent (10%) of the assessment.

- (h) Upon completion of decommissioning to the satisfaction of the Township, any remaining financial security shall be released to the PSES owner.

(19) Solar Easements.

- (a) If required, a PSES owner and/or operator must obtain any solar easements necessary to guarantee unobstructed solar access by separate civil agreement(s) with adjacent property owner(s).
- (b) Solar easements shall be in writing and shall be subject to the same conveyance and instrument recording requirements as other easements.
- (c) Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating solar easements shall include but not be limited to:
 - [1] A description of the dimensions of the easement, including vertical and horizontal angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed;
 - [2] Restrictions on the placement of vegetation, structures, and other objects which may impair or obstruct the passage of sunlight through the easement;
 - [3] Enumeration of terms and conditions, if any, under which the easement may be revised or terminated;
 - [4] Explanation of the compensation for the owner of the real property subject to the solar easement for maintaining the easement and for the owner of the real property benefiting from the solar easement in the event of interference with the easement.

(20) Permit Requirements.

- (a) PSES shall comply with the Township subdivision and land development requirements in Chapter 22 of the Code. The installation of PSES shall be in compliance with all applicable permit requirements, codes, and regulations. The PSES shall require a building permit prior to any construction and an occupancy permit prior to any solar energy production.
- (a) The PSES owner and/or operator shall repair, maintain and replace the PSES and related solar equipment during the term of the permit in a manner consistent with industry standards as needed to keep the PSES in good repair and operating condition. Any changes to the configuration of the solar equipment, fencing or

screening that involves greater than 10% of the PSES site shall require submission of a revised land development plan and building permit application for review and approval by the Township.

B. Ground Mounted Principal Solar Energy Systems.

(1) Regulations applicable to all ground mounted PSES:

- (a) The PSES shall meet the lot size requirements of the applicable zoning district.
- (b) PSES owners are encouraged to use low-maintenance and/or low-growing native species and pollinators under the system as a best management practice for stormwater management, or other acceptable vegetation and/or pollinators acceptable to the Township. The PSES shall also meet all requirements of Chapter 23 of the Code and any applicable Pennsylvania Department of Environmental Protection regulations for stormwater, including the FAQs for Chapter 102 Permitting for Solar Farms or successor guidelines and best management practices for solar farms.
- (c) No grass or weeds shall be permitted at any time to exceed 12 inches in length or height from the surfaces under or surrounding the PSES. Any Noxious weeds, as listed on Pennsylvania's Noxious Weed Control List (as amended), shall be immediately eradicated and removed.

[1] A violation of this provision also constitutes a violation of the Township's Weed Control provisions, Chapter 10, Part 1 of the Code, and the Township has the power to enforce this provision as outlined in §10-106 of the Code. Additionally, the Township may perform the eradication and removal services required and charge the owner appropriate fees. Nonpayment of these fees may result in a municipal lien against the property.

- (d) PSES shall be setback three hundred (300) feet from any residential district or residential use. Crops, in addition to fences and screening for a PSES, may be within the setback but must be at least twenty-five (25) feet from any adjacent property line or street right-of-way line.
- (e) Ground mounted PSES solar modules shall comply with the building height restrictions for principal buildings of the applicable zoning district, excluding lightning rods and above-ground transmission lines when required.
- (f) The following components of a PSES shall be considered impervious coverage and shall be included as part of the impervious coverage limitations for the underlying zoning district:

[1] Foundation systems for PSES, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.

