

CHAPTER 16

SOLAR ENERGY SYSTEM LICENSING ORDINANCE

16.01 AUTHORITY

This ordinance is adopted under the powers granted to the Town of Black Earth by Wis. Stat. §§60.22(3) and 61.34, its authority under §66.0401 and §66.0403, and other authority under the statutes, and its adoption of village powers under §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.

16.02 PURPOSE

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 Black Earth, Dane County, Wisconsin and set forth the rules and procedures for this municipality regarding solar energy systems (“Systems”) within the Town.

16.03 APPLICABILITY

This Ordinance applies to all Systems that generate electricity within the Town designed for normal operation at a capacity of 1,000 kilowatts (kW) or more and less than 100 Megawatts.

For the purpose of this Ordinance, the following terms shall have the meaning given to them in this section. To the extent a term is used in this Ordinance is not defined in this section, the term shall have the meaning given in the Town of Black Earth Ordinances.

- A. Construction activities – 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 Wisconsin Statute 13.48(2)(h)1.g and includes transmission and distribution facilities dedicated to the solar energy system.

16.04 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. §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 rooftop 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.

16.05 LICENSE REQUIRED

- (1) **License Requirement.** 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 16.06 (1).
- (2) **License Term.** An initial license term may be approved for a maximum of 25 years. A license renewal under Section 16.06 (2) may be for a term of up to 10 years from the date of issuance.
- (3) **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 that applies to an original license application. If the licensee of the Solar Energy System wants to expand the existing system by more than 1,000 kW, a new license application will need to be submitted and a new solar license issued.
- (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 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 16.09.

16.06 REQUIREMENTS FOR APPLYING FOR OR RENEWING A SOLAR LICENSE

- (1) **Application for a Solar License.**
 - a. The applicant shall submit an application that contains all required documentation required under Section 16.07 to the Town Clerk.
 - b. The applicant shall pay the required application fee of \$1,000.00 to the Town Clerk at the time of submitting the application. The fee shall be made payable to the “Town of Black Earth.”
 - c. 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 cost, the applicant shall pay the additional amount within 30 days of invoicing by the Town.

- (2) **Application for Renewal of a License.** A licensee seeking renewal of a solar license shall submit a complete application for renewal to the Town Clerk no later than three (3) months prior to the expiration of the license.
- (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 Planning Commission and 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 additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance. The Town Board shall determine whether the application is complete and, no later than 45 days after the application is filed, notify the applicant about the determination. As soon as possible after receiving the application for approval, the Town shall publish a class 1 notice under ch. 985, stating that an application for approval has been filed with the Town. If the Town determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the Town has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application for approval. If the Town fails to determine whether an application for approval is complete within 45 days after the application is filed, the application shall be considered to be complete. The Town may not consider a minor modification of the application to be a new application.
 - 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 Board.**
- a. **Notice and Hearing: Proposed Decision.** Upon the issuance of a proposed decision under Section 16.06, sub (3)(c) 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. 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. The Town shall approve or disapprove an application for approval no

later than 90 days after the day on which it notifies the applicant that the application for approval is complete. If a political subdivision fails to act within the 90 days, or within any extended period established under §66.0401(e), the application is considered approved.

§66.0401(e): A political subdivision may extend the time period in par. (d) if, within that 90-day period, the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted under this paragraph may not exceed 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine whether to approve or deny the application for approval.
2. An extension of up to 90 days if the applicant makes a material modification to the application for approval.
3. An extension of up to 90 days for other good cause specified in writing by the political subdivision.

- c. **Basis of Proposed and Final Decisions.** The Town Board shall base its proposed and final decision 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. The decision on an application for approval shall be made with written findings of fact that are supported by the evidence in the record under par. (b). A political subdivision's procedure for reviewing the application for approval shall conform to the commission's rules promulgated under s. 196.378(4g)(c)3. The Town shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval. The Town's record shall conform to the commission's rules promulgated under s. 196.378(4g)(c)2.
- d. **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 the Ordinance.
- e. **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.
- f. **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.

