Joseph E. Martin
Senator, District 19

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

Draft Ordinance

Drafting notes appear in italics and are not ordinance text. Bracketed values are for the Planning Board to set. This draft must be reviewed by the Town Attorney and reconciled with the Jay Land Use Ordinance before a public hearing.

TOWN OF JAY COMMERCIAL SOLAR ENERGY FACILITY ORDINANCE

Section 1. Title

This Ordinance shall be known and cited as the "Town of Jay Commercial Solar Energy Facility Ordinance" (the "Ordinance").

Section 2. Authority

This Ordinance is adopted pursuant to the home rule authority granted by Article VIII, Part 2, Section 1 of the Maine Constitution and 30-A M.R.S. § 3001, and the land use authority of 30-A M.R.S. § 4312 et seq.

Section 3. Purpose

The purpose of this Ordinance is to allow the development of commercial solar energy facilities in the Town of Jay while protecting public health and safety; protecting the property, water supplies, and quiet enjoyment of neighboring landowners; preserving the scenic character of the Town; protecting Town roads and infrastructure; and ensuring that every facility is fully removed and its site restored at the end of its life, at no cost to the Town or its taxpayers.

Section 4. Applicability

1. **Applies to.** This Ordinance applies to the construction, expansion, repowering, operation, and decommissioning of any Commercial Solar Energy Facility and any Battery Energy Storage System associated with it, within the Town of Jay.
2. **Exempt.** This Ordinance does not apply to: (a) roof-mounted or building-integrated solar energy systems; (b) ground-mounted solar energy systems with a total Facility Footprint of less than [1 acre] that primarily serve on-site electricity use; or (c) solar energy devices on residential property governed by 33 M.R.S. chapter 28-A and 30-A M.R.S. § 3013.

3. **Pending applications.** Notwithstanding 1 M.R.S. § 302, this Ordinance applies to any application for a Commercial Solar Energy Facility that had not received final approval from the Town as of [November 3, 2026, the date of the moratorium vote].

Drafting note: Retroactive application is common in Maine moratorium and ordinance practice but is the provision most likely to be challenged. The Town Attorney should confirm the date and wording.

Section 5. Definitions

- **Abandonment:** A Facility that has not generated electricity for export for [12] consecutive months, except as provided in Section 20.
- **Battery Energy Storage System (BESS):** One or more devices, assembled together, capable of storing energy for later delivery, including associated enclosures, cooling, and fire suppression equipment.
- **Commercial Solar Energy Facility ("Facility"):** A ground-mounted solar energy system, together with its racking, inverters, transformers, collection lines, fencing, access roads, and associated equipment, with a Facility Footprint of [1 acre] or more, or whose primary purpose is the sale of electricity off-site.
- **Decommissioning:** Removal of all Facility components and restoration of the site as required by Section 19.
- **Facility Footprint:** The area within the perimeter fence of the Facility, or, where no fence exists, the area bounded by the outermost panels and equipment.
- **Non-Participating Property:** Any lot not owned or leased by the Owner for the Facility.
- **Non-Participating Residence:** Any dwelling, school, place of worship, or licensed child care facility on a Non-Participating Property, existing or with a building permit issued as of the date the application is filed.
- **Owner:** The person or entity holding the permit for the Facility, including its successors and assigns, and any operator acting on its behalf.
- **Participating Property:** Any lot owned or leased by the Owner for the Facility.
- **Qualified Professional:** A Professional Engineer licensed in Maine or, for sound and visual studies, an acoustical or landscape professional with demonstrated experience in the relevant field, in each case acceptable to the Planning Board.
- **Repowering:** Replacement of [10]% or more of a Facility's solar modules, or of any inverter or transformer, with equipment of a different model or specification.

Section 6. Permit Required; Review Authority

1. No person shall construct, expand, or repower a Facility without a Commercial Solar Energy Facility Permit issued by the Planning Board following site plan review under this Ordinance and the Jay Land Use Ordinance.

