

Dated: 12/2016

Amending the Zoning Ordinance of the Town of Fallsburg by adding terms to the §310-2.2 (Definitions), creating §310-4.12 (Solar energy systems, small-scale) and by adding a paragraph to §310-6.3 (Individual standards for special uses) called “Solar energy systems, large-scale”

WHEREAS, the Town Board has determined that it is desirable for the Town to permit and regulate the use of Solar Energy Systems in the Town of Fallsburg; and

WHEREAS, the Town Board has determined that the use and regulation of Solar Energy Electrical Systems in the Town will reduce the need for additional electric generation and distribution and decrease atmospheric pollution that adversely affects public health; and

WHEREAS, the Town Board recognizes that it is necessary to regulate the use and placement of Solar Energy Systems in the Town because of the impact of said systems on both building site improvements and overall Town aesthetics;

NOW THEREFORE, BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF FALLSBURG:

Section 1. That the Zoning Ordinance of the Town of Fallsburg shall incorporate the following terms to §310-2.2 (Definitions):

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 for onsite consumption.

LARGE-SCALE SOLAR ENERGY SYSTEM: A solar energy system that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption.

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. Can be mounted on flat and pitched roofs.

SOLAR ENERGY EQUIPMENT: Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM: An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electrical energy.

Section 2. That the following section shall be added to the Zoning Ordinance of the Town of Fallsburg:

§ 310-4.12 Solar energy systems, small-scale.

- A. Authority. This Zoning for Solar Energy Law is adopted pursuant to sections 261-264 of the Town Law of the State of New York, which authorizes the Town of Fallsburg to adopt zoning provisions to 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.”
- B. Purpose. This law has been enacted to promote the use of Solar Energy Systems as recommended by the Town of Fallsburg Comprehensive Plan that encourages developers “to incorporate alternative energy sources [such as solar geo-thermal and wind].” These systems lower the cost of energy to property owners, promote public health, and help establish energy independence.

C. Roof-Mounted Solar Energy Systems.

1) Permit Process.

- a. Roof-Mounted Solar Energy Systems will require a building permit and are permitted as an accessory use or structure in all zoning districts when attached to any lawfully permitted building or structure.
- b. Sloped Roof-Mounted Solar Energy Systems facing a street shall submit elevation view(s) of the structure and roof, which will indicate the location of the system.
- c. Flat Roof-Mounted Solar Energy Systems shall submit an additional site plan showing the configuration of solar panels with clear demarcations for the edge of the roof and any parapets. System design should allow for at least three (3) feet between any panels and roof or parapet edges.
- d. Structural computations completed by a licensed Architect or Engineer shall be required by the Code Enforcement Officer indicating the structural capacity to support the additional weight of the system.

2) Height. Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district in which they are located.

3) If a building-mounted system is to be installed on any permitted (legal) non-conforming building or structure that violates setback requirements or height restrictions, the solar energy system shall be permitted if it does not create an additional non-conformance so long as the system complies with all other provisions in this ordinance.

4) Aesthetics and Fire Access. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:

- a. The front slope of the principal building shall not be used unless no other alternative exists.
- b. Panels 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.
- c. All exterior plumbing and electrical lines must be painted and/or coated to match the color of adjacent roofing material and walls. All visible exterior plumbing and electrical lines must not be installed in any portion of the front of the property.
- d. A 3'-0" setback is required along all eaves, dormers and ridge lines for fire access and roof venting for emergency services.

D. Ground-Mounted Solar Energy Systems.

- 1) Ground-Mounted Solar Energy Systems are permitted as accessory structures in the following districts: REC-1, REC-2, R-1, HR1, AG-1 and PRD. A site plan designed according to the following standards shall be submitted along with the permit application.
 - a. Height. The height of the structure(s) shall not be more than 15 feet in height.
 - b. Setback. Ground-Mounted Solar Energy Systems shall meet the minimum zoning setback for the zoning district in which it is located, or 25 feet, whichever is stricter.
 - c. Lot Coverage. The surface area covered by ground-mounted solar panels shall be included in total lot coverage.
 - d. Footprint. The system shall be no more than half the footprint of the primary structure on site.
 - e. Visibility. Active solar systems shall be designed to blend into the architecture of the building or be screened from routine view from public right-of-way or adjacent residentially-zoned properties.
 - f. All such systems in residential districts shall be installed in the side or rear yards.
- 2) The Town of Fallsburg reserves the right to request additional information including, but not limited to, photos, maps, graphs, and a site plan. The Town may refer the application to the Planning Board or Architectural Review Board for site plan review and/or to obtain a Special Use Permit.
- 3) If the applicant plans to sell excess energy generated by the solar energy system, the Town of Fallsburg may require a Special Use Permit according to the standards established in § 310-6.3.
- 4) Compliance with electric code. All photovoltaic systems shall comply with the National Electric Code, current edition.

E. Abandonment and Decommissioning.

- 1) Solar Energy Systems are considered abandoned after six (6) months without electrical energy generation and must be removed from the property. Two (2) applications for extensions may be granted by the Planning Board for a period of three (3) months each.
- 2) If facility owner fails to repair or remove a solar system as ordered, and the appeal rights have been exhausted, the Town of Fallsburg may enter the property, remove the

system, and charge the owner for all costs and expenses of removal. Any unpaid costs will result in a lien on the property.

