

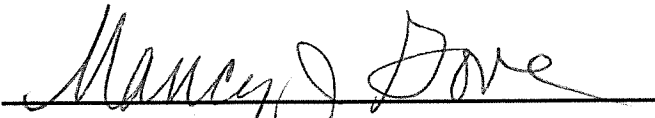
**TOWN OF MERCER, MAINE  
SOLAR ENERGY SYSTEMS ORDINANCE**

**TOWN OF MERCER, MAINE**

**SOLAR ENERGY SYSTEMS ORDINANCE**

**ADOPTED March 3, 2023**

**Attested to be a True Copy:**

  
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**Nancy J. Gove, Town Clerk**

# **TOWN OF MERCER, MAINE**

## **SOLAR ENERGY SYSTEMS ORDINANCE**

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### **SECTION 1: ESTABLISHMENT AND PURPOSE**

With this Ordinance the Town of Mercer establishes the Solar Energy Systems Ordinance pursuant to Title 30-A M.R.S.A. Chapter 141 §3001-3006 Home Rule Authority. The purpose of this Ordinance is to protect the health, safety and general welfare of the citizens and taxpayers of Mercer by establishing standards and requirements for the permitting, construction, operation and decommissioning of Solar Energy Systems (SES).

### **SECTION 2: APPLICABILITY**

This Ordinance applies to roof and building mounted SESs and ground mounted SESs whose airspace projected over a roof or the ground is less than one acre, as follows:

1. Roof and building mounted SES: Roof mounted and building mounted SESs are a permitted use as long as the owner or contractor complies with the following:
  - a. Demonstrates to the satisfaction of the Code Enforcement Officer (CEO) that, at a minimum, all of the following safety risks have been satisfactorily addressed in the design and plan for installation of the proposed SES:
    - i. Weight load
    - ii. Wind resistance
    - iii. Ingress or egress in the event of fire or any other emergency
  - b. To comply with Section 2.1.a above, the applicant shall submit the results of an on-site inspection and a statement from a qualified professional that the roof and structure is built adequately for the proposed system without posing a safety threat.

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- c. Files a Notice to the Assessor in accordance with Town policy.
  - d. Roof mounted SES cannot exceed 4 feet above the roof peak on a pitched roof. A system cannot be higher than 4 feet above the structure on a flat roof.
  - e. Any costs incurred by the Town in ensuring compliance with Section 2 shall be fully reimbursed by the owner or contractor prior to system installation.
2. Ground or roof mounted SESs whose airspace projected over a roof or the ground is equal to or greater than one acre shall comply with the requirements of Sections 3 thru 14, inclusive.

**SECTION 3: STANDARDS FOR GROUND MOUNTED SOLAR ENERGY SYSTEMS ONE ACRE OR LARGER**

**1. UTILITY CONNECTIONS**

Overhead or pole mounted electrical wires shall be avoided to the extent possible within the facility.

**2. SAFETY**

The SES owner or project proponent shall provide a copy of the application to the Planning Board for approval and to the CEO and the Fire Chief for review and comment. If the Fire Chief is unable to do said review, an independent review from a licensed fire safety consultant shall be required instead, at the applicant's expense. The CEO and Fire Chief shall base any recommendations for approval or denial of the application by the Planning Board upon review of the fire safety of the proposed system.

**3. CERTIFICATION OF UNDERWRITERS LABORATORY (UL) LISTING**

The Certificate shall be provided along with proof that all electrical equipment used at the facility is UL listed. No substitutions of other certifications for the UL listing shall be permitted.

**4. VISUAL IMPACT**

The owner or project proponent shall submit a visual impact plan that demonstrates to the satisfaction of the Planning Board that the project has been designed:

- 1. to minimize visual impacts by preserving native vegetation, screening abutting properties or other appropriate measures, including adherence to height standards and setback requirements.
- 2. to reduce glare in the direction of abutting or neighboring properties, as well as roads and streets.
- 3. to ensure that ground-mounted solar projects developed along a roadway or adjacent to a residential use shall use buffering and screening.
  - a. Natural features shall be maintained wherever possible to provide a buffer between the development and abutting use. When natural features such as topography,

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gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide a visual buffer, a planted buffer will need to be established.

