

**§ 300-81.4. Solar power generation systems and facilities. [Added 9-15-2020 by L.L. No. 11-2020]**

A. Statutory authority and jurisdiction.

- (1) This section is hereby enacted pursuant to the provision of § 10 of the Municipal Home Rule Law and §§ 261 and 263 of the Town Law of the State of New York, which authorize the Town of Yorktown 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 and access to sunlight necessary therefor."
- (2) The authority to issue special use permits pursuant to this section is hereby delegated to the Planning Board.
- (3) References herein to zoning districts in the Town of Yorktown are references to such districts as described in this Chapter 300 of the Code of the Town of Yorktown.

B. Statement of purpose and intent.

- (1) Solar energy is an abundant and nonpolluting energy resource that reduces fossil fuel emissions, reduces dependence on the electrical power grid that generates power from nonrenewable and nuclear sources of fuel, reduces impacts to residential and commercial property resulting from power interruptions resulting from man-made or natural events, and reduces the Town's energy load.
- (2) The use of solar energy to provide electrical power for the needs of the Town's residents and businesses is consistent with the Town of Yorktown's commitment to green infrastructure and practices, and consistent with its goal of promoting long-term sustainability.
- (3) This section is intended to permit and regulate solar energy systems and the requisite provision of, and access to, adequate sunlight; to mitigate the potential impacts to neighboring properties, while promoting the use of solar energy systems in residential, commercial, and industrial districts, in accordance with applicable laws and regulations.
- (4) This section is adopted to advance and protect the public health, safety, and welfare of the Town of Yorktown, including:
  - (a) Taking advantage of a safe, abundant, and nonpolluting energy resource;
  - (b) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and
  - (c) Increasing employment and business development in the region by furthering the installation of solar energy systems;
  - (d) Decreasing the use of fossil fuels, which reduces the carbon footprint of the Town, aids in energy independence of the Town and nation, and reduces polluting greenhouse gas emissions;

- (e) Increasing resiliency of the energy grid during storm events and times of peak energy demand.
- (5) The Town values its open space, naturalized areas, and rural character. Maintaining high environmental quality and values are a mainstay of the Town's efforts in its guidance and regulation of development in the Town. As such, the Town, in guiding the development of solar installations, will prioritize their placement first on agricultural or greenfield properties in areas that are presently cleared, second on commercial properties over roofs and parking areas, and third, on vacant parcels that are currently in a naturalized state.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:
- ABACA — An acronym that refers to the Advisory Board on Architecture and Community Appearance.
- ACCESSORY USE — A use which is customarily incidental and subordinate to the principal use of a lot, water area or a building and located on the same lot or water area therewith.
- ALTERNATING CURRENT (AC) — An electric current that reverses direction at regular intervals, having a magnitude that varies continuously in sinusoidal manner.
- 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.
- DIRECT CURRENT (DC) — An electric current of constant direction, having a magnitude that does not vary or varies only slightly.
- GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground or supported on a foundation, and attached to a pole, column, or other mounting system, and detached from any other structure for the primary purpose of producing electricity for on-site or off-site consumption.
- KILOWATT (kW) — A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used. One thousand kW is equal to one megawatt (MW).
- KILOWATT-HOUR (kWh) — A unit of energy equivalent to one kilowatt (kW) of power expended for one hour of time.
- LARGE-SCALE SOLAR ENERGY SYSTEM — A solar energy system that exceeds 25 kilowatts (kW) DC as rated by its nameplate capacity. The maximum system capacity and the maximum area of land upon which the system shall be erected are as follows:**[Amended 10-19-2021 by L.L. No. 9-2021]**
- (1) Up to one megawatt AC on an area of land no larger than 10 acres, excluding any easement for accessing the parcel; or over one but not to exceed five megawatt AC on an area of land no larger than 20 acres, excluding any easement for accessing the parcel.
- LOT COVERAGE — That percentage of the lot area covered by the combined area of all

buildings or structures on the lot.

**MAIN USE** — A term used for purposes of this Chapter 300, Zoning, as denoting a set of specific uses of land for which each zone has as its intended primary permitted uses.

**MEGAWATT (MW)** — Equal to 1,000 kilowatts; a measure of the use of electrical power.

**MEGAWATT-HOUR (MWh)** — A unit of energy equivalent to one megawatt (MW) of power expended for one hour of time.

**PRINCIPAL USE** — The main use conducted on a lot, dominant in area, extent or purpose to other uses which may also be on the lot.

