

**TOWN OF NEWBURGH, MAINE
SOLAR ENERGY ORDINANCE**

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ADOPTED: Newburgh Town Council June 14, 2023
Effective: July 1, 2023

CERTIFIED BY: _____

Cynthia Grant, Town Clerk

1. Purpose

- a) Solar energy is a local, renewable, and non-polluting energy resource that can reduce fossil fuel dependence on emissions. Energy generated from solar energy systems can be used to offset energy demand on the grid, with benefits for system owners and other electricity customers.
- b) The use of solar energy equipment for the purpose of providing electricity and energy for heating and/or cooling is an important component of the Town of Newburgh's sustainability goals.
- c) The standards that follow enable the accommodation of solar energy systems and equipment in a safe manner while still allowing the quiet enjoyment of property.
- d) This ordinance is intended to balance the need for reasonable standards and expedited and streamline development review procedures.

2. Definitions

Solar Energy System: A device or structural design feature 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 System, Roof-Mounted: A Solar Energy System that is mounted on the roof of a building or structure.

Solar Energy System, Ground-Mounted: A Solar Energy System that is structurally mounted to the ground and is not roof-mounted.

1. Solar Energy System, Small-Scale is a ground-mounted system whose physical size based on total airspace projected over the ground is less than 15,000 square feet (approximately one-third of an acre):
2. Medium-scale Solar Energy system is on whose physical size based on total airspace projected over a roof or on the ground is equal to or greater than 15,000 square feet but less than 87,120 square feet (two acres); and
3. Large-scale Solar Energy System is one whose physical size based on total airspace projected over a roof or the ground is equal to or greater than 87,120 square feet (two acres).

3. Applicability

- a) Notwithstanding the provisions of 1 M.R.S.A. section 302 or any other law to the contrary, the requirements of this ordinance shall apply to all roof-mounted and ground mounted solar energy systems modified or installed after the date of its enactment.
- b) All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and standards.
- c) Any upgrade, modification or structural change that alters the size, placement or output of an existing solar energy system shall comply with the provisions of this ordinance.
- d) For this ordinance, the Town of Newburgh’s zoning districts are mapped and categorized as follows:

Table 3.1 Use Table

Permitting Required for Solar Energy Systems

	Rural	Residential	Commercial
Rooftop SES	Y	Y	Y
Small-Scale Ground-Mounted solar	MSP	MSP	MSP
Medium-Scale Ground Mounted Solar	MJR	MJR	MJR
Large-Scale Ground-Mounted Solar	N	N	N

Y = allowed N=Prohibited MSP= Minor Site Plan Review MJR= Major Site Plan Review

4. General Standards and Applicability

- a) A solar energy system or device shall be installed or operated in the Town of Newburgh provided it is compliant with this ordinance.
- b) Permitting shall be determined by zone within the Town of Newburgh, type of solar system, and proposed size. The Town of Newburgh has designated the proper permitting process for each solar system in the above matrix entitled “Permitting Required for Solar Energy Systems.”

- c) All Solar Energy Systems, Roof-mounted and Ground-mounted are subject to the Dimensional Standards of Section 5 and the Performance Standards outlined in Section 6 of this ordinance.

5. Dimensional Standards

a) Solar Energy Systems, Roof-Mounted

i. Height:

1. In commercial zones, solar energy systems shall be mechanical devices and, for purposes of height measurement, are restricted only to the extent consistent with other building-mounted mechanical devices.
2. In all other zoning districts, such systems shall conform to the maximum building height requirements of the zoning district in which they are located. See Article 2.6 Table B.2 in the Town of Newburgh's Land Use Ordinance for maximum building heights.

b) Solar Energy Systems, Ground-Mounted

i. Height standards for ground-mounted solar energy systems are dependent on location and zoning district. Height shall be measured from the lowest point of the structure above grade to the highest point of the facilities when oriented at maximum tilt.

1. In all zoning districts, such systems shall not exceed sixteen (16) feet in height when oriented at maximum tilt.

ii. Setbacks

1. Minimum setback shall conform to the requirements of the zoning district in which the system is located. Article 2.6 Table B.2 of the Town's Zoning ordinance for setback standards.
2. Additional setbacks may be required to mitigate visual and functional impacts.