- b. An evergreen buffer may be used to meet this requirement, provided that the applicant submits a plan demonstrating to the satisfaction of the Planning Board that the proposed evergreen buffer will provide effective, year-round visual screening of the SES from public roads and adjacent residences. Such plan shall include line-of-sight profiles from adjacent residences and typical road locations to the SES.
- c. Slats or mesh screen fencing may be used to meet this requirement. This solid visual screen shall be a solid neutral color that blends in with the surroundings.
- d. All buffer areas shall be maintained in a neat and sanitary condition by the owner. Dead or damaged trees that have less than 50% of the typical leaf area for the species and size shall be replaced by the owner.

4. Vegetation control shall be by mechanical means only. Chemical vegetation control is prohibited.

**5. LAND CLEARING, SOIL EROSION AND HABITAT IMPACTS**

Clearing of vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground mounted SESs, and as otherwise prescribed by applicable laws, regulations and Ordinances. Ground mounted SESs shall be designed to minimize mowing to the extent practicable. Removal of mature trees shall be avoided to the extent possible.

Native, pollinator-friendly seed mixtures shall be used to the extent possible.

The developer shall demonstrate to the Planning Board's satisfaction that the any removal of topsoil from the site will be minimized to the greatest extent possible. If the Planning Board finds that this requirement has not been met, it may require the developer to revise the grading plan to the satisfaction of the Board.

**6. SETBACKS**

Systems must be set back a minimum of 50 feet from any side property lines, any public road, or any right of way.

**7. FENCING**

Lots on which an SES is located shall be protected by a perimeter fence unless the Planning Board determines that such fencing is not necessary to protect the facility or the public. One or more signs shall be affixed to the fencing identifying the owner of the facility and emergency contact information. To allow for the passage of wildlife, the bottom of fences must be elevated above ground level by a minimum of five inches.

**8. SIGNAGE**

A sign shall be placed at the site of the SES to identify the current owner and operator as well as provide a 24-hour emergency contact phone number and equipment specification information. Said information shall be clearly visible at the entrance of the facility and shall be no more than 8 square feet in size. As required by the NEC, disconnect and other emergency

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shut off information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning the dangers of voltage generated shall be placed at the base of all pad mounted transformers and substations.

### **9. REMOVAL**

SEs that have reached the end of their useful life or have been abandoned consistent with this Ordinance shall be removed. Absent a notice of a proposed date of decommissioning or written notice of extenuating circumstances, ground-mounted solar energy systems shall be considered abandoned when they fail to generate electricity for more than one year without having first obtained the written consent of the Code Enforcement Officer. Determination of abandonment shall be made by the Code Enforcement Officer.

The owner or operator shall physically remove the installation within 365 days after the date of discontinued operations. The owner or operator shall notify the Select Board, Planning Board and CEO, each by certified mail, of the proposed date of discontinued operations.

### **10. ROADS**

All SEs shall maintain year-round access to the facility to accommodate emergency vehicles and other appropriate support services.

### **11. OPERATION AND MAINTENANCE PLAN**

The project proponent shall submit a plan for the operation and maintenance of all ground mounted SEs, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation.

### **12. EMERGENCY SERVICES**

Every owner or operator of a SE shall provide a copy of the project summary, electrical schematic and a site plan to the CEO and Fire Chief. Upon request, the owner or operator shall cooperate with the CEO and the Fire Chief in developing an emergency response plan which includes access for inspection or emergency services at any time. A 3200 Series KNOX-BOX, or agreed 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 system shall be clearly visible at the entrance of the facility. The owner or operator shall provide to the CEO the name and contact information of the person responsible throughout the life of the installation.

