

ZONING LOCAL LAW
TOWN OF KIRKWOOD

ARTICLE VII
SOLAR ENERGY SYSTEMS
LL #6-22 Adopted September 6, 2022

SECTION 701 Authority.

This Local Law is adopted pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Kirkwood to adopt land use provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.”

SECTION 702 Purpose and Intent

This Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Kirkwood by creating regulations for the installation and use of renewable energy systems and equipment with the following objectives:

- A. Taking advantage of a renewable energy resource and reducing the consumption of energy by the owners of commercial and residential properties, including single-family homes;
- B. Increasing employment and business development in the region by furthering the installation of renewable energy systems;
- C. Balancing the need to improve energy sustainability through increased use of renewable energy systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability; and
- D. Minimizing adverse impacts on the character of neighborhoods, property values and the scenic, historic and environmental resources of the Town.

SECTION 703 Word Usage and Definitions

For the purposes of this Local Law, and where not inconsistent with the context of a particular section, the terms, phrases, words, abbreviations and their derivations defined below shall have the meaning given in this Article. 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, the use of which is customarily incidental and subordinate to that of a principal building and located on the same lot therewith. Battery energy storage systems are specifically excluded from this definition. (Amended 10/3/2023, LL #4)

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

BOARD – The Planning Board of the Town of Kirkwood, New York.

BUILDING – Any structure covered by a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

BUILDING INTEGRATED SOLAR ENERGY 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.

CERTIFICATE OF COMPLIANCE – A certificate stating that materials and products meet specified standards or that work was done in compliance with approved construction documents.

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COMMERCIAL SOLAR ENERGY SYSTEM – A solar energy system that primarily produces energy that is fed directly into the grid primarily for off-site sale or consumption, or any solar energy system with a nameplate generating capacity of 200 kilowatts or more. Commercial solar energy systems include building-integrated, roof-mounted and ground-mounted solar energy systems that meet or exceed the above-stated nameplate generating capacity.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

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

NAMEPLATE CAPACITY – A solar energy system’s maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

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.

NON-COMMERCIAL SOLAR ENERGY SYSTEM - A solar energy system with a nameplate generating capacity of less than 200 kilowatts that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption. Non-commercial solar energy systems include building-integrated, roof-mounted and ground-mounted solar energy systems that do not meet or exceed the above-stated nameplate generating capacity.

NON-PARTICIPATING PROPERTY: A parcel of land not subject to any type of agreement with the Applicant.

PARTICIPATING PROPERTY: A parcel of land subject to a lease, good neighbor agreement or other contract with the Applicant, in which the property owner receives consideration in exchange for authorizing or consenting to solar energy system development by the Applicant on or in the vicinity of the parcel.

PHOTOVOLTAIC SYSTEMS - A solar energy production system that produces electricity by the use of semiconductor devices, i.e. photovoltaic cells that generate electricity when light strikes them.

PRIME FARMLAND: Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

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 for onsite or offsite consumption.

SOLAR ACCESSORY FACILITY OR STRUCTURE - An accessory facility or structure serving or being used in conjunction with a solar energy system and located on the same property or lot as a solar energy system, including, but not limited to, utility or transmission equipment, storage sheds or cabinets. Battery energy storage systems are specifically excluded from this definition. (Amended 10/3/2023, LL #4)

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“SOLAR CARPORT” means a ground-mounted structure that complies with the Building Code and consists of a roof supported on posts with solar panels affixed to the roof or solar panels functioning as the roof. A solar carport is installed at parking lots or parking spaces to form an overhead cover that provides shelter for motor vehicles, boats, tractors, or some other vehicle that is parked beneath the structure and also functions to generate usable electricity.

SOLAR COLLECTOR/SOLAR PANEL - A photovoltaic cell, panel or array, capable of collecting and converting solar energy into electricity.

