

AN ORDINANCE IMPOSING A MORATORIUM ON THE ISSUANCE OF BUILDING
PERMITS TO BUILD AND CONSTRUCT SOLAR FARMS IN
CLAY COUNTY, NORTH CAROLINA

THAT WHEREAS, in recent years, there have been a significant number of solar farms constructed and built in Clay County, North Carolina; and

WHEREAS, it has come to the attention of the Clay County Board of Commissioners that the development and construction of solar farms in Clay County, North Carolina, can have a material adverse impact upon the values of adjacent properties and other properties close to the same; and

WHEREAS, it has come to the attention of the Clay County Board of Commissioners that there are safety concerns associated with solar farms which must be adequately addressed so as to protect the health, safety and welfare of the citizens of Clay County, North Carolina; and

WHEREAS, in the recent past there has been rapid growth in Clay County, North Carolina, of the building and construction of solar farms; and

WHEREAS, since Clay County began looking into the possible regulation of solar farms in Clay County, North Carolina, four new solar farms have been built and constructed and permits for six new solar farms have been applied for and issued or are under consideration; and

WHEREAS, the current regulations in Clay County may not adequately address the public health and safety concerns and other concerns caused by the building and construction of solar farms in Clay County, North Carolina; and

WHEREAS, Clay County has not thoroughly studied the impact of the building and construction of solar farms nor considered the options for their regulation and control; and

WHEREAS, the General Assembly for the State of North Carolina has empowered counties to regulate development within the territorial jurisdiction of the county pursuant to Part 3 of Article 18 of Chapter 153A and Article 6 of Chapter 153A, specifically § 153A-121, of the North Carolina General Statutes; and

WHEREAS, County Staff and the Board of Commissioners need a definite and reasonable period of time within which to study, draft, discuss, consider and/or adopt reasonable regulations concerning the building and construction of solar farms within Clay County, North Carolina; and

WHEREAS, The Clay County Board of Commissioners has duly advertised on August 18, 2011, that it will conduct a public hearing to discuss the possible adoption of a temporary moratorium ordinance on the issuance of building permits to build and construct solar farms in Clay County, North Carolina, for sixty days, and to receive public comment upon the same, on Tuesday,

August 30, 2011, at 6:00 o'clock, p.m., in the Multipurpose Room located on the second floor of the Clay County Courthouse, located at 261 Courthouse Drive, Hayyesville, NC 28904, and it convened and opened the required public hearing on August 30, 2011, all in accordance with the North Carolina Gen. Stat. §153A-340 (h).

NOW THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF CLAY DOTH ORDAIN AS FOLLOWS:

1. THAT there is hereby imposed a moratorium for a period of 60 days from the date hereof on the issuance of building permits to build and construct solar farms in Clay County, North Carolina. For purposes of this ordinance, the term "solar farm" includes, but is not limited to, a use where a series of one or more solar collectors are placed in a area for the purpose of generating photovoltaic power for an area greater than the principal use on the site. Solar farm is also referred to as solar power plant and solar photovoltaic farm. "Solar collector" means a device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.
2. THAT pursuant to the provisions of N.C. Gen. Stat. § 153A-340(h), this Moratorium Ordinance shall not apply to any project for which a valid building permit issued pursuant to N.C. Gen. Stat. § 153A-357, is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to N.C. Gen. Stat. § 153A-344.1, to development for which substantial expenditures of have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final solar farm plans that have been accepted for review by the County prior to the call for public hearing to adopt the moratorium. Any preliminary solar farm plat accepted for review by County prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval and issuance of building permit without being subject to the moratorium.
3. THAT the provisions of this Moratorium Ordinance shall apply to the unincorporated areas of Clay County, lying outside the corporate limits or extraterritorial jurisdiction of any incorporated town. Municipalities within Clay County may elect to allow this ordinance to be effective within their corporate limits and extraterritorial jurisdiction.
4. THAT this moratorium shall become effective immediately upon its adoption.
5. Statement of problems or conditions necessitating this Moratorium Ordinance:
 - A. In recent years, there have been a number of solar farms constructed and built in Clay County, North Carolina;
 - B. It has come to the attention of the Clay County Board of Commissioners that the

development and construction of solar farms in Clay County, North Carolina, can have a material adverse impact upon the values of adjacent properties and other properties close to the same;