### **13. ADDITIONAL STANDARDS**

The application shall include information that demonstrates to the satisfaction of the Planning Board that the proposed solar energy system will satisfy the following requirements:

- a. The proposed SE will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water.
- b. The proposed activity will not have an adverse impact on wetlands.

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- c. The proposed activity will not have an adverse impact upon any waterbody, such as a lake, pond, river or stream.
- d. The proposed activity will provide for adequate storm water management.
- e. The proposed activity will not adversely impact any floodplain areas.
- f. The proposed activity will dispose of all solid waste in conformance with all local regulations and that the type and quantity of waste proposed to be sent to Town facilities will not exceed their capacity.
- g. The proposed activity, to the maximum extent possible, will not have an adverse effect on the scenic or natural beauty of the area, or significant wildlife habitat identified by the Maine Department of Inland Fisheries and Wildlife.
- h. The proposed activity shall conform to all the applicable requirements of the Town's Shoreland Zoning Ordinance, and all other local Ordinances.
- i. The Town has the capacity to provide fire and rescue services to the development.

### **SECTION 4: COMPLIANCE WITH NATIONAL AND STATE CODES**

- 1. All SESs shall be installed in compliance with the photovoltaic systems standards of the latest edition of the National Fire Protection Association (NFPA).
- 2. All wiring shall be installed in compliance with the photovoltaic systems standards of the latest edition of the National Electric Code (NFPA 70) (NEC) as adopted by the State of Maine.
- 3. Prior to operation, electrical connections must be inspected and approved by a State Electrical Inspector.

### **SECTION 5: APPLICATION PROCESS**

- 1. Prior to submitting an application and the start of the review process, a pre-application conference with the Planning Board, Fire Chief and CEO shall be held.
- 2. The applicant shall submit one original application and six copies, complete with all required supporting information and the appropriate application fee. The application shall include a list of abutting property owners with addresses, a copy of the notice to the abutters specifying the location, size and general description of the project, along with the green return receipts showing proof of notice to the abutting property owners by certified mail.
- 3. The application shall include a site plan with the following information:
  - a. Property lines and physical features, including roads and setbacks for the project site;
  - b. Proposed changes to the landscape of the site, grading, vegetation, clearing and planting, fencing, exterior lighting, screening vegetation, structures, and an erosion control plan;
  - c. Blueprints or drawings of the SES showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collectors and all

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- abutting property lines and the distance between existing on-site buildings and structures and the tallest finished height of any solar collector.
- d. Name, address and contact information of the proposed system installer, the project proponent, project proponent agent and all co-proponents, funders, investors or property owners, if any.
  - e. A preliminary equipment specification sheet that documents all proposed solar panels and/or collectors, significant components, mounting systems and inverters that are to be installed, including a one or three-line electrical diagram detailing the solar photovoltaic installation, associated components and electrical interconnection methods. A final equipment specification sheet shall be submitted prior to the issuance of an operation license.
  - f. Name, address and contact information of proposed or potential system installer and the owner or operator of the SES. Information about the actual system installer and operator shall be submitted prior to the issuance of a solar energy system operation license.
  - g. Name, address, phone number and signatures of the project applicant, and of all the property owners, funders and investors demonstrating their consent to the application and the use of the property for the SES.
  - h. Property operation and maintenance plan shall describe continuing solar energy system maintenance and property upkeep, such as mowing, trimming vegetation and road maintenance, including snow removal.
  - i. Locations of important plant and animal habitats identified by the Maine Department of Inland and Fisheries and Wildlife, if any.
  - j. Locations of wetlands and waterbodies, if any.
  - k. Locations of shoreland zones, floodplains or well-based head protection areas, if any.
  - l. During the review of the site plan details, the Planning Board will determine the amount of the required construction bond in accordance with Section 9.1.
4. The application shall include a decommissioning plan with the following information:
- a. How physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site will be accomplished.
  - b. How disposal of all solid waste, special waste and hazardous waste in accordance with local, state, and federal waste disposal regulations will be performed and paid for.
  - c. How and on what schedule, stabilization and re-vegetation of the site as deemed necessary to minimize erosion will be accomplished. The applicant should include, to the extent possible, restoration of native vegetation, and pollinator-friendly seed mixtures shall be used to the maximum extent possible in re-vegetation of ground cover.
  - d. Estimate of costs for the decommissioning of the solar energy system with a detailed description of how the estimated costs were derived, including the date which was the basis for the estimate.
  - e. Decommissioning will be paid for by a performance guarantee or performance bond level in accordance with Section 9.2.

