

PROPOSED NEW TOWN CODE TO BE ADOPTED IN ITS ENTIRETY

ARTICLE VIIIIC

Solar Energy System Regulations

Local Law No. 2-2017 to be Repealed by Local Law No. 3-2019

§ 247-68.14 Solar Energy Systems

1. Title.

This article shall be known and may be recited as the "Solar Energy Systems Ordinance of the Town of Pendleton."

2. Findings.

The Town Board of the Town of Pendleton makes the following findings:

- A. The Town Board of the Town of Pendleton recognizes that solar energy is a clean, readily available and renewable energy source, and the Town of Pendleton intends to accommodate the use of solar energy systems.
- B. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town of Pendleton to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Pendleton, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Pendleton.
- C. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- D. Solar energy systems need to be regulated for removal when no longer utilized.

3. Purpose.

This zoning ordinance for solar energy is adopted to advance and protect the public, health, safety and welfare of the Town of Pendleton, including:

- A. Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
- B. Decreasing the cost of energy to owners of commercial and residential properties, including single-family houses; and
- C. Increasing employment and business development in the region by furthering the installation of solar energy systems.

4. Definitions.

The following definitions shall apply to this article:

APPLICANT

The person or entity filing an application and seeking an approval under this article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the terms "applicant" or "owner" or "operator" are used in this article, said term shall include any person acting as an applicant, owner or operator.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEMS

A solar energy system that is 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.

FOOTPRINT OF LARGE SCALE SOLAR SYSTEM

The area usually measured in acres which is located within a line drawn around the perimeter of the total project. The total area of the all Solar Panels, areas between panels, all support buildings and access roads to the panels are included in the footprint. Fencing around the Footprint of the Large Scale Solar System must be installed and all area within that fencing is included in the footprint.

FOOTPRINT OF MINOR SOLAR ENERGY SYSTEM - GROUND-MOUNTED

The area which is located within a line drawn around the perimeter of the total project.

GROUND-MOUNTED SOLAR ENERGY SYSTEM

A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices.

LARGE-SCALE SOLAR ENERGY SYSTEM OR SOLAR FARM

Any solar energy system that cumulatively on a lot is designed and intended to supply energy into a utility grid, primarily for sale to the general public.

MINOR SOLAR ENERGY SYSTEM

Any solar energy system which relies upon solar radiation as an energy source and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM

Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface.

5. Use districts where allowed.

A. Solar Energy Systems shall be allowed in Zoning Districts as follows:

(1) Allowed by Right:

(a) Minor Solar Energy Systems including Roof-Mounted Solar Energy Systems and Ground – Mounted Energy Systems – Allowable in all Zoning Districts. In Commercial and Light Industrial Zoning Districts Roof or Ground Mounted Solar Energy Systems must be used in conjunction with the Business located on the same parcel as the Solar Energy System.

(2) Allowable by Special Use:

(a) Large-Scale Solar Energy Systems or Solar Farms – Allowable in ~~CO1~~ Light Commercial, CO2-Medium Commercial, LI- Light Industrial and SLI - Special Light Industrial Districts only by Special Use.

(b) Large-Scale Solar Energy Systems or Solar Farms are not permitted By Right or Special Use in the R-1 and R-2 Residential Zoning Districts and CO-1 Light Commercial District.

6. General regulations.

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Pendleton shall be permitted only as follows:

A. All solar energy systems shall adhere to all applicable federal, state, county and Town of Pendleton laws, regulations and building, plumbing, electrical, and fire codes.

B. Rooftop-mounted and building-integrated solar energy systems upon issuance of a building permit based on the criteria set out at ~~§ 247-72.5~~ 247-68.14(5) herein.

C. Ground-mounted solar energy systems upon issuance of a building permit based on the criteria set out at ~~§ 247-72.5~~ 247-68.14(5) herein.

D. Large-scale solar energy systems upon Site Plan Review and Special Use Permit Approval issued by the Town of Pendleton Planning Board, and upon issuance of a Building Permit issued by the Building Inspector/Code Enforcement Officer shall be subject to all provisions of this article.

