

Town of Dickinson

Local Law No. of the year 2024

**A LOCAL LAW REPEALING AND REPLACING CHAPTER 460
OF THE TOWN CODE ENTITLED "SOLAR ENERGY SYSTEMS"**

Section 1. Chapter 460 entitled Solar Energy Systems is hereby repealed and replaced with the following:

§ 460-1. Title.

This chapter shall be referred to as "Solar Energy Systems."

§ 460-2. Authority.

This chapter is enacted pursuant to section 20 of the Municipal Home Rule Law. This chapter shall supersede the provisions of town law to the extent that it is inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute and authorizes the Town of Dickinson 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.

§ 460-3. Statement of purpose.

This Solar Energy Systems law is adopted to advance and protect the public health, safety, and welfare of the Town of Dickinson including:

- A. Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
- B. Reducing the consumption of energy by the owners of commercial and residential properties, including single-family homes;
- C. Increasing employment and business development in the region by furthering the installation of solar energy systems; and
- D. Fulfilling the New York State Clean Energy mandate.

§ 460-4. Severability.

- A. If any word, phrase, sentence, part, section, subsection or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the prescribed application thereof, shall be severable, and the remaining

provisions of this chapter and all applications thereof not being declared void, unconstitutional or invalid shall remain in full force and effect.

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

§ 460-5. Word usage and definitions.

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

ACCESSORY STRUCTURE

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

APPLICANT

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

BOARD

The Planning Board of the Town of Dickinson, 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 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.

CERTIFICATE OF COMPLIANCE

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

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.

ENERGY SYSTEM

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

FARMLAND OF STATEWIDE IMPORTANCE

Land, designated as "Farmland of Statewide Importance" in the US 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 NRCS's 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.

RESIDENTIAL SCALE SOLAR

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

ROOF-MOUNTED SOLAR ENERGY SYSTEM

A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity 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.

SOLAR CARPORT

Means a ground-mounted structure that complies with this 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, which relies upon solar radiation as an energy source for the generation of electricity.

SOLAR ENERGY EQUIPMENT

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

SOLAR ENERGY SYSTEM

An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR ENERGY SYSTEMS OVERLAY DISTRICT

A district overlaying current zoning districts as defined in Section 1 of Local Law No. 1 of the year 2024.

SOLAR THERMAL SYSTEMS

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

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.

§ 460-6. Applicability.

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

§ 460-7. Roof-mounted and Ground-mounted solar energy systems.

A. Roof-mounted solar energy systems.

- (1) Roof-mounted solar energy systems that use the electricity onsite or offsite are permitted in all zoning districts when attached to any lawfully permitted building or structure. A New York State (NYS) Unified Solar Permit (USP) is required with licensed UL or NABCEP installers.
- (2) Roof-mounted solar energy systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
- (3) Aesthetics. Roof-mounted solar energy system installations shall incorporate, where/when feasible the following design requirements: Panels 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.
- (4) Roof-mounted solar energy systems that use the energy onsite or offsite shall be exempt from site plan review under the local zoning code or other land use regulations.
- (5) All roof mounted solar energy systems must file a USP application with the Code Enforcement Department prior to starting the project.
- (6) All Commercial Solar Energy Systems must comply with section 8 of Local Law No. 1 for the year 2024, in addition to this Local Law No. 2 of the year 2024.

- (7) Solar carports shall be permitted over existing and proposed parking facilities. For purposes of this Article, solar carports are not considered a structure as defined by the Town's Zoning Laws and/or the Uniform Code.

B. Ground-mounted solar energy systems.

- (1) Residential solar energy systems that are ground-mounted and use the electricity primarily onsite are permitted as accessory structures and shall adhere to the following:
 - (a) Ground-mounted solar energy systems shall adhere to the height and setback requirements of the underlying zoning district.
 - (b) System coverage of the lot is limited to the underlying zoning district. The surface area covered by ground-mounted solar panels shall be included in total lot coverage.
 - (c) All such systems shall be installed in the side yards and rear yards, with a 20-foot setback on all sides. Any corner lots or requirements needing front yard installs will be addressed through the Zoning Board of Appeals.
 - (d) Residential energy systems that use the electricity primarily onsite shall be exempt from site plan review under the local zoning code or other land use regulations.
 - (e) The ground-mounted solar energy systems will not exceed 20% of the lot coverage. The height will not exceed 10 feet from the finished grade when oriented at maximum tilt in residential zoning districts and 15 feet from finished grade when oriented at maximum tilt in nonresidential zoning districts.
 - (f) Must include a visual buffer between the system and public roads and neighboring 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 energy system and no less than 8 feet tall. The Applicant will be responsible for maintaining and grooming all trees and shrubs that are used as a visual buffer. The Applicant must replace any dead or dying trees and shrubs in order to maintain an appropriate buffer.
 - (g) Applicants for non-commercial ground-mounted solar energy systems with a nameplate generating capacity between 25 kilowatts and 200 kilowatts must provide the Code Enforcement Officer with a decommissioning plan as set forth in this Local Law, *prior to the issuance of a building permit*. However, the security required may be in the form of cash, bond, or letter of credit.
 - (h) A USP is required with licensed UL or NABCEP installers.