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5. All the above must be submitted to the Town, attention to the Planning Board, at least seven days in advance of a regularly scheduled Planning Board meeting.
6. When the application is received, the Planning Board shall give a dated receipt to the applicant and shall notify by mail all property owners abutting the parcel and across any street abutting the parcel as listed in the most recently published commitment book.
7. In order for the Planning Board to be more fully informed about the site, the Planning Board shall schedule a site walk. The applicant shall delineate property boundaries as well as the locations of proposed improvements such as solar arrays, entrance road, etc. with appropriate flagging.
8. Within ten days of the conclusion of the initial Planning Board meeting, the applicant will be notified in writing if their application is complete or incomplete. If it is incomplete, a list of outstanding items will be included in the notification letter. Each time revisions are submitted on an incomplete application the Planning Board has another thirty days to review the revised materials to make a determination of completeness.
9. Once an application is deemed to be complete, the project will be reviewed by the Planning Board for compliance with the Ordinance standards.

**SECTION 6. PUBLIC HEARING REQUIREMENTS**

The Planning Board shall hold a public hearing on a SES application as follows:

1. The public hearing shall be held within thirty days after the proposed application is deemed complete. This period may be extended for up to sixty days by mutual consent by the applicant and the Planning Board.
2. The notice of the date, time and place of the public hearing shall be made as follows:
  - a. Published in a newspaper having general circulation within the Town. The date of the publication shall be at least seven days before the hearing.
  - b. Mailed by first-class mail to the applicant, at least seven days prior to the hearing.
  - c. Mailed by Certified Mail, return receipt requested, to all abutting property owners as determined from the current tax assessment data, at least seven days before the public hearing. The Planning Board shall maintain a list of all property abutters mailed a notice in the application file. Failure of an abutter to receive a notice shall not invalidate the public hearing, nor shall it require the Planning Board to schedule another hearing.
3. The cost of the requirements for notice set forth in Section 6.1. and 6.2 are to be paid by the applicant.
4. The Planning Board may vote to continue the public hearing to receive additional public comment or information concerning the application. The Board is not required to meet the notice requirements listed above for the continued public hearing.



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**SECTION 7: PLANNING BOARD REVIEW**

1. Within thirty days of the Board finding the application complete or within thirty days after the conclusion of a public hearing, the Board shall vote to approve, approve with conditions or disapprove the application. This period may be extended by mutual written agreement (by being recorded in the Board meeting Minutes).
2. In approving the project, the Board must find that all of the applicable provisions of this Ordinance have been satisfied or can be satisfied pursuant to any conditions imposed by the Board.
3. The Board shall inform the applicant in writing of its decision within thirty days of the date of such decision.
4. One copy of the approved site plan shall be retained in the Town Office and one copy shall be given to the Code Enforcement Officer.
5. The Board may attach reasonable conditions to approvals to ensure conformity with the purposes and provisions of this Ordinance. The Board may condition final approval on receipt of copies of all state or federal permits required by the project including, but not limited to, Natural Resource Protection Act Permit, Traffic Movement Permit, Site Location of Development Permit and US Army Corps of Engineers permits.
6. If the application concerns property which in whole or part is within any Shoreland Zone, the criteria included in the Shoreland Zoning Ordinance shall be reviewed concurrently with this Ordinance and any other relevant town ordinances.
7. All approvals shall expire within one year of the date of issuance unless work thereunder is substantially commenced within one year from the date of approval. If work is not substantially completed within two years from the date of issue, a new application may be required by the Board.