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2. The Planning Board shall hold at least one public hearing on each application. Notice shall be mailed to the owners of all properties within [1,000 feet] of the proposed Facility Footprint at the applicant's expense.
3. A permit under this Ordinance is in addition to, not in place of, any permit required by the Maine Department of Environmental Protection or other agencies. Where a state standard is more protective, the state standard applies.
4. No building permit shall issue until all financial assurance under Sections 14 and 19 has been posted and accepted by the Town.

Section 7. Application Requirements

An application shall include, at a minimum:

1. The identity of the Owner, its parent companies, and a 24-hour emergency contact.
2. Evidence of right, title, or interest in all Participating Property, including lease provisions granting the Town and its agents the right of access needed to carry out Decommissioning under Sections 19 and 20.
3. A site plan stamped by a Qualified Professional showing the Facility Footprint, all equipment, setbacks, access roads, fencing, buffers, and existing structures and wells within [1,000 feet].
4. A sound study meeting Section 11.
5. A visual impact assessment meeting Section 10, including photo simulations from public roads, Jay Hill, and other locations identified by the Planning Board.
6. A glare analysis meeting Section 12.
7. The pre-construction survey plan required by Section 13.
8. A construction management plan, including haul routes, hours, and a draft road use agreement.
9. A stormwater management and erosion control plan, and a vegetation management plan identifying any herbicide use.
10. An emergency response plan meeting Section 16, reviewed by the Jay Fire Department.
11. If a BESS is proposed, the materials required by Section 17.
12. A decommissioning plan and cost estimate meeting Section 19.
13. Copies of all applications filed with the Maine DEP and other agencies, and all decisions issued, as they become available.
14. The application fee and review escrow required by Section 8.

Section 8. Fees and Review Escrow

1. The applicant shall pay an application fee set by the Select Board.

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2. The applicant shall deposit [$__] into a Town-held escrow account to pay the reasonable costs of independent engineering, acoustical, visual, legal, and other professional review selected by the Town. The Town may require additional deposits whenever the balance falls below [25]%. Unused funds will be returned after a final decision.
3. The Planning Board shall not deem an application complete until the escrow is funded.

Section 9. Setbacks and Dimensional Standards

1. **Minimum setbacks.** All Facility components, including fencing, shall meet the following minimum setbacks:

Measured from	Panels, racking, fencing	Inverters, transformers, substations, BESS
Non-Participating Property line	[100] ft	[300] ft
Non-Participating Residence	[300] ft	[500] ft
Public road right-of-way	[100] ft	[200] ft
Non-participating private drinking water well	[200] ft	[300] ft
Great ponds, rivers, streams, and wetlands protected under 38 M.R.S. § 480-A et seq.	[100] ft, or the Shoreland Zoning requirement if greater	[250] ft

2. **Waiver by neighbor.** A setback from a Non-Participating Property or Residence may be reduced with the written consent of that property's owner, in an agreement recorded in the Franklin County Registry of Deeds that runs with the land. A copy shall be filed with the application.
3. **Height.** Panels at maximum tilt shall not exceed [15] feet above finished grade. Other equipment, excluding utility interconnection structures, shall not exceed [20] feet.
4. **Fencing.** Perimeter fencing shall be agricultural-style or similar, no more than [8] feet high, without barbed or razor wire visible from public roads, and shall include wildlife passage openings as recommended by the Maine Department of Inland Fisheries and Wildlife.

Section 10. Visual Screening and Buffers

1. A vegetated buffer at least [10] feet deep shall be maintained within the setback along every Non-Participating Property line and public road from which the Facility would be visible.
2. Existing trees and vegetation within setbacks shall be retained, except as needed for access drives and utility crossings approved by the Planning Board.