- F. Enforcement. Any violation of this section shall be subject a fine of \$250 per day.
- G. Only commercially-made Solar Energy Systems are permitted. All systems shall be installed by a licensed electrician and inspected by a certified electrical inspector prior to Certificate of Compliance and Use.

Section 3. That the following addition be made to §310-6.3 (Individual standards for special uses) in the Town of Fallsburg Zoning Ordinance:

§ 310-6.3. Individual standards for special uses.

K. Solar energy systems, large-scale. Such establishments shall be subject to the requirements set forth in this section including site plan approval and shall be permitted in the following districts: REC-1, REC-2, HI, AG-1, and PRD. Applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Code Enforcement Officer and referred, with comments, to the Planning Board for its review and action, which can include approval, approval with conditions, and denial.

1. Special use standards. For a special permit application, the site plan application shall be supplemented by the following provisions:
 - a. Easements. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
 - b. The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed including appropriate electrical details.
 - c. Landscaping. A landscaping plan according to §310-5.10 shall be provided. The Planning Board reserves the right to request additional screening or vegetation to mitigate adverse environmental impacts.
 - d. Wiring. The location of the electrical wiring shall be provided. If the system is underground, a trench and backfill detail shall be provided.
 - e. A phase one Environmental Site-Assessment shall be provided.

- f. A site study for endangered plants and animals shall be performed.
- g. Record drawings will be required and submitted to the Town of Fallsburg upon installation of the Solar Energy System.
- h. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming. Grass shall be kept a maximum of six (6) inches high. A contract with a local vendor is required.
- i. Visual Impact Assessment. A Visual Impact Assessment shall be required for any system that is within five (5) miles of an airport or may have a substantial adverse effect on nearby residential properties. An impact assessment may also be required by the Town of Fallsburg Planning Board in accordance with any concerns from voting members or the general public.
- j. 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 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 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 plan. If the system is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.

2. Special Use Permit Design Standards.

- a. Height. Large-Scale Solar Energy Systems shall adhere to the height requirements of the underlying zoning district.
- b. Spacing. Rows between panels, as measured from pole to pole, should be at least 22.'
- c. Setback. All Large-Scale Solar Energy Systems shall maintain at minimum a 100-ft setback along the perimeter of the property. Additional setback shall be required if

more than 285 linear feet of panels are shown on the site plan according to the following formula:

- a. For every 10' of panels – 1 row spacing included – 1' additional buffer shall be provided.
- d. All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. The Town of Fallsburg Planning Board shall determine the type and size of fencing.
- e. Any application under this section shall meet any substantive provisions contained in local site plan requirements in the zoning code that, in the judgement of the Town of Fallsburg Planning Board, are applicable to the system being proposed.
- f. The Town of Fallsburg Planning Board may impose conditions on its approval of any Special Use Permit under this section in order to enforce the standards referred to in this section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

3. Inspection, Safety, and Removal.

- a. The Town of Fallsburg reserves the right to inspect a solar energy system for building or fire code compliance and safety. Easements providing access to the Town for this purpose shall be provided.
- b. If, upon inspection, the Town of Fallsburg determines that a fire or building code violation exists, or that the system otherwise poses a safety hazard to person(s) or property, the Town of Fallsburg may order the facility owner to repair or remove the system within thirty (30) days or an alternative amount of time determined by the Code Enforcement Officer.

4. Abandonment and Decommissioning.

- a. Solar Energy Systems are considered abandoned after six (6) months without electrical energy generation and must be removed from the property. Two (2) applications for extensions may be granted by the Planning Board for a period of three (3) months each.
- b. If facility owner fails to repair or remove a solar system as ordered, and the appeal rights have been exhausted, the Town of Fallsburg may enter the property, remove the system, and charge the owner for all costs and expenses of removal. Any unpaid costs will result in a lien on the property.

5. Enforcement. Any violation of the Solar Energy Law shall be subject to the same civil and criminal penalties provided for in the zoning regulations of the Town of Fallsburg.
6. Permit Requirements.
 - a. Only commercially-made Solar Energy Systems are permitted.
 - b. Before any construction or installation of any solar photovoltaic system shall commence, a licensed electrician must be identified and a third-party inspection must be completed by a certified electrical inspector to document compliance with this ordinance. The applicant must then obtain a building permit from the Town of Fallsburg.
7. Severability. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections as declared by the valid judgement of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause provision or phrase, which shall remain in full force and effect.

Synopsis

This ordinance amends the Town Code to include new regulations for Solar Energy Systems. The ordinance addresses the purpose for the legislation; defines key terms; imposes regulations for the use, design and installation of specific systems; and implements a permitting and enforcement provision.

Certifications:

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Board of the Town of Fallsburg at a duly-noticed and convened meeting at which a quorum was present on _____, 2016.

Attest: _____

Date: _____

Town Clerk

So Certifies: _____

Date: _____

Mayor

This shall certify that the title and synopsis of the foregoing ordinance was posted at the Town Hall on _____, 2016 and public in the [insert paper] on _____, 2016.

So Certifies: _____

Date: _____

Town Clerk