SOLAR ENERGY EQUIPMENT - Material, hardware, inverters, or other electrical equipment and conduits of photovoltaic devices associated with the production of electrical energy. (Amended 10/3/2023, LL #4)

SOLAR ENERGY SYSTEM - All components and subsystems required to convert solar energy into electric energy suitable for use. This term includes, but is not limited to, solar panels and solar energy equipment. The area of a solar energy system includes all the land and/or structures inside the perimeter of the solar energy system, which extends to any interconnection equipment. Battery energy storage systems are specifically excluded from this definition. (Amended 10/3/2023, LL #4)

STRUCTURE – Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

UNIFORM CODE – The New York State Uniform Fire Prevention and Building Code.

SECTION 704 Applicability

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

SECTION 705 Non-Commercial Solar Energy Systems

- A. Non-commercial solar energy systems may be permitted as a customary accessory use in any zoning district, subject to the Zoning Code of the Town of Kirkwood and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Section, and subject to the following:
- (1) A non-commercial solar energy system as an accessory use shall be limited to one or more roof-, wall- and/or ground-mounted solar collector devices and solar-related equipment.
 - (2) Solar carports shall be permitted over existing and proposed parking facilities. For the purposes of this Article, solar carports shall not be considered a structure as defined by the Town’s Zoning Laws and/or the Uniform Code.
 - (3) **Roof-Mounted Non-Commercial Solar Energy Systems:** Such systems mounted on a roof shall not cause the building on which such a system is located to exceed the maximum height restrictions for such building, if any, for the Zoning District which it is located. Panels facing the front yard must be mounted at an angle that is no greater than 20 degrees greater than the angle of the roof’s surface with a maximum distance of 24 inches between the roof and the highest edge of the system.
 - (4) **Ground-Mounted Non-Commercial Solar Energy Systems:** Such systems mounted on the ground shall adhere to the following requirements:
 - i. No more than 20% lot coverage.
 - ii. Installation shall be allowed only in the side or rear yards.
 - iii. Height shall not exceed 10 feet from finished grade when

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oriented at maximum tilt in residential zoning districts and 15 feet from finished grade when oriented at maximum tilt in nonresidential zoning districts.

- iv. Setbacks shall be 20 feet in the rear yard and side yards.
- v. All ground-mounted non-commercial solar energy systems must include a visual buffer between the system and public roads/neighborhood properties. The buffer shall consist of appropriate plantings with a mixture of evergreen trees and shrubs a height so as to provide a visual screen of the ground-mounted non-commercial system and no less than 8 feet tall. The Applicant shall be responsible for maintaining and grooming all trees and shrubs that are used as a visual buffer. The Applicant shall replace any dead or dying trees and shrubs in order to maintain an appropriate buffer.
- vi. Applicants for ground-mounted non-commercial solar energy systems with a nameplate generating capacity between 25 kilowatts and 200 kilowatts shall, prior to issuance of a building permit, provide the Code Enforcement Officer with a decommissioning plan as set forth in Section 706(K), provided, however, that the security required by such Section may be in the form of cash, bond or letter of credit.

- B. Installations shall be compliant with all New York State requirements, including but not limited to, those set forth in Uniform Code and the State Energy Conservation Construction Code.

SECTION 706 Commercial Solar Energy Systems

A. Zoning Districts

- (1) Commercial solar energy systems are permitted as a primary use, subject to a Special Use Permit and site plan approval issued by the Board, only in the following zoning districts:
(Amended 10/3/2023, LL #4)

Agricultural/Rural Residential
Industrial Development

- (2) Commercial solar energy systems are prohibited in all other zoning districts.

