

**TOWN OF FORT ANN  
COUNTY OF WASHINGTON, STATE OF NEW YORK  
Ordinance \_\_ of 2016**

**AN ORDINANCE REGULATING THE SITING OF SOLAR ARRAYS  
IN THE TOWN OF FORT ANN**

**Section 1. Authority and Title.**

This Ordinance is adopted pursuant to the authority granted to the Town of Fort Ann in Articles 2 and 3 of the Municipal Home Rule Law and Section 130 of Article 9 of the NYS Town Law.

**Section 2. Legislative Intent.**

It is the purpose of this Ordinance to promote the health, safety and general welfare of the inhabitants of the Town of Fort Ann by establishing specific minimum requirements and regulations governing the location, use, and maintenance of solar arrays within the Town of Fort Ann.

Solar energy is a renewable and nonpolluting energy resource that can prevent fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid when excess solar power is generated.

The purpose of this legislation is to balance the potential impact on agriculture and neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar collection systems without excess regulation. The intent is to allow small scale building-integrated photovoltaic (BIPV) systems, flush-mounted solar systems, roof-mounted and building-mounted and pole-mounted solar installations that have a minimum footprint (height) to be approved using the building permit process while requiring solar energy system installations rated for an electrical output of over 12 kW to go through the site plan review process before the Planning Board.

**Section 3. Definitions.**

Definitions. As used in this Ordinance, the following terms shall have the meanings indicated:

**ALTERNATIVE ENERGY SYSTEM:** Structure, equipment devices or construction techniques for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

**BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEM:** A solar energy system that consists of integrating photovoltaic modules into the building structure such as the roof or the

facade and which does not alter relief of the roof.

**COLLECTIVE SOLAR:** Solar installation owned collectively through subdivision homeowner association, college student groups, "adopt-a-solar-panel," or other similar arrangements.

**FLUSH-MOUNTED SOLAR PANEL:** Photovoltaic panels and tiles that are installed flush to the surface of a roof or wall and which cannot be angled or raised.

**FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system that is directly installed on the ground and is not attached or affixed to an existing structure.

**NET METERING:** A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

**PERMIT GRANTING AUTHORITY:** The Town of Fort Ann authority charged with granting permits for the installation of alternative energy systems.

**PHOTOVOLTAIC (PV) SYSTEM:** A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when light strikes them.

**QUALIFIED SOLAR INSTALLER:** A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's or NABCEP's list of certified installers may still be deemed to be qualified solar installers if the Town of Fort Ann determines such persons to have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of the exposed parts.

**RATED NAMEPLATE CAPACITY:** The maximum rated output of electric power production of the Solar Collector in watts of Direct Current (DC).

**ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM:** A solar system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as

modules fixed to frames which can be tilted toward the south at an optimal angle.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade including the orientation of the streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

**SOLAR COLLECTOR:** A solar photovoltaic cell, panel or array, or any solar hot air or solar energy collector which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored energy to heat, air or water.

**SOLAR EASEMENT:** An easement recorded pursuant to the NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

**SOLAR ENERGY SYSTEM:** Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected and converted into another form of energy and is stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

**SOLAR ENERGY SYSTEM, ACTIVE:** A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

**SOLAR ENERGY SYSTEMS, SMALL SCALE:** A Solar Energy System having a rated nameplate capacity of 12 kW DC or less.

**SOLAR ENERGY SYSTEM, LARGE SCALE:** A Solar Energy System that having a rated nameplate capacity of greater than 12 kW DC.

**SOLAR PANEL:** A device for the direct conversion of solar energy into electricity.

**SOLAR STORAGE BATTERY:** A device that stores energy from the sun and makes it available in an electrical form.

**SOLAR THERMAL SYSTEM:** Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

#### **Section 4. Applicability.**

The requirements of this Ordinance shall apply to all solar energy system installations modified or installed after the effective date of this Ordinance.

- A. All applications for Large Scale Solar Energy Systems shall be designed as follows:
1. The solar energy system shall be designed by a licensed engineer and contain site specific building plans which bear the seal and signature of a licensed engineer and satisfy the permitting requirements contained in this Ordinance.
  2. Building permits are required for all solar energy systems in accordance with the NYS Uniform Building Code.
  3. Free standing ground mounted systems shall not exceed twenty (20) feet in total height from the existing grade.
  4. Solar collectors shall be set back at least one hundred (100) feet from the highway and twenty five (25) feet from all side and rear lot lines.
  5. The Town encourages installations that would employ landscape screening and other methods of enhancing the appeal of the ground-mounted and freestanding solar collector such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.
- B. Exemptions:
1. Small Scale Solar Energy Systems shall be exempt from the requirements of this Ordinance.
  2. Large Scale Solar Energy Systems that do not exceed One Hundred Ten Percent (110%) of a farm operation which otherwise meets the requirements of NYS Agriculture and Markets Law shall be exempt from the requirements of this Ordinance.

**Section 5. Requirements.**

All large scale solar energy systems shall undergo Site Plan Review in accordance with the Site Plan Review Law of the Town of Fort Ann, prior to construction, installation or modification as provided in this Ordinance.