**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 on-site or off-site consumption.

**SMALL-SCALE SOLAR ENERGY SYSTEM** — A solar energy system that does not exceed more than 25 kW DC as rated by its nameplate capacity, and serves only the buildings or structures on the lot upon which the system is located. Nothing contained in this provision shall be construed to prohibit the sale of excess power through a net billing or net metering arrangement made in accordance with New York Public Service Law (§ 66-j) or similar state or federal statute. **[Amended 10-19-2021 by L.L. No. 9-2021]**

**SOLAR ACCESS** — Space open to the sun and substantially clear of overhangs or shade, including the orientation of streets and lots to the sun so as to permit the use of a solar energy system on individual properties.

**SOLAR ENERGY EQUIPMENT** — Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit 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 PANEL** — A photovoltaic device capable of collecting and converting solar energy into electrical energy and is normally attached to a building by mechanical means and is readily removable and replaceable or ground-mounted utilizing structural components.

**SOLAR POWER GENERATION SYSTEMS** — See "solar energy system" definition.

D. Applicability.

- (1) The requirements of this section shall apply to all solar energy systems and equipment installed or modified after the effective date of this section, excluding general maintenance and repair and building-integrated photovoltaic systems.
- (2) Roof-mounted small-scale solar energy systems installed on single- and two-family residential properties are subject to compliance with this chapter under authority of the Building Inspector, and do not require review and approval from the Planning Board. Roof-mounted solar energy systems mounted facing front yards or any yard facing the street must be referred to the ABACA for review and recommendation. The Building Inspector may refer the application and associated materials to the Planning Board for review and recommendation.

## E. Solar as an accessory use or structure.

- (1) Small-scale solar energy systems are permitted through the issuance of a special use permit within all zoning districts, subject to the requirements set forth in this section, including site plan approval. Applications for the installation of a small-scale solar energy system shall be reviewed by the Planning Department and referred, with comments, to the Planning Board for its review and action, which can include approval, approval with conditions, and denial, unless otherwise cited by Subsection D(2) of this section. Where a solar energy system will require a tree removal permit, the application shall be referred to the Tree Conservation Advisory Commission.
- (2) Roof-mounted solar energy systems.
  - (a) Roof-mounted solar energy systems that use the electricity on site or off site are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.
  - (b) Height. 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.
  - (c) Aesthetics. Roof-mounted solar energy system installations shall incorporate, when feasible, the following design requirements:
    - [1] Panels installed on pitched roofs and facing the front yard 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. Panels installed on flat roofs must be installed so that they are not visible or suitably screened.
- (3) Ground-mounted solar energy systems.
  - (a) Ground-mounted solar energy systems that use the electricity primarily on site are permitted as accessory structures in all zoning districts.
  - (b) Setback and height. Ground-mounted solar energy systems shall adhere to the setback requirements of the underlying zoning district and shall not exceed 15 feet in height in residential zones and 20 feet in height in all other zones.
  - (c) The surface area covered by ground-mounted solar panels shall be included in total lot coverage and shall not exceed 50% of the area of the lot, inclusive of all principal and accessory structures on the lot, as required by the underlying zone. The Planning Board, in its discretion, may increase the allowable lot coverage, if the applicant can demonstrate that there are no adverse impacts to the surrounding neighbors and community character.
  - (d) All such systems in residential districts shall be installed on properties that are a minimum of two acres in size or more and shall be installed in the side or rear yards. **[Amended 5-3-2022 by L.L. No. 5-2022]**
  - (e) Landscape screening and buffering shall be required. A ground-mounted solar energy system shall be fully screened from adjacent residential properties, streets

or roads on which it fronts or is visible from, and any other views which the Planning Board determines is necessary.