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3. Where existing vegetation does not screen the Facility, the Owner shall plant at least two staggered rows of native evergreen trees, a minimum of [6] feet tall at planting, spaced to screen at least [75]% of the Facility from view from Non-Participating Residences and public roads within [5] years of planting. The Planning Board may require berms, fencing with screening, or additional plantings where needed.
4. The Owner shall maintain all screening for the life of the Facility and replace dead or failing plantings within one growing season.
5. The visual impact assessment shall identify each location from which the Facility would be visible from public roads and Non-Participating Residences, with photo simulations at the time of planting and at five years.

Section 11. Sound

1. **Limits.** Sound from the Facility, measured at any Non-Participating Property line, shall not exceed:

Period	Limit (hourly equivalent sound level)
Daytime, 7:00 a.m. to 7:00 p.m.	[55] dBA
Nighttime, 7:00 p.m. to 7:00 a.m.	[45] dBA

2. **Tonal sound.** Where the Facility produces a tonal sound, as defined in Maine DEP rules (06-096 C.M.R. ch. 375, § 10), [5] dBA shall be added to the measured level before comparison with the limits above.
3. **Pre-construction study.** The application shall include a study by a Qualified Professional measuring existing ambient sound at the nearest Non-Participating Residences and modeling Facility sound at every Non-Participating Property line under worst-case operating conditions.
4. **Compliance testing.** Within [90] days after commercial operation, and within [30] days after any written complaint the Code Enforcement Officer finds credible, the Owner shall conduct sound monitoring by a Qualified Professional approved by the Town, at the Owner's expense, and file the results with the Town.
5. **Corrective action.** If monitoring shows a violation, the Owner shall correct it within [60] days, including by curtailing operation of the equipment causing it.

Section 12. Glare and Lighting

1. The application shall include a glare analysis by a Qualified Professional, using a recognized modeling method, for all Non-Participating Residences within [1,500 feet] and all public roads adjacent to the Facility.

2. The Facility shall not cause glare at any Non-Participating Residence or on any public road that the Planning Board finds would create a nuisance or a traffic hazard. Panels shall use anti-reflective coatings.
3. Exterior lighting shall be limited to what is required for safety and security, shall be motion-activated, downward-directed, and fully shielded, and shall not shine onto any Non-Participating Property.

Section 13. Pre-Construction Surveys and Monitoring

Before any site work begins, the Owner shall pay for the following surveys, performed by firms selected or approved by the Town, with results filed with the Town and provided to affected property owners:

1. **Roads.** A video and written condition survey of every Town road on the approved haul routes.
2. **Wells.** With the owner's permission, testing of water quality (including bacteria, nitrates, arsenic, and other parameters set by the Town's consultant) and yield for every private well within [1,000 feet] of the Facility Footprint. Testing shall be repeated within [6] months after construction. If construction damages a well, the Owner shall promptly provide temporary potable water and shall repair or replace the well at its expense.
3. **Structures.** A condition survey, with the owner's permission, of every structure within [500 feet] of any area where piles will be driven, and vibration monitoring during pile driving.
4. **Soils and drainage.** A baseline survey of soil types, topsoil depth, and drainage patterns across the Facility Footprint, which shall define the restoration standard under Section 19.
5. **Sound.** The ambient sound measurements required by Section 11.

Section 14. Construction

1. The Owner shall enter into a road use and maintenance agreement with the Town before construction, secured by a bond or letter of credit in an amount set by the Town's engineer. The Owner shall repair any damage to Town roads to a condition equal to or better than that documented in the pre-construction survey.
2. Construction activity shall be limited to [7:00 a.m. to 7:00 p.m.] Monday through Saturday. Pile driving shall be limited to [8:00 a.m. to 5:00 p.m.] Monday through Friday. No construction on Sundays or state holidays, except emergency work.
3. Construction traffic shall use only approved haul routes.

Section 15. Environmental Standards

1. The Facility shall meet all stormwater and erosion control requirements of the Maine DEP. The Owner shall file copies of all inspection reports required by DEP with the Town.
2. Ground cover under and around panels shall be maintained in perennial vegetation. Topsoil shall not be removed from the site.
3. No herbicides shall be applied within [200] feet of any private well or within [100] feet of any water body or wetland. All herbicide use shall be by a Maine-licensed applicator and reported to the Town annually.
4. Damaged or broken modules shall be removed from the site within [30] days of discovery.

