

## ORDINANCE NO 2024- 02

### TOWN OF DAY HEALTH AND SAFETY SOLAR ORDINANCE

ORDINANCE to establish local regulations on the installation and use of solar energy systems for the production of electricity and/or conversion of energy for uses on-site and those systems which produce electricity for off-site use and distribution.

Article 1. Solar Energy Systems

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## **Article 1 – Solar Energy Systems**

### **Section 1 – Definitions**

(a) Terms used in this ordinance shall have the following meanings:

- (1) Applicant means the owner who submits an application for a solar energy system.
- (2) Collector use period means 9:00 AM to 3:00 PM standard time daily.
- (3) Commercial use means a solar energy system that is not an accessory use to existing parcels, structures, or uses and is designed for providing energy to off-site uses and/or to export to the wholesale market.
- (4) Commission means State of Wisconsin Public Service Commission (PSC).
- (5) Committee means the Town of Day Board.
- (6) County means Marathon County, Wisconsin.
- (7) Owner means a person and/or entity with direct ownership interest in a solar energy system.
- (8) Permit means a solar energy system permit issued by the Town of Day Board.
- (9) Private use means a solar energy system that is an accessory use (private or commercial) to existing parcels, structures, or uses and is designed for providing energy to existing parcels or structures.
- (10) Solar collector means a manmade device which is part of a solar energy system providing the surface on which sunlight energy is collected.
- (11) Solar energy means radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.
- (12) Solar energy system means a manmade system that transforms solar energy into another form of energy or transfers heat from a solar collector to another medium using mechanical, electrical, or chemical means.
- (13) Town means Town of Day Board.
- (14) Town administrator means Town of Day Chairman.

### **Section 2 - Purpose**

- (a) The purpose of this ordinance is to adopt and wholly incorporate the requirements of Wis. Stat. 66.0401 and Wis. Stat. 66.0403 as a local ordinance and to establish local regulations on the installation and use of solar energy systems for the production of electricity and/or conversion of energy for uses on-site and those systems which produce electricity for off-site use and distribution.
- (b) These regulations are adopted pursuant to the authority granted in Wis. Stat. 60.61, 60.62, 66.0401, and 66.0403 and are intended to be no more restrictive than those set forth in Wis. Stat. 66.0401.

### **Section 3 – Applicability**

- (a) This ordinance applies to all lands within the boundaries of the town lying outside the limits of incorporated cities and villages. This ordinance applies to solar energy systems only.

### **Section 4 – Permit Requirements**

- (a) An owner shall obtain a permit from the Town before the installation, construction, modification, or expansion of a solar energy system. No solar energy system shall be

installed, constructed, modified, or expanded without complying with the provisions of this ordinance.

- (b) A solar energy system permit issued by the Town expires if construction of solar energy system is not commenced within twenty-four (24) months from the date the permit is issued.
- (c) A solar energy system permit is not required for the following:
  - (1) For private, residential use solar energy systems that consist of solar collectors mounted to buildings, provided the collectors do not extend more than twenty-four (24) inches from the original exterior perimeter of the building on which the collectors are mounted or built.
  - (2) For minor alterations involving ordinary maintenance and repair of the system.
- (d) The Town adopts the permit requirements and process set forth in Wis. Stat. 88.0401(4) and Wis. Stat. 88.0403 - 88.0405. Owner shall comply with such requirements and process.
  - (1) Such requirements include, but are not limited to, the Town publishing a Wis. Stat. 88.0401(4) after the submission of an application (Wis. Stat. 88.0403) and the applicant providing notice to applicable property owners (Wis. Stat. 88.0405).

#### **Section 5 – Application Submittal**

- (a) Owner shall file a completed application for a permit with the town administrator, along with the applicable fee as set forth in the Town fee schedule as approved by the Town of Day Board. Owner shall use the Town-provided application form. The Town may require the owner to pay additional fees/costs (i.e. outside attorneys, engineers, environmental specialists, planners, and other consultants and experts) to cover actual and necessary fees/costs to review and process the application.
- (b) The application for permit shall contain the following information at a minimum:
  - (1) Name, address, and phone number of all persons having an ownership in the property where the solar energy system is intended to be installed;
  - (2) The location, total size, and parcel identification number of the lot or lots including a legal description;
  - (3) Relative location of any and all nearby public and private streets;
  - (4) The existing and intended use of the lot or lots;
  - (5) A site plan (which shall be required to be drawn to scale horizontally and vertically) shall include the following:
    - a. The dimensions and configuration of the lot;
    - b. Proposed setback distances to side and rear property lines, roads (either right-of-way lines or centerlines), septic system components, access easements, and unique site features such as wetlands and waterways;
    - c. The location of all existing, temporary, and proposed building(s) or structure(s);
    - d. The location of all existing public and/or private streets abutting the lot;
    - e. Existing and/or proposed private onsite wastewater treatment system(s);
    - f. Open space(s) and parking area(s);
    - g. All projects/developments within the shoreland, wetland, and/or floodplain areas shall adhere to all applicable site plan standards and requirements of county shoreland-wetland and floodplain zoning; and
    - h. Any applicable easements (access, utility, etc.).
  - (6) Approximate/estimated value of the development, construction, or project;

- (7) On residential parcels, the number of dwelling units contained within each building and proposed number of bedrooms;
  - (8) Location and dimensions of all buildings or structures to be erected, structurally altered, or moved; and
  - (9) Such other information concerning the lot or adjacent lots as may be necessary as determined by the Town to determine conformance with this ordinance.
- (c) The owner shall submit the number of copies of the application as determined by the Town and a letter of intent to the clerk of each adjoining political subdivision.

#### **Section 6 – Application Review**

- (a) An application is complete if it complies with the filing requirements of this ordinance and payment of all application fees and costs.
- (b) The Town shall determine the completeness of an application and shall notify the owner in writing of the completeness determination no later than forty-five (45) days after the day the application is filed.
- (c) If the Town determines that the application is incomplete, the owner shall provide additional information requested and an additional forty-five (45) day completeness review period will begin the day after the Town receives responses to all required items identified in the notice.
- (d) If the owner fails to provide additional information specified in the notice of an incomplete application within ninety (90) days from the date of the written notice, the application will be deemed abandoned and the forfeiture of any application fee and/or costs. The owner may refile the application at a later date subject to payment of a new application fee and any other costs set forth in this ordinance. There is no limit to the number of times that an owner may refile an application.
- (e) If the Town does not make a completeness determination within the applicable review period as set forth above, the application is considered to be complete.
- (f) The Town shall have ninety (90) days from the date that it notifies the owner that the application is complete in which to approve or disapprove the application. The time for approval may be extended by the Town depending on the complexity of the proposed system.
- (g) The owner shall record a copy of a written decision approving an application with the Marathon County Register of Deeds within thirty (30) days of the written decision date for all applicable property as stated in Wis. Stat. 36.0403(6)(a). If the owner does not timely record such decision, the Town shall record the decision at the owner's expense.
- (h) The Town shall post in a conspicuous place on the property for which a permit is issued attesting to the fact that activity has been permitted pursuant to the provisions of this ordinance and the permit itself.

#### **Section 7 – Application and Permit Conditions**

- (a) Unless otherwise stated, any condition or requirement set forth in this ordinance is a condition for approval of an application and permit for a solar energy system (for private or commercial use).
- (b) An owner shall submit a copy of all necessary state and federal permits and approvals to the Town.
- (c) All applications and permits regulated by this ordinance may be subject to additional conditions and restrictions as determined by the Town that are consistent with but not more restrictive than those set forth in Wis. Stat. 36.0401(1)(m). Where such conditions are

considered and applied on a case-by-case basis, the condition or restriction shall satisfy one of the following:

- (1) Serves to preserve or protect the public health or safety.
- (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (3) Allows for an alternative system of comparable cost and efficiency.

#### **Section 8 – Private Use Application and Permit Requirements**

- (a) Unless otherwise stated, any condition or requirement set forth in this section is a condition for approval of an application and permit for a solar energy system for private use only.
- (b) Solar energy systems for private use shall meet the following requirements:
  - (1) Solar energy systems mounted on buildings or roofs shall not exceed the maximum allowed height that may apply pursuant to other zoning regulations (i.e. shoreland zoning).
  - (2) Solar energy systems installed directly into the ground or on a pole shall not exceed fifteen (15) feet in height when oriented at maximum tilt.
  - (3) Solar energy systems shall meet the accessory structure setbacks for applicable zoning regulations that may apply where the system is located.
  - (4) Solar energy systems shall be designed to blend into the architecture of the building or structure.
  - (5) Solar energy systems using a reflector to enhance solar production shall minimize reflected light from the reflector affecting adjacent or nearby properties. Measures to minimize reflected light include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, and/or other remedies that limit reflected light.
  - (6) Roof or building mounted solar energy systems, excluding building-integrated systems, shall allow for adequate roof access for fire-fighting purposes to the south-facing or flat roof upon which the panels are mounted.

#### **Section 9 – Commercial Use Application and Permit Requirements**

- (a) Unless otherwise stated, any condition or requirement set forth in this section is a condition for approval of an application and permit for a solar energy system for commercial use only.
- (b) Solar energy systems for commercial use shall meet the following requirements:
  - (1) In addition to the application requirements stated above, the system application shall also include the following:
    - a. Proposed ingress and egress to system.
    - b. System's proximity to transmission lines to link the system to the electric power grid.
    - c. Nature of land use on adjacent and nearby properties.
    - d. Proximity of system to neighboring residential structures.
  - (2) Solar energy systems shall meet setbacks for applicable zoning regulations that may apply where the system is located.
  - (3) Solar energy systems installed directly into the ground or on a pole shall not exceed fifteen (15) feet in height when oriented at maximum tilt.
  - (4) Solar energy systems (excluding power and communication lines from the solar energy system to the electric power grid) shall be enclosed by a fence with controlled access.
  - (5) Solar energy systems shall be subject to and comply with the Wisconsin DNR stormwater management, erosion, sediment control provisions as well as NPDES permit requirements. An owner shall utilize all applicable best practices in the placement, construction, operation, and maintenance of its solar energy facilities in

order to minimize soil compaction, protect the topsoil, prevent topsoil mixing, and avoid and repair any damage to drainage systems on agricultural land.

- (6) The following provisions shall be met related to the clearing of existing vegetation and establishment of vegetated ground cover. Additional requirements and standards may apply as required by the Town Administrator.
- a. Large-scale removal of trees will require a Town approved mitigation plan.
  - b. The top soil shall not be removed during development unless approved by the Town.
  - c. If top soil is removed it must be stock piled and remain on site for site reclamation. Top soil removal will require an issuance of a Marathon County Nonmetallic Mine Permit. This permit will require obtaining financial assurance for the disturbed acreage and be subject to annual fees for that acreage.
  - d. Seed mixes and maintenance practices shall be consistent with those recommendations made by the Town and/or Wisconsin DNR.
  - e. The applicant shall submit financial assurance in the form of a letter of credit, cash deposit, or bond in favor of the Town equal to one hundred twenty-five (125) percent of the costs to meet the ground cover and buffer area standard. The financial assurance shall remain in effect until vegetation is sufficiently established.
- (7) The system application shall include a decommissioning plan to ensure the solar energy system is properly removed after its useful life as well as sufficient financial assurance for decommissioning in an amount to cover the actual and necessary costs to decommission the solar energy system and form (i.e. bond, letter of credit, escrow account) determined by the Town.
- a. Decommissioning of solar energy systems must occur in the event they are not in use for twelve (12) consecutive months. Decommissioning shall be completed within 180 days after the end of useful life or as determined by the Town. The plan shall include provisions for removal and disposal of all structures, foundations, storage, and hazardous materials; restoration of soil and vegetation; and a plan ensuring financial resources will be available to fully decommission the system. All structures/facilities and/or foundations shall be disposed of at a licensed solid waste disposal facility and/or otherwise in a manner consistent with federal, state, and local regulations.
  - b. If the owner fails to remove a solar energy system and reclaim the site, the Town may remove or cause the removal of the solar energy system and the reclamation of the site. The Town may recover the cost of removal and reclamation from any financial assurance provided by the owner. Any removal or reclamation cost incurred by the Town that is not recovered from the owner may be collected by any lawful means.
  - c. An owner shall file a notice of decommissioning completion with the Town and any political subdivision within which its solar energy systems facilities are located when a system approved by the Town has been decommissioned and removed.
  - d. The Town shall conduct a decommissioning review to determine whether the system has reached the end of its useful life and whether the owner has decommissioned and removed the system and whether the owner has complied with its site restoration obligation.

- e. The owner shall cooperate with the Town by participating in the decommissioning review process.
- (8) An owner shall, on or before January 31 of each year, file an annual report with the Town documenting the operation and maintenance of the solar energy system during the previous calendar year.
- (9) An owner shall establish and maintain a liaison with the Town within which its solar energy systems facilities are located and with fire, police, and other appropriate first responders serving the area in which the solar energy systems facilities are located and create and implement effective emergency plans with such personnel.
  - a. An owner shall distribute a copy of its emergency plans to the following:
    - 1. Marathon County Emergency Management, Attn: Emergency Management Director, 500 Forest Street, Wausau, WI 54403
    - 2. Marathon County Sheriff's Office, Attn: Marathon County Sheriff, 500 Forest Street, Wausau, WI 54403
    - 3. Clerk for any city, town or village within which its solar energy systems facilities are located or that are within one-half mile of any of its solar energy systems facilities.
    - 4. Any fire, police, or other first responder identified by the county's emergency management director or the clerk of any city, town, or village who has received a copy of the owner's emergency plans as set forth above.
- (10) An owner shall, within thirty (30) days of consulting with any federal or state agency about the construction, operation, or decommissioning of the solar energy system, provide the Town with information about the reason for the consultation.
- (11) An owner shall provide the Town with notice of any change in ownership of the solar energy system on or before the effective date of the change. A notice of change in ownership of the solar energy system shall include information showing that the financial assurance requirements set forth in this ordinance will be met following the change in ownership.
- (12) An owner shall submit a copy of all necessary state and federal permits and approvals to the Town within thirty (30) days of the owner's receipt of any permit or approval that was not provided with the owner's application.
- (13) An owner, at the owner's sole expense, shall maintain and provide the Town each month a maintenance log for the solar energy system. The log must contain the following information regarding any maintenance performed: 1) date and time maintenance was performed; 2) nature of the maintenance performed; and 3) reason(s) for the maintenance. The Town may retain such consultants or experts as it deems necessary to assess and determine whether the solar energy system facilities are compliant and/or to assess whether the solar energy system facilities are being maintained in good repair and operating condition. An owner shall pay for all costs incurred by the town in connection with monitoring compliance during construction and assessing when solar energy facilities are maintained in good repair and operation condition.
- (14) Within ninety (90) days of the date a solar energy system commences operation, the owner shall file with the Town an as-built description of the solar energy system, an accurate map of the solar energy system showing the location of all solar energy system facilities, including unique identification for each system component; geographic information; system information showing the location of all system facilities including the location of power and communication lines from the solar energy system to the electric power grid; and current information identifying the owner of the energy system.

## **Section 10 – Appeals**

- (a) A decision by the Town that the application is incomplete, to approve or disapprove the application, or to impose a restriction on a large solar energy system may be appealed to the commission pursuant to Wis. Stat. 66.04(1) or PSC 128.51.
- (b) An appeal shall be filed within thirty (30) days after the date of the decision or the start of the enforcement action that is being appealed.
- (c) Judicial review of the commission's decision or order is available pursuant to Wis. Stat. 66.04(1)(5).

## **Section 11 – Complaint Notice Requirements**

- (a) An owner shall comply with the notice requirements set forth in PSC 128.42(1).
- (b) An owner shall, before construction of a large solar energy system begins, provide the Town with a copy of the notice issued pursuant to PSC 128.42(1) along with a list of the name and address of each person and each political subdivision to which the notice was sent.
- (c) An owner shall, before construction of a large solar energy system begins, file with the Town the name and telephone number of the owner's contact person for receipt of complaints or concerns during construction, operation, maintenance, and decommissioning. The owner shall keep the name and telephone number of the contact person on file with the Town current.

## **Section 12 – Complaint Monitoring**

- (a) An owner shall maintain a complaint log as required by PSC 128.40(2)(c).
- (b) An owner shall, at the owner's sole expense, provide the Town with a copy of the complaint log for each month within five (5) calendar days after the end of each month.
- (c) An owner shall, before construction of a large solar energy system begins, provide the Town with a written copy of the owner's complaint resolution process. An owner shall provide the Town with a written copy of any changes to the complaint resolution process at least thirty (30) days prior to implementing the change.

## **Section 13 – Complaint Process**

- (a) An aggrieved person may make a complaint to the owner regarding the failure by the owner to comply with PSC 128 or this ordinance.
- (b) An owner shall use reasonable efforts to resolve complaints and shall investigate complaints regarding a solar energy system at the owner's expense.
- (c) Upon receipt of a complaint, an owner shall provide the complainant with a copy of the notice described in PSC 128.42(1). Within thirty (30) days of receiving a complaint, an owner shall provide an initial response to the complainant.
- (d) An owner shall make a good faith effort to resolve complaints within forty-five (45) days of receiving a complaint. An owner shall notify the Town and applicable political subdivisions of complaints that have not been resolved within forty-five (45) days of the date the owner received the original complaint.
- (e) An aggrieved person who has made a complaint to an owner pursuant to PSC 128.40 may petition the Town for review of the complaint if the complaint has not been resolved within forty-five (45) days of the owner receiving the original complaint.
- (f) The petition for review must be filed with the Town within ninety (90) days of the date of the original complaint.
- (g) The petition must include the following:



- (1) name, address, and telephone number of the person filing the petition;
  - (2) copy of the original complaint to the owner;
  - (3) copy of the owner's initial response;
  - (4) statement describing the unresolved complaint;
  - (5) statement describing the desired remedy;
  - (6) any other information the complainant deems relevant to the complaint; and
  - (7) notarized signature of the person filing the petition.
- (h) The Town shall forward a copy of the petition to the owner by certified mail within ten (10) days of the Town's receipt of the petition.
- (i) The owner shall file an answer to the petition with the Town and provide a copy of its answer to the complainant within thirty (30) days of the owner's receipt of the petition.
- (j) The owner's answer must include all of the following:
- (1) name, address, and telephone number of the person filing the answer;
  - (2) statement describing the actions taken by the owner in response to the complaint;
  - (3) reasons why the owner believes that the complaint has been resolved or why the complaint remains unresolved;
  - (4) statement describing any additional action the owner plans or is willing to take to resolve the complaint;
  - (5) any other information the owner deems relevant to the complaint; and
  - (6) notarized signature of the person filing the answer.
- (k) The complainant and the owner may, within thirty (30) days following the owner's filing of its answer, file such additional information with the Town as each deems appropriate.
- (l) The Town may request such additional information from the complainant and the owner as it deems necessary to complete its review.
- (m) The Town may retain such consultants or experts as it deems necessary to complete its review and invoice the owner for such costs.
- (n) The Town shall issue a written decision and may take such enforcement action as it deems appropriate with respect to the complaint.
- (o) The Town's decision and enforcement action is subject to review under Wis. Stat. 66.0401(5).

#### **Section 14 – Violations**

- (a) No person or entity shall do any of the following:
- (1) Violate any provision of this ordinance;
  - (2) Knowingly provide false information; make a false statement; and/or fail to provide or misrepresent any material fact to the Town, Town employee, agent, or Town governing body; and/or
  - (3) Disobey, fail, neglect, resist, or refuse to comply with a permit or order issued pursuant to this ordinance.
- (b) A separate offense is deemed committed on each day that a violation occurs or continues.

#### **Section 15 – Enforcement**

- (a) The Town shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.
- (b) The Town may request permission to inspect, at a reasonable time and date, any premises or structure for which is subject to a permit or order to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If

permission is not given, the Town may apply for, obtain, and execute a special inspection warrant pursuant to Wis. Stat. 66.0119.

- (c) If the Town determines a violation of any provision of this ordinance has occurred, the Town may issue a written notice stating the conditions of non-compliance, specifying the action required to come into compliance, and specifying a reasonable amount of time when compliance is required.
- (d) The Town may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of solar energy systems facilities for which a permit has been granted, or failure to comply with the action required contained in a notice of noncompliance.
- (e) Any person or entity who violates this ordinance may be subject to any of the following:
  - i. Issuance of a citation; or
  - ii. Commencement of legal action including, but not limited to, issuance of a summons and complaint and/or seeking injunctive relief.
- (f) A separate offense is deemed committed on each day that a violation occurs or continues.
- (g) The Town is not required to issue a notice of noncompliance or take any other action prior to enforcing violations of this ordinance as set forth above.
- (h) Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude enforcement under this ordinance.

#### **Section 16 – Penalties**

- (a) A person or entity that violates this ordinance is subject to a forfeiture of not less than \$500 and not more than \$10,000 for each violation plus court costs.
- (b) The forfeiture thresholds set forth above are doubled for repeated violations of this ordinance that occur within any twelve (12) month period.

**Section 17. Effective Date.**

This Ordinance shall be effective upon publication and posting as provided by law.

Dated this 19 day of June, 2024

THE TOWN BOARD OF THE TOWN OF DAY MARATHON, COUNTY, WISCONSIN

By: Ronald Kuehnhold

Ronald Kuehnhold, Supervisor

Chad Hoffman

Chad Hoffman, Supervisor

Joe Bruegger

Joe Bruegger, Chairperson

, Attest

Dave Kraus

Dave Kraus, Clerk