B. Site Restrictions and Requirements

Commercial solar energy systems shall be subject to the following restrictions and requirements:

- (1) Commercial ground-mounted solar energy systems are not permitted as an accessory use. Roof-mounted and building-integrated commercial solar energy systems may be permitted as an accessory use. Commercial Solar Energy Systems shall not include battery energy storage systems. (Amended 10/3/2023, LL #4)
- (2) Commercial ground-mounted solar energy systems must be located on sites with at least 5 acres open for development. Other types of commercial solar energy systems shall comply with applicable lot size requirements as set forth in the Town's Zoning Code.
- (3) The height of the solar collectors and any mounts within a commercial ground-mounted solar energy system shall not exceed 20 feet from finished grade when oriented at maximum tilt. Other types of commercial solar energy systems shall comply with applicable maximum height requirements as set forth in the Town's Zoning Code.
- (4) Solar energy equipment shall be located in a manner to (i) minimize visual impacts and view blockage for surrounding properties, and (ii) shading of property to the north, while still providing adequate solar access for collectors.

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- (5) Solar collectors shall be installed so as to minimize glare onto neighboring properties and roadways. All solar collectors shall be treated with anti-reflective coating(s).
- (6) No solar collector shall be closer than 100 feet from any non-participating residential property line.
- (7) No solar collector shall be closer than 250 feet from non-participating, habitable residential structures.
- (8) No solar collector shall be closer than 50 feet from non-participating, non-residential property lines.
- (9) No solar collector shall be closer than 50 feet from the centerline of any public street or roadway.
- (10) No solar collector shall be erected ahead of the front line of any existing building.
- (11) All commercial ground-mounted solar energy systems and associated solar accessory structures/facilities shall be completely enclosed by a minimum eight-foot-high anchored mini-mesh chain-link fence with two-foot tip out and a self-locking gate. Said fence shall contain five-inch-high by sixteen-inch-wide grade-level cutouts every 75 feet to permit small animals to move freely into and out of the site. No fence shall contain barbed or razor wire at the top.
- (12) All commercial ground-mounted solar energy systems must additionally include a visual buffer between the system, public roads and non-participating properties. The buffer shall consist of appropriate plantings with a mixture of evergreen trees and shrubs a height so as to provide a visual screen of the ground-mounted system and no less than 8 feet tall. The species, type, location and planted height of such landscaping and fencing shall be subject to the approval of the Board. The Applicant shall be responsible for maintaining and grooming all trees and shrubs that are used as a visual buffer. The Applicant shall replace any dead or dying trees and shrubs in order to maintain an appropriate buffer as required by the Board.
- (13) All proposed commercial solar energy systems shall demonstrate that the facility will be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation, and on any nearby residential dwellings. Any glare produced by the solar array shall not impair or render unsafe the use of contiguous structures, any vehicles in the vicinity, any airplanes, etc.
- (14) Lot Coverage Requirements. Commercial solar energy systems shall adhere to applicable maximum lot coverage requirements for principal uses for the Zoning District which it is in.
- (15) Siting Considerations. No commercial ground-mounted solar energy system shall be installed in a floodplain, aquifer or other environmentally sensitive area without the following:
 - i. Approval of an engineering plan;
 - ii. Approval and acceptance of documentation showing proper installation including a maximum tilt with the entire panel(s) at least two feet above the flood elevation;
 - iii. [Reserved]
 - iv. Approval and acceptance of plans for utility connections;
 - v. Approval and acceptance of safety measures.
- (16) 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 frontage in compliance with the Town's applicable zoning laws.

