

FINAL DRAFT 4/11/2023
TOWN OF FAYETTE
PROPOSED UTILITY SCALE SOLAR ENERGY FACILITY ORDINANCE

Section 1. Purpose

The purpose of this Ordinance is to establish a municipal review procedure and siting standards for Utility Scale Solar Facilities (USSF’s). These standards are intended to:

- A. Establish clear guidelines and standards to regulate utility scale solar energy facilities.
- B. Permit the Town to protect public health, safety, and welfare fairly and responsibly.
- C. Support the development of utility scale solar energy facilities in a manner that minimizes any potential adverse effects on the scenic, cultural, and natural resource character of the Town.
- D. Provide for the decommissioning and removal of panels and associated utility structures that are no longer being used for energy generation and transmission purpose.
- E. Support the goals and policies of the Comprehensive Plan, including orderly development, efficient use of infrastructure, and protection of natural and scenic resources.

Section 2. Authority

This Ordinance is enacted pursuant to the enabling provisions of Article VIII, Part 2, §1 of the Maine Constitution, the provisions of Title 30-A MRSA, §3001 (Home Rule), and the provisions of Title 30-A §4312 et. seq. (Comprehensive Planning and Site Plan Review Regulation, or “Growth Management” Act).

Section 3. Applicability

- A. No Utility Scale Solar Energy Facility shall be located within the Town of Fayette without a Permit issued by the Town of Fayette Planning Board, unless specifically exempted from the permit requirements of this Ordinance. Any physical expansion, reconfiguration, or increase in the Rated Nameplate Capacity of an existing Solar Energy Facility shall also require approval from the same permitting authority as required for a new Utility Scale Solar Energy Facility under this Ordinance. Routine maintenance or replacements do not require a permit.
- B. Exemption. Solar Energy Facilities occupying 800 square feet or less are exempt from the requirements of this Ordinance, but must meet state electrical codes and permitting requirements, and applicable requirements of any other Ordinance of the Town of Fayette.

Section 4. Addition to the Land Use Table in the Fayette Land Use Ordinance (Article 6, Section 5)

	DISTRICTS					
	RP	SP	WP	SD	RD	RG
Utility Scale Solar Facility	NO	NO	NO	NO	PB	PB

Section 5. Definitions

As used in this Ordinance, unless the context otherwise indicates, the terms referenced below have the following meanings:

Financial capacity: the demonstration of current and future financial capacity, which must be unaffected by the owner's or operator's future financial condition, to fully fund decommissioning in accordance with an approved decommissioning plan under this ordinance.

Megawatt (MW): a unit for measuring power that is equivalent to one million watts, or 1,000 kilowatts.

Rated Nameplate Capacity: the maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Array: a grouping of multiple solar modules with the purpose of harvesting solar energy.

Solar Related Equipment: Items including a solar photovoltaic cell, module, or array, or solar hot air or water collector device panels, lines, pumps, batteries, mounting brackets, framing, fencing, foundations, or other structures used or intended to be used for collection and management of solar energy.

Transfer of ownership: a change in the legal entity that owns or operates a solar energy development. A sale or exchange of stock or membership interests or a merger is not a transfer of ownership as long as the legal entity that owns or operates the solar energy development remains the same.

Utility Scale Solar Facility (USSF): any solar facility, project, or installation which is intended to and/or in fact does generate solar power and feeds said power into the electric grid supplying the local utility with power. This shall include, but is not limited to, any ground mounted photovoltaic (PV) project that is larger than 0.10 megawatts (AC) in capacity. Residential/commercial solar arrays smaller than 0.10 megawatts (AC), and roof mounted installations, are not included in this definition.

Section 6. Administration and Enforcement

A. This Ordinance will be administered as an additional level of review along with the provisions of the Site Plan Review Ordinance, including Sections II through V, which are hereby incorporated by reference. Specific application requirements, standards of review, and other requirements pertinent to Solar Energy Facilities within this Ordinance shall be added to the Application Requirements and Standards of Approval within the Site Plan Review Ordinance. In case of a conflict, the stricter provision shall apply.

B. Permit Required. An approval Permit from the Planning Board is required prior to the installation, construction, or expansion of a Utility Scale Solar Energy Facility (USSF). USSF's must meet the requirements of this Ordinance and the Site Review Ordinance. All USSF's must also meet all federal and state electrical codes and permitting requirements.

Section 7. Specific Application Requirements

In addition to the requirements listed in Section II of the Site Plan Review Ordinance, an application for a USSF Permit must also include the following:

A. An additional permit / technical review fee schedule to be set by the Board of Selectmen shall be payable at the time of application. This fee will be reviewed and amended as necessary on an annual basis.

B. A description of the owner of the facility, the operator if different, and detail of qualifications and track record to run the USSF.

