

TOWN OF ALBION, WISCONSIN  
ORDINANCE# 2022-02 Solar Energy System Permit

The Town Board of the Town of Albion, Dane County, Wisconsin, does hereby ordain as follows:

**SOLAR ENERGY SYSTEM PERMIT**

**Section 1 Preamble**

The purpose of this ordinance is to promote the public health and safety, prosperity, aesthetics, and general welfare of the people and communities within the Town of Albion, Dane County, Wisconsin, and set forth the rules and procedures for this municipality regarding solar energy systems (“Systems”) within the Town. This ordinance is adopted pursuant to the Town’s village and police powers under secs. 60.10(2)(c) and 61.34, Wis. Stats.

**Section 2 Intent**

- (1) The general intent of this ordinance is to regulate the location, construction, installation, alteration, design, operation, and use of all solar energy systems (“Systems”) within the Town of Albion designed for nominal operation at a capacity of 1,000 kilowatts (kW) or more, but less than 100 MW.
- (2) Wisconsin courts have recognized that the evaluation of an application for local approval of a System requires a case-by-case approach and that a municipality must receive information about the specifics of a particular proposed System and then decide whether a restriction is warranted. This ordinance is intended to comply with such requirements and is not intended to arbitrarily set a one size fits all scheme of requirements for any System.
- (3) Except to the extent that restrictions preserve and protect the public health and safety, the application of this ordinance shall not significantly increase the cost or significantly decrease the efficiency of the proposed Solar Energy System.

**Section 3 Definitions**

- (1) “Construction activities” means initiation of any construction, land clearing, or land disturbance related to construction, installation, or operation of a solar energy system.
- (2) “Solar energy system” or “System” has the meaning provided in Wis. Stat. Sec. 13.48(2)(h)1.g. and includes transmission facilities and Battery Energy Storage Systems (“BESS”) dedicated to the solar energy system. It is not the intent of this ordinance to regulate smaller residential and small commercial roof top systems (“Small Scale Solar”) Small Scale Solar systems are specifically exempted from regulation under this ordinance but may be subject to regulation under other applicable codes and statutes, including but not limited to, zoning and building codes.

#### **Section 4 Permit Required**

- (1) Permit Requirement. A person, firm, corporation, or other legal entity is prohibited from commencing construction activities on a System or operation of a System in the Town without first obtaining a permit from the Town Board (“Solar Permit”). The procedure for applying for a Solar Permit is provided in Section. 5, below.
- (2) Permit Term. An initial permit may be approved for a maximum of thirty-five (35) years. A permit renewal under section 5(2) may be for a term of up to ten (10) years.
- (3) Permit Amendment. If the Town has issued a Solar Permit, the operator may request an amendment to that permit during the permit term, using the same process as applies to an original permit application.
- (4) Permit Transfer. A Solar Permit may be assigned or transferred only with 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 permittee under this Ordinance and any developer agreement between the Town and the permittee.
- (5) Permit Revocation. A Solar Permit may be suspended or revoked under the procedures in section 8, below.

#### **Section 5 Requirement for Applying for a Solar Permit or Renewal of an Approval**

- (1) Application for a Solar Permit. The applicant shall submit an application that contains all required documentation required under Section 7 and shall pay the required application fee of \$1,000.00 to the Town Clerk at the time of submitting the application. Further, to the extent that outside expertise is necessary and essential for the consideration of the application, the applicant shall pay any such engineering, inspection, consulting and legal fees incurred by the Town for services performed by or on behalf of the Town for this application.
- (2) Application for Renewal of a Permit. The operator shall make a written request to the Town Clerk for a renewal of the permit no later than October 1 of the year in which the permit will expire.
- (3) Preliminary Review, Preliminary Hearing, and Proposed Decision.
  - (a) Preliminary Review. The Town Clerk shall forward an application or a request for renewal to the Plan Commission for initial review to determine if additional information or expertise is necessary to properly evaluate the application. Once the initial review is complete, the Plan Commission will forward the application with recommendations to the Town Board.
  - (b) 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.

- (c) 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 Permit, with or without conditions, or to deny the application or request.

(4) Decision by the Town Board.

