

Chapter 13

Solar Energy System Licensing

7-13-1	Finding, Purpose and Authority
7-13-2	Applicability
7-13-3	Definitions
7-13-4	License Required
7-13-5	Requirements for Applying for a Solar License or Renewal of an Approval
7-13-6	Application
7-13-7	Minimum Standards
7-13-8	Inspection, Enforcement Procedures, and Penalties
7-13-9	Severability, Interpretation, and Abrogation
7-13-10	Effective Date

Sec. 7-13-1 Finding, Purpose and Authority

- (a) **Findings.** Solar energy systems (“Systems”), while an increasingly important part of a renewable energy portfolio, can have certain adverse impacts.
- (b) **Purpose.** The purpose of this Chapter is to require the operator of a proposed System to be located in the Town of Westport to obtain a license from the Town prior to beginning construction activities in order to protect public health and safety, to minimize or prevent potential adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Westport.
- (c) **Authority.** This Chapter is adopted under the powers granted to the Town of Westport by Wis. Stat. §§ 60.10, 60.22(3), and 61.34, its authority under § 66.0401 and § 66.0403, and other authority under the statutes, and its adoption of village powers under § 60.10(2)(c). Any amendment, repeal or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal, or recreation.
- (d) **Interpretation.** Wisconsin Courts have recognized that the evaluation of an application for local approval of a System requires a case-by-case approach. The Town must receive information about the specifics of a particular proposed System and then decide whether a restriction is warranted. Town Chapters may not arbitrarily set as a one size fits all scheme of requirements for any System.

Sec. 7-13-2 **Applicability**

This Chapter applies to all Systems that generate electricity within the Town of Westport designed for nominal operation at a capacity of 1,000 kilowatts (kW) or more.

Sec. 7-13-3 **Definitions**

- (a) **Construction activities** means initiation of any construction, land clearing, or land disturbance related to construction, installation, or operation of a solar energy system.
- (b) **Solar energy system or System** has the meaning provided in Wis. Stat. § 13.48(2)(h)1 .g. and includes transmission facilities dedicated to the solar energy system.

Sec. 7-13-4 **License Required**

- (a) **License Requirement.** Except as provided in Section 7-13-6 (b), a person is prohibited from commencing construction activities on a System or operation of a System in the Town without first obtaining a license from the Town Board ("solar license"). The requirements for applying for a solar license is provided in Section 7-13-5 (a).
- (b) **License Term.** An initial license term may be approved for a maximum of 35 years. A license renewal under Section 7-13-5 (b) may be for a term of up to 10 years.
- (c) **License Amendment.** If the Town has issued a solar license, the operator may request an amendment to that license during the license term, using the same process as applies to an original license application.
- (d) **License Transfer.** A solar license may be assigned or transferred without the express written consent of the Town upon delivery to the Town of documentation that the transferee agrees to be bound by the obligations of the licensee under this Chapter and any developer agreement between the Town and the licensee.
- (e) **License Revocation.** A solar license may be suspended or revoked under the procedures in Section 7-13-8.

Sec. 7-13-5 **Requirements for Applying for a Solar License or Renewal of an Approval**

- (a) **Application for a Solar License.** The applicant shall submit an application that contains all required documentation required under Section 7-13-6 to the Town Clerk.
- (b) **Application for Renewal of a License.** The operator shall make a written request to the Town Clerk for a renewal of the license no later than October 1 of the year in which the license will expire.

- (c) **Preliminary Review, Preliminary Hearing, and Proposed Decision.**
- (1) **Preliminary Review.** The Town Clerk shall forward an application or a request for renewal to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.
 - (2) **Additional Information.** The Town Board may request that the applicant submit additional information if the Town Board determines that the application or request for renewal is incomplete, or if the Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Chapter.
 - (3) **Proposed Decision.** Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a solar license, with or without conditions, or to deny the application or request.
- (d) **Decision by the Town Board**
- (1) **Notice and Hearing: Proposed Decision.** Upon the issuance of a proposed decision under sub. (c) (3) above, the Town Clerk shall place the preliminary decision of the Town Board on the Town's website and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for a solar license, give Class II public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.
 - (2) **Town Board Final Decision.** Following the receipt of public comments at the public hearing and any submitted written comments, the Town Board may make a final decision whether to grant a solar license or to renew a license, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.
 - (3) **Basis of Proposed and Final Decisions.** The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board.
 - (4) **Application Consistency.** In the case of an application for a solar license, the Town Board shall grant the license if it determines that the operation of the System will be consistent with the standards and the purposes of this Chapter.
 - (5) **Renewal Request.** In the case of a request for renewal of a license, the Town Board shall grant the request for renewal if it finds that there have been no material violations of the Chapter or the license which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the solar license or this Chapter.
 - (6) **Denial in writing.** If the Town Board denies an application for a solar license or denies a request for renewal of a license, the Town Board shall notify the applicant in writing.

Sec. 7-13-6 Application

- (a) **Application Requirements.** All applicants for a solar license shall submit a detailed site plan, including a map, with the applicant's application. The applicant shall also submit information about the owner of any lands upon which any part of the System will be located, the name, address, phone number, and email address of the operator, an operation plan detailing the construction, operations, and decommissioning phases over the life of the project, including estimated time lines for each. The applicant shall also provide information showing that the System will comply with the minimum standards in Section 7-13-7.
- (b) **Developer Agreement.** The Town Board may enter into a developer agreement with an applicant that supersedes in whole or in part the requirements of this Chapter.