6. Performance Standards

- a) Solar Energy Systems (including Roof-Mounted and Small-Scale) must conform with the following standards:

- i. Roof-mounted and building-mounted solar energy systems and equipment are permitted by right unless they are determined by the Code Enforcement Officer to present one or more unreasonable safety risks, including, but not limited to the following:
 1. Weight load;
 2. Wind resistance;
 3. Ingress or egress in the event of fire or another emergency; or
 4. Proximity of a ground-mounted system relative to buildings.
- ii. All solar energy system installations shall be installed in compliance with the manufacturer's instructions and the photovoltaic systems standards.
- iii. All wiring shall be installed in compliance with the manufacturers instructions and NEC national electric code.
- iv. Prior to operation, electrical connections must be inspected and approved by the Code Enforcement Officer.

b) Medium-Scale Ground Mounted Solar Energy Systems

In addition to the standards in Section 1, large-scale and medium-scale ground-mounted solar energy systems shall comply with the following:

i. Utility Connections:

Utility connections shall be underground wherever possible.

ii. Safety:

1. The solar system owner or project proponent shall provide a copy of the Site Plan Review application to the Planning Board for review and comment. The Planning Board shall base any recommendation for approval or denial of the application upon review of the safety of proposed system.

iii. Visual Impact:

1. Reasonable efforts, as determined by the Planning Board, shall be made to minimize undue visual impacts by preserving native vegetation, screening abutting properties, or other

appropriate measures, including adherence to height standards and setback requirements.

iv. Land Clearing, Soil Erosion, and Habitat Impacts:

1. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.
2. Removal of mature trees shall be avoided to the extent possible.
3. Native, pollinator-friendly seed mixtures shall be used to the extent possible.
4. Herbicide and pesticide use shall be minimized. No prime agricultural soil or significant volume of topsoil shall be removed from the site for installation of the system.

v. Fencing:

1. Where fencing is used, fences should be elevated by a minimum of 5 inches to allow for the passage of small terrestrial animals.

vi. Removal:

1. Solar energy systems that have reached the end of their useful life or that have 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 Town of Newburgh Planning Board of the proposed date of discontinued operations and plans for removal.
2. Removal should consist of:
 - a. Physical removal of all solar energy systems, structures, equipment, security barriers, and transmission lines from the site.
 - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

- c. Stabilization or re-vegetation of the site to minimize erosion. Native, pollinator-friendly seed mixtures shall be used to the maximum extent possible.

vii. Abandonment:

1. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a medium scale ground-mounted solar energy system shall be considered abandoned when it fails to operate for more than 150 days.
2. A surety is required at the time of Planning Board review of a Site Plan application for the assumption of any debt, default, non-compliance with State and Federal laws or local ordinances, or failure of the array falls to the principal (contractor/developer/investor/solar company) and not the obligee (owner).
3. At the time of Planning Board review of a Site Plan application and permit, the applicant for a medium scale ground mount solar array system shall identify how it shall provide a performance guarantee payable to the benefit of the Town of Newburgh, a municipal corporation, for all costs associated with the removal of an approved solar energy system that has been abandoned on public land. The performance guarantee shall be equal to one hundred fifty (150) percent of the estimated cost of removal. The performance guarantee can be in the form of a Solar Contractor Surety Bond or Solar Decommissioning Bond and may be acceptable to the Town as determined by the planning board and legal counsel for the Town of Newburgh. The financial guarantee shall include a provision granting and guaranteeing the Town the authority to access the funds and property and perform the decommissioning if the facility is abandoned and the owner or operator fails to meet their obligations to remove the solar energy system. The applicant shall provide the Town with the identified performance guarantee prior to the issuance of a building permit by the Code Enforcement Officer for the solar energy system. The owner or operator shall also be responsible for notifying the Town in writing if the performance guarantee is revoked, and in such cases, shall provide the Town a replacement guarantee that is found acceptable by legal counsel

for the Town within ninety (90) days, or the owner's or operator's permit to operate the system shall be revoked. The owner or operator shall be responsible for paying the Town's legal fees.