- F. Approval standards for large-scale solar systems as a main use permitted by special permit.
- (1) Large-scale solar energy systems are permitted through the issuance of a special use permit within all zoning districts, subject to the requirements set forth in this section, including site plan approval. Large-scale solar energy systems are not permitted as a sole, principal use on properties within nonresidential zones. Applications for the installation of a large-scale solar energy system shall be submitted to the Planning Board for its review and action, which can include approval, approval with conditions, and denial. Where a solar energy system will require a tree removal permit, the application shall be referred to the Tree Conservation Advisory Commission.
  - (2) Special use permit application requirements. For a special use permit application, the requirements of § 195-40 shall be met unless otherwise waived by the Planning Board, and as supplemented by the following provisions.
    - (a) 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.
    - (b) Site plans, survey and other documentation required by the Planning Board showing the layout of the solar energy system signed by a professional engineer or registered architect shall be required.
    - (c) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
    - (d) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
    - (e) A statement detailing the loss of trees and other vegetation to be removed and the quantity of carbon sequestered by said trees and vegetation using the "Method for Calculating Carbon Sequestration by Trees in Urban and Suburban Settings" of the U.S. Department of Energy, or other recognized methodology and a comparison of this data to the reduction of carbon emissions representative of the electrical output of the proposed facility that would have been produced from a traditional fossil fuel electrical generation plant.
  - (3) Special use permit standards.
    - (a) Height and setback. Large-scale solar energy systems shall adhere to the setback requirements of the underlying zoning district, except that the Planning Board may impose greater setbacks if it determines that the minimum setbacks do not provide adequate protection against identified negative impacts. In residential districts the minimum setbacks shall be complied with except that no setback shall be less than 100 feet from any property boundary. The height of ground-mounted systems shall be limited to 10 feet in residential zones and 20 feet in all other zones. Roof-

mounted systems shall be limited to the height requirements of the underlying zone except that panels installed on flat roofs must be installed so that they are not visible or suitably screened. **[Amended 5-3-2022 by L.L. No. 5-2022]**

- (b) Lot size. Large-scale energy systems shall be located on lots with a minimum lot size of five acres in residential zones. Lot size in nonresidential zones shall comply with the requirement in the underlying zone. **[Amended 5-3-2022 by L.L. No. 5-2022]**
- (c) Lot coverage. A large-scale solar energy system that is ground-mounted shall not exceed 80% of the lot on which it is installed. The surface area covered by solar panels shall be included in total lot coverage. Where a solar energy system is not the principal use of the site, the lot coverage may exceed that of the underlying zone, but in no case shall exceed 50%, including all principal and accessory structures on the lot as required by the underlying zone.
- (d) All ground-mounted large-scale energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. The type of fencing shall be determined by the Planning Board. The fencing and the system may be further screened by any landscaping needed to avoid adverse aesthetic impacts. Fencing for ground-mounted systems that function as canopies or carports above parking areas may not be required, provided that the Planning Board determines the visual and aesthetic impacts to the surrounding area is not significantly adversely affected.
- (e) Any application under this section shall meet any substantive provisions contained in site plan requirements in the Chapter 195 of the Town Code entitled "Land Development" and Chapter 300 of the Town Code entitled "Zoning" that, in the judgment of the Planning Board, are applicable to the system being proposed. The Planning Board may waive one or more of the requirements therein.
- (f) The Planning Board may impose conditions on its approval of any special use permit under this section 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).
- (g) Landscape screening and buffering shall be required. A landscape plan shall be submitted and approved by the Planning Board. Large-scale solar energy systems shall be fully screened from adjacent residential properties, streets or roads on which it fronts or is visible from, and any other views, which the Planning Board determines is necessary. Views from adjacent commercial properties shall be minimized to the extent reasonably practicable and screened from streets or roads on which it fronts. Screening of systems that function as canopies or carports above parking areas may not be required, provided that the Planning Board determines the visual and aesthetic impacts to the surrounding area is not significantly adversely affected. Screening and buffering may be accomplished using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area. Native

pollinator (birds, bats, bees, and multiple species of insects) habitats may be required to be established on a solar energy system where appropriate. Such habitats may consist of short-growing, low-maintenance, native seed mix underneath and around panels, diverse pollinator seed mix in between panels, buffers of vegetation that attract and benefit pollinators, and native flowering plants and grasses.

- (h) Mitigation for tree loss under Chapter 270, when required, will be developed to mitigate for the carbon sequestration ability of the removed trees to the greatest extent practicable.
- (i) The owner, operator or manager of any large-scale solar power generation system shall be required to conduct annual inspections of the site's approved landscaping, screening, buffering, and any other required vegetative plantings or structures required under the approval. The inspection shall ascertain the health, effectiveness, condition and viability of such landscaping, screening, buffering, and any other required vegetative plantings or structures. The findings of each annual inspection shall be reported to the Town Engineer as a written report with photographs where necessary. Any dead or diseased vegetative material or any other deficiencies shall be promptly replaced or repaired by the site owner, operator, or manager. If such diseased, dead or deficient material is not promptly replaced or repaired to the satisfaction of the Town Engineer, the Town Engineer shall exercise enforcement action pursuant to § 300-199, Screening, drainage facilities and buffer strips. **[Added 5-3-2022 by L.L. No. 5-2022]**
- (j) For large-scale solar energy systems proposed to be installed on protected woodlands, the applicant shall provide an in-depth analysis of the functions of the woodlands to include, as appropriate, the items listed in § 270-3. **[Added 5-3-2022 by L.L. No. 5-2022]**