Sec. 7-13-7 Minimum Standards

The Town Board shall grant a solar license if it finds that the proposed System will be consistent with the following minimum standards and the purposes of this Chapter. Pursuant to Section 7-13-1 (d) and Wisconsin law, evaluation of these standards requires a case-by-case evaluation:

- (a) The System will be appropriately buffered and screened from public view.
- (b) The construction and operation of the System will not adversely impact town roads.
- (c) All applicable federal, state and local permits and approvals have been or will be obtained prior to commencement of operation.
- (d) The operator will maintain compliance with state and federal environmental requirements including stormwater management.
- (e) The operator will limit the normal hours of operations at the site, particularly construction activities and activities causing excessive light to be shed from the site onto neighboring property, to avoid disturbance of the use and enjoyment of neighboring property.
- (f) The operator will limit night lighting to the level that is minimally necessary for security and worker safety. Every effort, consistent with legal requirements for safety, shall be made to minimize illumination of the night sky and neighboring properties. The operator shall at a minimum comply with the Town Dark Skies Code found at Title 9, Chapter 7, Town Code.
- (g) The operator will control off-site noise levels to the extent practicable to avoid adverse impacts on neighboring properties, particularly during construction activities. The operator shall comply with all applicable noise limits.
- (h) Any hazardous chemicals or other materials will be stored, used, and disposed of in accordance with applicable state and federal law.
- (i) The System may not be sited on Group I or II agricultural soils as these align with the most productive farming areas of the Town.

- (j) Systems are discouraged in other areas used for crop production in the Town. In addition to providing food, these areas also serve an important function for the spreading of manure to support local dairy farming.
- (k) Systems shall not be sited over lands designated as Community Residential, Rural Residential, Commercial, Business Park, or Parks, Open Space, Environmental Corridors Classifications in the Town Comprehensive Plan, Future Land Use Map. These areas are instead intended for other forms of development or conservation, in line with local and intergovernmental plans and agreements.
- (l) Systems are discourage within the viewshed of any residential subdivision, public recreation land, or the proposed North Mendota Parkway area as noted in Town Comprehensive Plan; or effectively screen the solar field from views from these places using topographic changes, woodlands, setbacks, and/or landscaped berms.
- (m) Systems should be sited along existing electric transmission lines capable of distributing energy from the solar field, or new lines outside of the solar field should be buried, in order to minimize the installation of new overhead lines outside of the solar field in the Town.
- (n) Site, grading, stormwater management, and erosion control plans shall comply with associated Town, Dane County, and State regulation.
- (o) Large-scale removal of topsoil, mature trees, and woodlands is discouraged; preserve environmental corridors and logical animal movement routes; and promote prairie and pollinator-friendly vegetation as ground cover throughout the solar field.
- (p) System proposals shall include an evaluation of environmental, wildlife habitat, architectural, archeological, cultural, and other resources on and near such site, and avoid negative impacts on such resources.
- (q) Adequate security and other legal assurances shall be required which provide that financial resources are available to remove the solar field and all associated equipment and infrastructure when their usefulness or life span is exhausted, other technologies render the facilities obsolete or no longer cost effective, or the owner or operator goes out of business or is otherwise financially unable to maintain the facility or remove the equipment and infrastructure following uses.
- (r) Restrictions shall be placed the Systems property to prevent future development and/or division of the property consistent with the provisions for Rural Preservation found in the Town Comprehensive Plan.

Sec. 7-13-8 Inspection, Enforcement Procedures, and Penalties

- (a) **Inspection.** The Town Building Inspector, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a System in the Town to safeguard the health and safety of the public and to determine compliance with this Chapter, upon showing proper identification and providing reasonable notice.

- (b) **Violations.** The following are violations under this Chapter:
- (1) Engaging in construction, installation, or operation of a System without a solar license granted by the Town Board or a developer agreement.
 - (2) Failure to comply with the applicable minimum standards and other terms of this Chapter.
 - (3) Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.
 - (4) Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.
 - (5) Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.
- (c) **Hearings.**
- (1) Any person affected by a notice, order, or action under sub. (d), or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (d) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.
 - (2) After a hearing under par. (1), the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action under sub. (d), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Chapter have been complied with. The petitioner shall be notified within 10 days, in writing, of such findings.
 - (3) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.
- (d) **Remedies.** The Town Board may take any appropriate action or proceeding against any person in violation of this Chapter, including the following:
- (1) Issue a stop work order.
 - (2) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
 - (3) Issue a citation.
 - (4) Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (f) and injunctive relief.

- (5) Suspend or revoke the solar license under sub. (e) in the event there are repeated exceedances of the standards of conditions incorporated into a solar license or developer agreement.
- (e) License Suspension or Revocation. After giving notice and holding a hearing, the Town Board may suspend or revoke a solar license for a violation under sub. (b).
- (f) Penalties.
 - (1) Any person or entity who violates this Chapter may be assessed a forfeiture of not less than \$500 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
 - (2) Any person or entity who violates this Chapter shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under sub. (f)(1) and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.
- (g) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

Sec. 7-13-9 Severability, Interpretation, and Abrogation

- (a) Severability.
 - (1) Should any section, clause, provision, standard, or portion of this Chapter be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of this Chapter shall remain in full force and effect.
 - (2) If any application of this Chapter to a particular parcel of land or System or project is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.
- (b) The provisions of this Chapter shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.
- (c) This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.

Sec. 7-13-10 Effective Date

- (a) Following passage by the Town Board, this Chapter shall take effect the day after the date of publication or posting of the adopted ordinance as provided by Wis. Stat. § 60.80.