- C. It has come to the attention of the Clay County Board of Commissioners that there are safety concerns associated with solar farms which must be adequately addressed so as to protect the health, safety and welfare of the citizens of Clay County, North Carolina;
 - D. In the recent past there has been rapid growth in Clay County, North Carolina, of the building and construction of solar farms;
 - E. Since Clay County began looking into the possible regulation of solar farms in Clay County, North Carolina, four new solar farms have been built and constructed and permits for six new solar farms have been applied for and issued or under consideration;
 - F. The current regulations in Clay County may not adequately address the public health and safety concerns and other concerns caused by the building and construction of solar farms in Clay County, North Carolina;
 - G. Clay County has not thoroughly studied the impact of the building and construction of solar farms nor fully considered the options for their regulation and control; and
 - H. County Staff and the Board of Commissioners need a definite and reasonable period of time within which to consider reasonable regulations concerning the building and construction of solar farms within Clay County, North Carolina.
6. Statement as to courses of action, alternative to this Moratorium Ordinance that were considered by Clay County and why those alternative courses were not deemed adequate:

The County through its County Manager and with the assistance of the County Attorney embarked upon a study of whether or not Clay County could properly regulate solar farms in Clay County under its police power or otherwise. The same has taken some time to accomplish. After determining that Clay County could, the County was challenged by the task of coming up with appropriate and reasonable regulations of solar farms within the jurisdictional limits of Clay County. The County had hoped that this process could be completed quickly but it appears that the same will take some time to accomplish due to the nature and complexity of the same. This alternative to a moratorium ordinance was deemed inadequate the following reason: Since Clay County began looking into the possible regulation of solar farms in Clay County, North Carolina, four new solar farms have been built and constructed and permits for six new solar farms have been applied for and issued or under consideration. Further, it appears that this is a rapidly growing industry and it

appears likely that additional solar farms will be built and constructed in Clay County, North Carolina. Further, once a solar farm has been constructed, it will be much more difficult to properly regulate the building and construction of the same.

7. Statement of the development approvals subject to this Moratorium Ordinance and how this Moratorium Ordinance on those approvals will address the problems or conditions leading to the imposition of this Moratorium Ordinance:

Building permits for the building and construction of solar farms are the development approvals subject to this Moratorium Ordinance. This Moratorium Ordinance on building permits for the building and construction of solar farms will temporarily stop the issuance of building permits for the building and construction of solar farms in Clay County so as to afford Clay County adequate time to study, draft, discuss, revise and adopt appropriate regulations to address challenges which are presented by solar farms and as set forth in Paragraph Number 5 hereof and all subparagraphs thereof, the same being incorporated herein by reference. Further, it will stop for a period of 60 days the development of further non-exempt solar farms projects in Clay County, North Carolina, until such appropriate regulations are properly in place.

8. This Moratorium Ordinance shall automatically expire at the end of October, 31, 2011, unless sooner repealed by the Clay County Board of Commissioners.

9. Statement of reasons why a sixty day duration of this Moratorium Ordinance is reasonably necessary to address the problems or conditions leading to the imposition of this Moratorium Ordinance:

It is deemed that the process of studying, drafting, discussing, revising and adopting appropriate regulations to address the challenges which are presented by solar farms and as set forth in Paragraph Number 5 hereof and all subparagraphs thereof, the same being incorporated herein by reference, would take approximately 60 days.

10. That during the duration of this Moratorium Ordinance, the following actions shall be taken on the following schedule by Clay County to address the problems or conditions leading to the imposition of this Moratorium Ordinance:

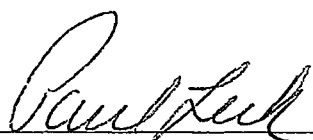
- A. Staff of the County shall study and draft appropriate proposed regulations to address the challenges which are presented by solar farms and as set forth in Paragraph number 5 and all subparagraphs thereof, the same being incorporated herein by reference, between now and October 7, 2011;
- B. Staff of the County shall submit said proposed regulations for consideration, review and/or approval by members of the Clay County Board of County Commissioners not later than October 7, 2011;

- C. The Clay County Board of County Commissioners shall consider, review and/or approve said proposed regulations not later than October 7, 2011; and
- C. Proposed revisions to said proposed regulations shall be brought back to the Clay County Board of County Commissioners for its consideration and/or approval no later than 60 days after the adoption of this Moratorium Ordinance.

ADOPTED this the 7 day of September, 2011.

COUNTY OF CLAY

By: 
Chairman, Clay County Board of
County Commissioners

ATTEST: 
Clerk to the Clay County Board of
County Commissioners

(County Seal)