**SECTION 8: FEES, LICENSES, INSPECTIONS AND MAINTENANCE**

**1. APPLICATION FEE**

1. An application for an SES shall include an application fee based on a rate of \$0.25 per square foot of panel area. Should the Planning Board disapprove the application, or it is withdrawn by the owner or applicant prior to final action by the Planning Board, 50% of the fee shall be refunded less any costs incurred by the Town in reviewing the application.
2. The construction phase performance guarantee as described in Section 9.1 must be submitted before construction of the SES can commence. Planning Board approval shall be valid for one year from the date of approval but may be extended for one additional year by the Planning Board. If construction has not substantially commenced within this time frame, such approval shall be considered null and void and the applicant will be required to submit a new application for consideration by the Planning Board pursuant to the provisions of this Ordinance.

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### **2. INITIAL OPERATION LICENSE**

Prior to operation of SESs, the owner or operator must obtain an operation license from the Town. An operation license application accompanied by a \$2,500 fee plus a performance guarantee as described in Section 9.2 must be submitted. The SES will be reviewed by the CEO to ascertain compliance with approvals as granted by the Planning Board before the SES operation license will be issued by the Town. The owner or operator must provide proof to the CEO that all required state or federal licenses or permits are current. Once the SES is operational, any additional expenses incurred by the Town of Mercer to ensure compliance with Planning Board approval and the provisions of this Ordinance that exceed the operation license fee shall be reimbursed to the Town before a renewal license will be issued.

### **3. ANNUAL RENEWAL OF OPERATION LICENSE**

All SESs must apply annually for renewal of its operation license. A renewal operation license application accompanied by a fee of \$2,500 must be submitted. A review by the CEO is required for the renewal of the operation license. The owner or operator must provide proof to the CEO that all required state or federal licenses or permits are current. Areas of review shall include, but are not limited to, the following:

1. Spot checking of solar panels or collectors for cracking or evidence of water infiltration within the panels or collectors. Any panel or collector identified as deficient or defective by the CEO shall be removed, mitigated and or replaced by the SES owner or operator within 24 hours.
2. Compliant perimeter fencing in good repair.
3. Proper grounding of equipment.
4. Proper signage.
5. Proper installation and maintenance of all safety systems.
6. Proper control of vegetation
7. Proper maintenance of roads within the SES.

Any additional expenses incurred by the Town of Mercer to ensure compliance with Planning Board approval and the provisions of this Ordinance that are greater than the operation license fee shall be reimbursed to the Town before a renewal license will be issued.

### **4. TRANSFER LICENSE AND FEE**

The owner or lessee of an approved SES may transfer the operation license to another owner or lessee upon approval of the Planning Board provided the following conditions are met:

1. A transfer application fee in the amount of \$2,500 is submitted with the transfer request to the Planning Board. The new owner or lessee will be responsible for any additional expenses incurred by the Town to ensure compliance with Section 8.4 that exceed the transfer application fee.
2. The new owner or lessee submits a signed and notarized statement that they will adhere to the conditions and specifications of the operation license.
3. The new owner or lessee submits documentation that performance guarantees in compliance with Sections 9.1 or 9.2, as applicable, have been obtained.
4. The new owners or lessees must conform to all construction, site development, uses, and conditions as specified in the original approval granted by the Planning Board.

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5. The Planning Board may require as a condition of approval that any new owner or lessee meet with the CEO or designee to document that the facility is in compliance with all applicable requirements of this ordinance and Planning Board approval.

