

TOWN OF WINDSOR

UTILITY SCALE SOLAR ENERGY FACILITY ORDINANCE

Section 1. Purpose

The purpose of this Ordinance is to establish a municipal review procedure and siting standards for Utility Scale Solar Facilities (USSF's). These standards are intended to:

- a. Establish clear guidelines and standards to regulate utility scale solar energy facilities;
- b. Permit the Town to fairly and responsibly protect public health and safety;
- c. Support the development of utility scale solar energy facilities in a manner that minimizes any potential adverse effects on the scenic, cultural, and natural resource character of the Town;
- d. Provide for the removal of panels and associated utility structures that are no longer being used for the purpose of energy generation and transmission; and
- e. Support the goals and policies of the Comprehensive Plan, including orderly development, efficient use of infrastructure, and protection of natural and scenic resources.

Section 2. Authority

This Ordinance is enacted pursuant to the enabling provisions of Article VIII, Part 2, §1 of the Maine Constitution, the provisions of Title 30-A MRSA, §3001 (Home Rule), and the provisions of Title 30-A §4312 et. seq. (Comprehensive Planning and Site Plan Review Regulation, or "Growth Management" Act).

Section 3. Applicability

- a. No Utility Scale Solar Energy Facility shall be located within the Town of Windsor without a Permit issued by the Town of Windsor Planning Board, unless specifically exempted from the permit requirements of this Ordinance. Any physical expansion, reconfiguration, or increase in the Rated Nameplate Capacity of an existing Solar Energy Facility shall also require approval from the same permitting authority as required for a new Utility Scale Solar Energy Facility under this Ordinance. Routine maintenance and replacements of components do not require a permit.
- b. Exemption. Solar Energy Facilities occupying 800 square feet or less on the same land parcel are exempt from the requirements of this Ordinance. All Solar Energy Facilities must meet state electrical codes and permitting requirements, and applicable requirements of any other Ordinance of the Town of Windsor. An applicant may only be allowed one installation of an array of less than 800 square feet on the same land parcel.

Section 4. Definitions

As used in this Ordinance, unless the context otherwise indicates, the terms referenced below have the following meanings:

- a. **Financial capacity:** Means the demonstration of current and future financial capacity, which must be unaffected by the owner's or operator's future financial condition, to fully fund decommissioning in accordance with an approved decommissioning plan under this ordinance.
- b. **Rated Nameplate Capacity:** means the maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC)
- c. **Residential Dwelling Structure:** means any structure that includes a room or group of rooms with a bathroom, cooking, and sleeping facilities designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters. The term shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwellings.
- d. **Solar Energy System (SES):** a solar photovoltaic cell, module, or array, including all Solar Related Equipment, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation.
- e. **Solar Glare:** The potential for solar panels to reflect average sunlight, with an intensity sufficient to cause annoyance, discomfort, loss in visual performance or visibility, or a public safety hazard.
- f. **Transfer of ownership:** means a change in the legal entity that owns or operates a solar energy development. A sale or exchange of stock or membership interests or a merger is not a transfer of ownership as long as the legal entity that owns or operates the solar energy development remains the same.
- g. **Utility Scale Solar Facility (USSF):** is any solar facility, project, or installation which is intended to and/or in fact does generate solar power and feeds said power into the electric grid supplying the local utility with power. This shall include, but is not limited to, any ground mounted photovoltaic (PV) project that is larger than 0.10 M.W. (ac) in capacity. Residential/commercial solar arrays smaller than 0.10 M.W. (ac) are not included in this definition.

Section 5. Administration and Enforcement

- a. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other Ordinance or Code of the Town existing on the effective date of this Ordinance or State or Federal regulation, the provision which establishes the higher standard for the promotion and protection of health and safety shall prevail.
- b. Permit Required. An approval Permit from the Planning Board is required prior to the installation, construction, or expansion of a Utility Scale Solar Energy Facility (USSF). USSF's must meet the requirements of this Ordinance. All USSF's must also meet all federal and state electrical codes and permitting requirements.
- c. Maintenance Conditions: The USSF owner or operator shall maintain the USSF and all associated fencing and landscaping elements in good functional condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security and visual

barrier measures. The USSF 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 based on annual inspection done by the Code Enforcement Officer.

