Town of Portage Lake Solar Power Generation Ordinance

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1. Title.

This ordinance shall be known as "The Portage Lake Solar Power Generation Ordinance."

2. Findings and purpose.

2A. The purpose of this ordinance is to protect the health, safety and general welfare of the citizens and taxpayers of Portage Lake, by establishing reasonable regulations for the permitting, construction, operation and decommissioning of solar energy systems that are compatible with existing surrounding uses. It is the preference of Portage citizens to have nonresidential solar energy systems installed on buildings or lands that are already developed or impacted instead of on undeveloped land.

2B. The types of solar energy systems will be referred to as the following:

(2B1) Residential: A non-profit solar system used for producing 25KW or less energy at the property where the applicant resides. Requires a building permit and CEO approval.

(2B2) Small Commercial: A non-profit system capable of generating less than 25KW used for producing energy at a property where the applicant operates a business or where the applicant rents or leases space to another individual or entity. Requires a building permit and CEO approval. If ground-mounted, it requires site design review.

2B3) Large Commercial: A non-profit system capable of generating 25kw or greater used for producing energy at a property where the applicant operates a business or where the applicant rents or leases space to another individual or entity. Requires a building permit and CEO approval. If ground-mounted, it requires site design review and planning board review.

(2B4) Industrial: A for-profit system used primarily for the production of energy for the power grid. Requires a building permit, and site design review, and a public hearing held by the Planning Board.

3. Statutory authority; administration.

3A. This ordinance is adopted and hereafter amended pursuant to and consistent with Article VIII of the State of Maine Constitution and 30-A M.R.S.A. § 3001.

3B. This ordinance shall be administered by the Code Enforcement Officer (CEO), the Select Board, and the Planning Board, where applicable.

4. Applicability.

This ordinance applies to all solar energy systems in Portage.

5. Amendments; conflict with other provisions.

5A. Amendments. This amendment may be amended by vote of a Town Meeting.

5B. Conflict with other ordinances. This ordinance shall not be construed to repeal any existing bylaws or ordinances or to impair the provisions of private restrictions placed upon property; provided, however, that where this ordinance imposes greater restrictions, its provisions shall control.

5C. When effective. The effective date of this ordinance shall be the date of Town Meeting approval.

5D. Severability clause. If any section, clause, paragraph, sentence or phrase of this ordinance shall, for any reason, be held to be invalid or unconstitutional, such invalid section, clause, paragraph, sentence or phrase is hereby declared to be severable; and any such invalid or unconstitutional section, clause, paragraph, sentence or phrase shall in no way affect the remainder of this ordinance.

6. Financial responsibilities of applicant/owner/operator. (Applicable to Large Commercial and Industrial solar generation systems)

6A. Liability insurance. Through the life of the facility, the applicant/owner/operator shall maintain a current general liability (GL) policy in an amount commensurate to the potential liability of the solar energy system.

6B. Escrow. The Planning Board or Select Board may, with notice to the applicant, hire independent expert consultants or specialists as it may deem necessary to advise in carrying out the provisions of this ordinance. All costs and expenses shall be paid for by the applicant through an escrow account. The escrow account shall be established when requested by the Town, for an initial amount of up to a maximum of $7,000 in the name of the Town. If the escrow amount falls below 50% of the original required deposit amount, full replenishment is required within 30 days of notice to the applicant. The Town reserves the right to cease review if escrow amounts are insufficient and the applicant fails to replenish the account upon request by the Town.

6C. Abandonment.

> (6C1) Large commercial ground-mounted systems and all industrial systems, or a portion thereof, shall be decommissioned if they cease to generate electricity for a continuous period of 12 months.
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> (6C2) As part of permitting large commercial ground-mounted systems and all industrial systems, the applicant shall submit a decommissioning plan to the Town with a cost estimate for the costs of decommissioning.
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> (6C3) The decommissioning plan shall include financial assurance, naming the Town as beneficiary, to cover the costs associated with decommissioning the abandoned solar energy system through the life span of the facility. An independent and certified licensed professional engineer, selected by the Town, shall be retained to help establish the cost of decommissioning, without regard to salvage value, and itemize the estimated major expenses to restore the site to the requirements of the applicant/owner/operator's Town permit or Maine DEP approval, if

applicable, or the requirements of the Maine DEP in effect at the time of decommissioning, whichever is more restrictive to the owner/operator.

(6C4) If the owner/operator fails to complete the decommissioning of the solar energy system within established time lines, the Town may take such action as necessary (including court action, with all legal costs to be paid by the owner/operator) to secure the posted decommissioning funds and to complete the decommissioning work. In the case of abandonment, the Town shall utilize the decommissioning funds to decommission the solar energy system and take such action as necessary, including court action, to secure funds and to ensure completion of the decommissioning should the posted decommissioning fund not be sufficient to complete decommissioning.

