

ORDINANCE # 4-2010

**AN ORDINANCE AMENDING THE VILLAGE OF TREMPPEALEAU CODE OF ORDINANCES
– SOLAR ENERGY SYSTEMS AND ACCESS**

The Village Board of the Village of Trempealeau, Trempealeau County, Wisconsin, does ordain as follows:

SECTION I. Section 10-1-135 of the Village Code of Ordinances, is hereby amended to read as follows.

SEC. 10-1-135 SOLAR ENERGY SYSTEMS & ACCESS

- 10-1-135(a) Solar Energy Systems
- 10-1-135(b) Definitions
- 10-1-135(c) Permit Applications and Notice
- 10-1-135(d) Hearing
- 10-1-135(e) Grant of Permit
- 10-1-135(f) Appeals
- 10-1-135(g) Record of Permit
- 10-1-135(h) Rights of Permit Holder
- 10-1-135(i) Waiver of Rights
- 10-1-135(j) Termination of Rights
- 10-1-135(k) Preservation of Rights

A. SOLAR ENERGY SYSTEMS

1. Statement of findings and purpose:
 - a. Diminishing supplies of nonrenewable energy resources threaten the physical and economic well-being of the residents of this community who presently rely on such resources to maintain their homes, industries, businesses and institutions;
 - b. Solar energy systems hold great promise for the future energy needs of this community because they use a renewable energy resource; because they require less capital, land, water and other resources needed for central-station generation of electricity; and because they do not pollute the community's water and air; and
 - c. The successful use of solar energy systems for such purposes as supplying space heating, water heating or the productions of electricity is dependent upon sufficient access to direct sunlight.
2. This chapter is adopted under authority contained in Sec. 66.0403, Wis. Stats., for the purpose of protecting the health, safety, and general welfare of the community by:
 - a. Promoting the use of solar energy systems;
 - b. Protecting access to sunlight for solar energy systems; and
 - c. Assuring that potentially conflicting interests of individual property owners are accommodated to the greatest extent possible compatible with the overall goal of this ordinance.

B. DEFINITIONS.

1. In this Chapter “AGENCY” means the Village of Trempealeau Zoning Administrator.
2. “APPLICANT” means an owner applying for a permit under this chapter.
3. “APPLICATION” means an application for a permit under this chapter.
4. “COLLECTOR SURFACE” means any part of a solar collector that absorbs solar energy for the use in the collector’s energy transformation process. “Collector surface” does not include frames, support and mounting hardware.
5. “COLLECTOR USE PERIOD” means 9:00 a.m. to 3:00 p.m. standard time daily.
6. “IMPERMISSIBLE INTERFERENCE” means a blockage of solar energy from a collector surface or a proposed collector surface for which a permit has been granted under this section during a collector use period, if such blockage is by any structure or vegetation on property an owner of which was notified under Sec. 10-1-135(C) (6) “impermissible interference” does not include:
 - a. Blockage by a narrow protrusion, vegetation, or other object which never obstructs more than 5% of the solar energy which would strike a solar collector during the collector use period on any given day;
 - b. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under Sec. 10-1-135(C)(6).
 - c. Blockage by any vegetation planted before the date the last notice is mailed or delivered under Sec. 10-1-135(C)(6).
 - d. Blockage by any structure or vegetation which obstructs less solar energy from a solar collector during the collector use period than would be obstructed by a 6 foot high wall located along the northern boundaries of the property to the south of the solar collector.
7. “OWNER” means at least one owner, as defined under Sec. 66.021(1)(a), Wis. Stats., of a property or the personal representative of at least one owner.
8. “PERMIT” means a solar access permit issued under this Chapter.
9. “SOLAR COLLECTOR” means a device, structure or part of a device or structure a substantial purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.
10. “SOLAR ENERGY” means direct radiant energy received from the sun.

C. PERMIT APPLICATION AND NOTICE.

1. PERMIT JURISDICTION. Any owner who has installed or intends to install a solar collector shall apply to the Village Board for a permit. A permit may affect any land located within the territorial limits of the Village or which is subject to an extraterritorial zoning ordinance unless the extraterritorial land is subject to a zoning ordinance adopted by a county or town.
2. APPLICATION. An application for a permit under this Section may be obtained from the Village Administrator and shall be completed by the applicant.
3. INFORMAL PRE-APPLICATION MEETING. Prior to the filing of an application, the applicant shall meet with the Plan Commission to discuss the application and the permit process.
4. APPLICATION FEE. The completed permit application shall be submitted to the Village

Administrator with an application fee as stated in the Schedule of Fees or \$250 whichever is greater.

5. REVIEW OF APPLICATION. The Plan Commission shall review the application to determine if it is satisfactorily completed. The Plan Commission shall notify the applicant of this determination within thirty (30) days after the application has been filed and the application fee received. If the Plan Commission determines that the application is satisfactorily completed, the Village shall provide notice forms and receipt forms to the applicant for service and signing under Subsection (6).
6. SERVICE OF NOTICE. If an applicant is notified that an application has been satisfactorily completed, the applicant shall deliver by certified mail or by hand the notice, supplied by the Village, to the owner of any property which the applicant proposed to be restricted by the permit. The applicant shall submit to the Village Administrator a copy of a signed receipt for every notice-delivered under this subsection.
7. CONTENT OF NOTICE. The information on the notice form shall include:
 - a. The name and address of the applicant, and the address of the land upon which the solar collector is or will be located.
 - b. That an application has been filed by the applicant.
 - c. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.
 - d. That any person who received a notice may request a hearing under Section 10-1-135(D) within thirty (30) days after receipt of the notice.
 - e. The procedure for filing a hearing request and telephone number, address and office hours of the agency.