Section 6. Specific Application Requirements

An application for a USSF Permit must include the following:

- a. A permit / technical review fee to be set by the Selectboard Members shall be payable at the time of application. This fee will be reviewed and amended as necessary on an annual basis by the Selectboard.
- b. A description of the owner of the facility, the operator if different, and detail of experience/history operating and track record to run the USSF;
- c. If the operator will be leasing the land, a copy of the agreement (minus financial compensation) clearly outlining the relationship inclusive of the rights and responsibilities of the operator, landowner, property tax apportionment agreement (if any) and any other responsible party with regard to the USSF and the life of the agreement;
- d. A description of the energy to be produced and to whom it will be sold;
- e. A copy of the agreement and schematic details of the connection arrangement with the transmission facility, clearly indicating which party is responsible for various requirements and how they will be operated and maintained;
- f. Applicant must present and meet federal, state and local permit requirements to the Planning Board
- g. A description of the panels to be installed, including make and model, and associated major facility components;
- h. A construction plan and timeline, identifying known contractors, site control during construction and anticipated on-line date;
- i. A full official land survey of the proposed site. Must include any Rights of way and Easements on the property and be sealed and/or stamped by a Maine licensed professional surveyor.
- j. An operations and maintenance plan, including security and the projected operating life of the facility;
- k. An emergency management plan for all anticipated hazards must be submitted by developer/applicant.
- l. Proof of financial capacity to construct and operate the proposed USSF; and
- m. The applicant shall notify in writing by Certified Mail, Return Receipt Requested, all owners of property within five hundred (500) feet of the proposed USSF that an application has been submitted, specifying the location of the proposed subdivision and including a general description of the project.

n. A Visual Impact Assessment

An analysis to determine potential visual effect of the USSF must be undertaken. The visual impact assessment must be prepared by a design professional trained in visual assessment procedures such as professional engineering, GIS or landscape architecture companies.

In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures.

A visual impact assessment must also include narratives to describe the following:

- Significance of any potential impacts
- The level of current use / visual interactions with the affected area by residents, abutters and the public i.e. how many people will be affected by the changes.
- Reasonable viewer expectations of the affected area based of existing conditions, uses and landscape setting
- Measures taken to avoid and minimize visual impacts
- Steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

The Visual Impact Assessment must include the following elements:

i. A visual and cartographic analysis (Viewshed Analysis)

A geographical representation of all the areas of where the USSF, from its highest points is visible from the surrounding (impact) area should be presented. Areas of the impact area from which the activity will be visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape.

ii. Site inventory and photographic review.

This should provide a comprehensive and objective means by which to analyze and assess the potential visual and aesthetic impacts that may result from the USSF and its associated elements.

iii. Visual Simulations - Visual simulations should be provided to show a photo-realistic perspective view of proposed USSF elements in the landscape, thereby allowing abutters to clearly visualize how a project will really look from their primary residential structure.

o. A decommissioning plan, including:

i. A description of the trigger for implementing the decommissioning plan. There is a rebuttable presumption that decommissioning is required if no electricity is generated for a

continuous period of 12 months. The Applicant may rebut the presumption by providing evidence, such as a force majeure event that interrupts the generation of electricity, that although the project has not generated electricity for a continuous period of 12 months, the project has not been abandoned and should not be decommissioned.

- ii. A description of the work required to physically remove all solar panels, associated foundations, buildings, cabling, electrical components, and any other associated facilities to the extent they are not otherwise in or proposed to be placed into productive use. All earth disturbed during decommissioning must be graded and re-seeded, unless the landowner of the affected land requests otherwise in writing.

[Note: At the time of decommissioning, the Applicant may provide evidence of plans for continued beneficial use of any or all of the components of the Solar Energy Facility. Any changes to the approved decommissioning plan shall be subject to review and approval by the Planning Board.]

- iii. An estimate of the total cost of decommissioning less salvage value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: panel removal, panel foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization, and road infrastructure removal and permanent stabilization. This cost estimate must be updated every three (3) years to the Planning Board.
 - iv. Demonstration in the form of a performance bond, surety bond, letter of credit, or other form of financial assurance as may be acceptable to the Planning Board that upon the end of the useful life of the USSF the Applicant will have the necessary financial assurance in place for 120% of the total cost of decommissioning, less salvage value. The financial assurance shall include a provision granting the Town the ability to access the funds and property and perform the decommissioning if the USSF is abandoned or the Applicant or subsequent responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and approved by the Planning Board.
 - v. Transfer of ownership. Upon a transfer of ownership of a solar energy development subject to a decommissioning plan approved under this ordinance, a person that transfers ownership of the development remains jointly and severally liable for implementation of the plan until the Planning Board approves transfer of the decommissioning plan to the new owner or operator. (If/when a change of ownership occurs the current owner must register the name, address and contact information of the new owner with the town. For each day that the new owners are not registered with the town, the applicant shall be in violation and subject to standard penalties as per Section 9 of this ordinance.)
- p. Land Clearing, Soil Erosion, and Habitat Impacts:
- Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and ordinances. Removal of Mature trees shall be avoided to the extent possible. Native, pollinator-friendly seed mixtures shall be used to the extent possible. Herbicide and pesticide use shall be minimized. No prime agriculture

soil or significant volume of topsoil shall be removed from the site for installation of the system. Incidents of soil erosion shall be corrected within 60 days of being reported.

q. Buffers and Screening

All buffer areas shall be maintained in a neat and sanitary condition by the owner.

Fence - Ground Mounted Solar Energy Systems shall be protected by a perimeter fence. Such fences shall allow for small wildlife passage and movement.