**5. EMERGENCY INSPECTIONS**

Emergency inspections will be done at the cost to the owner or operator in the event that an Act of God or other disaster has occurred which could be reasonably believed to have damaged or cracked any solar panels or collectors.

**6. INSPECTIONS AND MAINTENANCE**

The SES owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, vegetative screening, fences, landscaping and plantings and integrity of security measures. The SES 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 fire chief for emergency response. The owner or operator shall be responsible for the cost of maintaining the SES and any access road(s), including regular plowing of snow to maintain road access. The CEO shall have the right to perform an inspection upon giving seven-day notice to the owner or operator.

**SECTION 9: PERFORMANCE GUARANTEE**

**1. CONSTRUCTION PHASE PERFORMANCE GUARANTEE**

After an SES is approved but before a building permit is issued, the applicant shall submit to the Town a performance guarantee in accordance with this section.

A performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the applicant (or owner/operator, if other than the named-applicant), and a date after which the applicant will be in default and the Town shall have access to the funds to finish construction. The conditions and amount of the construction phase performance guarantee shall be determined by the Planning Board with the advice of the CEO, Select Board and, if desired, the Town Attorney. In establishing the amount of a performance guarantee, the Town may seek independent verification of the accuracy of the applicant's cost estimates or may set the amount in accordance with the amount of the contract between the applicant and the contractor who will be installing the required improvements. The amount of a performance guarantee shall be adequate to cover the entire construction costs of all required improvements, taking into account the proposed time span of the construction schedule and the inflation rate for construction costs. The performance guarantee may also be used by the Town in the event that construction activities cause damage to Town property.

A performance guarantee may take any one of the following forms:

- A. Escrow account. A cash contribution to the establishment of an escrow account may be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the developer, the Town shall be

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named as owner and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the expenditure of the interest by the Town is necessary in order to complete the required improvements.

B. Performance bond. A performance bond, issued by a surety company approved by the Select Board, may be made payable to the Town. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the developer, and the procedures for collection by the Town. The bond documents shall specifically reference the development for which approval is sought.

C. Irrevocable letter of credit. An irrevocable letter of credit, issued by a financial institution approved by the Select Board may establish funding for the development from which the Town may draw if construction is inadequate. An irrevocable letter of credit shall indicate that funds have been set aside for the construction of the development and may not be used for any other project or loan.

### **2. OPERATION AND DECOMMISSIONING PHASE PERFORMANCE GUARANTEE**

After an approved SES has been constructed but before an operator's license is issued, the applicant, owner, or operator will provide a performance guarantee to the Town and will ensure continuous coverage by a performance guarantee throughout the life of the project up to and including the decommissioning process.

The performance guarantee shall be 150% of the estimated decommissioning cost with salvage factor figured in. This figure will be recalculated every five years from the date of Planning Board approval. The calculation must be done by a Maine licensed professional engineer, the cost of which shall be borne by the owners or operator.

The performance guarantee can be in any of the forms set forth in Section 9.1, as determined by the Select Board on consultation with legal counsel for the Town. The financial guarantee shall include a signed consent from the applicant, owner or operator granting and guaranteeing the Town the authority to access the funds and property and perform decommissioning of the SES in the event the SES is abandoned, discontinued, or if a date for decommissioning is set and the owner or operator fails to meet their obligations to remove the SES and fully execute the decommissioning plan.

Every 5 years after the date of issuance of the SES initial operation license, the applicant, owner or operator will be responsible for notifying the Select Board in writing when the performance guarantee is recalculated and funded. The owner or operator is also responsible for notifying the Town in writing if the performance guarantee is revoked, and in such cases, shall provide the Town with a replacement performance guarantee within 30 days which must be approved by the Select Board and legal counsel for the Town, or the owner's or operator's license to operate the SES will be revoked. The SES will be decommissioned at the owner's or operator's expense.