G. Abandonment and decommissioning.

- (1) All applications for a solar farm shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility, prior to issuance of a building permit. The Planning Board shall require the applicant to file a decommissioning bond prior to the issuance of any permits in an amount sufficient to cover the cost of decommissioning. **[Amended 5-3-2022 by L.L. No. 5-2022]**
- (2) If the applicant begins but does not complete construction of the project within 18 months after receiving final site plan approval, this may be deemed abandonment of the project and require implementation of the decommissioning plan to the extent applicable.
- (3) The decommissioning plan must ensure that the site will be restored to a useful, nonhazardous condition without delay, including, but not limited to, the following:
  - (a) A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimations shall

take into account inflation.

- (b) Removal of aboveground and below-ground equipment, structures and foundations.
  - (c) Restoration of the surface grade and soil after removal of equipment.
  - (d) Revegetation of restored soil areas with native seed mixes, excluding any invasive species. The Planning Board may require restoration of former forested areas using native species formerly on the site, and at a rate that will ensure the survival and maturation of the forest.
  - (e) The plan shall include a timeframe for the completion of site restoration work.
- (4) Solar energy systems are deemed abandoned after one year without electrical energy generation and must be removed from the property. Applications for extensions are reviewed by the Planning Board and may be extended for a period of one year. The maximum number of extensions is five. At the expiration of the system, it must be decommissioned.
- (5) If the large scale solar energy system is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover the costs to the municipality.
- H. Enforcement. Any violation of this Solar Energy Law shall be subject to the same civil and criminal penalties provided for in Chapter 300, Zoning, of the Code of Town of Yorktown.
- I. Payments in lieu of taxes. To the extent any real property with a solar energy system authorized hereunder is exempt from taxation to the extent of any increase in the assessed value thereof by reason of the inclusion of such solar energy system under New York Real Property Tax Law § 487, the property owner shall be required to enter a contract with the Town for payments in lieu of taxes ("PILOT"), as set forth in NY RPTL § 487(9). The amount of such PILOT shall be set by the Town Board, upon recommendation of the Town Assessor. Said recommendation shall be based upon industry-recognized standards [e.g., the New York State Energy Research and Development Authority (NYSERDA) PILOT calculators]. Under NY RPTL § 487, solar energy systems are not exempt from special district ad valorem taxes, which will be the responsibility of the property owner in addition to any PILOT payments. **[Added 5-3-2022 by L.L. No. 5-2022]**
- J. Lock box. All large-scale solar energy systems shall maintain an emergency key box on site to provide for emergency access to the system and to provide for the storage of vital system information. **[Added 5-3-2022 by L.L. No. 5-2022]**
- K. Compliance with all laws. Solar energy systems shall comply with all applicable laws, including, as applicable, the Fire Code of the State of New York. **[Added 5-3-2022 by L.L. No. 5-2022]**
- L. Applicability. **[Added 5-3-2022 by L.L. No. 5-2022]**
- (1) The provisions of a change or amendment to this § 300-81.4 which increase setback dimensions, minimum lot size, maximum height in excess of the setback dimensions,

height dimensions, or lot sizes as shown and delineated on a plan of development for a solar power generation system and which said plan of development is the subject of a pending application before any board, agency, or department of the Town of Yorktown having jurisdiction thereof or has been duly approved by any such board, agency, or department shall not, for the period of time described in § 300-81.4L(2), be applicable to or in any way affect any of the plans of development and the appurtenances and constructions or solar power equipment shown and delineated on such plan of development.

- (2) The exemption provided for on any such plan of development for a solar power generation system shall apply for a period of 36 months after the adoption of this section and shall expire upon expiration of any approval or extension thereof duly granted by any board agency or department having jurisdiction thereof. If a plan of development has been approved, constructed and put into operation, then this exemption shall be until the cessation of continuous operation of the solar power generation system or March 15, 2047, whichever is later. Cessation of continuous operation shall be considered to have occurred after nine consecutive months of a system being inactive in energy production and distribution to the electrical distribution system to which it is connected.
- (3) Any changes or amendments to this § 300-81.4 that are not specifically referenced as exempted in § 300-81.4L(1) shall apply to all plans of development for a solar power generation system, whether pending, approved, constructed or operational.