

Model Solar Energy Law

1. Authority

This Zoning for Solar Energy Law is adopted pursuant to sections 261-263 of the Town Law, of the State of New York, which authorize the Town of Wilton to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.”

2. Statement of Purpose

A. This Zoning for Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of Town of Wilton, including:

- 1) Taking advantage of a safe, abundant, renewable, and non-polluting energy resource; and
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and
- 3) Increasing employment and business development in the region by furthering the installation of Solar Energy Systems.

3. Definitions

ABANDONMENT AND DECOMMISSIONING - Solar Energy Systems are considered abandoned after 1 year without electrical generation for consumption and re-sale and must be removed from the property. Applications for extensions are reviewed by the Planning Board and can be extended for a period of 5 years. Abandonment and decommissioning thresholds for large scale solar energy systems of 200 kilowatts or more are provided in Section 9(B).

BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM - A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing less than 25 kilowatts electricity for onsite consumption.

LARGE-SCALE SOLAR ENERGY SYSTEM - A Solar Energy System that is ground mounted and produces more than 25 kilowatts of energy primarily for the purpose of offsite sale or consumption.

COMMERCIAL SOLAR PV SYSTEM- A large scale solar energy system that produces 200 kilowatts or more.

ROOF-MOUNTED SOLAR ENERGY SYSTEM - A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption.

SOLAR ENERGY EQUIPMENT - Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM - An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR THERMAL ENERGY SYSTEMS - Solar hot water technology consisting of solar thermal equipment. Thermal energy is transferred to a heat transfer system via a collector and heat exchanger.

4. Applicability

The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair of Building-Integrated Photovoltaic Systems.

5. Solar as an Accessory Use or Structure

A. Roof-Mounted Solar Energy Systems.

- 1) Roof-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or primary structure.
- 2) Height. Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
- 3) Aesthetics. Roof-Mounted Solar Energy System installations shall incorporate, the following design requirements:
 - a. Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.

- 4) Roof-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from site plan review under the local zoning code or other land use regulations.

B. Ground-Mounted Solar Energy Systems.

- 1) Ground-Mounted Solar Energy Systems that use the electricity primarily onsite are permitted as accessory structures for residential use.
- 2) Height and Setback. Ground-Mounted Solar Energy Systems shall adhere to the maximum height of 13 feet and setback requirements of the underlying zoning district.
- 3) Lot Coverage. Systems are limited to 60% of lot coverage, the surface area covered by Ground-Mounted Solar Panels shall be included in total lot coverage. Maximum capacity generation of 25 kilowatts in residential districts.
- 4) All such Systems in residential districts shall be installed in the side or rear yards.
- 5) Ground-Mounted Solar Energy Systems that use the electricity primarily onsite shall be exempt from site plan review under the local zoning code or other land use regulations.

6. Approval Standards for Large-Scale Solar Systems as a Special Permitted Use

A. Large-Scale Solar Energy Systems are permitted through the issuance of a special use permit except within the R-1 District, subject to the requirements set forth in this Section, including site plan approval. Applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Zoning Enforcement Officer and referred, with comments, to the Planning Board for its review and action, which can include approval, approval with conditions, or denial.

B. Special Use Permit Application Requirements for a special use permit. The site plan application is to be used as supplemented by the following provisions:

- 1) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
- 2) Site Plans showing the layout of the Solar Energy System signed by a Professional Engineer or Registered Architect shall be required.
- 3) The equipment specification sheets shall be documented and submitted for all

photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.

- 4) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming. No chemical herbicides are allowed.
- 5) Decommissioning Plan. See Abandonment and Decommissioning Section 9(B).