E. All solar energy systems existing on the effective date of this article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this article.

F. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.

G. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.

H. This article shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Pendleton.

7. Minor Solar Energy Systems.

Rooftop-mounted solar energy systems shall be subject to the following requirements:

A. Shall not be more than three feet higher than the finished flat roof to which it is mounted.

B. Shall be flush-mounted parallel to the pitched roof surface and no more than six inches above the surface with an eighteen-inch clearing at the roof ridge and an eighteen-inch clearing path to the ridge.

C. The Building Inspector/Code Enforcement Officer may require, in his sole discretion, at least a three-foot center walkway for safety access purposes.

D. The proposed solar installation shall be on the roof of a residential building or legal accessory structure with a single layer of roof covering. A waiver may be requested, in writing, from the Building Inspector/Code Enforcement Officer for an installation on a second layer of roof covering.

E. The proposed solar installation shall create a gravity roof load of no more than five pounds per square foot for a photovoltaic (PV) system.

F. All equipment and systems must be in full compliance with all current National Electrical Code (NEC) and New York State Building Code requirements.

G. A professional engineer or registered architect must also certify the load bearing and wind load sufficiency of the proposed solar installation.

H. A new survey is not required, but if the solar energy system is proposed for an accessory structure on a residential property, the applicant shall provide an existing survey and demonstrate that the accessory structure is legal.

I. Building-integrated solar energy systems shall not be more than three feet from the building wall and in no instance shall any part of the system extend beyond the roofline or parapet wall.

J. Ground-mounted solar energy systems shall be subject to the following setback requirements:

(1) R1 and R2 Districts: front yard: 125 feet; side yard: 30 feet; and backyard: 30 feet.

(2) CO1, CO2, LI, and SLI Districts: See §§ 247-12 to 247-15 for the established setback (front yard, side yard and backyard) requirements in prospective zoning districts.

- K. The location of said solar energy system shall be located only in the side or rear yard.
- L. The orientation of said solar energy system shall not be pointed directly at any adjoining residential dwelling.
- M. The height of said solar energy system shall not exceed 15 feet when oriented at maximum tilt.
- N. The total surface area of said solar energy system on a lot which is two acres or less shall not exceed 600 square feet.
- O. The total footprint (See definition of Footprint Minor Solar in Section ~~247-72(4)~~ 247-68.14(4)) surface area of said solar energy system on a lot which is greater than two acres shall not exceed 2.5% of the total square footage of the entire lot.
- ~~P. The solar energy system shall be included and be subject to the maximum lot coverage allowable under the zoning district where it is located.~~

8. Site Plan Review requirements for Large-Scale Solar Energy Systems.

- A. Applicants for approval to place, construct, and make a major modification to a large-scale solar energy system within the boundaries of the Town of Pendleton shall submit an Application for Site Plan Review as provided in § 247-54 of the Town Zoning Code. In addition to the standard requirements in other articles of the Zoning Law, the following information shall be contained in the application:
 - (1) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
 - (2) One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
 - (3) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site.
 - (4) Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels.
 - (5) Proposed fencing and/or screening for said project.
 - (6) The “Footprint” of the Large Scale Solar System outlined in accordance with the definition of footprint found in Section ~~247-72.4~~, 247-68.14(4) Definitions, of this Ordinance must be provided. A calculation determining total acreage within the footprint must also be provided.
 - (7) A decommissioning plan to ensure the proper removal of large-scale solar energy systems is to be submitted to the Building Department for approval and must specify that after the large-scale solar energy system is no longer in use (as determined by the owner/operator or the **Building Inspector/Code Enforcement Officer**), it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected time line for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor. Cost estimates shall take inflation into consideration and be revised every five years during operation of the system. Removal of the large-scale solar energy system must be completed in accordance with the approved decommissioning plan and the standards provided as follows:
 - (a) All structures and foundations associated with the large-scale solar energy systems shall be removed

to a depth of 36 inches;

- (b) All disturbed ground surfaces shall be restored to original conditions, including topsoil and seeding as necessary;
- (c) All electrical systems shall be properly disconnected and all cables and wiring buried less than 36 inches in depth shall be removed; and
- (d) A bond or other approved security shall be provided to cover the cost of removal and restoration of the area impacted by the solar energy system. Security shall be in an amount equal to 150% of the construction estimate as presented in the approved decommissioning plan.