### **SECTION 10: ABANDONMENT, DISCONTINUANCE AND DECOMMISSIONING**

1. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a solar energy system shall be considered abandoned when it fails to be

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operational. If the owner or operator of the solar energy system fails to remove the installation within 365 days of abandonment, discontinuation or decommissioning, the Town retains the right to use available means to cause an abandonment, hazardous or decommissioned solar energy systems to be removed. Annual review by the CEO, or in the CEO's absence, by the Select Board, will continue at the operator's expense until the generating facility is fully removed and the site is returned to its original state.

2. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this Ordinance within 365 days of abandonment, discontinuance or the proposed date of decommissioning, the Town retains the right to use the performance guarantee identified in Section 9.2, and all other means available to the Town to cause an abandoned, hazardous or decommissioned solar energy system to be removed and the site remediated.
3. If an owner or operator of the solar energy system successfully removes the SES pursuant to the requirements of this Ordinance and the CEO finds that the removal is compliant, the owner or operator may apply to the Town for the release of the performance guarantee identified in Section 9.2. The Town shall not unreasonably withhold the release of a performance guarantee after the CEO certifies compliance with the removal requirements of this Ordinance.

### SECTION 11: DEFINITIONS

**Applicant:** Person or persons or entity applying for an SES operation license.

**Electrical Equipment:** Any device associated with a solar energy system, such as an outdoor electrical unit/control box, which transfers the energy from the solar energy system to another intended location.

**Electricity Generation:** The amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatt hours (kWh) or megawatt hours (MWh).

**Height of Buildings:** The vertical measurement from grade to the highest point of the building, except utility structures such as chimneys, TV antennae, HVAC systems, and roof mounted solar energy systems shall not be included in this measurement, nor shall any construction whose sole function is to house or conceal such structures.

**Mounting:** The manner in which a solar PV system is affixed to the roof or ground (i.e., roof mount, or ground mount).

**Power:** The rate at which work is performed (the rate of producing, transferring, or using energy). Power is measured in Watts (W), Kilowatts (kW), and Megawatts (MW), in Direct Current (DC).

**Solar Array:** Multiple solar panels or collectors combined to create one system.

**Solar Collector:** Any solar PV cell panel, or array, a solar collector, or a solar thermal collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

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**Solar Energy System (SES):** A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means. It may be roof mounted, building mounted or ground mounted.

**Solar Energy System Ground Mounted:** A solar energy system that is structurally mounted to the ground and is not roof mounted:

- a. May be of any size (small, medium or large scale);
- b. Solar Photovoltaic (Solar PV) System. A solar energy system consisting of photovoltaic cells that produces electricity.

**Solar Energy System Roof or Building Mounted:** A solar energy system that is mounted on the roof of a building or structure.

- a. May be of any size (small, medium or large scale);
- b. Solar Photovoltaic (Solar PV) System. A solar energy system consisting of photovoltaic cells that produces electricity.

**Substantial Commencement:** Completion of thirty (30) percent of permitted structure measured as a percentage of estimated total cost.

**Substantial Completion:** The time at which the construction work has progressed to the point where, in the opinion of the Code Enforcement Officer, the work is sufficiently complete so that the SES can be utilized for the purposes for which it is intended.

### SECTION 12: ENFORCEMENT

1. Code Enforcement Officer:

It shall be the duty of the CEO to review and make recommendations to implement this Ordinance. If the CEO shall find any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it within thirty days of receipt via certified mail with return receipt. A copy of each notice shall be forwarded to the Planning Board and Select Board. A copy of each notice shall be maintained as a permanent record.

4. Legal Actions:

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Select Board, upon notice from the CEO, is hereby authorized to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

5. Fines:

- a. During the construction phase, should the CEO determine that any aspect of the construction is out of compliance with the approved plan, or that a deficiency related to

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construction or site control may harm abutting landowners or the public, the CEO may, depending on the severity of the deficiencies, either:

- i. Issue a stop-work order to the responsible party with a deadline for compliance; or
- ii. Permit unrelated construction to continue while issuing to the responsible party a deadline for bringing the deficiency into compliance.

