

ORDINANCE 2022-01

AN ORDINANCE TO CREATE A SOLAR ENERGY SYSTEM LICENSING PROCESS IN THE TOWN OF DEERFIELD, DANE COUNTY, WISCONSIN

WHEREAS, the Deerfield Town Board has determined that a licensing process is needed to protect the health and safety of the public regarding the installation and use of solar energy systems, consistent with the restrictions set forth under Wis. Stat. § 66.0401(1m); and,

WHEREAS, the Deerfield Town Board has therefore determined that it is in the public interest to adopt the regulations attached hereto as Addendum A.

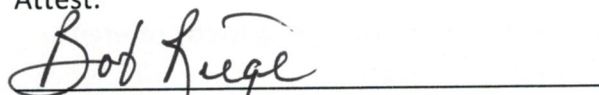
NOW, THEREFORE, the Town of Deerfield Board of Supervisors ordains that the regulations contained in Addendum A attached hereto are adopted and made into an ordinance.

This ordinance shall be effective on the day after publication or posting or of an appropriate notice hereof as provided by law.

Adopted this 14th day of ~~February~~ ^{March} 2022.


Mike Schlobohm, Town Chair

Attest:


Bob Riege, Town Clerk

ADDENDUM A

REGULATION OF SOLAR ENERGY SYSTEMS

- 1.1 Finding, Purpose, Authority and Interpretation
- 1.2 Applicability
- 1.3 Definitions
- 1.4 License Required
- 1.5 Requirements for Applying for a Solar License or Renewal of an Approval
- 1.6 Application
- 1.7 Minimum Standards
- 1.8 Inspection, Enforcement Procedures, and Penalties
- 1.9 Severability, Interpretation, and Abrogation
- 1.10 Effective Date

Section 1.1 Finding, Purpose Authority and Interpretation

- (a) **Findings.** Solar energy systems ("System" and "Systems"), while an increasingly important part of a renewable energy portfolio, can have certain adverse impacts regarding health and safety.
- (b) **Purpose.** The purpose of this Ordinance is to require that a license be obtained from the Town of Deerfield ("Town") prior to constructing and operating a System to ensure that the System does not adversely impact public health and safety.
- (c) **Authority.** This Ordinance is adopted under the powers granted to the Town by Wis. Stat. §§ 60.22(3), and 61.34, and the Town's authority under Wis. Stat. § 66.0401. Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal, or recreation.

Section 1.2 Applicability

- (a) This Ordinance applies to all Systems that generate electricity within the Town designed for nominal operation at a capacity of 1,000 kilowatts (**kW**) or more.

Section 1.3 Definitions

- (a) **Construction activities** means initiation of any construction, land clearing, or land disturbance related to construction, installation, or operation of a solar energy system.

- (b) **Solar energy system or System** has the meaning provided in Wis. Stat. § 13.48(2)(h)1.g. and includes transmission and distribution facilities dedicated to the solar energy system.

Section 1.4 License Required

- (a) **License Requirement.** Except as provided in Section 1.6 (b), a person is prohibited from commencing construction activities on a System or operating a System in the Town without first obtaining a Solar Energy System Construction and Operating License from the Town Board ("solar license"). The requirements for applying for a solar license are provided in Section 1.5 (a).
- (b) **License Term.** An initial license term may be approved for a maximum of 25 years. A license renewal under Section 1.5 (b) may be for a term of up to 25 years from date of issuance.
- (c) **License Amendment.** If the Town has issued a solar license, the licensee may request an amendment to that license during the license term, using the same process as applies to an original license application. If the licensee of the Solar Energy System wants to expand the existing system by more than 1000 KW, a new license application will need to be submitted and a new solar license issued.
- (d) **License Transfer.** A solar license may be assigned or transferred without the express written consent of the Town upon delivery to the Town of documentation that the transferee agrees to be bound by the obligations of the licensee under this Ordinance and any developer agreement between the Town and the licensee.
- (e) **License Revocation.** A solar license may be suspended or revoked under the procedures in Section 1.8.

Section 1.5 Requirements for Applying for or Renewing a Solar License

- (a) **Application for a Solar License.**
- (1) The applicant shall submit an application that contains all required documentation required under Section 1.6 to the Town Clerk.
 - (2) The application shall be accompanied with the license fee as set forth in the Town of Deerfield Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of Deerfield".