C. Special Use Permit Standards.

- 1) Height and Setback. Large-Scale Solar Energy Systems shall adhere to the height and setback requirements of the underlying zoning district. Maximum of 13 feet for ground mounted systems or 6 feet for flat roof mounted.
- 2) Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 acres.
- 3) Lot Coverage. A Large-Scale Solar Energy System that is ground-mounted shall not exceed 60 % of the lot on which it is installed. The surface area covered by Solar Panels shall be included in the total lot coverage.
- 4) All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the emergency contact information shall be placed on the entrance and perimeter of the fencing. The type of fencing shall be determined by the Planning Board. The fencing shall be a maximum of 8 feet and a minimum of 6 feet. The system may be further screened by any landscaping needed to avoid adverse aesthetic impacts.
- 5) Any application under this Section shall meet any substantive provisions contained in local site plan requirements in the zoning code that, in the judgment of the Planning Board, are applicable to the system being proposed. If none of the site plan requirements are applicable, the Planning Board may waive the requirement for site plan review.
- 6) The Planning Board may impose conditions on its approval of any special use permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

7. Enforcement

Any violation of this chapter shall be punishable by a fine of \$1,000 per day, per violation or up to 1 year in jail or both and each 24 hours thereof shall constitute a single, separate and distinct offense.

8. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.

9. Abandonment and Decommissioning

- A. Applicability and purpose. This section governing abandonment and decommissioning shall apply to large-scale ground-mounted solar PV systems of 200 kilowatts or more. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Wilton, by the Town requiring abandoned commercial solar PV systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities and serve as an attractive nuisance.
- B. Abandonment. A commercial solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deemed abandoned if following site plan approval initial construction of the system has commenced and is not completed within 18 months of issuance of the first building permit for the project.
 - 1) Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for an additional period of one year, provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service, at no less than 80% of its rated capacity, within the time period of the extension. An application for an extension of time shall be made

to the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.

C. Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the commercial solar PV system shall be in accordance with a decommissioning plan approved by the Planning Board.

D. Decommissioning and Removal.

1) Decommissioning and removal of a commercial solar PV system shall consist of:

- (a) Physical removal of all above ground and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site;
- (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
- (c) Restoration of the ground surface and soil;
- (d) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

2) Upon petition to the Planning Board, the Board may permit the system owner and/or landowner to leave certain underground or above ground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and do not adversely affect community character or the environment.

E. Special use permit conditions. The following conditions shall apply to all special use permits issued for a commercial solar PV system. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

- 1) Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in the above section and include:
 - (a) An estimate of the anticipated operational life of the system;
 - (b) Identification of the party responsible for decommissioning;
 - (c) Description of any agreement with the landowner regarding decommissioning;
 - (d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work;
 - (e) A cost estimate prepared by a qualified professional engineer, estimating the full cost of decommissioning and removal of the solar PV system;
 - (f) A financial plan to ensure that financial resources will be available to fully decommission the site.

- 2) Financial surety. Prior to the issuance of a building permit and every three years thereafter, the commercial solar PV system owner and/or landowner shall file with the Town evidence of financial security to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit or other security acceptable to the Town Board. The irrevocable letter of credit shall include an auto extension provision, to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw on the letter of credit in the event that the commercial solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every three years thereafter, as provided herein.
 - (a) Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent annual reports. The amount of the surety may be adjusted by the Town upon receipt of an annual report containing an updated cost estimate for decommissioning and removal.

- 3) Annual report. The commercial solar PV system owner shall on a yearly basis provide the Town Building Inspector a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The report shall also identify any change in ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the commercial solar PV system. The Town may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of section 7 of this chapter.
- F. Decommissioning and removal by Town. If the commercial solar PV system owner and/landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.
- 1) Procedure
 - (a) Upon a determination by the Building Inspector that a commercial solar PV system has been abandoned, the Building Inspector shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility under construction, to complete construction and installation of the facility within 180 days; or (b) in the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.
 - (b) Being so notified, if the system owner, landowner and/or permittee fails to perform as directed by the Building Inspector within the 180 day period, the Building Inspector shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Building Inspector's determination of abandonment to the Planning Board and request a hearing on the matter.
 - (c) Said appeal and request for hearing must be made and received by the Town within 20 days of mailing notice. Failure by the permittee to submit an appeal and

request for hearing within the twenty-day period will result in the special use permit being deemed revoked as stated herein.

- (d) In the event the permittee appeals the determination of the Building Inspector and requests a hearing; the Planning Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Planning Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board, or whether to revoke the permit and order removal of the solar PV system.
- (e) Upon a determination by the Building Inspector or Planning Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.
- (f) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in section 9(D) Decommission and Removal Plan herein. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.