4. If the owner or operator of the solar energy system fails to remove the installation within 150 days of abandonment or the proposed date of decommissioning, the Town of Newburgh or the obligee retains the right to use all available means to cause an abandoned, hazardous, or decommissioned medium scale ground-mounted solar energy system to be removed.

5. If an owner or operator successfully removes a medium scale solar energy system in accordance with requirements of this Section, and the Town's Code Enforcement finds that the removal was successfully completed, the owner or operator may apply to the Planning Board for the release of the performance guarantee identified in this Section. The Town shall not unreasonably withhold the release of a performance guarantee post a determination by the Code Enforcement Officer that an owner or operator has successfully removed a solar energy system.

viii. Operations and Maintenance Plan:

1. The project proponent shall submit a plan for the operation and maintenance of the medium scale ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation.

ix. Signage:

1. A sign shall be required to identify the owner and provide a 24-hour emergency contact phone number.

x. Emergency Services:

1. The medium-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary electrical schematic, and site plan to the Planning Board.

2. Upon request, the owner or operator shall cooperate with Public Safety in developing an emergency response plan.

3. All means of shutting down the system shall be clearly marked.

4. The owner or operator shall provide to the Planning Board the name and contact information of a responsible person for public inquiries throughout the life of the installation.

7. Site Plan Application and Review

Please refer to the Town of Newburgh Zoning Ordinance in Article 4.

a) Applicability:

i. Roof-mounted systems are not subject to Site Plan Review.

ii. Small-Scale ground-mounted solar energy systems are subject to Minor Site Plan Review.

iii. Medium-Scale ground-mounted solar energy systems are subject to Major Site Plan Review.

b) In addition to the Town of Newburgh's site plan application requirements in Article 4, the Applicant shall submit the following supplemental information as part of a site plan application:

i. A site plan showing:

1. Property lines and physical features, including roads, for the project site;

2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;

3. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, 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;

4. Documentation of the major system components to be used, including the panels, mounting systems, and inverter(s);

5. Name, address, and contact information of the proposed system installer, the project proponent, project proponent agent, and all co proponents or property owners, if any; and

6. A one-or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods.
7. Locations of important plant and animal habitats identified by the Maine Department of Inland Fisheries and Wildlife or Town of Newburgh, or rare and irreplaceable natural areas, such as rare and exemplary natural communities and rare plant habitat as identified by the Maine Natural Areas Program.
8. Locations of wetlands and waterbodies.
9. Location of floodplains.
10. Locations of local or National or Historic Districts.
11. A public outreach plan, including how the project proponent will inform abutters and the community.
12. A removal plan with a performance guarantee (Refer to Section 7.g. in this ordinance)
13. An Operations and Maintenance Plan

8. Review Procedure and Process

Please refer to Article 4 in the Town of Newburgh's Zoning Ordinance for the Town's review process and approval standards.

9. Fees.

The Town may adopt administrative fees and technical review fees for site plan review. Refer to Town's Fees Ordinance Article 4.3.

10. Legal Action and Violations

a) When any violation of any provision of this ordinance shall be found to exist, the Code Enforcement Officer is hereby authorized and directed to institute all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Newburgh. This Section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this ordinance.

b) Any person, firm, or corporation, being the owner of, or having control of, or the use of any building or land or part thereof, who violates any of the provisions of this ordinance shall be guilty of a civil violation and upon conviction thereof shall be fined in accordance with the following:

- i) The minimum penalty for starting construction or undertaking a land use

activity without a required permit penalty shall be one hundred dollars (\$100.00), and the maximum penalty shall be two thousand five hundred dollars (\$2500.00).

ii) The minimum penalty for a specific violation shall be one hundred dollars (\$100.00), and the maximum penalty shall be two thousand five hundred dollars (\$2500.00).

c) All civil penalties imposed shall ensure to the benefit of the Town of Newburgh. Each day any violation that continues to exist after notification shall constitute a separate offense.