

MEMORANDUM

TO: Waterboro Select Board

FROM: Natalie L. Burns

RE: Commercial Solar Facilities Moratorium Ordinance

DATE: July 27, 2021

Included with this memorandum is a copy of the proposed Commercial Solar Energy Facility Ordinance for the Board's consideration. The following is a list of specific items for the Board's information and/or review:

1. Definition of Commercial Solar Energy Facility (Section 1, p. 1). The Ordinance defines the term "Commercial Solar Energy Facility" to include any facility that is operated solely for the purpose of generating electrical power for sale. It excludes any solar energy facility that is principally generating energy for the use on-site by a residence, a business or an agricultural use, even if there is some incidental sale of power. This exclusion would allow any of those types of uses to install solar facilities for their own use. Since there is frequently some incidental sale of power to the grid with such facilities, the definition specifically allows that type of incidental sale. The Board should review this definition to ensure that it meets the Board's intent.

2. Length of moratorium (Section 2, p. 2). The initial length of the moratorium is 180 days from the applicability date of the Ordinance. This is the maximum initial date allowed by State law. The Select Board may extend the initial 180-day period for additional periods of up to 180 days each, provided that the Town is working to address the issues set forth in the Moratorium Ordinance. If the Ordinance or an extension is still in effect when the Board adopts Zoning Ordinance amendments to regulate the facilities, the Board should repeal the moratorium, making sure the effective date of the repeal is not before the effective date of the amendments.

3. Effective date (Section 4, p. 3). Under the provisions of Section 314 of the Charter, ordinances generally take effect 30 days after the date of passage, unless passed as an emergency.

4. Applicability date (Section 2, pp. 2-3, Section 4, p. 2). A municipality may pass an ordinance with retroactive applicability in order to ensure that applications do not get submitted while zoning amendments are under consideration and during any period of time between passage and effective date. Because of the 30-day effective provision of Section 314 and because the Board must give notice and hold a hearing on the

Moratorium Ordinance, this draft includes an August 4, 2021 applicability date for anything that has not received its final approval as of that date. This date is the one where the Board will first consider and discuss the Moratorium Ordinance and the retroactive applicability date. The Board may wish to choose another applicability date, such as the date when it will vote on the Moratorium Ordinance, or it may choose to simply allow the Moratorium to take effect 30 days after passage in accordance with Section 314. Section 314 does allow the Board to adopt an Ordinance as an emergency, but then it would be automatically repealed on the 91st day after adoption.

**TOWN OF WATERBORO COMMERCIAL SOLAR ENERGY
FACILITY MORATORIUM ORDINANCE**

THE TOWN OF WATERBORO adopts a Commercial Solar Energy Facility Moratorium Ordinance as follows:

Section 1. Definitions.

Associated Facilities means elements of a Commercial Solar Energy Facility other than its Generating Facilities that are necessary to the proper operation and maintenance of the Commercial Solar Energy Facility, including, but not limited to, buildings, access roads, generator lead lines and substations.

Generating Facilities means Solar Collectors and electrical lines, not including generator lead lines, that are immediately associated with Solar Collectors.

Town means the Town of Waterboro, Maine.

Commercial Solar Energy Facility means a facility that uses one or more Solar Collectors to convert solar or photovoltaic energy to electrical energy and that is operated solely for the purpose of generating electrical power for sale. A Commercial Solar Energy Facility includes Generating Facilities and Associated Facilities, but does not include a solar energy facility that principally generates energy for one or more residential, agricultural or business uses on the property on which the facility is located, even if a portion of the energy is sold.

Solar Collector means a device, structure or a part of a device or structure for which the primary purpose is to transform photovoltaic or solar radiant energy into thermal, mechanical, chemical, or electrical energy, along with associated electrical conversion components designed to convert solar energy into electricity.

Section 2. Moratorium Declared.

WHEREAS, there is growing interest in Commercial Solar Energy Facility development in the Town;

WHEREAS, the Town is under threat of Commercial Solar Energy Facility development pressure;

WHEREAS, this development pressure is unanticipated and has not been adequately provided for in the Town's current Zoning Ordinance;

WHEREAS, development of Commercial Solar Energy Facilities could pose serious threats to the public health, safety and welfare of the residents of Waterboro abutting, or in close proximity to, such facilities without adequate provision for issues of health, safety, land use compatibility, noise, visual degradation and environmental degradation;

WHEREAS, the Town is in the process of developing ordinances to regulate Commercial Solar Energy Facilities but needs additional time to prepare the ordinances and to determine the implications of development proposals involving Commercial Solar Energy Facilities and to finalize and adopt reasonable ordinances for the protection of the health, safety, and welfare of Waterboro's residents, property owners and natural resources;

WHEREAS, the Select Board and the Planning Board, with such professional advice and assistance as they deem necessary and appropriate, shall study the Town's ordinances to determine the land use, environmental and other regulatory implications of development proposals involving Commercial Solar Energy Facilities and consider what regulations might be appropriate for such activity;

WHEREAS, the Town's current Zoning Ordinance is not adequate to prevent potential serious public harm from proposed development proposals involving Commercial Solar Energy Facilities;

WHEREAS, the Town's current Zoning Ordinance does not contain sufficient standards to effectively provide municipal review and approval of development proposals involving Commercial Solar Energy Facilities;

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town first considers this moratorium on development proposals involving Commercial Solar Energy Facilities;

WHEREAS, amendments to the Zoning Ordinance require a public hearing by the Planning Board and then must be voted upon by the Select Board; and

WHEREAS, in the judgment of the Town, these facts create an emergency within the meaning of 30-A M.R.S.A. § 4356(1)(B) and require this Ordinance as immediately necessary for the preservation of the public health, safety and welfare;

NOW, THEREFORE, the Town does hereby ordain that this Ordinance be, and hereby is, enacted, and, in furtherance thereof, the Town does hereby declare a moratorium on development proposals involving a Commercial Solar Energy Facility. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended or modified by the Select Board, for the express purpose of drafting an amendment or amendments to Town ordinances to protect the public from health and safety risks including, but not limited to, the potential adverse environmental, health, safety, land use compatibility, noise, and visual degradation effects of development proposals involving a Commercial Solar Energy Facility if not properly regulated; and

BE IT FURTHER ORDAINED, that this Ordinance shall apply to any new development proposals involving a Commercial Solar Energy Facility after the August 3, 2021 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any new development proposal involving a Commercial Solar Energy Facility for which an application for a license, building permit, certificate of approved use, conditional use review and/or any other required land use approval has not been submitted and finally acted on by the Code Enforcement Officer, Planning Board, Board of Appeals or other Town official or administrative board or agency prior to August 3, 2021, the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall start or engage in the construction or operation of a Commercial Solar Energy Facility or test for the suitability of sites for a Commercial Solar Energy Facility on or after the August 3, 2021 applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town may enact as a result of this moratorium; and

BE IT FURTHER ORDAINED, that during the time this moratorium is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of approved use, conditional use review and/or any other permits, licenses or approvals related to a Commercial Solar Energy Facility; and

BE IT FURTHER ORDAINED, that those provisions of the Town's Zoning Ordinance or other ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 3. Violations; Civil Penalties.

If the construction or operation of a Commercial Solar Energy Facility is established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties in accordance with 30-A M.R.S.A. § 4452, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Section 4. Effective Date; Applicability Date.

This Ordinance shall take effect in accordance with the provisions of Section 314 of the Town Charter. The applicability date of this Ordinance is August 3, 2021.

Dennis Abbott

Dwayne Woodsome

Dana Brown

Dave Chauvette

Michael Provencher

Date: _____