- (2) Commercial ground-mounted solar energy systems. Consistent with the requirements set forth in this Local Law and pursuant to Local Law No. 1 of the year 2024, Commercial ground-mounted solar energy systems are permitted as follows:
- (a) Commercial ground-mounted solar energy systems are permitted as a primary use in Solar Energy Systems Zoning District by special use permit issued by the Planning Board. Such systems shall have passed site plan review and be subject to the requirements as set forth herein.
 - (b) Commercial ground-mounted solar energy systems are prohibited in all other zoning districts.
 - (c) 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 do not include battery energy storage systems.
 - (d) Commercial ground-mounted solar energy systems must adhere to the following restrictions and requirements:
 - (1) They must be located on sites with at least 5 acres open for development. Other types of commercial solar energy systems must comply with applicable lot size requirements as set forth in the Town's Zoning Code.
 - (2) The height of the solar collectors and any mounts within a commercial ground-mounted solar energy system must not exceed 20 feet from the finished grade when oriented at maximum tilt. Other types of commercial solar energy systems must comply with applicable maximum height requirements set forth in the Town's Zoning Code.
 - (3) Solar energy equipment must 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.
 - (4) Solar collectors must be installed so as to minimize glare onto neighboring properties and roadways. All solar collectors must be treated with anti-reflective coating(s).
 - (5) No solar collectors shall be closer than 100 feet from any non-participating residential property line.
 - (6) No solar collector shall be closer than 250 feet from non-participating, habitable residential structures.
 - (7) No solar collector shall be closer than 50 feet from non-participating, non-residential property lines.

- (8) No solar collector shall be closer than 100 feet from the centerline of any public street or roadway.
- (9) No solar collector shall be erected ahead of the front line of any existing building.
- (10) All commercial ground-mounted solar energy systems and associated solar accessory structures and facilities must 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. The fence must 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 may contain barbed or razor wire at the top.
- (11) All commercial ground-mounted solar energy systems must additionally include a visual buffer between the system, public roads and non-participating properties. The buffer must 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 will be subject to the Board's approval. The Applicant will be responsible for maintaining and grooming all trees and shrubs that are used as a visual buffer. The Applicant must replace any dead or dying trees and shrubs in order to maintain an appropriate buffer as required by the Board and the Town Code.
- (12) All proposed commercial solar energy systems must 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 nearby residential dwellings. Any glare produced by the solar array must not impair or render unsafe the use of contiguous structures, any vehicles in the vicinity, any airplanes, etc.
- (13) Commercial solar energy systems shall adhere to applicable maximum lot coverage requirements for principal uses for the Zoning District which it is in.
- (14) No commercial ground-mounted solar energy system may 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.
- (15) 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, either directly or by easement.

- (16) All utilities serving the site of a commercial solar energy system must 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 established that such variance or waiver will not be detrimental to the health, safety, general welfare, and environment, including the visual and scenic characteristics of the area.
- (17) At a commercial ground-mounted solar energy systems site, at least one access road and adequate parking must be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, must be made to the extent practicable. Road construction must minimize ground disturbance and vegetation cutting at all times. Road grades must closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. This subsection applies to other types of commercial solar energy systems if, at the Board's direction, the circumstances of the project so dictate.
- (18) Fire access roads and access for fire apparatus equipment must be provided, as approved by the chief of the Fire District providing fire protection coverage encompassing the site of the commercial solar energy system and the Planning Board. Any gates to the site must be equipped with Knox Company locks to allow fire department access. The applicant must provide a fire safety and suppression plan developed in coordination with the chief of the respective fire district. This plan will include reference to required training, staffing, and equipment.
- (19) Commercial ground-mounted solar energy system owners must 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 must use native plant species and seed mixes.
- (20) Applications to install commercial solar energy systems must be reviewed by Code Enforcement and referred, with comments, to the Board for its review and action.
- (21) Site lighting must be limited to wall pack fixtures located on a structure that houses equipment or for storage with zero foot candles at the property line.