- (a) Notice and Hearing; Proposed Decision. Upon the issuance of a proposed decision under sub. (3)(c), the Town Clerk shall place 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 Permit, 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.
- (b) 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 Permit or to renew a permit, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.
- (c) Basis of Proposed and Final Decisions. The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board.
- (d) In the case of an application for a Solar Permit, the Town Board shall grant the permit if it determines that the operation of the System will be consistent with the standards and purposes of this Ordinance.
- (e) In the case of a request for renewal of the permit, the Town Board shall grant the request for renewal if it finds that there have been no material violations of the Ordinance or the permit which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the Solar Permit or this Ordinance.
- (f) If the Town Board denies an application for a Solar Permit or denies a request for renewal of a permit, the Town Board shall notify the applicant in writing.

**Section 6 Application**

- (1) Application Process.

- (a) Applicants shall first engage in a pre-application meeting. At this meeting, the Applicant shall provide a list of all federal, state and local permits and approvals that are necessary for the project to proceed.
  - (b) After the pre-application meeting, applicants shall submit an application containing all information required by Section 6 (2) below.
  - (c) If the application is deemed incomplete, the Town Clerk will notify the applicant of such no later than 45 days after submission of the application.
  - (d) Within 45 days of the filing of an application for approval, the Town Clerk shall publish a class 1 notice stating that an application has been filed with the Town Board and such notice shall state whether the application is deemed complete. If the application is deemed incomplete, the notice shall state the reason for such determination.
  - (e) An applicant may supplement or refile an application as necessary.
  - (f) Within 90 days of receipt of a complete application, or within 135 days of the initial filing of the application if there no determination as to completeness, the Town Board shall act to approve or disapprove the application.
    - i. The time period within which to act may be extended by the Town a maximum of 45 days if it determines that it needs additional information in order to make a determination.
    - ii. The time period within which to act may be extended by up to 90 days if the applicant makes a material modification to the application, or if there is other good cause for an extension as determined in writing by the Town Board.
- (2) Application Requirements. All applicants for a Solar Permit shall submit a detailed site plan, including a map, with the applicant's application. The applicant shall also submit information about the owner of any lands upon which any part of the System will be located, the name, address, phone number, and email address of the operator, an operation plan detailing the construction, operations, and decommissioning phases over the life of the project, including estimated timelines for each. The applicant shall also provide information addressing the factors set out in Section 7.
- (3) Developer Agreement. The Town Board may enter into a developer agreement with an applicant that supersedes in whole or in part of the requirements of this Ordinance.

**Section 7 Decision Factors**

- (1) The Town Board shall grant the permit, either with or without conditions, if it determines that the development and operation of the System is in the best interest of the citizens of the Town, and will be consistent with the protection of public safety and general welfare. The Town Board shall deny the permit if it determines that the development and

operation of the System is not in the best interest of the citizens of the Town, and will not be consistent with the protection of public safety or general welfare.

- (2) The Town Board may conditionally approve the permit and attach conditions to protect public health and safety and promote the general welfare of the Town. In making its decision, the Town Board shall consider the following factors:
  - (a) The size of the parcel to be dedicated to solar energy production.
  - (b) The proposed height of the photovoltaic panels.
  - (c) The proposed setbacks from any side or rear property lines.
  - (d) The security measures proposed with regard to fencing, lock boxes, and other items.
  - (e) The proposed plans for buffering, including vegetative buffering, any submitted glint or glare assessment, and other proposed screening the System from public view.
  - (f) The proposed plans for complying with state and federal environmental requirements including stormwater management, impact on water quality and water supply in the area, and control of dust from project activities.
  - (g) The possible adverse impact the construction and operation of the System will have on town roads and any proposed restrictive provisions and proof of financial security for road maintenance and repair.
  - (h) The operator's plans for hours of operations at the site, particularly during construction.
  - (i) The operator's plans for limiting night lighting and controlling off-site noise levels to avoid adverse impact on neighboring properties.
  - (j) The operator's plans for addressing soil protection, erosion control, drainage, vegetation during construction and during the life of the project utilizing best management practices.
  - (k) The operator's plans for limiting impact on wildlife that inhabits the site.
  - (l) The proposed time frame, project life, development phases, and future expansions of the project.
  - (m) The likely markets for the generated energy.
  - (n) The operator's plans for emergency and normal shutdown procedures. Such plans may include plans regarding emergency response planning, training and coordination, and access in the event of fire. If a BESS system is incorporated in the System plan,

the applicant shall provide detailed plans and proposed procedures for responding to an emergency at the site.

