

**Town of Enfield**  
**Local Law # \_\_ of 2019**  
**Solar Power Siting Amendments to Site Plan Review Law**

**BE IT ENACTED** by the Town Board of the Town of Enfield, County of Tompkins, State of New York, as follows:

Section 1 - SHORT TITLE & PURPOSES - This local law shall be known as the “Solar Siting Local Law” or the “Solar Energy Law Addendum” (or simply herein, the “local law”). This local law amends Town of Enfield Local Law #2 of 2012 (Site Planning) to add special regulatory and review procedures and requirements for the siting of certain solar power facilities, as hereafter defined.

The purpose and intent of this Local Law is to further the purposes of site planning within the Town of Enfield, by both promoting solar power and protecting the land and persons from the impacts of such land use and development, including to help preserve important soils and open spaces, to mitigate impacts and nuisances, and to help ensure harmony with natural site conditions and surrounding land uses, including through decommissioning and siting requirements, including:

- a. Taking advantage of a safe, abundant, and renewable energy resource;
- b. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- c. Increasing the benefit of solar energy to low-to-moderate income households through community solar projects;
- d. Protecting our environment and resources for future generations by minimizing the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- e. Managing commercial renewable energy development to provide a balance between energy needs that protect our environment and respect for our rural agricultural landscape; and
- f. Maintaining a balance between property rights of individual landowners and the community at large.

Section 2 - AUTHORITY - This Local Law is adopted pursuant to the authority and provisions of § 10 of the Municipal Home Rule Law, § 10 of the Statute of Local Governments, and Town Law § 130, and Town Law Article 16, including §§ 268 and 274-a therein.

Section 3 - SPECIFIC REGULATORY AMENDMENTS - Local Law # 2 of 2012 (the “Site Plan Review Law”) be and hereby is amended as follows:

- a. Section 1.4 of said Site Plan Review Law is amended to read as follows:

- A. ACE: The United States Army Corps of Engineers.
- B. Applicant: any person or entity responsible for submitting a Site Plan application for review by the Planning Board, or otherwise responsible for compliance with the terms, conditions, and requirements of this Local Law.
- C. Building: a structure wholly or partially enclosed within exterior walls, or within exterior party walls, and a whole or partial roof, affording shelter to persons, animals, or property.
- D. Building-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. A Building-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.
- E. Building-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. A Building-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.
- F. CEO: the code enforcement officer of the Town.
- G. DEC: the New York State Department of Environmental Conservation.
- H. DOT: the New York State or United States Department of Transportation.
- I. EAF: a SEQRA Environmental Assessment Form.
- J. EIS: a SEQRA Environmental Impact Statement.
- K. Flood Plain: Any jurisdictional or mapped flood Plain identified by the DEC.
- L. 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. A Ground-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.
- M. Large-Scale Solar Energy System: A Solar Energy System that feeds electricity directly into the grid, is ground mounted and is larger than four thousand (4,000) square feet in total area, including solar collectors, the enclosure and/or fence surrounding the Solar Energy System per each lot or per adjacent lots under common ownership or under common operation. A Large-Scale Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.
- N. Permittee: The party holding a Solar Permit granted pursuant to this Solar Energy Law.