(3) Commercial Solar Energy Systems: Special Use Permit Required.

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 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.

- (a) No commercial solar energy system may be installed or constructed until the site plan is reviewed and approved by the Board and Special Use Permit has been issued.
- (b) A pre-application meeting is required with the Applicant, Town Engineer, Code Enforcement Officer, and Town Supervisor prior to submittal of a formal Special Use Permit application.
- (c) Incomplete applications not meeting the requirements stated herein, or which are otherwise incomplete, may be rejected by the Board.
- (d) The Special Use Permit application must 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 must 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.
- (e) The Special Use Permit application must include a written statement that:
 - 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.

- (f) At the Board's discretion, any false or misleading statement in the application may subject the Applicant to denial of the application without further consideration or opportunity for correction.
 - (g) The Board must 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 must show and include a site plan with, drawing and all necessary supplemental reports and documentation that show and include the following:

- (1) Names, mailing addresses, e-mail 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.
- (2) Name of the 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) Non-refundable application fee of \$750.
- (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(ies).
 - 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 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(s) showing:
 - i. Location and distance of the solar energy system associated solar accessory facilities or structures to the nearest non-participating residential property line.

- ii. Location and distance of the solar energy system and associated solar accessory facilities or structures to the nearest non-participating residential structure.
- iii. Location and distance of the solar energy system and associated solar accessory facilities or 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(ies) 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.”

C. Solar thermal systems are not covered under this chapter. The New York State Uniform Fire Prevention and Building Code shall set the standards for Solar Thermal Systems. A USP is required with licensed UL or NABCEP installers. All installations must comply with all New York State requirements, including the Uniform Code and the State Energy Conservation and Construction Code, as well as any requirements from NYSERDA.

§ 460-8. Site plan approval conditions for commercial ground-mounted solar energy systems.

- A. Site plan approval conditions for commercial ground-mounted solar energy systems shall consist of the following:
- (1) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted. Dollar amounts shall be redacted out on the lease.
 - (2) Stamped drawings to scale signed by a New York State Licensed Professional Engineer or Registered Architect showing the layout of the Solar Energy System, utility connections, and transmission lines shall be required. Plans must be submitted on a boundary survey plat and include topographic data with a five-foot contour minimum.
 - (3) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, utility connections, transmission lines, and inverters that are to be installed.

- (4) Property operation and maintenance plan. Such plan shall describe a list of contacts for the property, notification of the transfer of ownership, continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- (5) All commercial ground-mounted solar energy systems shall be enclosed by eight-foot fencing to prevent unauthorized access. Warning signs with the owner's name and emergency contact information shall be placed 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. The Planning Board shall have the discretion to require screening only in areas within view of the public or residential properties in close proximity to the site.
- (6) The Town of Dickinson Planning Board may impose conditions in order to enforce the standards referred to in this section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).
- (7) Decommissioning plan. To ensure the proper removal of commercial ground mounted solar energy systems, a decommissioning plan shall be submitted as part of the application. See § 15 for details.
- (8) A USP is required after site plan approval and before any work commencing with licensed UL or NABCEP installers.
- (9) The Town of Dickinson Planning Board may impose a requirement of a host community agreement to offset impacts to the Town and services provided by the Town.

B. Site plan application requirements.

- (1) All site plan review applicants for a commercial ground-mounted solar energy system or any modification of such facility shall comply with the requirements set forth in this section. Submission of a Planning Board site plan review application for a commercial ground-mounted solar energy system, or any changes to a commercial ground-mounted solar energy production facility, must be made to the Planning Board that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying or revoking the site plan for commercial ground-mounted solar energy production facilities. The Planning Board may, at its discretion, delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Planning Board with respect to granting or not granting, recertifying or not recertifying, or revoking of site plan disposal of commercial ground-mounted solar energy production facilities.
- (2) An application for site plan review for commercial ground-mounted solar energy systems shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the

applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

- (3) A pre-application meeting is required with the applicant, Town Engineer, and Code Enforcement prior to submitting a formal site plan for review.
- C. Incomplete applications not meeting the requirements stated herein, or which are otherwise incomplete, will be rejected.
- D. The applicant shall include a statement in writing:
- (1) That the applicant's proposed commercial ground-mounted solar energy systems shall be maintained in a safe manner and in compliance with all conditions of the site plan review disposure, without exception, unless specifically granted relief by the Planning Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules, and regulations.
 - (2) That the construction of the commercial ground-mounted solar energy systems is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.
- E. No commercial ground-mounted solar energy systems shall be installed or constructed until the site plan is reviewed and approved by the Planning Board, in receipt of the disposure, and a USP has been issued.
- F. All applications for the construction or installation of new commercial ground-mounted solar energy systems shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer and/or architect acceptable to the Town, unless otherwise noted. The application shall include, in addition to the other requirements for the site plan review, 1 electronic copy and 6 paper copies of the following information:
- (1) Name, address and phone number of the person preparing the report.
 - (2) Name, address and phone number of the property owner, operator and applicant, include the legal form of the applicant.
 - (3) Postal address and Tax Map parcel number of the property.
 - (4) Zoning district or designation in which the property is situated.
 - (5) Scale drawings with the size of the property, stated both in square feet and lot line dimensions, survey, and a diagram showing the location of all lot lines (one digital copy, two 22 x 34 copies and the rest 11 x 17).

- (6) Location of nearest residential structure.
- (7) Location of nearest habitable structure.
- (8) Location, size and height of all existing structures on the property which is the subject of the application.
- (9) Location, size, and height of all proposed solar collection and accessory structures.
- (10) Type, locations and dimensions of all proposed and existing landscaping and fencing.
- (11) The proposed solar energy production capacity design level proposed for the facility and the basis for the calculations of the area of the solar energy production facility's capacity.
- (12) The make, model and manufacturer of the solar production component parts.
- (13) A description of the proposed solar production facility and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
- (14) Applicant's proposed solar production facility maintenance/inspection procedures and related system of records.
- (15) Certification that the proposed solar production facility will not cause interference with air traffic.
- (16) Certification that a topographic and geomorphologic study/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. See Chapter 476 for SWPPP requirements.
- (17) The applicant shall submit a completed Environmental Assessment long-form (EAF) and a completed Visual EAF to the Planning Board for review. The applicant shall be in attendance for the Planning Board meeting. Based on the results of the Visual EAF addendum, the Planning Board may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.
- (18) A decommissioning plan completed in conformance with § 15.
- (19) The applicant shall furnish a visual impact assessment, in a manner approved by the Planning Board, to demonstrate and provide in writing and/or by drawing how it shall

effectively screen from view the proposed commercial ground-mounted solar energy systems and all related structures which shall include:

- (a) A zone of visibility map, which shall be provided in order to determine locations where the commercial ground-mounted solar energy systems may be seen.
 - (b) Pictorial representations of before and after views from key viewpoints both inside and outside of the Town, including, but not limited to, state highways and other major roads; airports; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Town Engineer and Code Enforcement Officer, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.
 - (c) An assessment of the visual impact of the commercial ground-mounted solar energy systems and accessory buildings from abutting and adjacent properties and streets.
- (20) A fully executed declaration of restrictive covenants by the owner, operator, lessee and lessor in the form attached and made a part hereof.
- G. The applicant shall furnish written certification that the commercial ground-mounted solar energy systems, foundation and attachments are designed and will be constructed ("as built") to meet all local, county, state and federal structural requirements for loads, including wind and snow loads. If the commercial ground-mounted solar energy systems are subsequently approved and constructed, similar as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished prior to the Town issuance of any certificate of occupancy or compliance.
 - H. After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the commercial ground-mounted solar energy systems are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors by a certified and approved New York State licensed electrical inspector. Any and all representations made by the applicant to the Planning Board, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Planning Board.
 - I. All utilities at solar energy production facilities site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Planning Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Planning Board, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.

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

§ 460-9. Retention of expert assistance; reimbursement by applicant.

- A. The Planning Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any application. The initial deposit shall be \$7,500. These funds shall accompany the filing of an application, and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no more frequently than monthly for their services in reviewing the application and performing their duties. If at any time during the review process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant.
- C. The total amount of the funds set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Planning Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as reasonably required and requested by the Town, shall be paid by the applicant.

§ 460-10. Solar related permits and fees.