- (o) The extent of any electromagnetic field and communications interference that will be generated by the project and the operator's plans for limiting such.
  - (p) Studies related to stray voltage, noise, and/or emc interference which are expected due to the project.
  - (q) The operator's plan for storing, using, and disposing of hazardous chemicals or other materials so as to be in compliance with applicable state and federal law.
  - (r) The operator's plans for decommissioning the project and reclamation of the land after anticipated useful life or abandonment or termination of the project, including plans for environmentally safely removing the power generating equipment, and any proof of financial security for reclamation. The Town will require the owner(s) of a Solar Field to follow the current industry standards for reuse or recycling of the components of a PV Solar System (PV panels, support structures and storage batteries) that exist at the end of the operational life of said components. The Town will consider what sureties, financial assurances, or other guarantees the operator has available and intends to offer to cover costs of decommissioning in the event the operator fails to perform decommissioning as required under the permit.
  - (s) Any other factors relating to the best interest of the citizens of the Town and the protection of public health, safety, and general welfare.
- (3) The evaluation of such factors shall be made by the Town Board on a case-by-case basis.
  - (4) All applicants shall have all applicable federal, state, and local permits and approvals in place or to be in place prior to commencement of operation.
  - (5) All applicants and operators shall comply with all applicable fire, building and electrical codes.
  - (6) The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State, or County permits or if the System is abandoned.

### **Section 8 Inspection, Enforcement Procedures, and Penalties.**

- (1) Inspection. The Town Board, 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.

(2) Violations. The following are violations under this Ordinance:

- (a) Engaging in construction, installation, or operation of a System without a Solar Permit granted by the Town Board or a developer agreement.
- (b) Making an incorrect or false statement, including the information and documentation submitted during the permitting process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.
- (c) Failure to comply with any conditions of an approval or permit, or any agreements entered into as a condition of approving a permit.
- (d) Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.

(3) Hearings.

- (a) Any person affected by a notice, order, or action under sub. (4), or upon denial of an application for a permit or permit 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. (4) is served or within 30 days of the date of the approval or denial of a permit or an application for 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.
- (b) After a hearing under par. (a), the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action under sub. (4), or grant or deny Ordinance have been complied with. The Petition shall be notified within 10 days, in writing, of such findings.
- (c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons thereof, 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 issues in connection with the case.

(4) Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

- (a) Issue a stop work order.
- (b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
- (c) Issue a citation.

- (d) Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (6) and injunctive relief.
- (e) Suspend or revoke the Solar Permit under sub. (5) in the event there are repeated violations of the conditions incorporated into a Solar Permit or developer agreement.
- (5) Permit Suspension or Revocation. After giving notice and holding a hearing, the Town Board may suspend or revoke a Solar Permit for a violation under sub. (2).
- (6) Penalties.
  - (a) 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.
  - (b) Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under sub (6)(a) and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.
- (7) Non-Waiver. One or more waivers of any provision of the Solar Permit by the Town shall not be construed as a waiver of a further breach of the same provision or any other provision of the Solar Permit. Waivers must be in writing to be effective.

## **Section 9 Severability, Interpretation, and Abrogation**

- (1) Severability.
  - (a) 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.
  - (b) 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 judgement shall not be applicable to any other parcel of land not specifically included in said judgement, unless specifically required by the court.
- (2) 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.
- (3) This Ordinance is not intended to repeal, annul or interfere with easements, covenants, deed restriction or agreements created prior to the effective date of this Ordinance.

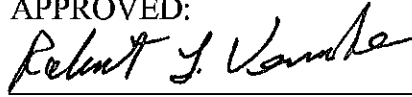


**Section 10 Effective Date.**

This Ordinance shall become effective following its adoption, upon publication and/or posting in the manner provided for by law.

Adopted this 6<sup>th</sup> day of September, 2022.

APPROVED:



Robert Venske, Chairman

ATTEST:



Julie Hanewall, Clerk

ADOPTED:

Supervisor, Abigail Staff introduced the above ordinance and moved its passage. Seconded by Lawrence Beck.

Roll Call: Robert Venske, Abigail Staff, Pat Tesar, Lawrence Beck

Yes: 4      No: 0

Copies of this ordinance may be obtained at the clerk's office located at 620 Albion Road, Edgerton, WI 53534, Monday through Friday, 8:00 a.m. to 1:00 p.m.