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- (17) All utilities serving the site of a commercial solar energy system 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. If the applicant seeks to install aboveground utilities or transmission lines, the Applicant must provide sufficient proof of infeasibility of underground installation. The Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Board, the Applicant's proof establishes that 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.
 - (18) At a commercial ground-mounted solar energy systems site, at least one access road and adequate 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. This subsection shall apply to other types of commercial solar energy systems if, at the discretion of the Board, the circumstances of the project so dictate.
 - (19) Fire access roads and access for fire apparatus equipment shall be provided, as approved by the chiefs of the Kirkwood Fire Company No. 1, Inc. and Five Mile Point Company, Inc., and the Board. Any gates to the site shall be equipped with Knox Company locks to allow fire department access. The applicant shall provide a fire safety and suppression plan developed in coordination with the chiefs of the Kirkwood Fire Company No. 1, Inc. and Five Mile Point Company, Inc., which plan shall include reference to required training, staffing and equipment.
 - (20) Commercial ground-mounted solar energy system owners shall develop, implement, and maintain native perennial vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the landowners and/or solar energy system owners shall use native plant species and seed mixes.
 - (21) Applications for the installation of a commercial solar energy system shall be reviewed by Code Enforcement and referred, with comments, to the Board for its review and action.
 - (22) Site lighting shall be limited to wall pack fixtures located on a structure that houses equipment/batter storage with zero foot candles at the property line.
- C. Additional Site Restrictions and Requirements for Commercial Ground-Mounted Solar Energy Systems Located on Certain Agricultural Lands.
- (1) Any commercial ground-mounted solar energy system located on areas that consist of Prime Farmland and/or Farmland of Statewide Importance shall not exceed 50% of the area of Prime Farmland and/or Farmland of Statewide Importance on the parcel.
 - (2) Commercial solar energy systems located on Prime Farmland and/or Farmland of Statewide Importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.
- D. Commercial Solar Energy Systems: Special Use Permit Required.
- (1) The Board is hereby designated and authorized to review, analyze, evaluate and make decisions with respect to all Special Use Permit applications for commercial solar energy systems. In so doing, the Board may approve, approve with conditions, disapprove, recertify, not recertify or

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revoke any such Special Use Permit. The Board may, at its discretion, delegate or designate other officials of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to granting or not granting, recertifying or not recertifying, or revoking site plan and/or Special Use Permit approval of commercial solar energy systems.

- (2) No commercial solar energy system shall be installed or constructed until the site plan is reviewed and approved by the Board and a Special Use Permit has been issued.
- (3) A pre-application meeting is required with the Applicant, Town Engineer, Code Enforcement Officer and Town Supervisor prior to submitting a formal Special Use Permit application.
- (4) Incomplete applications not meeting the requirements stated herein, or which are otherwise incomplete, may be rejected by the Board.
- (5) The Special Use Permit application 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. If the landowner(s) of the project location is not the Applicant, the Applicant shall additionally provide one of the following:
 - i. A signed writing from each landowner consenting to the filing of the Application by the Applicant; or
 - ii. A copy of the agreement(s) between the Applicant and each landowner authorizing the Applicant to use the landowner's property as proposed in the Application.
- (6) The Special Use Permit application shall include a statement in writing:
 - i. That the Applicant's proposed commercial solar energy system shall be maintained in a safe manner and in compliance with all conditions of the site plan approval, without exception, unless specifically granted relief by the 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.
 - ii. That the construction of the proposed commercial solar energy system is legally permissible, including but not limited to the fact that the Applicant is authorized to do business in New York State.
- (7) At the discretion of the 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.
- (8) The Board shall hold a public hearing in accordance with the requirements of state and local law.

E. Special Use Permit Application Requirements for Commercial Solar Energy Systems.

All Special Use Permit applications for proposed commercial solar energy systems shall show and include a site plan with maps, drawings and any/all necessary supplemental reports and documentation that show and include the following:

- (1) Names, mailing addresses, email addresses and telephone numbers of:
 - i. The Applicant and, if the application is made on behalf of a business entity, the entity's authorized agent(s) responsible for the application; and, if different from the Applicant.
 - ii. The owner(s) of the proposed project site.
 - iii. The developer of the proposed project.
 - iv. The operator of the proposed project.