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

- (2) A holder of a disposition of approval from the Planning Board for a commercial ground-mounted solar energy system shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted solar energy production facility in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, county, state or United States, including, but not limited to, the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- (3) Unless waived by the Planning Board, there shall be a pre-application meeting prior to submittal of a formal USP application to address issues which may help expedite the review/permitting process. This meeting may also include a site visit, at the discretion of the Town. Cost(s) of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- (4) At the time of obtaining a USP, the applicant must provide a financial security bond for removal of the commercial ground-mounted solar energy systems and property restoration with the municipality as the assignee in an amount approved by the Planning Board upon the recommendation of the Town Engineer. See § 15 for specifications. If the lessee shall go out of business, the bond shall stay in the control of the Town of Dickinson until the solar site is decommissioned.

- B. Fees for any/all necessary special permits, USPs, required inspections, etc. as documented herein are approved via Resolution by the Dickinson Town Board. A summary of up-to-date fees as presently adopted is available through the Office of the Town Clerk.

§ 460-11. Right to inspect.

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

§ 460-12. Liability insurance.

- A. An owner/operator of a commercial ground-mounted solar energy system shall secure and at all times maintain public liability insurance for personal injuries, death and

property damage, and umbrella insurance coverage for the duration of the commercial ground-mounted solar energy systems in amounts as set forth below:

- (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (3) Workers' compensation and disability: statutory amounts.
- B. The commercial general liability insurance policy shall specifically include the Town of Dickinson as additional named insured for any reason that Town of Dickinson officials may have legal reasons to be on the site.
 - C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least "A."
 - D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of the cancellation of the insurance.
 - E. Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance which such policies are to renew or replace.
 - F. Before construction of a permitted commercial ground-mounted solar energy production facility is initiated, but no later than 15 days after the grant of the Planning Board approval, the holder of the site plan approval deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 460-13. Penalties for violations.

- A. In the event of a violation of this chapter or any commercial ground-mounted solar energy systems issued pursuant to this chapter, the Board may impose and collect, and the holder of the site plan approval for solar collection facilities shall pay to the Town, fines or penalties as set forth below.
- B. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such

violations. Each week's continued violation shall constitute a separate additional violation.

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

§ 460-14. Default and/or revocation.

- A. If a commercial ground-mounted solar energy system is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter, then the Code Enforcement Department shall notify the owner/operator of the commercial ground-mounted solar energy production facility in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within 24 hours.
- B. If, within the period set forth in Subsection A above, the commercial ground-mounted solar energy systems are not brought into compliance with the provisions of this chapter or substantial steps are not taken in order to bring the affected commercial ground-mounted solar energy facilities into compliance, then the Code Enforcement Department may revoke such certificate of compliance for commercial ground-mounted solar energy systems and shall notify the owner/operator of the commercial ground-mounted solar energy systems within 48 hours of such action.

§ 460-15. Abandonment and decommissioning.

- A. To ensure the proper removal of commercial ground-mounted solar energy systems, a decommissioning plan shall be submitted. Compliance with this plan shall be made a condition of the issuance of a site plan approval's disposure under this section. The decommissioning plan must specify that if/when the commercial ground-mounted 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/vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. The applicant (or any subsequent owner) shall submit a cost estimate detailing the projected cost of executing the decommissioning plan as prepared by a NYS-licensed Registered Professional Engineer/architect. Cost estimates shall take into account

inflation. The Board may require reasonably related environmental testing in order to establish the baseline standard for the property, including but not limited to, soil testing.

Removal of commercial ground-mounted solar energy systems must be completed in accordance with the decommissioning plan. The applicant (or any subsequent owner) shall provide a completed Declaration of Restrictive Covenants form (provided by the Code Enforcement Department) and security sufficient for decommissioning costs in the form of a performance bond to ensure the availability of funds for such costs (the "decommissioning security") with the Town Of Dickinson as the assignee. The performance bond shall be issued by a surety which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The performance bond shall be in an amount equal to the decommissioning costs. The performance bond shall be established for a term of one year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this agreement, or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the performance bond with no lapse, each performance bond shall be required to be extended or replaced at least one month in advance of its expiration date.