9. Large-scale solar energy systems design criteria.

A. Design of large-scale solar energy systems shall meet the following conditions:

(1) Setbacks. Any utility-scale solar energy system shall adhere to the following setbacks:

(a) A minimum of 200 feet from any property lot line.

(b) A minimum of 250 feet from any building or structure on any adjacent lot; and

(c) A minimum of 500 feet from any dwelling.

(d) A minimum of 200 feet from any public road or railroad (measured from the road right-of-way or property line); and

(e) A minimum of 750 feet from all property lot lines bordering a school or public park.

(2) Maximum overall height. The height of a large-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.

(3) Number of large-scale solar energy systems allowed per lot. There shall be allowed only one large-scale solar energy system per lot.

(a) Minimum lot area shall be 15 acres.

(b) Maximum lot area shall be 100 acres.

~~(c) The solar energy system to be located in the CO1, CO2, LI, or SL1, shall be subject to the maximum lot coverage percentage allowable in the~~

~~_____ Zoning District where it is to be located.~~

(c) The Large Scale Solar Energy System proposed to be located in the CO-2-Medium Commercial, LI-Light Industrial or SLI-Special Light Industrial Zoning Districts shall be subject to a maximum lot coverage area of 25% of the total acreage of property owned or leased on which proposed Solar Energy System is located as calculated per the definition of Footprint found in Section 247-72.4 247-68.14(4) of this Ordinance.

(4) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth tone color.

(5) All transmission lines and wiring associated with a large-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.

- B. After completion of a large-scale solar energy system, the applicant shall provide to the **Building Inspector/Code Enforcement Officer** a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- C. Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large-scale solar energy system.

D. Security Fencing: Fencing around the Footprint of the Large Scale Solar System must be installed and all area within that fencing is included in the footprint.

10. Maintenance; procedures; and fees.

- A. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the solar energy system has been deemed inoperative or abandoned by the **Building Inspector/Code Enforcement Officer** for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal to the security assigned to the project.
- B. Determination of abandonment or inoperable. A determination of the abandonment or an inoperable solar energy system shall be made by the Town **Building Inspector/Code Enforcement Officer**, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector/Code Enforcement Officer determination of abandonment or inoperable shall be filed with the Town of Pendleton Zoning Board of Appeals within 30 days of the **Building Inspector/Code Enforcement Officer** causing personal service or mailing, certified mail, his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperable without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

C. Special Use Permit

(1) All Applications shall be subject to Planning Board Site Plan Review per Section 247-54.

(a) Environmental Review (SEQR) is required.

(b) Public Hearing is required.

[1] 400 feet notification

(2) A Special Use Permit issued by the Planning Board is required upon approval of the Site Plan and is subject to an annual review by the Planning Board. Planning Board Review will be undertaken to insure that all provisions listed herein are being adhered to. The Planning Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation/violations.

D. Application and annual fees.

(1) Large-scale solar energy system. An applicant shall pay an initial application fee of \$2,500 or such other amount as the Planning Board may determine for Site Plan Review Application to cover the cost of Town Engineer review of the Site Plan Engineered Drawings along with SWPPP Review and SWPPP Inspection Fees.

(2) A public hearing fee of \$100 applies.

(3) See Chapter 131 to verify current fees.

- E. Any changes or alterations post-construction to a large-scale energy system shall be done only by application to amend the Site Plan approval subject to all requirements of this Code.

~~§ 247-72.11~~ 11. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

~~§ 247-72.12~~ 12. Severability.

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.