



## OAKLAND SOLAR ARRAY ORDINANCE

Accepted: August 25, 2021

### Section 1. Purpose

The purpose of this ordinance is to accomplish the following objectives with the least possible regulation.

1. To encourage the development of on-site energy production and consumption.
2. To protect the public health and safety.
3. To promote the general welfare of the community.
4. To conserve the environment, wildlife habitat, fisheries, and unique natural areas, and
5. To fit these systems harmoniously into the fabric of the community by providing standards for alternative energy systems and other types of arrays.

### Section 2. Authority

1. The Oakland Planning board is vested with the authority to review and approve, approve with conditions, or reject any application for Solar Energy Conversion Arrays (Arrays) as defined in this Ordinance. An array shall have been approved by the Planning Board before a building permit may be issued under the Building Permit and Occupancy Ordinance.
2. In the event the Planning Board requires expert opinions, advice, or testimony during the course of reviewing the application to determine the impact to surrounding properties or public safety implications, or to resolve any other issues regarding the proposal, it shall first use due diligence to obtain and utilize free services from governmental or non-profit sources.
3. Should the Planning Board be unable to obtain and utilize free services, the Council may authorize the hiring of independent third-party consultants to review array proposals to determine the impact to surrounding properties or public safety implications or resolve any other issues regarding the proposal. The Planning Board shall require the applicant to pay for such services after giving notice to the applicant of the name of the expert, the area of

qualification of the expert, and the purpose for which the expert is required and the approximate cost of the expert.

4. The applicant shall be provided with an opportunity to meet with the Code Enforcement Officer to arrange a schedule for payment of the costs.

5. The applicant shall have the right to request a public hearing before the Appeals Board to determine if the experts, as noticed by the Planning Board, are necessary to a determination of any issue properly before the Planning Board, and if the approximate costs of the expert are reasonable. The applicant shall request the hearing within 10 days of receipt of the notice establishing the necessity and costs of any independent third-party consultant, or such time as is agreed to by the Planning Board and the applicant. It will be the applicant's burden to prove that the requested expert is unnecessary, or that the cost is not reasonable,

In addition to any other applicable provisions of this Ordinance, before granting a Solar Array Complex Plan approval, the Planning Board must find that the proposed plan will comply with such of the following standards as applicable.

### Section 3. Exempt Arrays

The following arrays are exempt from this Ordinance:

1. Roof-mounted on any legally permitted residential or residential accessory structure.
2. Ground - or pole-mounted for private use, with a panel area less than 5,000 square feet.
3. Building integrated solar (i.e., shingle, hanging solar, canopy, etc...).
4. Repair or replacement of array components that do not enlarge the area of the existing array.
5. Commercial buildings utilizing solar energy for on-site operational purposes only.

### Section 4. Solar Array Complex Plan Review

All non-exempt arrays must be approved by the Oakland Planning Board through this Ordinance.

The following requirements must be included in a Solar Energy Conversion Array application:

1. All application materials required under the Building Permit Ordinance and any applicable fee established by the Board of Selectmen.
2. A site plan showing property lines, the location of any wetlands or flood zones, the location of proposed panels, equipment, fencing and access roads, and the location and setback of any roads or streets.
3. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) whose minimum requirements meet the standards in Section 5 of this Ordinance. Such plan must be filed in the Kennebec County Registry of Deeds prior to the first operation of the array.
4. A Waste Stream Management Plan (WSMP) for the construction waste and debris at the site of the said Array, including but not limited to cardboard, wood, scrap metal, scrap wire, and

clearing and grading wastes, from the construction site and the disposal site(s) of such waste. Information on the amount of material that is being recycled shall be included in the WSMP. The Code Enforcement Officer shall conduct a final inspection to ensure compliance with the approved plan.

#### Section 5. Guarantee For Removal

At the time of approval of a proposed array, and prior to initiating construction of any array within the Town of Oakland, the applicant must guarantee the costs for the removal of the facility.

1. The amount of the guarantee shall be equal to 125% of the estimated removal cost, provided by the applicant and certified by a professional civil engineer licensed in Maine or a professional array construction company.

2. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in Maine or a professional array construction company every five (5) years from the date of the Planning Board's approval of the Solar Array Complex plan.