- (3) If the Town Board determines that additional expertise is required or will provide valuable assistance to the Town Board in its review of the application, the Town Board may retain the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The estimated additional fee shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, the applicant shall pay the additional amount within 30 days of invoicing by the Town.
- (b) **Application for Renewal of a License.** A licensee seeking renewal of a solar license shall submit a complete application for a renewal to the Town Clerk no later than three (3) months prior to the expiration of the license.
- (c) **Preliminary Review, Preliminary Hearing, and Proposed Decision.**
- (1) **Preliminary Review.** The Town Clerk shall forward an application or a request for renewal to the Town Planning Commission and Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.
- (2) **Additional Information.** The Town Board may request that the applicant submit additional information if the Town Board determines that the application or request for renewal is incomplete, or if the Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance.
- (3) **Proposed Decision.** Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a solar license, with or without conditions, or to deny the application or request.
- (d) **Decision by the Town Board.**
- (1) **Notice and Hearing: Proposed Decision.** Upon the issuance of a proposed decision under Section 1.5, sub. (c) (3) above, the Town Clerk shall place the preliminary decision of the Town Board on the Town's website and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for a solar license, give Class II

public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.

- (2) **Town Board Final Decision.** Following the receipt of public comments at the public hearing and any submitted written comments, the Town Board may make a final decision whether to grant a solar license or to renew a license, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.
- (3) **Basis of Proposed and Final Decisions.** The Town Board shall base its proposed and final decisions on a review of the application, any available reports from experts or consultants, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board.
- (4) **Granting License.** The Town Board shall grant the solar license if it determines that the operation of the System will be consistent with the standards set forth in this Ordinance.
- (5) **Renewal Request.** The Town Board shall grant a request for renewal of a solar license if it determines that continued operation of the System will be consistent with the standards set forth in this Ordinance, and that there have been no material violations of this Ordinance or the license which have not been remedied.
- (6) **Denial in Writing.** If the Town Board denies an application for a solar license or denies a request for renewal of a license, the Town Board shall notify the applicant in writing and provide the reason for the denial.

Section 1.6 Solar License Application

Applications for a solar license shall be made on an application form provided by the Town Clerk and include the following:

- (1) A detailed site plan and map of the portion of the System in the Town of Deerfield, including, but not limited to, proposed locations of all improvements, including buried cables.

- (2) Contact information about the owners of any lands upon which any part of the System will be located. The application will provide the name, address, phone number, and email address of the person and/or entity intending to construct and operate the System.
- (3) Names and contact information for landowners within ¼ mile of any part of the proposed System.
- (4) A safety plan, including details regarding security, safety equipment, procedures in the event of fire or other emergency, and a point of contact regarding the System in the event of an emergency.
- (5) An operation plan detailing the construction, operations, and decommissioning phases over the life of the project, including estimated timelines for each.
- (6) An “end of life” detailed decommissioning plan showing the total removal for all structures, foundations and buried electrical circuits, and restoration of the property. Buried electric circuits and foundations must be removed to a minimum depth of 48”.
- (7) An herbicide and pesticide utilization plan detailing the use and storage of these chemicals to control noxious and invasive plants, animals and insects.
- (8) Information showing that the System will comply with the minimum standards set forth in Section 1.7, including, but not limited to, proposed terms regarding the use and repair of Town roads during the construction and operation of the System.

Section 1.7 Standards and Recommendations for Systems

- (a) **Minimum Standards.** The following minimum standards apply to all Systems:

- (1) Systems will be appropriately buffered and screened from public view.
- (2) The construction and operation of the System shall not adversely impact Town roads. Systems shall be located at least 50 feet from a Town right-of-way (ROW) to allow maintenance activities, unless the Town Board determines a smaller setback will suffice at a given location.
- (3) Prior to construction and operation of the System, adequate provisions shall be made by the licensee to the Town’s satisfaction that licensee will repair any

damages it or its contractors cause to Town roads and other improvements, at licensee's sole expense. Town roads, drainage systems, and other improvements in the right-of-way (ROW) will be protected, and that such assurance may be made by separate contract with the Town.