D. HEARING.

Within thirty (30) days after receipt of the notice under Section 10-1-135(C)(6), any person who has received a notice, or anyone acting on the person's behalf, may file a request for a hearing on the granting of a permit or the Village Board may determine that a hearing is necessary even if no such request is filed. If a request is filed or if the Village Board determines that a hearing is necessary, the Village Board shall conduct a hearing on the application within 90 days after the last notice is delivered. At least thirty (30) days prior to the hearing date, the Village Board shall notify the applicant, any person who has requested a hearing under this section, all owners notified under Section 10-1-135(C)(6), and any other person filing a request of the time and place of the hearing. Prior to the hearing, the Plan Commission shall submit an advisory recommendation to the Village Board.

E. GRANT OF PERMIT.

1. DETERMINATION. The Village Board shall grant a permit if the Board determines that:
 - a. The granting of a permit will not unreasonably interfere with the orderly land use and development plans of the Village;
 - b. No person has demonstrated that she or he has present plans to build a structure that would create an impermissible interference by showing that she or he has applied for a building permit prior to receipt of a notice under Sec. 10-1-135(C)(6) has expended at least Five Hundred (\$500.00) Dollars on planning or designing such a structure, or by submitting any other credible evidence that she or he has made

substantial progress toward planning or constructing a structure that would create an impermissible interference; and

- c. The benefits to the applicant and the public will exceed any burdens.
- d. No person has demonstrated that the granting of a permit would cause an undue hardship in using his or her property in a manner consistent with existing zoning regulations and neighboring property uses.

2. **CONDITIONS.**

- a. The Village Board may grant a permit subject to any condition or exemption the Village Board deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include but are not limited to restrictions on the location of the collector and requirements for the compensation of persons affected by the granting of the permit.
- b. As a condition of receiving a permit, the permit holder shall be responsible for the cost of trimming (pre-existing) vegetation on property affected by the permit to prevent an impermissible interference. The permit holder shall give consideration to the desires of the property owner in trimming such vegetation and shall not unnecessarily remove vegetation which does not or will not in a reasonable period of time create an impermissible interference.

F. APPEALS.

Any person aggrieved by a decision under this chapter may appeal the decision by making a written request to the Village Board within ten (10) days of the decision. The decision shall be reviewed by the Zoning Board of Appeals.

G. RECORD OF PERMIT.

If the Village Board grants a permit:

1. The Village Board shall specify the property restricted by the permit and shall prepare notice of the granting of the permit. The notice shall include the legal description pursuant to sec 706.05(2)(C), Wis. Stats., for the property upon which the solar collector is or will be located and for any property restricted by the permit, and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector which is the subject of the permit unless the permit affecting the property is terminated or unless a waiver agreement affecting the property is recorded under Section 10-1-135.
2. The applicant shall record with the register of deeds of the county in which the property is located the notice under Subsection (1) for each property specified under Subsection (1) and for the property upon which the solar collector is or will be located.
3. The Village Board shall note the location of any solar collector which is the subject of a permit on a map showing the location of all solar collectors for which permits have been granted and shall identify on the map all properties which are subject to restrictions resulting from the granting of a permit.

H. RIGHTS OF PERMIT HOLDER.

The holder of a permit granted under this Section is entitled to access to sunlight for the solar collector subject to any conditions or exemptions in the permit and may seek damages for any loss caused by an impermissible interference or an injunction to prevent an impermissible interference as provided under sec. 66.032(7), Wis. Stats.

I. WAIVER OF RIGHTS.

A permit holder by written agreement may waive all or part of any right protected by a permit. The permit holder shall record a copy of the agreement with the register of deeds. A copy of the agreement shall also be filed with the Village Board.

J. TERMINATION OF PERMITS.

1. Any rights protected by a permit under this Section shall terminate if the Village Board determines that the solar collector which is the subject of the permit is:
 - a. Permanently removed or is not used for two (2) consecutive years, excluding time spent on repairs or improvements, or
 - b. Not installed and functioning within two (2) years after the date of issuance of the permit.
2. The Village Board shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under Subsection (1).
3. If the Village Board terminates a permit, the Village Board shall record a notice of termination with the register of deeds. The Village Board shall charge the permit holders for the cost of recording.
4. The Village Board shall modify the map of solar collectors prepared under Section 10-1-135(G)(3) to reflect the termination of a permit.

K. PRESERVATION OF RIGHTS.

The transfer of title to any property shall not change the rights and duties provided by a permit granted under this Section.

SECTION II. Repeal of Conflicting Ordinances. All ordinances, resolutions, orders or parts thereof heretofore adopted, enacted or entered in conflict with this Ordinance shall be and the same hereby are repealed.

SECTION III. Savings Clause. If any provision of this Ordinance is found invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or application of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION IV. Amendments. The Village, through its Village Board, may amend this Ordinance in whole or in part whenever it may deem necessary.

SECTION V. Adopted at a regular Village Board meeting this 3rd Day of May, 2010.

VILLAGE OF TREMPEALEAU

BY: _____
Kurt Wood, Village President

ATTEST: _____
Vicki Freeman, Village Clerk

Vote: Ayes _____ Noes _____

Posted: May __, 2010; Effective: May __, 2010