3. Types and Contents of Guarantee - One of the following performance guarantees chosen by the applicant shall be provided on approval of the application,

a. Interest-Bearing Escrow Account - A cash contribution equal to 125% of the estimated removal cost for the establishment of an escrow account shall be made by either a certified check made out to the Town, direct deposit into a savings account, or purchase of a certificate of deposit.

i. For any account opened by the applicant, the Town shall be named as owner or co-owner, and consent of the Town shall be required for withdrawal.

ii. Any interest earned on the escrow account shall be returned to the applicant unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required work.

b. Performance Bond -

A performance bond shall detail the conditions of the bond, the method for release of the entire bond or portions of the bond to the Town, and the procedures for collection by the municipality. The bond documents shall specifically reference the array facility for which approval is sought.

c. Irrevocable Letter of Credit -

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the removal of the array facility and may not be used for any other project or loan. The letter of credit shall detail the procedures for collection by the municipality. The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of the Town Selectmen, and/or Town Attorney, expenses paid for by the applicant.

## Section 6. Decommissioning and Abandonment

1. The owner or operator of the facility, or the owner of the parcel if there is no separate owner or operator of the facility or if the owner/operator fails to do so, shall do the following as a minimum to decommission the project:
  - a. Remove all non-utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least four feet below grade.
  - b. Revegetate any cleared areas with appropriate plantings that are native to the region according to an approved Solar Array Complex plan, unless requested in writing by the owner of the real estate to not revegetate due to plans for agricultural planting or other development subject to the Planning Board's approval.
  - c. Fill in all holes, depressions or divots resulting from the construction of the array.
2. All said removal and decommissioning shall occur within 12 months of the facility ceasing to operate.
3. Abandonment will occur because of any of the following conditions unless the lessee or owner of the facility or of the parcel notifies the Code Enforcement Officer of the intent to maintain and reinstate the operation of the facility within 30 days of the following events:
  - a. The land lease (if applicable) ends; or
  - b. The system does not function for 12 months; or
  - c. The system is damaged and will not be repaired or replaced.
4. A notice submitted to the Code Enforcement Officer of the intent to maintain and reinstate the operation of the facility shall be updated every six months with a statement of the progress made towards that goal.
5. If the facility has not returned to operational condition within one year from the date of the first notice of the intent to maintain and reinstate the operation of the facility, the Code Enforcement Officer shall find the facility has been abandoned unless there is documentable evidence that the process has had significant progress and in the Code Enforcement Officer's opinion is likely to be completed in a timely manner.
6. Upon determination of abandonment based on the foregoing, the Code Enforcement Officer shall notify the party (or parties) responsible by certified mail or by hand delivery with signed receipt that they must remove the facility and fully restore the site in accordance with section 6 subsection (1) of this ordinance within three hundred and sixty (360) days of notice by the Code Enforcement Officer. A copy of the notice shall be forwarded by the Code Enforcement Officer to the Oakland Council.
  - a. In the event the lessee of the facility fails to decommission the facility as outlined above, the landowner shall decommission the facility within 90 days of notice by the Code Enforcement Officer.

b. In the event the landowner fails to remove the facility as stated above, the Town of Oakland shall have the facility removed and shall reimburse the Town's costs by accessing any performance guarantee provided.

c. Any unpaid costs associated with the removal after one year of removal shall be enforced as a special tax to be assessed against the real estate of the array site,

#### Section 7. General Standards for all Arrays

1. Unless otherwise specified through a written contract, lease or other agreement, a copy of which is on file with the Oakland Code Enforcement Officer, the property owner of record will be presumed to be the responsible party for owning and maintaining the array.
2. Approval under this Ordinance is conditional upon compliance with all other Oakland Ordinances, the Maine Plumbing and Electrical Codes, Natural Resources Protection Act, Storm water Management Law or other applicable regulations and any requirements of the local utility if any array is to be connected to any existing electric grid.
3. An array shall not be constructed until the Solar Array Complex plan has been approved by the Planning Board and a Building Permit has been issued by the Code Enforcement Officer and any applicable appeal period having passed without an appeal being filed.
4. All arrays shall be operated and located such that no disruptive electromagnetic interference with signal transmission or reception is caused beyond the site. If it has been demonstrated that the system is causing disruptive interference beyond the site, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.
5. All on-site electrical wires or piping associated with the system shall be installed underground except for "tie-ins" from above-ground mounted installations and to public-utility company transmission & distribution poles, towers and/or lines. This standard may be waived by the Planning Board if the project terrain is determined to be unsuitable for underground installation.
6. The array site shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation of any kind except appropriate manufacturer's or installer's identification and warning signs,
7. Array placement must be designed to minimize or negate any solar glare onto nearby properties, or roadways.
8. If lighting is provided at the site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel or the night sky. Motion sensor control is preferred.
9. Any point of potential contact of people or animals with generated electric current must be secured.
10. The boundaries of any nonexempt array that borders any road or any abutting residential dwelling lot shall consist of a vegetated buffer the width of the required setback along that border, in addition to any fence that may be erected, and existing vegetation should be used to