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- (2) Name of project, Tax Map parcel numbers and boundary lines of parcel(s) on which the project will be located, a location map showing proposed site's location, north arrow, and scale of the plan.
- (3) Application fee of \$750.00 (non-refundable).
- (4) Stamped drawings to scale signed by a New York State Licensed Professional Engineer or Registered Architect showing:
 - i. The layout of the proposed solar energy system.
 - ii. A survey of the property or properties.
 - iii. The location of all lot lines, easements and rights of way.
 - iv. The location of all current and proposed utility connections, transmission lines and solar accessory facilities/structures.
 - v. Existing and proposed topography and five-foot contour intervals.
 - vi. Location of all proposed landscaping and screening per the landscaping and screening plan required by this Article.
 - vii. Proposed road and emergency access to the project site, including provisions for paving, if any.
- (5) A map or maps showing:
 - i. Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating residential property line.
 - ii. Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating residential structure.
 - iii. Location and distance of the solar energy system and associated solar accessory facilities/structures to the nearest non-participating, non-residential property line.
 - iv. Location of nearest habitable structure.
 - v. Location, size and height of all existing structures on the property or properties that are the subject of the application.
 - vi. Location, size, and height of all proposed solar collection and accessory structures.
 - vii. The names, addresses and Tax Map parcel numbers of all owners of record of abutting parcels and those within fifteen hundred (1,500) feet of the property lines of the parcel(s) where development is proposed. Each such owner shall be designated as "participating" or "non-participating" as those terms are defined in this Article. The location of all structures located on such properties shall be identified and labeled as "residential" or "non-residential".
- (6) A landscaping and screening plan showing:
 - i. All existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material and erosion control measures.
 - ii. Appropriate fencing around the entirety of a ground-mounted solar energy system in accordance with the requirements of this Article. The fencing shall have self-locking gates, and shall bear warning signs with the owner's name and emergency contact information on any access point to the system and perimeter of the fencing. The fencing and the system shall be further screened by any landscaping needed to avoid adverse aesthetic impacts.

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- (7) A report or series of reports containing the information hereinafter set forth. 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.
- i. The proposed solar energy production capacity design level proposed for the facility and the basis for the calculations of the solar energy system's capacity.
 - ii. The make, model and manufacturer of the solar production component parts and schematic drawings of same.
 - iii. A description of the proposed commercial solar energy system and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
 - iv. Applicant's proposed commercial solar energy system maintenance/inspection procedures and related system of records. This report shall further include a list of contacts for the property, notification procedures for the transfer of ownership and plans for continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
 - v. Certification from all relevant County, State and/or Federal authorities that the proposed commercial solar energy system will not cause interference with air traffic.
 - vi. Certification that a topographic and geomorphologic study/analysis has been conducted, taking into account subsurface features and a proposed drainage plan pursuant to a Storm Water Pollution Prevention Plan (SWPPP), such that the proposed site is deemed adequate to assure the stability of the proposed commercial ground-mounted solar energy system.
 - vii. Plans to prevent the erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be pre-construction and post-construction drainage calculations for the site completed by a licensed engineer. From this the engineer must show how there will be no increase in runoff from the site. A SWPPP will be required if disturbance of the land exceeds one acre.
 - viii. A decommissioning plan completed in conformance with this Article.
 - ix. The Applicant shall furnish a visual impact assessment, in a manner approved by the Board, to demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the proposed commercial solar energy system and all related structures which shall, at minimum, 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/or Code Enforcement Officer, acting in consultation with the Town's consultants or experts, will provide guidance concerning the appropriate key sites at the pre-application meeting. An assessment of the visual impact of the commercial solar energy system and accessory buildings from abutting and adjacent properties and streets is required.
 - x. The Applicant shall furnish a visual impacts minimization and mitigation plan that responds to any concerns raised as a result of the visual impact assessment. Said plan shall include proposed minimization and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for FAA aviation hazard lighting.

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- (8) A Completed State Environmental Quality Review Act (“SEQRA”) Full Environmental Assessment Form (“FEAF”).
- (9) The Board may, in its discretion, modify or waive any of the requirements described in this section to the extent that such conditions are inapplicable to a given application. The Board may also require that the Applicant submit additional information not listed herein that it deems necessary in order to inform and complete its review of the Applicant’s Special Use Permit application.