Lots on which Ground Mounted Solar Energy Systems are located shall utilize buffers / screening from roads and residences by plantings, berms, and natural topographical features. Ground mounted SES shall be screened from view to the greatest extent practical of any adjacent property that is used for residential purposes, as well as any public way. The screen shall consist of a vegetative barrier which provide a visual screen. In lieu of a vegetative screen, a fence that provides visual screening, and meets requirements of the controlling ordinance, may be allowed only if a vegetative screen is deemed impractical by the Planning Board.

All USSF shall be situated to eliminate concentrated glare onto abutting structures or roadways.

Section 7. Standards for Approval

The following standards must be met for a USSF to be approved for development:

- a) Legal Responsibilities: The Applicant must provide proof of authorization to construct, use, and maintain the property and any access drive for the life of the USSF and including the decommissioning of the USSF. The roles and responsibilities of the facility owner, operator, landowner and any other party involved in the project must be clear and meet the satisfaction of the Planning Board that the public interest is protected.
- b) Setbacks: Structures (including fencing) that are part of a USSF shall be setback a minimum of **100 feet** from any existing property lines, or right-of-way, and **125 feet** from the center of a public or private road.
- c) Glare – All SES shall be situated to eliminate concentrated glare onto nearby structures or roadways.
- d) Height: The USSF components shall be no more than 15 feet high at the tallest point of any equipment, excluding utility poles.
- e) Utility Notification: No USSF shall be installed until evidence has been given to the Planning Board that the applicant has an agreement with the local utility to accept the power.
- f) Fencing: The Planning Board shall require that a USSF be enclosed by fencing to prevent unauthorized access and may also require landscaping to avoid adverse aesthetic impacts of installed fencing to adjacent properties.

- g) Screening - Lots on which Ground Mounted Solar Energy Systems are located shall utilize buffers / screening from roads and residences by plantings, berms, and natural topographical features. Ground mounted SES shall be screened from view to the greatest extent practical of any adjacent property that is residentially zoned or used for residential purposes, as well as any public way. The screen shall consist of a vegetative barrier which provide a visual screen. In lieu of a vegetative screen, a fence that provides visual screening, and meets requirements of the controlling ordinance, may be allowed only if a vegetative screen is deemed impractical by the Planning Board.
- h) Signage: Signage shall be required to identify the owner of the USSF and provide a 24-hour emergency contact phone number. This signage shall not be used for advertising except for reasonable identification of the manufacturer or operator of the USSF. A clearly visible warning sign shall be placed at the base of all pad-mounted transformers and substations and on the fence surrounding the USSF, informing individuals of potential voltage hazards, including stating the output of power (AC or DC).
Signage indicating the official e911 address of the Facility shall also be required to clearly be visible, from both directions of travel, from the public road or roads from which the USSF is accessed.
- i) Visual Impact: Reasonable efforts, as determined by the Planning Board, shall be made to minimize undue visual impacts by preserving native vegetation, screening abutting properties, or other appropriate measures including:
 - i. The significance of the potentially affected scenic resources.
 - ii. The existing character of the surrounding area.
 - iii. Adhere to height standards and setback requirements.
 - iv. The extent, nature and duration of the potential effect of the USSF's presence on the public's continued use and enjoyment of the town's scenic resources.
- j) Emergency Services: The USSF owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town of Windsor Fire Chief. Upon request, the owner or operator shall coordinate with local emergency services in developing an emergency response plan. A "3200 Series KNOX-BOX" shall be provided and installed by the operator to be used to allow emergency service personnel continuous access. All means of shutting down the USSF shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

Access roads to the USSF shall be of sufficient quality, number of access roads and gates, and dimensions to satisfy the fire chief that any emergency response vehicles be able to easily and safely gain access to and around the site.

- k) Modifications: Any material modifications to a USSF made after issuance of the required Town permit(s) shall require approval by the Code Enforcement Officer and/or the Planning Board depending on minor or major changes.

Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing on the approved plan by the Code Enforcement Officer, and a report presented to the Planning board at their next regularly scheduled meeting.

Major changes including any variation from the plans, proposals, and supporting documents, that affect compliance of the ordinance standards shall be reviewed and approved by the Planning Board.

The board's scope of review shall be limited to those portions of the plan which are proposed to be modified. The board shall use the ordinance standards currently in effect at the time of review of the proposed modifications.

- 1) Satisfaction with All Aspects of Capacity and Plans Submitted: The Planning Board must find that the Applicant has the capacity to finance, safely operate and decommission the USSF.

Section 8. Effective Date and Duration

This ordinance shall take effect on _____ upon enactment by the Town of Windsor unless otherwise provided and shall remain in effect until it is amended or repealed.

Section 9. Enforcement Violations and Penalties

This Ordinance shall be enforced by the municipal officers or their designee. Violation of this Ordinance shall be subject to the enforcement and penalty provisions of 30-A, M.R.S. § 4452, Enforcement of Land Use Laws and Ordinances.

Select Board Approved – 9-27-2022
Select Board Approved – 10-11-2022
Town Meeting Approval – 11/9/2022