satisfy these planting requirements where possible. Berms with vegetation are encouraged as a component of any buffer and the Planning Board may allow up to 25% reduction in the required buffer width where a berm is to be constructed. The buffer shall screen the array from view by the abutting road or any nearby residences to the greatest extent practical. In the event no natural vegetation exists a plan by a licensed arborist shall be submitted to the Planning Board for approval. The plan shall contain indigenous species of conifers or evergreens and must be maintained to adequately screen the array.

11. Arrays covering permanent parking lots and other hardscape areas approved by the Planning Board are encouraged to limit the amount of stormwater flowage. Where the array will cover existing hardscape (impermeable surface) areas, the Planning Board may in its discretion waive the vegetated buffer requirement so long as the required setback is met.

12. If electric storage batteries are included as part of any array system, they must be installed according to all requirements set forth in the National Electric Code and State Fire Code when in operation. When no longer in operation, the batteries shall be disposed of in accordance with the laws and regulations of the Town of Oakland and any other applicable laws and regulations relating to solid, special, or hazardous waste disposal.

13. Financial gain from "Net metering" for electric power is not considered a commercial activity if used to offset energy costs of private individuals only.

## Section 8. Dimensional and Design Standards

1. Height: A ground - or pole - mounted SECA shall have a maximum height of 20 feet as measured from the ground level to the system's highest point at full tilt,

2. Roof Load: The weight of any array proposed to be roof mounted on any non-exempt structure must be calculated and the applicant must submit a determination by a registered engineer with stamped certification or finding that the load rating of the underlying structure can accommodate the additional weight of the SECA.

3. Lot Coverage: The maximum surface area of a ground - or pole - mounted panel system, regardless of the mounted angle, shall be calculated as part of the overall lot coverage or area of the structure, for the purposes of any applicable Town of Oakland ordinance.

4. Design Standards:

a. Any height limitations of this Ordinance shall not be applicable to roof-mounted solar collectors provided that such structures are erected only to such height as is reasonably necessary to accomplish the purpose for which they are intended to serve.

b. Array installations shall not obstruct solar access to neighboring properties.

c. The array structure shall be a non-reflective color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruptions.

## Section 9, Retroactive Clause

Notwithstanding the provisions of 1 M.R.S.A §302, and regardless of the date on which it is approved by the Council, this Ordinance shall be effective as of August 1, 2021 and shall govern any and all applications for permits or approvals required under the applicable laws of The Town of Oakland Maine that were or become pending before any officer board or agency of The Town of Oakland on or at any time after August 1 2021.

## Section 10. Conflicts; Savings Clause

Any provisions of the Town's ordinances that are inconsistent with or conflict with the provisions of this Ordinance are hereby repealed to the extent applicable. If any section or provision of this Ordinance is declared by a Court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

## Section 11. Violations and Enforcement

Violations of this Ordinance shall be subject to per-day penalties in accordance with 30-A M.R.S. § 4452 and the violator shall be assessed the Town's reasonable attorney fees and costs. The Code Enforcement Officer shall have authority to enforce this Ordinance.

## DEFINITIONS

Array: A Solar Energy Conversion Array.

For the purposes of this Ordinance, any single antenna or panel greater than 5,000 square feet of surface area is included in this definition.

Examples of arrays are, but are not limited to, solar heating panels, solar photovoltaic panels, concentrated solar thermal installations, and antenna arrays.

Berm: A barrier constructed of landscaped earth, four (4) feet or more in height measured from the outside base of the berm. Berms may be pierced with reasonable access ways no more than twelve (12) feet in width as approved by the Planning Board.

Solar Energy Conversion Array (SECA): The components and subsystems required to convert solar energy into electric or thermal energy suitable for use. The term applies, but is not limited to, solar photovoltaic (PV) systems, solar thermal systems, concentrated solar thermal installations, and solar hot water systems.

Council Approval Date:

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Mike Perkins, Chairman

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Dana Wrigley, Vice Chairman

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