Section 16. Fire Safety and Emergency Response

1. The Owner shall file an emergency response plan, developed with and approved by the Jay Fire Department, before commercial operation, and update it at least every [3] years.
2. The Owner shall provide on-site training for the Fire Department before commercial operation and annually after, and shall pay for any specialized equipment or training the Fire Chief reasonably determines is needed to respond to incidents at the Facility.
3. The Owner shall provide 24-hour emergency access, including a key box at each gate, and clearly posted emergency shutoff information and contact numbers.

Section 17. Battery Energy Storage Systems

1. A BESS shall be listed to UL 9540, supported by UL 9540A test data for the specific product, and designed, installed, and operated in compliance with the edition of NFPA 855 in effect at the time of application.
2. The application shall include a hazard mitigation analysis by a Qualified Professional, a site-specific emergency response plan, and a plan for continuous remote monitoring with automatic notification to the Owner's control center.
3. A BESS shall meet the setbacks in Section 9 for inverters, transformers, substations, and BESS, or greater distances the Planning Board finds necessary based on the hazard mitigation analysis.
4. A BESS shall have its own decommissioning plan and financial assurance, meeting Section 19 and 35-A M.R.S. chapter 34-E.

Section 18. Insurance and Indemnification

1. The Owner shall maintain commercial general liability insurance of at least [$10,000,000] per occurrence, naming the Town of Jay as an additional insured, and file a certificate of insurance with the Town annually.

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2. The Owner shall defend, indemnify, and hold harmless the Town, its officers, and its employees from any claim arising from the construction, operation, or decommissioning of the Facility.

Section 19. Decommissioning and Financial Assurance

1. **Decommissioning plan.** The application shall include a decommissioning plan, prepared by a Qualified Professional, describing the removal of all Facility components, the disposal or recycling of all materials at licensed facilities, and restoration of the site.
2. **Required removal.** Decommissioning shall include removal of all panels, racking, piles, foundations, inverters, transformers, BESS, fencing, and above-ground wiring; removal of all piles in their entirety; and removal of all below-grade wiring and conduit to a depth of at least [48] inches. Below-grade components deeper than [48] inches may remain only with the landowner's written consent and Planning Board approval. Access roads shall be removed unless the landowner requests in writing that they remain.
3. **Restoration.** The site shall be restored to the soil and drainage conditions documented in the pre-construction survey under Section 13, regraded, and reseeded with native vegetation or returned to agricultural use.
4. **Cost estimate.** The plan shall include an itemized estimate, prepared by a Qualified Professional and reviewed by the Town's engineer, of the full cost for a third party to perform Decommissioning, including labor, equipment, transportation, recycling and disposal fees, and restoration. The estimate shall not be reduced by any projected salvage, resale, or recycling value. A contingency of [25]% shall be added to the estimate.
5. **Financial assurance.** Before a building permit issues, the Owner shall provide financial assurance to the Town in the full amount of the cost estimate with contingency, in one of the following forms, each naming the Town of Jay as obligee or beneficiary with an independent right to draw:
    - (a) a performance bond issued by a surety listed in U.S. Treasury Circular 570 and rated A- or better by A.M. Best;
    - (b) an irrevocable standby letter of credit from a federally insured bank rated A or better, with automatic annual renewal; or
    - (c) cash deposited in a Town-held escrow account.
6. **Not acceptable.** Parent company or affiliate guarantees, landowner commitments, projected salvage value, and self-insurance shall not be accepted as financial assurance.
7. **Coordination with state requirements.** Financial assurance provided to the Maine DEP under 35-A M.R.S. chapter 34-D may satisfy this Section only if the Town is named as a co-obligee or beneficiary with an independent right to draw, and only to the extent its amount and terms meet this Section.

