

**ORDINANCE NO. 11-25(A) to REPEAL AND RECREATE ORDINANCE NO. 11-25
TOWN OF DUNN in DANE COUNTY, WISCONSIN
AN ORDINANCE FOR REGULATING SOLAR PANELS**

Sec. 11-25-1 Finding, Purpose, and Authority

- (a) Findings. The Town Board finds that solar energy is an abundant, renewable and non-polluting energy resource and that its conversion to electricity or heat will reduce dependence on non-renewable energy resources and decrease air and water pollution that results from the use of the currently prevalent non-renewable energy resources. The Town Board encourages the use of solar energy. It is important, however, that installation of solar energy facilities is accomplished in a safe, clean and orderly manner and with sensitivity to the rural, agricultural and scenic character of the Town of Dunn.
- (b) Purpose. The purpose of this Ordinance is to require the operator of a proposed System to be located in the Town of Dunn 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, to protect the conversion of prime soils on agricultural lands to non-farm uses, and to promote the general welfare of the people and communities within the Town of Dunn. This ordinance is enacted to provide for Town review of proposed solar energy facilities and to ensure such facilities are properly installed and are sited in a manner that will protect the natural beauty of the Town and its prime agricultural resources without significantly increasing the cost or efficiency of the proposed system or which permits an alternate system of comparable cost or efficiency.
- (c) Authority. This Ordinance is adopted under the powers granted to the Town of Dunn by Wis. Stat. §§ 60.10, 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.
- (d) Interpretation. Wisconsin Courts have recognized that the evaluation of an application for local approval of a System requires a case-by-case approach, therefore each application shall be evaluated individually.

Sec. 11-25-2 Applicability

- (a) This Ordinance applies to all Systems with total solar panel surface area, including framing, of two-thousand (2,000) square feet or greater on properties two (2) acres or larger, or one-thousand (1,000) square feet or greater on properties smaller than two (2) acres. The requirement for a license may not be avoided by successive installations each of which are smaller than the thresholds established herein.
- (b) The term “property” under this Ordinance shall mean contiguous land under the control of a landowner (meaning an individual or entity having legal ownership of land. The term landowner may also include all forms of collective ownership including joint tenants, tenants in common,

and life tenants), whether or not separated by streets, highways, or railroad rights-of-way. This may not correspond with tax parcels. Only one solar license shall be granted per property.

- (c) This Ordinance shall not apply where solar panels and any accompanying equipment are mounted upon a principle structure or accessory structure where the accessory structure is erected primarily for purposes other than for the mounting of solar energy equipment.

Sec. 11-25-3 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 and includes.
- (b) “Solar energy system” or “System” has the meaning provided in Wis. Stat. 13.48(2)(h)1.g. and includes transmission facilities dedicated to the solar energy system.

Sec. 11-25-4 License Required

- (a) License Requirement. Except as provided in Section 11-25-6 (b), 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 (“solar license”). The requirements for applying for a solar license is provided in Section 11-25-5 (a).
- (b) License Term. Any license issued shall be valid for the life of the System installed unless suspended or revoked under Section 11-25-8.
- (c) License Transfer. A solar license issued to the owner of property shall run with the land. A solar license issued to a tenant may be assigned or transferred without the express written consent of the Town to a new tenant, sublessee or property owner upon delivery to the Town of documentation that the transferee shall be bound by the obligations of the licensee under this ordinance.
- (d) License Revocation. A solar license may be suspended or revoked under the procedures in Section 11-25-8.

Sec. 11-25-5 Requirements for Applying for a Solar license or Renewal of an Approval

- (a) Application for a Solar License. The applicant shall submit an application that contains all required documentation required under Section 11-25-6 to the Town Clerk.
- (b) Review and Decision
 - (1) Preliminary Review. The Town Clerk shall review the application to determine if additional information or expertise is necessary to properly evaluate the application.
 - (2) Additional Information. The Town Clerk may request that the applicant submit additional information if it is determined that the application or request for renewal is incomplete, or if it is determined that additional information is needed to determine whether the requested

approval will meet the requirements of this Ordinance. The request shall state the reasons for the determination.

- (3) Proposed Decision. Upon completion of the Clerk's review of the application and a review of any report from retained experts, the Town Clerk shall issue a solar license, with or without conditions, or to deny the application or request.
- (4) Basis of Recommendation. The Town Clerk shall base the recommendation on a review of the application, any available retained experts' reports, and other relevant information at the discretion of the Town Clerk.
- (5) Determination and Appeal. The Town Clerk shall notify the applicant in writing of the determination and if the application is denied, such notice shall include the reasons therefor. The applicant may appeal the decision of the Town Clerk to the Town Board by filing a written request with the Town Clerk within 30 days of the written notice of denial.