- [2] Any impervious foundations installed for accessory mechanical equipment of the PSES, including any foundation structure to hold batteries or storage cells.
- [3] Gravel or paved access roads and parking areas servicing the PSES.
- (g) The total surface area of the impervious coverage on the property shall not exceed more than fifteen percent (15%) of the lot area.
- (h) A land development plan for a PSES shall contain property line, fence and landscaping details showing compliance with this Chapter.
- (i) Ground mounted PSES shall not be placed within any legal easement or right-of-way location unless agreed to by the easement or right-of-way holder.
- (j) All ground mounted PSES shall be completely enclosed by fencing that consists of a minimum six (6) foot high fence with a locking gate. This required fencing shall be of a type approved by the Board. Gates shall be placed in locations allowing adequate space for vehicles to pull-off any adjacent roadway to unlock the gate for access. Ground mounted PSES shall be screened from public roadways and any residential district or residential use as required by the Board.
- (k) A clearly visible warning sign shall be placed at the base of all pad-mounted transformers and substations and on the fence surrounding the PSES informing individuals of potential voltage hazards.
- (l) Signage shall comply with the prevailing sign regulations.
- (m) Access drives and internal service roads are required to allow for maintenance and emergency management vehicles. The minimum cartway width shall be no less than twenty-two (22) feet for both access road and internal service roads. All access drives and internal service roads must conform to the applicable standards set forth in the Township's Subdivision and Land Development Ordinance, Chapter 22 of the Code, §22-505, Street Design.
- (n) If ground mounted solar equipment is removed, any earth disturbance as a result of the removal of the ground mounted solar equipment must be returned to an environmentally stable condition.
- (o) The continuation of any agricultural or residential use, to include but not be limited to grazing to control vegetation or other agricultural or ecological practices to make beneficial use of the land underneath the solar arrays or any land not dedicated to the PSES, will be permitted as customarily incidental to and compatible with the PSES use, and shall not be considered a second principal use.

C. Roof and Wall Mounted Principal Solar Energy Systems.

- (1) The Applicant shall provide evidence that the plans comply with the Uniform Construction Code and adopted building code of the Township that the roof or wall is capable of holding the load imposed on the structure.
- (2) PSES mounted on roofs or walls of any building shall be subject to the maximum height regulations specified for buildings within the applicable zoning district.
- (3) A roof mounted or wall mounted PSES may be located on a principal or accessory building.
- (4) Wall mounted PSES shall comply with the building setbacks in the applicable zoning districts.
- (5) Solar panels shall not extend beyond any portion of the roof edge.

SECTION 7. The Code shall be amended by adding a new §323-6, titled “Modifications”, as

follows:

§323-6 Modifications.

The Board may grant modification of the requirements of one of more provisions of this Chapter if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the property in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the Chapter is observed. All requests for modification shall be in writing and shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Chapter involved and the minimum modification necessary.

SECTION 8. The Code shall be amended by adding a new §323-7, titled “Enforcement”, as

follows:

§323-7 Enforcement.

- A. The violation of any provision of this Chapter is hereby deemed a public nuisance. The Township is hereby authorized to enter upon private property and take all measures necessary to abate a deemed public nuisance under this chapter. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Township or designated contractor to enter upon the premises for the purposes set forth above. The costs incurred by the Township to abate a public nuisance, including attorney fees, shall be a special assessment against the property and shall constitute a municipal lien on the property for the amount of the assessment plus a penalty of ten percent (10%) of the assessment.
- B. Any person, partnership, corporation, developer or landowner who or which has violated the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township before a magisterial district judge (formerly district justice), pay a judgment of not more than six hundred dollars (\$600), plus all court costs, including reasonable attorney's fees incurred by the Township. No judgment shall commence

or be imposed, levied or payable until the date of the determination of a violation by the magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the magisterial district judge determining that there has been a violation further determines that there has been a good faith basis for the person, partnership, corporation, developer or landowner violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

- C. In addition to the penalties prescribed in Subsections A and B, the Township may institute injunctive, mandamus or any other appropriate action or proceedings at law or in equity for the enforcement of this chapter. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

SECTION 9: Any Ordinance, Code Chapter, or part inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only.

SECTION 10: In the event any provision, section, sentence, clause, or part of this Ordinance shall be held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such invalidity, illegality, or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses, or parts of this Chapter, it being the intent of the Board of Supervisors that the remainder of the Chapter shall be and shall remain in full force and effect.

SECTION 11: This Ordinance shall become effective five (5) days following its enactment by the Board of Supervisors of Newberry Township, York County, Pennsylvania, as provided by law.

ORDAINED AND ENACTED ON THIS, THE ____ DAY OF _____, 2023.

ATTEST:

Secretary

NEWBERRY TOWNSHIP
BOARD OF SUPERVISORS

By: _____
Chairman