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8. **Updates.** The Owner shall file an updated cost estimate, prepared and reviewed as in subsection 4, every [5] years after the start of commercial operation, upon any Repowering, and upon any transfer of ownership. The financial assurance shall be adjusted to the updated amount within [60] days of the Town's acceptance of the estimate.
9. **Maintenance of assurance.** The financial assurance shall remain in effect until Decommissioning is complete and accepted by the Town. The instrument shall require at least [90] days' written notice to the Town before cancellation or non-renewal. Failure to replace financial assurance at least [30] days before it expires is a violation of this Ordinance and authorizes the Town to draw the full amount.
10. **Timing.** Decommissioning shall begin within [6] months and be completed within [12] months after the earliest of: the end of the Facility's useful life as stated by the Owner, Abandonment, or revocation of the permit.
11. **Release.** The Town shall release [90]% of the financial assurance upon its acceptance of removal, and the balance after vegetation is established for one full growing season.

Section 20. Abandonment

1. The Owner shall notify the Town in writing within [30] days after the Facility stops generating electricity for export for any reason other than routine maintenance.
2. A Facility under active repair may avoid a finding of Abandonment if the Owner files, before the [12]-month period ends, a written repair plan with a completion date the Code Enforcement Officer approves. One extension of up to [12] months may be granted.
3. Upon Abandonment, the Code Enforcement Officer shall give the Owner written notice. If the Owner does not resume operation or begin Decommissioning within [90] days of notice, the Town may enter the site, perform Decommissioning, and draw on the financial assurance to pay all costs. Costs exceeding the financial assurance shall be a debt of the Owner and may be recovered by any lawful means, including a special tax lien where permitted by law.

Section 21. Transfer of Ownership

1. The Owner shall give the Town at least [60] days' written notice before any sale or transfer of the Facility or a controlling interest in the Owner.
2. The successor shall assume in writing all obligations under the permit and this Ordinance and shall post replacement financial assurance meeting Section 19 before the transfer takes effect.
3. The prior Owner's financial assurance shall not be released, and the prior Owner remains responsible for Decommissioning, until the Town accepts the successor's financial assurance.

Section 22. Operation, Reporting, and Complaints

1. The Owner shall file an annual report with the Town by [March 31] each year, stating annual generation, any periods of non-operation, equipment replaced, herbicide use, screening maintenance, complaints received and their resolution, and current insurance and financial assurance.
2. The Owner shall maintain a publicly posted 24-hour contact and a written complaint process. The Owner shall acknowledge complaints within [2] business days and provide a written response within [30] days, with a copy to the Code Enforcement Officer.
3. Equipment removed during repair or Repowering shall be removed from the Town within [90] days. Retired equipment shall not be stored on site beyond that period.
4. Any Repowering, expansion, or change in Facility Footprint, height, or equipment that would affect sound, glare, or setbacks requires an amended permit from the Planning Board.
5. The Code Enforcement Officer and the Town's agents may inspect the Facility with reasonable notice, and at any time in an emergency.

Section 23. Enforcement and Penalties

1. This Ordinance shall be enforced by the Code Enforcement Officer.
2. Violations are subject to civil penalties, injunctive relief, and the recovery of the Town's attorney fees and costs as provided by 30-A M.R.S. § 4452. Each day a violation continues is a separate violation.
3. The Planning Board may, after notice and hearing, suspend or revoke a permit for a material violation not corrected within the time set in a notice of violation.

Section 24. Appeals

An aggrieved party may appeal a final decision of the Planning Board as provided in the Jay Land Use Ordinance and Maine law, including Rule 80B of the Maine Rules of Civil Procedure.

Section 25. Conflict and Severability

1. Where this Ordinance conflicts with another Town ordinance, the more restrictive provision applies.
2. If any provision of this Ordinance is found invalid by a court, the remaining provisions remain in effect.

Section 26. Effective Date

This Ordinance takes effect upon adoption by the voters of the Town of Jay.

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