F. Retention of Expert Assistance; Reimbursement by Applicant.

- (1) The Applicant for a Special Use Permit for a commercial solar energy system shall be responsible for the cost of the engineering review by the Town Designated Engineer (TDE), as well as any additional consultants and/or experts the Town may hire to assist in the review and evaluation of the Application and any request for recertification of a previously issued special use permit. The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.
- (2) The applicant shall reimburse the Town for the cost of professional consultant services reasonably necessary to enable it to review such application. In no event shall the applicant’s responsibility be greater than the actual cost to the Town of such professional consultant services.
- (3) Charges made by such consultants shall be in accord with charges usually made for such services in the Broome County, New York region.
- (4) In the event that an application is required to be reviewed by more than one board, to the extent practicable, all such boards shall use the same consultant. In all instances, the Town shall attempt to avoid duplication of consultant reports or services wherever practicable in order to minimize the cost of such consultants to the applicant.
- (5) At the time of submission of an application, or immediately thereafter, an escrow account shall be established, from which withdrawals shall be made to reimburse the Town for the costs of professional consultants’ services. Upon establishment of an escrow account, the applicant shall then provide funds to the Town for deposit into such account in an amount to be determined by the Board based upon:
 - i. The costs of professional consultant services in connection with comparable applications in the Broome County, New York region; and
 - ii. The nature and complexity of the application with the decision of the Board to be final and conclusive on the applicant.
- (6) Expenditures from the escrow account shall be made by the Town as follows:
 - i. The professional consultants employed by the Town shall provide an itemized voucher to the Board as to the monetary value of their services rendered on each project.
 - ii. The Town shall review and audit all vouchers and shall determine whether such professional consultant expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications.
- (7) Upon receipt of a request by the applicant, the Town shall supply copies of such vouchers to the applicant reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between Town officials or employees and the Town’s professional consultants.

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- (8) In the event of request, the applicant shall be entitled to be heard by the Board on reasonable advance notice regarding expenditures from the escrow account.
- (9) After audit and approval of such vouchers by the Town, the Town may make payments from the escrow account.
- (10) The applicant shall reimburse the Town for the cost of professional services in excess of the amount in escrow prior to final decision on the application, provided that the Town determines that such professional consultant services are reasonable and necessary for the review of the application and the total costs for professional consultant services are reasonably similar to such costs for comparable applications in the Broome County, New York region.
- (11) A building permit or other permit being sought by the applicant shall not be issued unless all professional review fees charged in connection with the application have been reimbursed to the Town.
- (12) Any unexpended funds in an applicant's escrow account after the payment of all professional consultants' fees shall be returned to the applicant upon application to the Town for the same.

G. Related Permits and Fees.

- (1) A holder of a Special Use Permit granted under this Article 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.
- (2) A holder of a Special Use Permit granted under this Article 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 and/or United States, including, but not limited to, the most recent editions of the Uniform Code, 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.

H. Right to Inspect

- (1) In order to verify that the Applicant and any and all lessees, renters and/or licensees of commercial solar energy systems place and construct approved solar energy systems, 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, its authorized officers, agents and/or designees may inspect all facets of said Special Use Permit holders', renters', lessees' or licensees' placement, construction, modification and maintenance of such facilities. If required by law, notice will be provided prior to such inspection and such inspection may be conducted during normal business hours.
- (2) The costs of all inspections conducted pursuant to this Section shall be borne by the Applicant.
- (3) Upon request of the Town, its authorized officers, agents and/or designees, the owner of the commercial solar energy system shall provide the Town Building Inspector/Code Enforcement Officer a report showing the rated capacity of the system, and the amount of electricity that was generated in the most recent twelve-month period. The report shall be submitted no later than 45

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days after a written request for the same. Failure to submit a report as required herein shall be considered a violation subject to the penalties and remedies set forth in this Local Law.