- (4) All applicable federal, state and local permits, licenses and approvals have been or will be obtained prior to commencement of operation of a System.
- (5) The licensee will comply with all applicable local, state and federal laws and regulations, including, but not limited to, CPCN requirements, environmental and stormwater regulations, applicable to the construction and operation of the System.
- (6) Security and safety must be maintained in and around the System, consistent with the plan provided in the licensee's application.
- (7) At least two months prior to construction activities, the licensee will meet with a Town official to review the obligations and responsibilities of the licensee with respect to Town roads, drainage systems, fencing, property management and right-of-way (ROW) during the construction and operation phases of the project, in the context of public health and safety.
- (8) The licensee will limit the normal hours of operations at the site, particularly construction activities and activities causing excessive light to be shed from the site onto neighboring property, to avoid disturbance of the use and enjoyment of neighboring property.
- (9) The licensee will limit night lighting to the level that is minimally necessary for security and worker safety. Every effort, consistent with legal requirements for safety, shall be made to minimize illumination of the night sky and neighboring properties.
- (10) The licensee will control off-site noise levels to the extent practicable to avoid adverse impacts on neighboring properties, particularly during construction activities. The licensee shall comply with all applicable noise limits.
- (11) Licensee will seek permission and approval from the Town before trimming or removing any tree located in the Town's right-of-way (ROW), which permission will not be unreasonable withheld.

- (12) Any hazardous chemicals or other materials will be stored, used, and disposed of in accordance with applicable local, state and federal law.
 - (13) The licensee shall keep its contact information updated with the Town.
 - (14) Licensee shall, at its sole expense, remove its buried cables and other improvements in the Town's right-of-way (ROW) no later than twelve months from when the System is decommissioned or when the improvements in the Town's ROW are no longer used by the licensee, whichever is sooner.
 - (15) Prairie and pollinator-friendly vegetation shall be used and maintained as ground cover throughout solar fields, and these sites should be maintained free of invasive or noxious species.
- (b) **Recommended Considerations.** The following provisions are recommended but are not required standards:
- (1) The siting of Systems on areas used for crop production is discouraged, particularly on Group I and II agricultural soils. In addition to providing food, these areas also serve an important component of local agriculture and dairy farming.
 - (2) The siting of Systems is discouraged on lands designated as Community Residential, Rural Residential, Commercial, Business Park, Parks, Open Space, or Environmental Corridors Classifications in the Town Comprehensive Plan, Future Land Use Map. These areas are instead intended for other forms of development or conservation, in line with local and intergovernmental plans and agreements.
 - (3) The siting of Systems is discouraged within the view of any residential subdivision or public recreation land, unless effective screening and setbacks are installed.
 - (4) Systems should be sited along or near existing electric transmission lines capable of distributing energy from the solar field. It is further recommended that new transmission lines outside of the solar field should be buried, in order to minimize the installation of new overhead lines.
 - (5) Large-scale removal of topsoil, mature trees, and woodlands is discouraged, and it is recommended that environmental corridors and animal movement routes be preserved.

Section 1.8 Inspection, Enforcement Procedures, and Penalties

- (a) **Inspection.** The Town Building Inspector, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a System in the Town to safeguard the health and safety of the public and to determine compliance with this Ordinance, upon showing proper identification and providing reasonable notice. Licensee shall cooperate with the Town's representatives and agents for purposes of inspection.
- (b) **Violations.** The following are violations under this Ordinance:
 - (1) Engaging in construction, installation, or operation of a System without a solar license granted by the Town Board.
 - (2) Failure to comply with the applicable minimum standards set forth in section 1.7(a).
 - (3) Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.
 - (4) Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.
 - (5) Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.
- (c) **Hearings.**
 - (1) Any person affected by a notice, order, or action under sub. (d), or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (d) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a

hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.

- (2) After a hearing under par. (1), the Town Board, by a majority vote of the Town Board, shall sustain, modify or withdraw the notice, order, or action under sub. (d), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within 10 days, in writing, of such findings.
 - (3) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.
- (d) **Remedies.** The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:
- (1) Issue a stop work order.
 - (2) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
 - (3) Issue a citation.
 - (4) Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (f) and injunctive relief.
 - (5) Suspend or revoke the solar license under sub. (e) in the event there are repeated exceedances of the standards of conditions incorporated into a solar license or developer agreement.
- (e) **License Suspension or Revocation.** After giving notice and holding a hearing, the Town Board may suspend or revoke a solar license for a violation under sub. (b).
- (f) **Penalties.**
- (1) Any person or entity who violates this Ordinance may be assessed a forfeiture of not less than \$500 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

- (2) Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under sub. (f)(1) and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.
- (g) **Non-Waiver.** A failure by the Town to take action on any past violation shall not constitute a waiver of the Town's right to take action on any present or future violation.

Section 1.9 Severability, Interpretation, and Abrogation

(a) Severability.

- (1) Should any section, clause, provision, standard, or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.
- (2) If any application of this Ordinance to a particular parcel of land or System or project is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.
- (b) The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.
- (c) This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

Section 1.10 Effective Date

- (a) Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication or posting of the adopted ordinance as provided by Wis. Stat. § 60.80.