(6C5) The Planning Board shall not approve an application for a large commercial ground-mounted system or industrial system until the applicant has submitted an executed decommissioning access agreement that authorizes the Town, or its agents, to enter onto the solar energy system property for the purposes of implementing the decommissioning plan upon the occurrence of a triggering event, as described in the decommissioning plan, that requires the implementation of decommissioning activities and the owner/operator fails or refuses to commence decommissioning activities, such that the Town is authorized to access the bond or other financial guarantee to permit the Town to decommission the facility. The decommissioning access agreement shall run with the land and shall be executed in a form suitable for recording in the County Registry of Deeds. Once a solar energy system has been decommissioned, the Town will release the decommissioning access agreement.

(6C6) The financial assurance of decommissioning funds may be in the form of a performance bond, surety bond, or other form of bonded assurance, and shall demonstrate the financial assurance to the satisfaction of the Planning Board during permitting phases, and to the Select Board thereafter. Prior to the issuance of a building permit, the applicant/owner/operator shall post and maintain decommissioning funds in an amount no less than 150% of the cost of decommissioning the project to be constructed under that building permit, as well as the cost to restore the site area developed under the permit. The financial assurance shall be maintained at 150% for the rest of the life of the solar energy system regardless of change of ownership. The Select Board will inform the applicant or owner/operator of the amount of coverage required at each two-year update/revaluation, and the applicant/owner/operator will provide proof of required coverage within 30 days of notification. Failure to do so will cause the construction/operating permit to be rescinded.

(6C7) The Select Board shall review the financial stability of the financial institution providing the financial assurance initially and coincident with each two-year update/revaluation. The financial institution shall have a minimum AM Best rating of A to A- (excellent).

(6C8) In the event the applicant or owner/operator is unable to secure an underwritten bond, etc., due to no underwriting entities existing, the Select Board may consider accepting a 150% funded escrow account as an alternative. The escrow account would be opened by the applicant/owner/operator prior to construction at a financial institution approved by the Select Board, in the name of the Town, to be managed by the Town Treasurer, in an amount to be established initially and at every two-year update/revaluation.

(6C9) Final decommissioning plan. At least six months from the anticipated start date of decommissioning, the owner of the solar energy system shall submit to the Planning Board a final decommissioning plan for review and approval. The final plan shall include but not be limited to the following:

(a) Anticipated start date of decommissioning.

(b) Anticipated completion date of decommissioning.

(c) Methods to remove all parts of the solar energy system, including foundations, and how they will be disposed of or recycled.

(d) Areas and methods to restore disturbed land areas.

(e) Time period (months) to complete decommissioning.

(f) Cost for decommissioning C(3) above.

(g) All solar energy system materials shall be disposed of or recycled in a licensed facility; only rock, soil, and vegetation may be buried or disposed of on-site. All foundations shall be removed to a minimum of 24 inches below ground, except where the Planning Board finds that at least 25% of the area where the solar energy system is located was farmed, has soils designated as significant for farming, or is intended to be farmed, in which case foundations shall be removed to 48 inches below ground.

7. Two-year updates/revaluation. (Applicable to Large Commercial and Industrial solar generation systems)

For ground-mounted large commercial systems and all industrial solar energy systems, on every second anniversary of the date of approval, the owner/operator shall submit to the Select Board through the CEO the following updated materials:

7A. Evidence of the current owner/operator's financial ability, or evidence of a new owner/operator's technical and financial ability, to operate the solar energy system in accordance with the requirements of this ordinance;

7B. Copies of any new agreements of the current owner/operator, or any agreements that a new owner/operator has entered into, involving any project parcel not owned by the owner/operator, or any participating parcel;

7C. Updated engineer's cost estimate for decommissioning of the project;

7D. Updates of all emergency or safety plans;

7E. An inspection/enforcement fee in an amount established by the Select Board to cover anticipated solar energy system-related inspection/enforcement costs during the coming two-year period, based on its past experience with such costs;

7F. Proof that all financial responsibilities described above are fulfilled.

7G. Proof of updated "general liability (GL) insurance policy"

8. Site design review application and review.

8A. Applicability:

(8A1) Rooftop and ground mounted residential and small commercial solar energy systems are not subject to solar site design review, such projects shall apply for and receive building permits from the CEO.

(8A3) Large commercial solar energy system projects shall apply for and receive building permits from the CEO. Such projects require solar site design review review only if ground-mounted.

(8A4) Industrial solar energy systems projects shall submit a permit application to the CEO, it requires solar site design review. The Planning Board shall hold a public hearing for all site design review applications for industrial solar energy systems and the Planning Board issues permit.