I. Liability Insurance.

- (1) Prior to the commencement of construction of a commercial solar energy system, the owner/operator thereof 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 useful life of the commercial solar energy system. Insurance policy amounts shall be determined by the Board in consultation with Town's insurer to cover damage or injury that may result from the failure of a commercial solar energy system or any other part(s) of the generation or transmission facility. However, at minimum, the owner/operator shall carry the following insurances in the following amounts:
Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
Workers' compensation and disability: statutory amounts.
- (2) The commercial general liability insurance policy shall specifically include the Town of Kirkwood as additional named insured.
- (3) 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."
- (4) 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.
- (5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance policies currently in place.
- (6) Before construction of a permitted commercial solar energy system is initiated, but no later than 15 days after the grant of Board approval, the Special Use Permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

J. Permit Time Frame.

The Special Use Permit authorizing construction of a commercial solar energy system shall be valid for a period of eighteen (18) months from the date of issuance, conditional upon the subsequent issuance of building permit authorizing the commencement of construction. In the event construction is not completed in accordance with the approved site plan within eighteen (18) months after Special Use Permit approval, the Applicant may apply to the Board to extend the time to complete construction for 180 days, which extension shall not be unreasonably withheld or delayed. If the owner and/or operator fails to perform substantial construction after twenty-four (24) months, all previously granted approvals shall expire.

K. Abandonment of Use and Decommissioning.

- (1) The decommissioning plan required by this Section shall include, at minimum, the following:
 - i. The removal of all aboveground solar panels/collectors, solar energy equipment and accessory facilities/structures.
 - ii. The removal of all footings, foundations or similar installations to a depth of four (4.0) feet below grade. Belowground solar accessory facilities or structures, such as collection lines, are not required to be removed, unless otherwise required by applicable law. In addition, access roads may be left in place if written consent is received by the Town from the landowner. However, all solar energy equipment and accessory facilities or

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structures installed underground must be fully removed and the land reclaimed where such equipment or materials will:

- a. interfere with or prevent continued compliance by the landowner with any Environmental Laws,
 - b. give rise to any liability to the Town or the landowner under any Environmental Laws, or
 - c. form the basis of any claim, action, suit, proceeding, hearing or investigation under any Environmental Laws. "Environmental Laws" shall mean any applicable law (including common law), statute, regulation, ordinance, order, code, guidance standard recognized by regulatory authorities, or other legal requirement relating to protection of the environment, Hazardous Material(s) and/or worker health and safety adopted by any applicable federal, state, or local governmental authority. "Hazardous Material" means any pollutant, contaminant, hazardous or toxic substance, waste, and any other material (a) subject to regulation or governed by any Environmental Law; and (b) the presence, or discharge of, or exposure to which could result in liability as a result of its impact or potential impact on human health or the environment; and including asbestos and asbestos containing material; petroleum, petroleum products and waste oil; any flammable explosives, radioactive materials, or toxic mold.
- iii. Restoration of the surface grade and soil after removal of all aboveground solar panels, solar energy equipment and accessory facilities or structures.
 - iv. Revegetation of restored soil areas with native seed mixes that exclude any invasive species.
 - v. A reasonable timeframe for the completion all decommissioning and site restoration activities.
- (2) The implementation of the decommissioning plan shall commence and proceed upon the occurrence of any of the following:
- i. The Applicant abandons or otherwise ceases operation of the commercial ground-mounted solar energy system for a cumulative period of 180 days in any 365-day period;
 - ii. The Applicant or subsequent owner begins but does not complete construction of the project within 18 months, or 24 months upon the granting of an extension by the Board as described above, after receiving Special Use Permit approval;
 - iii. The Special Use Permit for the commercial solar energy system is revoked, terminated, or expired and is not renewed;
 - iv. When a permitted commercial solar energy system falls into such a state of disrepair that it creates a health or safety hazard; or
 - v. When commercial solar energy systems are located, constructed or modified without first obtaining, or in a manner not authorized by, the required site plan review approval, Special Use Permit, or any other necessary authorization.
- (3) In the event that construction of an approved solar energy system and/or solar accessory facilities or structures has been started but is not completed and functioning within 18 months of the issuance of the final site plan approval and Special Use Permit, the Town may notify the Applicant to complete construction and installation of the facility within 90 days. If the Applicant fails to perform, or to apply for and receive a Special Use Permit extension in accordance with this Article, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of such notification by the Town.
- (4) Upon revocation, termination or non-renewal of an expired Special Use Permit, the Applicant, owner and/or operator must fully complete the decommissioning plan within 180 days of the date of revocation, termination or non-renewal.
- (5) Upon the occurrence of any event listed in K(2) above, the Town shall notify the owner and/or operator of the commercial solar energy system to implement the decommissioning plan. Within

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90 days of the service of said notice, the owner and/or operator shall either restore operation equal to 50% of approved capacity, or commence implementation of the decommissioning plan, which plan must be fully completed within 180 days after implementation thereof.