Decommissioning costs shall be revaluated during construction of the project and once every three years thereafter from the date of the USP to ensure sufficient funds for decommissioning and, if the parties agree at that time that the decommissioning costs need to be modified, the amount of the decommissioning security shall be adjusted accordingly. Failure to secure such renewal or extension shall constitute a default of lessee under this agreement under the following circumstances, for which the Planning Board may determine that the health, safety and welfare interests of the Town warrant and require the removal of commercial ground-mounted solar energy systems:

- (1) When a commercial ground-mounted solar energy system has been abandoned (i.e., not in use as a solar energy production facility) for a period exceeding 90 consecutive days, or a total of 180 days in any 365-day period (except for periods caused by *force majeure* = Acts of God), repair or removal shall commence within 90 days.
- (2) When a permitted commercial ground-mounted solar energy system falls into such a state of disrepair that they create a health or safety hazard.
- (3) When permitted commercial ground-mounted solar energy systems have been located, constructed or modified without first obtaining, or in a manner not authorized by, the required site plan review approval or any other necessary authorization.

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

- C. The owner/operator for commercial ground-mounted solar energy systems, or its successors or assignees, shall get a demolition permit from the Code Enforcement Department to dismantle and remove such commercial ground-mounted solar energy systems and all associated structures and facilities from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Planning Board. However, if the owner of the property upon which the commercial ground-mounted solar energy production facilities are located wishes to retain any access roadway to the commercial ground-mounted solar energy systems, the owner may do so with the approval of the Planning Board.
- D. If commercial ground-mounted solar energy systems are not removed or substantial progress has not been made to remove the commercial ground-mounted solar energy systems within 90 days after the owner/operator for commercial ground-mounted solar energy systems has received notice, then the Code Enforcement Department will issue an order to remedy with a 30-day period to resolve said violation per Title 19 NYCRR, Chapter XXXII, Section 1203.5. When that Notice of Remedy time expires, the Town of Dickinson has the right to use the bond and hire a contractor to remove the solar equipment and bring the site back to its original state.
- E. Notwithstanding anything in this section to the contrary, the Planning Board may approve a temporary agreement for the commercial ground-mounted solar energy systems, for no more than 90 days, during which time a suitable plan for removal, conversion or relocation of the affected commercial ground-mounted solar energy systems shall be developed by the owner/operator for commercial ground-mounted solar energy systems, subject to the approval of the Planning Board, and an agreement to such plan shall be executed by the owner/operator for commercial ground-mounted solar energy systems and the Town. If such a plan is not developed, approved and executed within the ninety-day time period, then the Town may take possession of and dispose of the affected commercial ground-mounted solar energy systems in the manner provided in this section.
- F. Upon completion of the decommissioning process pursuant to the provisions of the agreement between the owner and operator (§ 15) the town, upon request by the owner and operator, shall execute a release of the terms of the declaration of restrictive covenants in accordance and as their interest in this matter appear.

§ 460-16. Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this chapter may request such from the Planning Board at a pre-application meeting, provided that the relief or exemption is contained in the original application for site plan review or, in the case of an existing or previously granted site plan approval, a request for modification of its facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Planning Board. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the Planning Board. The applicant shall bear all costs of the Planning Board or the Town in considering the request, and the relief shall not be transferable to a new or different owner/operator for commercial ground-mounted solar energy systems without the specific written permission of the Planning Board. Such permission shall not

be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

§ 460-17. Periodic regulatory review by Board.

- A. The Town Board may at any time conduct a review and examination of this entire chapter.
- B. If, after such a periodic review and examination of this chapter, the Town Board determines that one or more provisions of this chapter should be amended, repealed, revised, clarified or deleted, then the Town Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that, where warranted and in the best interests of the Town, the Town Board may repeal this entire chapter at any time.
- C. Notwithstanding the provisions of Subsections A and B of this section, the Town Board may at any time and in any manner (to the extent permitted by federal, state or local law) amend, add, repeal and/or delete one or more provisions of this chapter.

§ 460-18. Adherence to state and/or federal rules and regulations.

- A. To the extent that the owner/operator for commercial ground-mounted solar energy production facilities has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the owner/operator for commercial ground-mounted solar energy systems shall adhere to, and comply with all applicable rules, regulations, standards and provisions of any state or federal agency.
- B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency are modified during the duration of a commercial ground-mounted solar energy system, then the owner/operator for commercial ground-mounted solar energy systems shall conform the permitted commercial ground-mounted solar energy systems to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision or sooner, as may be required by the issuing entity.

§ 460-19. Possible need for variance.

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

Section 2. Separability.

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

Section 3. Repealer.

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

Section 4. Effective Date.

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