- C.** If the operator will be leasing the land, a copy of the agreement (minus financial compensation) clearly outlining the relationship inclusive of the rights and responsibilities of the operator, landowner, and any other responsible party regarding the USSF and the life of the agreement.
- D.** A description of the expected wattage to be produced and to whom it will be sold.
- E.** A copy of the agreement and schematic details of the connection arrangement with the transmission facility, clearly indicating which party is responsible for various requirements and how they will be operated and maintained.
- F.** A description of the panels to be installed, including make and model, and associated major facility components.
- G.** A construction plan and timeline, identifying known contractors, site control, and anticipated on-line date.
- H.** A full official land survey of the proposed site. Must include any rights of way and easements on the property and be sealed and/or stamped by a Maine licensed professional surveyor.
- I.** A survey of critical wildlife habitat is provided at the time of application, if a project is located in an area determined to be essential habitat, as defined by the Maine Department of Inland Fisheries and Wildlife, an INF&W recommendation shall be secured before a Planning Board ruling.
- J.** A soil analysis of the proposed site, performed by a third-party soil scientist, with a testing pattern.
- K.** An operations and maintenance plan, including site control and the projected operating life of the facility.
- L.** An emergency management plan for all anticipated hazards.
- M.** Documentation that the solar generation equipment has been approved under the UL certification program and that the system complies with all applicable local, state, and federal codes/regulations with the standards regarding signal interference. Electrical component and connection information shall be in sufficient detail to allow for a determination that it meets state electrical codes.
- N.** Acknowledgement that an annual (per calendar year) inspection shall be performed by a third-party engineer at the facility operator's expense. Documentation of such inspection and compliance with maintenance plan shall be provided to the Town by October 1 of each year and will include average annual production of prior year.
- O.** Proof of financial capacity to construct and operate the proposed USSF, including current and future sources of funding.
- P.** A Visual Impact Assessment: An analysis to determine potential visual effect of the USSF must be undertaken. In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures. A visual impact assessment must also include narratives to describe the significance of any potential impacts, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts, and steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

The Visual Impact Assessment must include the following elements:

1. A visual and cartographic analysis (Viewshed Analysis): A geographical representation of all the areas of where the USSF, from its highest points is visible from the surrounding (impact) area shall be presented. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the impact area from which the activity will be

visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape.

2. Site inventory and photographic review. This shall provide a comprehensive and objective means by which to analyze and assess the potential visual and aesthetic impacts that may result from the USSF and its associated elements.
3. Visual Simulations - Visual simulations will be provided to show a photo-realistic perspective view of proposed USSF elements in the landscape, thereby allowing abutters to clearly visualize how a project will really look from their primary residential structure. The visual impact assessment must be prepared by a design professional trained in visual assessment procedures, or as otherwise directed by the Planning Board.

Q. A Decommissioning Plan, including:

1. A description of the trigger for implementing the decommissioning plan. There is a rebuttable presumption that decommissioning is required if no electricity is generated for a continuous period of 12 months. The Applicant may rebut the presumption by providing evidence, such as a force majeure event that interrupts the generation of electricity, that although the project has not generated electricity for a continuous period of 12 months, the project has not been abandoned and shall not be decommissioned.
2. A description of the work required to physically remove all solar panels, associated foundations, buildings, cabling, electrical components, and any other associated facilities to the extent they are not otherwise in or proposed to be placed into productive use. All earth disturbed during decommissioning must be graded and re-seeded, unless the landowner of the affected land requests otherwise in writing, and the request is approved by the Town. [Note: At the time of decommissioning, the Applicant must provide evidence of plans for continued beneficial use of any or all of the components of the Solar Energy Facility. Any changes to the approved decommissioning plan shall be subject to review and approval by the Planning Board.]
3. Acknowledgement that the Code Enforcement Officer shall be notified at least 30 days prior to start of decommissioning.
4. An estimate of the total cost of decommissioning less salvage value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs must include, but is not limited to, the cost of the following activities: panel removal, panel foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization, and road infrastructure removal and permanent stabilization. This cost estimate must be updated every three (3) years.
5. Demonstration in the form of a performance bond (with the Town named as an additional insured), surety bond, irrevocable letter of credit, or other form of financial assurance as may be acceptable to the Town of Fayette's Risk Management Insurer that upon decommissioning the Applicant will have the necessary financial assurance in place for 150% of the total cost of decommissioning, less salvage value. The financial assurance shall include a provision granting the Town the ability to access the funds and property and to perform the decommissioning if the USSF is abandoned or the Applicant or subsequent

responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and/or approved by the Planning Board.