- (6) If the owner and/or operator fails to fully complete the decommissioning plan within the 180 day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the irrevocable letter or letters of credit posted by the owner and/or operator in accordance with this Section, and from the defaulted owner and/or operator directly, if necessary. Any decommissioning costs incurred by the Town which have not been fully paid by the owner and/or operator shall be assessed against the property, shall (in addition to any other available remedies) become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes. The decommissioning plan shall provide for the ability of the Town, or its assignee or designee, to access the property owners' land in order to complete decommissioning if necessary.
- (7) Prior to the issuance of a building permit, the owner or operator of an approved commercial solar energy system shall post an irrevocable letter or letters of credit in a face amount of not less than 120% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the solar energy system and accessory facilities/structures in accordance with the decommissioning plan required by this Section. Each said letter of credit shall state on its face that it is held by and for the sole benefit of the Town. The owner and/or operator shall not encumber or create any security interest(s) in the letter(s) of credit in favor of any third party. The amount of the financial guarantee shall be reviewed by the Applicant and the Board every five years and may be changed based upon majority vote of the Board. The form of the guarantee must be reviewed and approved by the Attorney for the Town, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer.
- (8) Ownership Changes – If the ownership of a commercial solar energy system that has been granted a Special Use Permit changes, the Special Use Permit shall remain in force and all conditions of the Permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. At the time of the notification of the ownership change the new owner(s) must provide an irrevocable letter or letters of credit to the Town Clerk in accordance with the provisions of this Section. All signs required shall be updated accordingly.

L. Adherence to State and/or Federal Rules and Regulations.

To the extent that applicable State or Federal laws, rules, regulations, standards or provisions of same are modified during the operation of a commercial solar energy system, the owner/operator thereof shall conform the permitted commercial solar energy system to the applicable changed and/or modified law, rule, regulation, standard or provision thereof within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision thereof, or sooner, if required by a State or Federal agency responsible for the administration of the changed law, rule, regulation, standard or provision thereof.

SECTION 707 Violations and Enforcement

A. Penalties for Violations.

- (1) A violation of this Article is hereby declared to be an offense, punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation.

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- (2) Notwithstanding anything in this Article, the owner/operator of any renewable energy system or related accessory structure covered by this Article may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this section. An attempt to do so may subject the owner/operator to the termination and revocation of any or all previously granted certificates, permits or approvals for the renewable energy system. The Town may also seek injunctive relief to prevent the continued violation of this Section, without limiting other remedies available to the Town.

B. Default and/or Revocation.

- (1) If any renewable energy system or related accessory structure covered by this Article is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Article, the Code Enforcement Officer shall notify the owner/operator in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and state that the violations must be corrected within thirty (30) 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 Article, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Code Enforcement Officer or his/her authorized designee may, at his/her sole discretion, order the violation remedied within 24 hours.
- (2) If, within the period set forth in subsection (1) above, the renewable energy system or related accessory structure is not brought into compliance with the provisions of this Article or substantial steps are not taken in order to bring the same into compliance, the Code Enforcement Officer may revoke any or all certificates, permits or approvals issued by him/her and shall notify the owner/operator of the same within 48 hours of such action. The Code Enforcement Officer shall, in addition to the foregoing, inform the Board of the owner/operator's failure to comply. The Board may thereafter, in its discretion, and after providing the owner/operator with notice and an opportunity to be heard, revoke any previously granted Special Use Permit for the renewable energy system.