B. In addition to the Town's site design review application requirements, the applicant shall submit the following supplemental information as part of a solar site design review application:

(8B1) A solar site design review showing:

(a) Property lines and physical features, including roads, state regulated water bodies, significant wildlife habitat, habitat of special significance, for the project site;

(b) Proposed changes to the landscape of the site, grading, before and after elevations,vegetation clearing and planting, exterior lighting, screening vegetation or structures;

(c) Drawings of the solar energy system, showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height and elevation of the solar collector;

(d) Documentation of the major system components to be used, including the panels, mounting system, and inverter(s);

(e) Name, address, and contact information of the proposed system installer, the project proponent, project proponent agent, and all co-proponents or property owners, if any.

(f) A one- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods.

(g) Vegetation Management Plan ensuring limited exposed soil.

(8B2) An erosion control plan designed by a qualified professional that meets the standards of the Maine Erosion and Sediment Control Best Management Practices manual, current edition, or as replaced by MDEP. Such plan shall provide additional protections for steep slopes, shallow soils, and areas near wetlands or other vulnerable areas.

(8B3) If the system is roof-mounted, record of an on-site inspection and statement from a qualified professional that the roof and structure are built adequately for the proposed system without posing a safety threat.

(8B4) A maintenance plan detailing the routine and periodic maintenance to be performed to keep the solar energy system in good condition.

(8B5) A decommissioning plan as described in 6C(2).

(8B6) A decommissioning access agreement as described in 6C(5), above.

(8B7) Proof that all financial requirements of section 6, above, are fulfilled.

9. Additional standards for industrial solar energy systems.

In addition to the standards in section 8, above, industrial solar energy systems shall comply with the following:

9A. Utility connections: Overhead or pole-mounted electrical wires shall be avoided to the extent possible within the facility.

9B. Safety: The solar system owner or applicant shall provide a copy of the site design review application to the state fire marshall's office for review and comment. The Fire Marshall shall base any recommendation for approval or denial of the application upon review of the fire safety of the proposed system.

9C. Visual impact: Reasonable efforts, as described in the Portage Land use ordinance, shall be made to minimize undue visual impacts from the lake or vistas, preserving native vegetation, screening abutting properties, or other appropriate measures, including adherence to height standards and setback requirements.

Ground-mounted solar projects developed along a roadway or adjacent to a residential use shall require buffering and screening.

(1) Natural features shall be maintained wherever possible to provide a buffer between the development and abutting use. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a visual buffer, a planted buffer will need to be established.

(2) A native evergreen buffer must be used to meet this requirement, provided that there is a row of four or more staggered plantings, at a maximum of five feet apart and planted a maximum of four feet on center, or alternative spacing as approved by the Planning Board based on the approved plant species and its typical growth size. The intent of the buffer is to provide a visual screen so that the panels are not visible for the next 30 years. Evergreens species shall be native and a minimum of six feet high at the time of planting.

9D. Land clearing, soil erosion, and habitat impacts: Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Ground-mounted facilities shall 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. Herbicide and pesticide use shall be minimized. No prime agricultural soil or significant volume of topsoil shall be removed from the site for installation of the system.

(1) Any topsoil to be stripped shall be stockpiled on-site in such a way to ensure that there is no mixing with subsoils. Stockpiled soil shall be seeded and mulched or otherwise stabilized within 14 days of placement.

(2) Stripped topsoil shall be spread evenly on disturbed areas prior to seeding.

9F. Removal: Solar energy systems that have reached the end of their useful life or that have been abandoned consistent with this ordinance shall be removed in accordance with their decommissioning plan.

9G. Signage: A sign shall be placed on the industrial solar energy system to identify the owner and provide a twenty-four-hour emergency contact phone number throughout the life of the installation.

9H. Emergency services: The industrial solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site design to the Fire Chief.

9I. Upon request, the owner or operator shall cooperate with the Fire Department in developing an emergency response plan. All means of shutting down the system shall be clearly marked.

9J. The owner or operator shall provide to the Town the name and contact information of a responsible person for public inquiries throughout the life of the installation.

10. General restrictions.

10A. Height. Building-integrated and roof-mounted systems shall not increase the total building height above the maximum height allowed in the Portage Land Use Ordinance.

10B. Ground mounted solar energy systems shall not exceed 12 feet in height when oriented at minimum tilt to the vertical. This requirement may be waived by the Planning Board if the project is going through site design review.

10C. Industrial solar energy systems shall not exceed 25 feet in height when oriented at minimum tilt to the vertical.

10D. Setbacks. All ground-mounted solar energy systems shall be regulated by the dimensional setback regulations stipulated in Portage Land Use and Shoreland Zoning Ordinances ; however, in no case shall any type of ground-mounted system be installed within 100 feet of the public way.