6. All components of Maine State Law Statute Title 35-A, Chapter 34-D §3491-3496 (Solar Energy Development Decommissioning) not addressed in this ordinance shall apply.

R. Transfer of ownership. Upon a transfer of ownership of a solar energy development subject to a decommissioning plan approved under this ordinance, a person that transfers ownership of the development remains jointly and severally liable for implementation of the plan until the Planning Board approves transfer of the decommissioning plan to the new owner or operator. The Town shall be notified of the transfer, and provided with the new owner's contact information, proof of bonding, and environmental quality analysis, no later than 60 days of the recorded transfer. All other provisions of this ordinance may be enforced at the Planning Board's discretion.

Section 8. Standards for Approval

In addition to the requirements in Section III of the Site Plan Review Ordinance, the following standards must also be met:

A. Legal Responsibilities: The Applicant must provide proof of authorization to construct, use, and maintain the property and any access drive for the life of the USSF and including the decommissioning of the USSF. The roles and responsibilities of the facility owner, operator, landowner and any other party involved in the project must be clear and meet the satisfaction of the Planning Board that the public interest is protected.

B. Setbacks: Structures (including fencing) that are part of a USSF shall be setback a minimum of 250 feet from any existing residential dwelling structure.

C. Height: The USSF shall be no more than 15 feet high at its tallest point of any equipment.

D. All applications for USSF shall be subject to the following provisions:

1. Siting of the overall facility and individual panels shall keep with the existing contours of the land.
2. Only pile driven, or ballast block footing shall be used so as to minimize the disturbance of soils during installation.
3. To the extent possible, infrastructure shall not be located on steep slopes.
4. A plan for topsoil maintenance shall be provided at the time of application to the Planning Board.
5. No more than 3 acres (130680 square feet) of forested land shall be clear cut for this purpose.

E. All operations and maintenance plans shall also include:

1. A plan prioritizing the ability to co-mingle agricultural and energy generation land uses including but not limited to: apiaries, grazing or handpicked crops.
2. A plan that provides habitat for native plants and animals and native pollinators.

F. Utility Notification: No USSF shall be installed until evidence has been given to the Planning Board that the applicant has an agreement with the local utility to accept the power.

G. Fencing: The Planning Board may require that a USSF be enclosed by fencing to prevent unauthorized access and may also require landscaping to avoid adverse aesthetic impacts of installed fencing to adjacent properties.

H. Signage: Signage shall be required to identify the owner of the USSF and provide a 24-hour emergency contact phone number. This signage shall not be used for advertising except for reasonable identification of the

manufacturer or operator of the USSF. A clearly visible warning sign shall be placed at the base of all pad-mounted transformers and substations and on the fence surrounding the USSF, informing individuals of potential voltage hazards, including stating the output of power (AC or DC). Signage indicating the official e911 address of the Facility shall also be required to clearly be visible, from both directions of travel, from the public road or roads from which the USSF is accessed.

I. Visual Impact: Any USSF shall not have any detrimental effect on the scenic resources of the town or degrade the scenic value from properties in the area. In order determine the visual impact of any USSF, the Planning Board will, using the information provided in the Visual Impact Assessment study (See above), consider the following:

1. The significance of the potentially affected scenic resources.
2. The existing character of the surrounding area.
3. The expectations of the typical viewer.
4. The project purpose and the context of the proposed activity.
5. The extent, nature and duration of the potential effect of the USSF's presence on the public's continued use and enjoyment of the town's scenic resources.

J. Emergency Services: The USSF owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town of Fayette Fire Chief. Upon request, the owner or operator shall coordinate with local emergency services in developing an emergency response plan. A "3200 Series KNOX-BOX," or approved equivalent, shall be provided and installed by the operator to be used to allow emergency service personnel continuous access. All means of shutting down the USSF shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. Access roads to the USSF shall be of sufficient quality and dimensions to satisfy the Town of Fayette Fire Chief that any emergency response vehicles be able to easily and safely gain access to and around the site.

K. Maintenance Conditions: The USSF owner or operator shall maintain the USSF and all associated fencing and landscaping elements in good functional condition. A maintenance plan shall be submitted and include, but not be limited to, topsoil maintenance, painting, structural repairs, and integrity of security and visual barrier measures. The USSF must be properly maintained and be kept free from all hazards, including, but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare. Site access shall be maintained to a level acceptable to the Town of Fayette Fire Chief for emergency response. The owner or operator shall be responsible for the cost of maintaining the USSF and any access roads.

L. Modifications: Any material modifications to a USSF made after issuance of the required Town permit(s) shall require approval by the Code Enforcement Officer and/or the Planning Board.

M. Satisfaction with All Aspects of Capacity and Plans Submitted: The Planning Board must find that the Applicant has the capacity to finance, safely operate and decommission the USSF.