

500.10 Solar Energy System License Ordinance

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SECTION I – FINDING, PURPOSE AND AUTHORITY

1. Findings. Solar energy systems "Systems", while an increasingly important part of a renewable energy portfolio, can have certain adverse impacts.
2. Purpose. The purpose of this Ordinance is to require the operator of a proposed System to be located in the Town of Berry to obtain a license from the Town prior to beginning construction activities in order to protect public health and safety, to minimize or prevent potential adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Berry.
3. Authority. This Ordinance is adopted under the powers granted to the Town of Berry by Wisconsin Statutes Sections 60.10, 60.22(3), and 61.34, its authority under Wisconsin Statutes Sections 66.0401 and 66.0403, and other authority under the statutes, and its adoption of village powers under Wisconsin Statutes Section 60.10(2)(c). 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.
4. Interpretation. Wisconsin Courts have recognized that the evaluation of an application for local approval of a System requires a case-by-case approach. The Town must receive information about the specifics of a particular proposed System and then decide whether a restriction is warranted. Town ordinances may not arbitrarily set a one size fits all scheme of requirements for any System.

SECTION II – APPLICABILITY

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

SECTION III – DEFINITIONS

1. Construction Activities. 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 Wisconsin Statutes Section 13.48(2)(h)l.g. and includes transmission facilities dedicated to the solar energy system.

SECTION IV – LICENSE REQUIRED

1. License Requirement. Except as provided in Section VI(2), a person is prohibited from commencing construction activities on a System or operation of a System in the Town without first obtaining a license from the Town Board "solar license". The requirements for applying for a solar license is provided in Section V(1).
2. License Term. An initial license term may be approved for a maximum of 35 years. A license renewal under Section V(2) may be for a term of up to 10 years.
3. License Amendment. If the Town has issued a solar license, the operator may request an amendment to that license during the license term, using the same process as applies to an original license application.
4. License Transfer. A solar license may be assigned or transferred without the express written consent of the Town upon delivery to the Town of Berry 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.
5. License Revocation. A solar license may be suspended or revoked under the procedures in Section VIII.

SECTION V – REQUIREMENTS FOR APPLYING FOR A SOLAR LICENSE OR RENEWAL OF AN APPROVAL

1. Application for a Solar License. The applicant shall submit an application that contains all required documentation required under Section VI to the Town Clerk.
2. Application for Renewal of a License. The operator shall make a written request to the Town Clerk for a renewal of the license no later than October 1 of the year in which the license 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 Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.
 - 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 license, with or without conditions, or to deny the application or request.

4. Decision by the Town Board.
 - a. Notice and Hearing of Proposed Decision. Upon the issuance of a proposed decision under subsection 3(c), 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.
 - 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 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.
 - 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 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 license, the Town Board shall grant the license if it determines that the operation of the System will be consistent with the standards and the purposes of this Ordinance.
 - e. In the case of a request for renewal of a license, the Town Board shall grant the request for renewal if it finds that there have been no material violations of the Ordinance or the license which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the solar license or this Ordinance.
 - f. 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.

SECTION VI – APPLICATION

1. Application Requirements. All applicants for a solar license 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 showing that the System will comply with the minimum standards in Section VII.
2. Developer Agreement. The Town Board may enter into a developer agreement with an applicant that supersedes in whole or in part the requirements of this Ordinance.

SECTION VII – MINIMUM STANDARDS

The Town Board shall grant a solar license if it finds that the proposed System will be consistent with the following minimum standards and the purposes of this Ordinance. Pursuant to Section I(4) and Wisconsin law, evaluation of these standards requires a case-by-case evaluation:

1. The System will be appropriately buffered and screened from public view.
2. The construction and operation of the System will not adversely impact town roads.
3. All applicable federal, state and local permits and approvals have been or will be obtained prior to commencement of operation.
4. The operator will maintain compliance with state and federal environmental requirements including stormwater management.
5. The operator 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.
6. The operator 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.
7. The operator will control off-site noise levels to the extent practicable to avoid adverse impacts on neighboring properties, particularly during construction activities.
8. Any hazardous chemicals or other materials will be stored, used, and disposed of in accordance with applicable state and federal law.
9. The operator shall submit a maintenance plan to the Town for approval and thereafter comply with the Town approved maintenance plan.

SECTION VIII – 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 license granted by the Town Board or a developer agreement.
 - b. Failure to comply with the applicable minimum standards and other terms of this Ordinance.
 - c. 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.
 - d. Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.
 - e. Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.
 - f. Failure to maintain the premises in accordance with the Town approved maintenance plan.
3. Hearings.
 - a. Any person affected by a notice, order, or action under subsection 4, 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 subsection 4 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.

- b. After a hearing under paragraph a, the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action under subsection 4, 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.
 - c. 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.
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 subsection 6 and injunctive relief.
 - e. Suspend or revoke the solar license under subsection 5 in the event there are repeated exceedances of the standards or conditions incorporated into a solar license or developer agreement.
5. 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 subsection 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. If power is generated in violation of a court injunction or without licensure the operator has an additional forfeiture and shall forfeit the then current commercial value of the power so generated.
 - c. Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under subsection 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. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

SECTION IX – 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 judgment shall not be applicable to any other parcel of land not specifically included in said judgment, 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 any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

SECTION X – EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 16th day of August, 2021

Posted: August 20, 2021

Published: September 2, 2021

Brenda Kahl, Clerk/Treasurer

David Evert, Supervisor

Christine Molling, Supervisor

Anthony Varda, Chair

Michael Statz, Supervisor

Duane Haag, Supervisor