Should the deadline not be complied with, the responsible party shall incur a fine of \$300.00 per day until such deficiencies are corrected. All notifications of deficiencies shall be in writing and provided to the SES owner or operator at the address provided in the annual renewal license application submitted to the Town of Mercer.

- b. During the operation phase, should the CEO determine that the SES is being operated out of compliance with the provisions of the operations license, the CEO may, depending on the severity of the non-compliance, either:
  - i. Issue a stop-operation order to the responsible party with a deadline for compliance; or
  - ii. Permit operation to continue while issuing to the responsible party a deadline for bringing the operation into compliance.

Should the deadline not be complied with, the responsible party shall incur a fine of \$300.00 per day until such non-compliance is corrected. All notifications of deficiencies shall be in writing and provided to the SES owner or operator at the address provided in the annual renewal license application submitted to the Town of Mercer.

#### **SECTION 13: ADMINISTRATIVE APPEALS**

1. All appeals of this Ordinance shall be made to the Board of Appeals, which Board shall undertake an appellate review of the underlying decision. No appeal filed pursuant to this Ordinance shall be considered de novo.
2. If the Code Enforcement Officer issues a Stop Work Order or fines pursuant to Section 12 and the applicant believes that the CEO has done so in error, or without reasonable grounds, the applicant may appeal the decision in writing to the Board of Appeals within 30 days after the CEO has issued said Stop Work Order or fines.
3. If the Planning Board denies an application or grants approval with objectionable conditions, or if it is claimed that the provisions of the Ordinance do not apply or that the true intent and meaning of the Ordinance has been misconstrued or wrongfully interpreted, the applicant, an abutting landowner, or other party who has participated before the Planning Board may appeal the decision of the Planning Board in writing to the Board of Appeals within 30 days after the Planning Board has issued a written decision.
4. The Board of Appeals shall consider the appeal at a meeting held within 30 days of receipt of the written request for an appeal. The Board of Appeals shall publish the time,

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date, and place of the meeting in a newspaper of area-wide circulation a minimum of seven days prior to the meeting. The Board of Appeals shall send notice of the meeting by first-class mail to all interested parties, including abutting landowners a minimum of 10 days prior to the meeting.

5. The Board of Appeals shall review the record of the proceedings before the Planning Board. If the Board of Appeals finds the Planning Board record to be insufficient, the Board of Appeals may remand the matter to the Planning Board for findings and conclusion or for further proceedings, findings and conclusion.

6. The Board of Appeals may ask all the parties to present their positions from the record of the proceedings before the Planning Board, as distinguished from allowing the parties to present new evidence, including testimony or exhibits.

7. The Board of Appeals may reverse the decision of the Planning Board, in whole or in part, upon finding that the decision is unsupported by substantial evidence in the record.

8. The decision of the Board of Appeals shall be in writing and shall contain findings and conclusion that clearly state the action taken by the Board and the reasons for such action. The Board of Appeals shall adopt its written decision within 30 days of the meeting, unless the Board make a finding that it is unable to do so, or unless an extension has been agreed upon amongst the parties.

**SECTION 14: AMENDMENTS**

This Ordinance may be amended by majority vote at a Town meeting.

**SECTION 15: VALIDITY AND SEVERABILITY**

Should any section or provision of this Ordinance be declared by courts to be invalid, such a decision shall not invalidate any other section or provision of this Ordinance.

**SECTION 16: CONFLICTING ORDINANCES**

Where the provisions of this Ordinance conflict with the provisions of other Ordinances, the provisions of this Ordinance shall prevail.

**SECTION 17: EFFECTIVE DATE**

This Ordinance shall become effective when enacted by the voters of the Town of Mercer.

Approved at a duly called Town Meeting on March 3, 2023.