Sec. 11-25-6 Application

- (a) 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 to permit the Clerk to make findings required under Section 11-25-7.

Sec. 11-25-7 Criteria for Review.

- (a) The license application shall be evaluated according to the criteria in sub. (c) and the purposes of this Ordinance. Pursuant to Section 11-25-1 (d) and Wisconsin law, evaluation of the criteria requires a case-by-case evaluation. Notwithstanding the forgoing, all System installations shall:
 - (1) have a post-construction vegetative ground cover with native, pollinator-friendly vegetation according to 11-25-7 (c) (11) to allow storm water infiltration;
 - (2) comply with local, state and federal environmental requirements including storm water management;
 - (3) include a decommissioning plan that is in recordable form to be recorded with the 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.
 - (4) be accompanied by a form of surety, either through escrow account, bond or otherwise, to ensure 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 one which is determined to be reasonable by the Town Clerk, but not to exceed 125 percent of the estimated future cost of removal and compliance with the additional requirements set forth herein. Municipally 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 associated with removal prepared by a qualified engineer. The amount shall include a mechanism for future value adjustment.

(b) Each of the criteria in sub. (c) shall be met and an affirmative finding of such satisfaction shall be made by the Town Clerk. If an affirmative finding cannot be made as to one or more criteria in sub. (c), the license shall nonetheless be granted unless denial is necessary to preserve or protect the public health or safety. Conditions of approval shall be imposed instead of denial if doing so would permit an affirmative finding to be made, or would substantially mitigate the effects of a negative finding as to any criterion in sub. (c). No condition may be imposed, however, unless the condition:

- (1) is necessary to preserve or protect the public health or safety;
- (2) does not significantly increase the cost of the system or significantly decrease its efficiency; or
- (3) allows for an alternative system of comparable cost and efficiency.

(c) The criteria to evaluate the application is as follows:

- (1) Whether the System will be appropriately buffered and screened from public view and the view of adjacent residences.
- (2) If the System is located outside of the Town's Limited Service Area, whether the System will sit on fewer than 5 or more total acres of Group I or Group II soils as defined by the Land Evaluation and Site Assessment (LESA) from the USDA and depicted on the Agricultural Land Evaluation map of the Town of Dunn Comprehensive Plan.
- (3) Whether the System and supporting infrastructure meets the siting standards of the Town of Dunn Comprehensive Plan and Town of Dunn Ordinance 13-3 Regulating Development Siting.
- (4) Whether the height of the solar energy system and associated structures do not exceed a height of 14 feet.
- (5) Whether the construction and operation of the System will avoid adverse impacts town roads.
- (6) Whether the effect of operations at the site, particularly construction activities and activities will refrain from causing excessive light to be shed from the site onto neighboring property, or adversely impact the use and enjoyment of neighboring property.

- (7) Whether night lighting will be limited to the level that is minimally necessary for security and worker safety.
- (8) Whether the operator will control off-site noise levels to the extent practicable to avoid adverse impacts on neighboring properties, particularly during construction activities.
- (9) Whether any hazardous chemicals or other materials will be absent from the site or be stored, used, and disposed of in accordance with applicable state and federal law.
- (10) Whether negative impacts on environmental, wildlife habitat, architectural, archeological, cultural, or other resources be avoided.
- (11) Whether native, pollinator-friendly vegetation is to be used as ground cover throughout the area covered by the System, or whether the System is to be used for agricultural activities and will avoid the large-scale removal of topsoil, mature trees, and woodlands.
- (12) Whether all utility wires associated with the System will be located underground, or are conduit at ground level, including all wires that transfer electricity from the System to another location.

Sec. 11-25-8 Inspection, Enforcement Procedures, Penalties, and Fees

- (a) Inspection. The Town Clerk, or 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.
- (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 or a developer agreement.
 - (2) Failure to comply with the terms of this Ordinance.
 - (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) Remedies. The Town 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 or conditions incorporated into a solar license or developer agreement.

(d) Hearings.

- (1) Any person affected by a notice, order, or action under sub. (c)(1) or (3), 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. (c) 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 members present, shall sustain, modify or withdraw the notice, order, or action under sub. (c), 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.

(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(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

(h) Fees. Fees shall be in accordance with the Town of Dunn Fee Schedule.

Sec. 11-25-9 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.

Sec. 11-25-10 Effective Date

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

Adopted this 20th day of December, 2022.

TOWN OF DUNN

By



Steven Greb, Town Chair

By



Jeffrey Hodgson, Town Supervisor

Rosalind Gausman
Rosalind Gausman, Town Supervisor

ATTEST:

Cathy Hasslinger
Cathy Hasslinger, Town Clerk Treasurer/Business Manager

Approved:

Posted: