

SOLAR ENERGY SYSTEMS

Local Law No. 1 of the year 2017

A Local Law to Regulate Solar Energy Systems, Solar Collections Systems, and Solar Energy Production Facilities (Solar Farms)

Adopted June 6, 2017

§ 0. Title.

This chapter shall be referred to as "Local Law No.1-2017," entitled "A Local Law regulating solar energy systems, solar collections systems, and solar energy production facilities (solar farms)."

§ 1. Authority.

This chapter is enacted pursuant to the Municipal Home Rule Law. This chapter shall supersede the provisions of town law to the extent that it is inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute and authorizes the Town of Kirkwood to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment."

§ 2. Statement of purpose.

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

- A. Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource.
- B. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and provide opportunities for solar farming.
- C. Increasing employment and business development in the region by furthering the installation of solar energy systems.
- D. Fulfill New York State clean energy mandate.

§ 3. Severability.

A. If any word, phrase, sentence, part, section, subsection or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter and all applications thereof not being declared void, unconstitutional or invalid shall remain in full force and effect.

B. Conflict with other laws. Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, the more restrictive or protective of the Town and the public shall apply.

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§ 4. Word usage and definitions.

For the purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number. The word shall is always mandatory and not merely directory.

ACCESSORY STRUCTURE – A building or structure subordinate or supplemental to the main building, located on the same property or lot and used for purposes customarily incidental to those of the main building.

APPLICANT – Any person, firm or corporation submitting an application to the Town of Kirkwood for a site plan review for a solar energy production facility.

BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM – 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.

COMMERCIAL ACCESSORY FACILITY OR STRUCTURE/COMMERCIAL SOLAR ENERGY SYSTEM – An accessory facility or structure serving or being used in conjunction with solar energy production facilities and located on the same property or lot as the solar energy production facility, including, but not limited to, utility or transmission equipment, storage sheds or cabinets, that produce more than 12 kwh of energy and are fed directly into the grid primarily for off-site sale or consumption.

COMMERCIAL ENERGY SYSTEM – An accessory facility or structure serving or being used in conjunction with solar energy production facilities and located on the same property or lot as the solar energy production facility, including, but not limited to, utility or transmission equipment, storage sheds or cabinets, that produce more than 12 kwh of energy and are fed directly into the grid primarily for off-site sale or consumption.

GROUND-MOUNTED SOLAR ENERGY SYSTEM – A solar energy system that is anchored to the ground and/or attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity.

NET METERING – A billing arrangement whereby the solar energy producer receives credit for excess electricity generated and delivered to the power grid, paying only for the power used.

PHOTOVOLTAIC SYSTEM – A solar energy production system that produces electricity by the use of semiconductor devices, photovoltaic cells, or other devices that generate electricity when light strikes them.

RESIDENTIAL SCALE SOLAR – A solar energy production system on a residential property directly energizing the residential structure's electrical system of that particular parcel that is up to 12 kwh.

ROOF-MOUNTED SOLAR ENERGY SYSTEM – A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity.

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SOLAR COLLECTOR/SOLAR PANEL – A photovoltaic cell, panel or array, which relies upon solar radiation as an energy source for the generation of electricity.

SOLAR ENERGY EQUIPMENT – Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduits of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM - An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR THERMAL SYSTEMS – A system that uses the sun's energy to heat water or other fluids, and can also power solar cooling systems.

§ 5. Applicability.

The requirements of this chapter shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair and building-integrated photovoltaic systems.

§ 6. Roof-mounted and Ground-mounted solar energy systems.

A. Roof-mounted solar energy systems.

(1) Roof-mounted solar energy systems that use the electricity onsite or offsite are permitted in all zoning districts when attached to any lawfully permitted building or structure. A building permit is required with licensed UL or NABCEP installers.

(2) Roof-mounted solar energy systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.

(3) Aesthetics. Roof-mounted solar energy system installations shall incorporate, when feasible, the following design requirements: Panels must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.

(4) Roof-mounted solar energy systems that use the energy onsite or offsite shall be exempt from site plan review under the local zoning code or other land use regulations.

(5) All roof mounted solar energy systems must file a building permit application with the Ordinance Department prior to starting the project.

B. Ground-mounted solar energy systems.

(1) Residential solar energy systems that are ground mounted and use the electricity primarily onsite are permitted as accessory structures and shall adhere to the following:

- (a) Height and setback. Ground-mounted solar energy systems shall be restricted to 12' in height from the grade on which they are located, and adhere to the setback

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requirements of the underlying zoning district. Area variances can be sought for height restrictions from the Zoning Board of Appeals.

- (b) System coverage of the lot is limited to the underlying zoning district. The surface area covered by ground-mounted solar panels shall be included in total lot coverage.
- (c) All such systems shall be installed in the side yards and rear yards. Any corner lots or requirements needing front yard installs will be addressed through the Zoning Board of Appeals.
- (d) Residential energy systems that use the electricity primarily onsite shall be exempt from site plan review under the local zoning code or other land use regulations.
- (e) A building permit is required with licensed UL or NABCEP installers.

(2) Commercial ground-mounted solar energy systems.

- (a) Commercial ground-mounted solar energy systems are permitted as a primary use in Commercial and Industrial Zoning Districts with an approved site plan and subject to the requirements as set forth herein.
- (b) Commercial ground-mounted solar energy systems are permitted as a primary use in Residential and Business Zoning Districts by special permit issued by the Planning Board, and with an approved site plan and subject to the requirements as set forth herein.
- (c) Commercial ground-mounted solar energy systems are not permitted as an accessory use.
- (d) Commercial ground-mounted solar energy systems must be located on sites with at least 5 acres open for development.
- (e) If property is subdivided to accommodate commercial ground-mounted solar energy systems as a primary use, the property containing the commercial ground-mounted solar energy system must have road access, either directly or by easement.
- (f) Applications for the installation of a commercial ground-mounted solar energy system shall be reviewed by the Ordinance Department Head and referred, with comments, to the Town of Kirkwood Planning Board for its review and action, which can include approval, approval on conditions, and denial. Refer to the schedule of zoning districts for area and zoning restrictions.

C. Solar thermal systems are not covered under this chapter. The New York State Uniform Fire Prevention and Building Code shall set the standards for Solar Thermal Systems. A building permit is required with licensed UL or NABCEP installers.

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§ 7. Site plan approval conditions for commercial ground-mounted solar energy systems.

A. Site plan approval conditions for commercial ground-mounted solar energy systems shall consist of the following:

- (1) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted. Dollar amounts shall be redacted out on said lease.
- (2) Stamped drawings to scale signed by a New York State Licensed Professional Engineer or Registered Architect showing the layout of the Solar Energy System, utility connections, and transmission lines shall be required. Plans need to be on a current boundary survey and include topographic data with five-foot contour minimum.
- (3) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, utility connections, transmission lines, and inverters that are to be installed.
- (4) Property operation and maintenance plan. Such plan shall describe a list of contacts for the property, notification of the transfer of ownership, continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- (5) All commercial ground-mounted solar energy systems shall be enclosed by six foot high galvanized chain link fencing to prevent unauthorized access, per Appendix A. Fencing shall be installed a minimum of six feet inside the rear and side property lines to allow for maintenance of vegetation and repair of the fence. Front set back shall be determined by zoning regulations, as well as additional considerations of the Planning Board. In the event a property is located on a corner lot, determination of the front property line will be at the discretion of the Planning Board. Fencing systems shall be maintained to be free of intertwining vegetation and trees at all times, and a maintenance plan shall contain a specific method for addressing overgrowth and frequency of action to prohibit growth. "Danger High Voltage Keep Out" and "No Trespass Keep Out" signs shall be attached to the fence system at a minimum of forty foot intervals, per Appendix B. Emergency Contact Signs shall be attached to the fence system at any access point, with the owner's name and emergency contact information, per Appendix B. The fencing and the system shall be further screened by any landscaping needed to avoid adverse aesthetic impacts as determined by the Planning Board.
- (6) The Town of Kirkwood Planning Board may impose conditions in order to enforce the standards referred to in this section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).
- (7) Decommissioning plan. To ensure the proper removal of commercial ground mounted solar energy systems, a decommissioning plan shall be submitted as part of the application. See § 14 for details.
- (8) A building permit is required after site plan approval and before any work commencing with licensed UL or NABCEP installers.

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B. Site plan application requirements.

- (1) All site plan review applicants for a commercial ground-mounted solar energy system or any modification of such facility shall comply with the requirements set forth in this section. Submission of a Planning Board site plan review application for a commercial ground-mounted solar energy system, or any changes to a commercial ground-mounted solar energy production facility, must be made to the Planning Board that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying or revoking the site plan for commercial ground-mounted solar energy production facilities. The Planning Board may, at its discretion, delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Planning Board with respect to the granting or not granting, recertifying or not recertifying or revoking of site plan disposal of commercial ground-mounted solar energy production facilities.
- (2) An application for site plan review for commercial ground-mounted solar energy systems shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (3) A pre-application meeting is required with the applicant, Town Engineer, and Ordinance Department Head prior to site plan application to review.

C. Incomplete applications, not meeting the requirements stated herein, or which are otherwise incomplete, may be rejected.

D. The applicant shall include a statement in writing:

- (1) That the applicant's proposed commercial ground-mounted solar energy systems shall be maintained in a safe manner and in compliance with all conditions of the site plan review disposal, without exception, unless specifically granted relief by the Planning Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules, and regulations.
- (2) That the construction of the commercial ground-mounted solar energy systems is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

E. No commercial ground-mounted solar energy systems shall be installed or constructed until the site plan is reviewed and approved by the Planning Board, in receipt of the disposal, and a building permit has been issued.

F. All applications for the construction or installation of new commercial ground-mounted solar energy systems shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer and/or architect acceptable to the Town, unless otherwise noted.

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The application shall include, in addition to the other requirements for the site plan review, 8 copies of the following information:

- (1) Name, address and phone number of the person preparing the report.
- (2) Name, address and phone number of the property owner, operator and applicant, include the legal form of the applicant.
- (3) Postal address and Tax Map parcel number of the property.
- (4) Zoning district or designation in which the property is situated.
- (5) Scale drawings with the size of the property, stated both in square feet and lot line dimensions, survey, and a diagram showing the location of all lot lines (one digital copy, two 22 x 34 copies and the rest 11 x 17).
- (6) Location of nearest residential structure.
- (7) Location of nearest habitable structure.
- (8) Location, size and height of all existing structures on the property which is the subject of the application.
- (9) Location, size and height of all proposed solar collection and all appurtenant structures.
- (10) Type, locations and dimensions of all proposed and existing landscaping and fencing.
- (11) The proposed solar energy production capacity design level proposed for the facility and the basis for the calculations of the area of the solar energy production facility's capacity.
- (12) The make, model and manufacturer of the solar production component parts.
- (13) A description of the proposed solar production facility and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
- (14) Applicant's proposed solar production facility maintenance and inspection procedures and related system of records.
- (15) Certification that the proposed solar production facility will not cause interference with air traffic.
- (16) Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrata and the proposed drainage plan, a storm water pollution prevention plan (SWPPP), the site is adequate to assure the stability of the proposed commercial ground-mounted solar energy systems on the proposed site. See the Town's Stormwater Management and Erosion Control Local Law for SWPPP requirements.
- (17) The applicant shall submit a completed Environmental Assessment long-form (EAF) and a completed visual EAF addendum for the Environmental Review Board (ERB) to process. The

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applicant shall be in attendance for the ERB meeting. Based on the results of the visual EAF addendum, the ERB may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.

(18) A decommissioning plan completed in conformance with Section 14.

(19) The applicant shall furnish a visual impact assessment, in a manner approved by the Planning Board, to demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the proposed commercial ground-mounted solar energy systems and all related structures which shall include:

- a. A zone of visibility map, which shall be provided in order to determine locations where the commercial ground-mounted solar energy systems may be seen.
- b. Pictorial representations of before and after views from key viewpoints both inside and outside of the Town, including, but not limited to, state highways and other major roads; airports; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Town Engineer and Ordinance Department Head, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.
- c. An assessment of the visual impact of the commercial ground-mounted solar energy systems and accessory buildings from abutting and adjacent properties and streets.

(20) A fully executed declaration of restrictive covenants by the owner, operator, lessee and lessor in the form attached and made a part hereof.

G. The applicant shall furnish written certification that the commercial ground-mounted solar energy systems, foundation and attachments are designed and will be constructed ("as built") to meet all local, county, state and federal structural requirements for loads, including wind and snow loads. If the commercial ground-mounted solar energy systems are subsequently approved and constructed, similar as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished prior to the Town issuance of any certificate of occupancy or compliance.

H. After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the commercial ground-mounted solar energy systems are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors by a certified and approved New York State licensed electrical inspector. Any and all representations made by the applicant to the Planning Board, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Planning Board.

I. All utilities at solar energy production facilities site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Planning Board may waive or vary the requirements of underground installation of utilities

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whenever, in the opinion of the Planning Board, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.

J. All commercial ground-mounted solar energy systems shall demonstrate that the facility be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation and on the residences in the area of the facility. Any glare produced by the solar array shall not impair or make unsafe the use of contiguous structures, any vehicles on or off the road, any airplanes, etc.

K. At a commercial ground-mounted solar energy systems site, an access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

§ 8. Retention of expert assistance; reimbursement by applicant.

A. The Planning Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.

B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any application. The initial deposit shall be \$7,500. These funds shall accompany the filing of an application, and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no more frequently than monthly for their services in reviewing the application and performing their duties. If at any time during the review process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant.

C. The total amount of the funds set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Planning Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as reasonably required and requested by the Town, shall be paid by the applicant.

§ 9. Solar related permits and fees.

A. Building permits.

- (1) A holder of a disposal or approval from the Planning Board granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

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- (2) A holder of a disposition of approval from the Planning Board for a commercial ground-mounted solar energy system shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted solar energy production facility in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, county, state or United States, including, but not limited to, the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- (3) Unless waived by the Planning Board, there shall be a pre-application meeting for the building permit application. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit, if required. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- (4) At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the commercial ground-mounted solar energy systems and property restoration with the municipality as the assignee in an amount approved by the Planning Board upon the recommendation of the Town Engineer. See § 14 for specifications. If the lessee shall go out of business, the bond shall stay in the control of the Town of Kirkwood until the solar site is decommissioned.

B. Fees. See Fee Schedule in Section 19.

§ 10. Right to inspect.

A. In order to verify that the applicant commercial ground-mounted solar energy systems and any and all lessees, renters and/or licensees of commercial ground-mounted solar energy systems place and construct such facilities, including solar collectors and solar inverters, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said disposition approval holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities.

B. Any special inspectors required by the Ordinance Office shall be at the expense of the applicant.

§ 11. Liability insurance.

A. An owner/operator of a commercial ground-mounted solar energy system shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage for the duration of the commercial ground-mounted solar energy systems in amounts as set forth below:

- (1) Commercial general liability covering personal injuries, death and property damage: \$3,000,000 per occurrence/\$10,000,000 aggregate.

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(2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.

(3) Workers' compensation and disability: statutory amounts.

B. The Commercial general liability insurance policy shall specifically include the Town of Kirkwood as additional named insured's for any reason the Town of Kirkwood Officials may have legal reasons to be on the site.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least "A."

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance which such policies are to renew or replace.

F. Before construction of a permitted commercial ground-mounted solar energy production facility is initiated, but no later than 15 days after the grant of the Planning Board approval, the holder of the site plan approval deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 12. Penalties for violations.

A. In the event of a violation of this chapter or any commercial ground-mounted solar energy systems issued pursuant to this chapter, the Board may impose and collect, and the holder of the site plan approval for solar collection facilities shall pay to the Town, fines or penalties as set forth below.

B. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

C. Notwithstanding anything in this chapter, the owner/operator for commercial ground-mounted solar energy production facilities may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the owner/operator of commercial ground-mounted solar energy production facilities to termination and revocation of certificate of compliance. The Town may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Town.

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§ 13. Default and/or revocation.

A. If a commercial ground-mounted solar energy system is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter, then the Ordinance Office shall notify the owner/operator of the commercial ground-mounted solar energy production facility in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within 24 hours.

B. If, within the period set forth in Subsection A above, the commercial ground-mounted solar energy systems are not brought into compliance with the provisions of this chapter or substantial steps are not taken in order to bring the affected commercial ground-mounted solar energy facilities into compliance, then the Ordinance Department may revoke such certificate of compliance for commercial ground-mounted solar energy systems and shall notify the owner/operator of the commercial ground-mounted solar energy systems within 48 hours of such action.

§ 14. Abandonment and decommissioning.

A. To ensure the proper removal of commercial ground-mounted solar energy systems, a decommissioning plan shall be submitted. Compliance with this plan shall be made a condition of the issuance of a site plan approval's disposal under this section. The decommissioning plan must specify that after the commercial ground-mounted solar energy systems is shut in, shut down, non-producing and/or obsolete, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. The applicant or any subsequent owner shall submit cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a New York State licensed registered professional engineer/architect. Cost estimations shall take into account inflation. Removal of commercial ground-mounted solar energy systems must be completed in accordance with the decommissioning plan. The applicant or any subsequent owner shall provide a completed declaration of restrictive covenants form (provided by the Town of Kirkwood Ordinance Office) and security sufficient for decommissioning costs in the form of a performance bond to ensure the availability of funds for such costs (the "decommissioning security") with the Town Of Kirkwood as the assignee. The performance bond shall be issued by a surety and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The performance bond shall be in an amount equal to the decommissioning costs. The performance bond shall be for a term of one year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this agreement, or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the performance bond with no lapse, each performance bond shall be required to be extended or replaced at least one month in advance of its expiration date. Decommissioning costs shall be revaluated during construction of the project and once every five years thereafter from the date of the building permit to ensure sufficient funds for decommissioning and, if the parties agree at that time that the decommissioning costs need to be modified, the amount of the decommissioning security shall

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be adjusted accordingly. Failure to secure such renewal or extension shall constitute a default of lessee under this agreement under the following circumstances, the Planning Board may determine that the health, safety and welfare interests of the Town warrant and require the removal of commercial ground-mounted solar energy systems:

- (1) When a commercial ground-mounted solar energy system has been abandoned (i.e., not used as commercial ground-mounted solar energy production facilities) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred sixty- five-day period, except for periods caused by force major or acts of God, in which case, repair or removal shall commence within 90 days.
- (2) When a permitted commercial ground-mounted solar energy system falls into such a state of disrepair that they create a health or safety hazard.
- (3) When permitted commercial ground-mounted solar energy systems have been located, constructed or modified without first obtaining, or in a manner not authorized by, the required site plan review approval or any other necessary authorization.

B. If the Planning Board makes such a determination as noted in Subsection A of this section, then the Ordinance Department shall notify the owner/operator for commercial solar energy system within 48 hours that said commercial solar energy system are to be removed. The Planning Board may approve an interim temporary use agreement, such as to enable the sale of the commercial ground-mounted solar energy systems.

C. The owner/operator for commercial ground-mounted solar energy systems, or its successors or assigns, shall get a demolition permit from the Ordinance Department to dismantle and remove such commercial ground-mounted solar energy systems and all associated structures and facilities from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Planning Board. However, if the owner of the property upon which the commercial ground-mounted solar energy production facilities are located wishes to retain any access roadway to the commercial ground-mounted solar energy systems, the owner may do so with the approval of the Planning Board.

D. If commercial ground-mounted solar energy systems are not removed or substantial progress has not been made to remove the commercial ground-mounted solar energy systems within 90 days after the owner/operator for commercial ground-mounted solar energy systems has received notice, then the Ordinance Office will issue an order to remedy with a thirty-day period to resolve said violation per Title 19 NYCRR, Chapter XXXII, Section 1203.5. When that Notice of Remedy time expires, the Town of Kirkwood has the right to use the bond and hire a contractor to remove the solar equipment and bring the site back to its original state.

E. Notwithstanding anything in this section to the contrary, the Planning Board may approve a temporary agreement for the commercial ground-mounted solar energy systems, for no more than 90 days, during which time a suitable plan for removal, conversion or relocation of the affected commercial ground-mounted solar energy systems shall be developed by the owner/operator for commercial ground-mounted solar energy systems, subject to the approval of the Planning Board, and an agreement to such plan shall be executed by the owner/operator for commercial ground-mounted solar energy systems and the Town. If such a plan is not developed, approved and executed within the ninety-day time period, then the Town may take

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possession of and dispose of the affected commercial ground-mounted solar energy systems in the manner provided in this section.

F. Upon completion of the decommissioning process pursuant to the provisions of the agreement between the owner and operator (§ 14) the town, upon request by the owner and operator, shall execute a release of the terms of the declaration of restrictive covenants in accordance and as their interest in this matter appear.

§ 15. Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this chapter may request such from the Planning Board at a pre-application meeting, provided that the relief or exemption is contained in the original application for site plan review or, in the case of an existing or previously granted site plan approval, a request for modification of its facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Planning Board. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the Planning Board. The applicant shall bear all costs of the Planning Board or the Town in considering the request, and the relief shall not be transferable to a new or different owner/operator for commercial ground-mounted solar energy systems without the specific written permission of the Planning Board. Such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

§ 16. Periodic regulatory review by Board.

A. The Town Board may at any time conduct a review and examination of this entire chapter.

B. If, after such a periodic review and examination of this chapter, the Town Board determines that one or more provisions of this chapter should be amended, repealed, revised, clarified or deleted, then the Town Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that, where warranted and in the best interests of the Town, the Town Board may repeal this entire chapter at any time.

C. Notwithstanding the provisions of Subsections A and B of this section, the Town Board may at any time and in any manner (to the extent permitted by federal, state or local law) amend, add, repeal and/or delete one or more provisions of this chapter.

§ 17. Adherence to state and/or federal rules and regulations.

A. To the extent that the owner/operator for commercial ground-mounted solar energy production facilities has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the owner/operator for commercial ground-mounted solar energy systems shall adhere to, and comply with all applicable rules, regulations, standards and provisions of any state or federal agency.

B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency are modified during the duration of a commercial ground-mounted solar energy

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system, then the owner/operator for commercial ground-mounted solar energy systems shall conform the permitted commercial ground-mounted solar energy systems to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision or sooner, as may be required by the issuing entity.

§ 18. Possible need for variance.

If there is any need for a commercial ground-mounted solar energy system to apply for a variance, a public hearing shall be held by the Zoning Board of Appeals, notice of which shall be published in the official newspaper of the Town no less than 10 calendar days prior to the scheduled date of the public hearing. In order that the applicant shall notify nearby landowners at least three weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within 1,500 feet of any property line of the lot on which the commercial solar energy production system are proposed to be located. The applicant shall provide and affidavit of legal notice and a notarized list of property owners notified as well as a digital copy of said application.

§ 19. Separability.

The provisions of this chapter are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this chapter or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

§ 20. Repealer.

All ordinances, local laws, and parts thereof inconsistent with this chapter are hereby repealed.

§ 21. Effective Date.

This chapter shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.