10E. Environmental setback. All ground-mounted solar energy systems shall be set back from the high water mark of the lake, all rivers, streams and brooks a minimum of 75 feet. In areas regulated by shoreland zoning, the stricter setbacks of applicable Portage Ordinances shall apply.

10F. No solar energy systems shall be permitted in areas of special flood hazard, as defined in the Portage Floodplain Management Ordinance.

10G. No solar energy system shall emit sound greater than 20 dB at the property lines of the parcel where it is located. If a written complaint regarding excessive noise is submitted to the town, the town's selectman may review the complaint and the property owner may be required (at their expense) to hire a qualified third party consultant to document the sound level and submit the results to the town. After review, Portage may require mitigation.

10H. Disposal: At no time during the construction, operation, or decommissioning of a solar energy system may any generated construction debris or equipment be buried on-site unless it is organic material. Materials shall be sent to licensed facilities for recycling and disposal.

11. Restrictions on industrial solar energy systems.

Ground-mounted industrial solar energy systems shall be governed by the following additional restrictions:

11A. No more than a total of 125 project acres, except as allowed by incentive below, may be occupied by ground-mounted industrial solar energy systems at any one time in the Town of Portage, including all industrial solar energy systems in operation on the effective date of this ordinance. If a project is being decommissioned, the decommissioning must be deemed complete prior to the start of construction of any project that requires the decommissioned project's allocation in order to stay under this threshold. If no project is set for decommissioning and the allocation is completely used, no new solar energy systems may be reviewed or approved by the Town. Up to an additional 50 acres may be developed contingent on approval of the Planning Board.

11B. A maximum of 50% of a parcel's footprint or of the combined total parcel area of all the parcels participating in a project may be covered by the solar energy system.

11C. Incentive areas. The Planning Board may give a parcel coverage bonus to solar energy systems located on abandoned existing impervious surfaces, capped landfills, contaminated lands, or other land impacted by past development. If requesting a parcel coverage bonus based on this criteria, the applicant shall provide a map showing the locations of impacted lands in the vicinity of the proposed project. In determining whether to grant the parcel coverage bonus, the Board will consider and make findings in each of following criteria for the land where the project footprint is proposed:

(11C1) If it is proposed on land impacted by past development.

(11C2) If it is proposed on land which is providing valuable habitat, flood control for surrounding areas, or other natural systems benefits.

(11C3) If it is proposed on land where another type of development would be better for the Town. In reviewing this criteria, the Planning Board shall consider proximity to infrastructure, adjacent incompatible uses or uses that are likely to need expansion onto this location, and similar factors. It shall also consider any issues that make development alternatives unsafe or unviable. The applicant shall provide information on the feasibility of these development alternatives.

(11C4) If it is proposed on land that is unsuitable for solar development.

11D. If, following a review of the above criteria, the Board determines that a parcel coverage bonus is warranted, the Planning Board may grant a parcel coverage bonus to allow up to 75% of the parcel(s) to be covered by the project.

12. Application procedure.

A. Application requirements.

(1) For industrial solar energy systems, a nonrefundable application fee as required by the Town's Fee Schedule will be assessed to cover all Planning Board and administrative costs associated with the evaluation of the application.

(2) For large commercial solar energy systems, a nonrefundable application fee as required by the Town's Fee Schedule will be assessed to cover all Planning Board and administrative costs associated with the evaluation of the application.

(3) Supplement to site design review. See section 8 and section 9 of this ordinance, above, for details of the application materials to be submitted for a solar energy system application.

13. Waivers and appeals.

13A. Waivers. An applicant may petition the Planning Board for a waiver. Where the Planning Board makes written findings of fact that the applicant will suffer a hardship if the requirements of this ordinance are strictly applied, it may waive the necessity for strict compliance with the requirements of this ordinance in order to provide relief from the hardship in question and to permit a more practical and economical development; provided, however, that the public health, safety, welfare and environment will not be compromised.

13B. Appeals. The applicant or abutting landowner, or any aggrieved party, may appeal the decision of the Planning Board to the Board of Appeals following town procedures and ordinances.

14. Definitions.

As used in this ordinance, the following terms shall have the meanings indicated:

DECOMMISSIONING

The process of removing the solar energy system and restoring the site to the standards described in the applicant's Town permit, the Maine DEP approval, if applicable, or the state's standards in effect at the time of decommissioning, whichever are more restrictive to the owner/operator.

SOLAR ENERGY SYSTEM

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 or ground-mounted, and may be residential, commercial or industrial as described in 2B(1), (2) and (3).

SOLAR ENERGY SYSTEM, GROUND-MOUNTED

A solar energy system that is structurally mounted to the ground and is not roof-mounted.

SOLAR ENERGY SYSTEM, ROOF-MOUNTED

A solar energy system that is mounted on the roof of a building or structure.