16.07 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 Black Earth, including, but not limited to, proposed locations of all improvements, including buried cables.
- (2) Contact information for the owners of any lands on which any part of the System will be located, 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, and 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) A decommissioning plan that is in recordable form to be recorded with the Dane County Register of Deeds. The plan shall include the anticipated life of the project, the estimated decommissioning costs net of salvage value in current dollars, the method of ensuring that funds shall be available for decommissioning and restoration and the anticipated manner in which the project shall be decommissioned and the site restored, including 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 of 48 inches.
- (7) An herbicide and pesticide utilization plan detailing the use and storage of these chemicals to control noxious weeds and invasive plants, animals, and insects.
- (8) A seeding plan for prairie and pollinator-friendly vegetation to be used as ground cover, as described in Section 16.08 (s).
- (9) A form of surety, either through an escrow account, bond, or otherwise, to ensure the removal of the solar energy system and all associated equipment and infrastructure when its usefulness or lifespan is exhausted, other technologies render the facilities obsolete or no longer cost-effective, the owner or operator goes out of business or is otherwise financially unable to maintain the facility, or removal is required and has not been performed by the property owner. The amount and form of surety must be determined to be reasonable by the Town Board but not to exceed 125 percent of the estimated future cost of removal and compliance with the additional requirements set forth herein. Municipal or state-owned solar energy systems may meet the surety requirement with a memorandum of understanding pledging responsibility for removal. The applicant shall submit a fully inclusive estimate of the costs of removal prepared by a qualified engineer. The amount shall include a mechanism for future value adjustment.

- (10) Information showing that the System will comply with the minimum standards set forth in Section 16.08, including but not limited to proposed terms regarding the use and repair of Town roads during the construction and operation of the System.

16.08 STANDARDS AND RECOMMENDATIONS FOR SYSTEMS

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

- a. Systems will be appropriately buffered and screened from public view.
- b. Prior to construction and operation of the System, adequate provisions shall be made by the licensee to the Town's satisfaction that the licensee will repair any damages it or its contractors cause to Town roads and other improvements at the licensee's sole expense. Town roads, drainage systems, and other improvements in the right-of-way (ROW) will be protected, and such assurance may be made by a separate contract with the Town.
- c. All applicable federal, state, and local permits, licenses, and approvals have been or will be obtained prior to construction of a System.
- d. The licensee will comply with all applicable local, state, and federal laws and regulations, including but not limited to ~~CPCN requirements~~, and environmental and stormwater regulations applicable to the construction and operation of the System.
- e. Security and safety must be maintained in and around the System, consistent with the plan provided in the licensee's application.
- f. At least two months prior to construction activities, the licensee will meet with a Town official to review the licensee's obligations and responsibilities regarding 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.
- g. 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 to the use and enjoyment of neighboring property.
- h. The licensee shall include plans detailing the extent of any electromagnetic field and communications interference that will be generated by the project and the operator's plans for limiting such.
- i. The licensee will control off-site noise levels to the extent practicable to avoid adverse impacts on neighboring properties, particularly during construction activities.
- j. The licensee will seek permission and approval from the Town before trimming or removing any tree in the Town's right-of-way (ROW), which permission will not

be unreasonably withheld.

- k. Any hazardous chemicals or other materials will be stored, used, and disposed of in accordance with applicable local, state, and federal law.
- l. The licensee shall keep its contact information updated with the Town.
- m. The 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 is no longer used by the licensee, whichever is sooner.
- n. 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.

(2) Recommended Considerations. This ordinance does not restrict placement of Systems in any portion of the Town or prohibit the installation of Systems on any particular site. The Town has consistently adopted and adhered to a strong policy of farmland preservation to protect the agricultural economy of the Town. The Town also has attempted to minimize conflict between the small amount of residential development which has occurred in the Town and other activities, such as farming. Consistent with these long-standing policies, the Town requests that the siting of Systems follow the recommended guidelines in this subsection. The Town will not grant or deny licenses based on adherence to these recommendations.

- a. 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.
- b. The siting of Systems is discouraged on lands designated as Community Residential, Rural Residential, Commercial, Business Park, Parks, Open Space, or Environments 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.
- c. The siting of Systems is discouraged within the view of any residential subdivision or public recreation land unless effective screening and setbacks are installed.
- d. 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.
- e. Large-scale removal of topsoil, mature trees, and woodlands is discouraged, and it is recommended that environmental corridors and animal movement routes be preserved.

16.09 INSPECTION, ENFORCEMENT PROCEDURES, AND PENALTIES

(1) 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. The licensee shall cooperate with the Town's representatives and agents for purposes of inspection.

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

- a. Engaging in the construction, installation, or operation of a System without a solar license granted by the Town Board.
- b. Failure to comply with the applicable minimum standards outlined in Section 16.08 (1).
- c. Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or 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, 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 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. (4) is served or within 30 days 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 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. (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 the 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 license under sub. (5) in the event there are repeated exceedances of the standards of 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 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 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.** 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.

16.09 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.

16.10 EFFECTIVE DATE

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.

Adopted this 10th day of April 2025, by the Town Board.

Tom Turk, Town Chair
Joann Bennett, Town Supervisor
Barb Parrell, Town Supervisor

Attested by:
Stephanie Zwettler, Town Clerk

Posted: April 14, 2025