- A. Site Plan Document Requirements. In addition to the Site Plan Review process contained in the Site Plan Review Law of the Town of Fort Ann, the Applicant shall provide the following documents to the Town of Fort Ann Planning Board.
1. A site plan depicting the following:
    - a. Property lines and physical features, including roads, for the project site;
    - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
    - c. Blueprints or drawings of the solar energy system signed by a professional engineer licensed to practice in New York State showing the proposed layout of the system, any potential shading from nearby structures or trees, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the

- tallest finished height of the solar collector;
  - d. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods with all NYS building code compliance disconnects and overcurrent devices;
  - e. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
  - f. Name, address, and contact information for proposed system installer;
  - g. Name, address, phone number and signature of the Applicant, as well as all co-Applicants or property owners, if any;
  - h. The name, contact information and signature of any agents representing the project Applicant; and
  - i. Location of agricultural district, location of active farmland, and soil type delineations, for the property and 500 feet adjoining the property;
  - j. Locations of floodplains and wetlands;
2. Documentation of actual or prospective access and control of the project site.
  3. An operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep such as mowing and trimming;
  4. A decommissioning plan. To ensure the proper removal of Large-Scale Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this Plan shall be made a condition of the issuance of a special use permit under this Section. The Decommissioning Plan must specify that after the Large Scale Solar Energy System can no longer be used, it shall be removed by the applicant or any subsequent owner. The Plan shall demonstrate how the removal of all infrastructure 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. 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. Removal of Large Scale Solar Energy Systems must be completed in accordance with the Decommissioning Plan; and
  5. Financial surety. Applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar energy system as well as the manner in which the surety will be held pending the final decommissioning and removal.
- B. Site Plan Review Design and Operation Standards.
1. Site Control - The Applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.
  2. Operation & Maintenance Plan - The Applicant shall submit a plan for the operation and maintenance of the solar energy system, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.

3. Utility Notification - No solar energy system shall be installed until evidence has been given to the Planning Board that the Applicant has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.
  4. Emergency Services - The large scale solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
  5. Land Clearing, Soil Erosion and Impacts - Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, and regulations.
- C. Abandonment or Decommissioning
1. Removal Requirements
    - a. Any large scale solar energy systems which has reached the end of its useful life or has been abandoned consistent with this Ordinance shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
      1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
      2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
      3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
    - b. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large scale solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Enforcement Officer. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large scale solar energy system. As a condition of Site Plan approval, the Applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

2. Decommissioning Plan - If the Large Scale Solar Energy System is not decommissioned after being considered abandoned in accordance with the Decommissioning Plan, the Town may remove the system, including all mounting hardware, and restore the property and impose a lien on the property to cover these costs to the municipality.
3. Estimate and Financial Surety - In addition to the Decommissioning Plan, the Applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar energy collectors. The Planning Board shall also establish the amount of such surety to be established by the applicant prior to the issuance of a building permit. The surety may be in the form of escrowed funds, bonds or otherwise, so long as the surety remains in place for the life of the solar energy system and available to the Town to ensure the solar energy system is decommissioned in accordance with the approved Plan. It is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations including all mounting hardware and restore landscaping consistent with this Ordinance, in the event the applicant fails to comply with its decommissioning obligations.

**Section 6. Waiver.**

The Town Board may, in its discretion, waive the requirements of this Ordinance for a Large Scale Solar System that it believes is harmonious with land uses in the area where it is proposed to be built and where, because of its size or other considerations, the Town Board believes that it does not need to be subjected to the special use permit and site plan regulations imposed by this section. This waiver may be a partial waiver, allowing the Town Board to require a Large Scale Solar System to comply with individual requirements found in this Ordinance.

**Section 7. Enforcement.**

The Applicant shall be responsible to meet all additional State, Federal, Local, County or other municipal laws or regulations which may apply. The Enforcement Officer and the Town are only responsible to enforce specific provisions of this Ordinance and are not responsible for ensuring compliance with other applicable laws and regulations.

**Section 8. Penalties.**

A. Any person who commits an offense under this Ordinance or any section or provision thereof is guilty of a violation and shall, upon conviction thereof, be subject to a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or imprisonment not exceeding fifteen (15) days, or both.

B. In the event of a continuing offense of any section or provision of this Ordinance, each day such offense shall continue shall be a separate violation and subject to a separate fine.

imprisonment or combination thereof.

C. In addition to Sections (a) and (b) above, the violation of any section or provision of this Ordinance shall subject the person violating the same to a civil penalty not to exceed Two Hundred Fifty Dollars (\$250.00), and when a violation of this Ordinance is continuous, each day shall constitute a separate and distinct violation, said penalty to be recovered by the Town of Fort Ann in a civil action.

D. The application of the above penalty or penalties, or the prosecution for the violation of the provisions of this Ordinance shall not be deemed to prevent the revocation of any permit issued pursuant thereto, without reimbursement of the fee paid therefor or the enforced removal of conditions prohibited by this Ordinance. Said cost for enforced removal of non-complying conditions will be assessed against the owner.

E. The penalties and remedies of the Town set forth in this Section are in addition to and not exclusive of other remedies found within this Ordinance or the laws of the State of New York.

**Section 9. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Ordinance, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 10. Effective Date.**

This Ordinance shall take effect ten (10) days after publication and posting, or immediately upon personal service as provided by Section 133 of the Town Law.