- O. Planning Board: the Planning Board of the Town.
- P. SEQRA: the New York State Environmental Quality Review Act, codified in the Environmental Conservation Law at Article 8, and including Title 6 of the New York Codes, Rules and Regulations, Part 617.
- Q. Qualified Solar Installer: A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations, and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition.
- R. Site Plan: a rendering, drawing, sketch, written plan, map, survey, or similar documents, prepared to specifications as required by and under this Local Law, which shows the arrangement, layout, and design of the proposed uses of land as shown upon such plan, together with supporting data and information as required by this Local Law, or as is reasonably requested or necessary in the discretion of the CEO and/or Planning Board, to render such plan complete and ready for review by the Planning Board.
- S. Solar Energy Equipment: Electrical energy storage devices, material, hardware, inverters, or other electrical equipment, infrastructure, and conduit of photovoltaic devices associated with Solar Panels and with the production of electrical energy.
- T. Solar Energy System: An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.
- U. Solar Panel: A photovoltaic device capable of collecting and converting solar energy into electrical energy.
- V. Solar Permit: A permit issued by the Planning Board pursuant to the provisions of this law for the construction and operation of a Large-Scale Solar Energy System.
- W. Solar Thermal Energy Systems: Solar hot water technology consisting of solar thermal equipment and any related Solar Energy Equipment. Thermal energy is transferred to a heat transfer system via a collector and heat exchanger.
- X. Storage Batteries: Devices that store energy and make it available in an electrical form.
- Y. Structure: an assembly of materials located on or permanently affixed to the ground, directly or indirectly, usually including underground parts, such as a foundation, and above ground parts. A Building is one type of structure.
- Z. Town: The Town of Enfield, in Tompkins County, New York.

AA. Town Board: The Town Board of the Town.

BB. Wetland: Any jurisdictional or mapped wetland identified by the DEC or ACE.”

- b. Article II of the Site Plan Review Law is amended by adding a new subsection A(7.) that reads as follows:

7. In addition to the requirements of § 2.2 (General Considerations) and the other provisions of Article II, the application and review procedures of Article III, the bonding and securitization requirements of Article IV, and the general requirements and rules of Article V herein, all Solar Energy Systems installed or modified after the effective date of this local law, excluding general maintenance and normal repairs of such Solar Energy Systems, shall be required to comply with the special site planning and review rules for Solar Energy Systems as set forth in the new Article VI of the Site Plan Review Law, as set forth below. Any repairs that are material in nature and not general maintenance or in the nature of a normal repair, as determined by the Planning Board, shall be subject to the requirements of this local law and Article VI herein, and a Solar Permit must be issued prior to or simultaneously with the application for or receipt of any required building permits.

- c. Article III, § 3.0 of the Site Plan Review Law is amended to read as follows:

SECTION 3.0 - APPLICATION AND REVIEW PROCEDURES - Prior to undertaking any listed land use activity (or resuming such listed activity after the requisite period of discontinuance) a Site Plan review and approval by the Planning Board is required. Applicants for Site Plan review and approval should follow the recommended procedures related to the pre-application conference (sometimes known as a “sketch plan conference”), but all Applicants must comply with all other procedures and requirements of this Local Law including, without limitation, the requirements of Article VI as are applicable to Solar Energy Systems, including the requirements therein as pertain to pre-application conferences, applications, and application requirements, and review procedures and requirements.

- d. Article IV, § 4.0 of the Site Plan Review Law is amended to read as follows:

SECTION 4.0 - PERFORMANCE BONDS AND OTHER SECURITY - Whenever any permanent infrastructure and improvements are required by any Site Plan, a performance bond, irrevocable letter of credit, escrowed payment and escrow agreement, or other security sufficient to cover the full cost of the same, as estimated by the Planning Board, shall be furnished to the Town by the Applicant or owner whenever the Planning Board, in its sole discretion, without recourse, shall require the same. The requirements of Town Law §§ 274-a(7) and 277(9) shall apply to this requirement whenever so imposed. Without limiting the foregoing requirements, Solar Energy Systems shall also comply with the bond, securitization, and decommissioning requirements set forth in Article VI.

- e. The Site Plan Review Law be and hereby is amended by adding a new Article VI, as follows:

**ARTICLE VI**  
**SPECIAL SITE PLAN REVIEW REGULATIONS AND**  
**REQUIREMENTS FOR SOLAR ENERGY SYSTEMS**

SECTION 6.0 - SOLAR EASEMENTS NOT IMPLIED - The installation of any Solar Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary.

SECTION 6.1 - SOLAR AS AN ACCESORY USE OR STRUCTURE - The following rules apply to Solar Energy Systems as based upon the installation type:

A. Building-Mounted Solar Energy Systems.

1. Building-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use when attached to any lawfully permitted building or primary structure.
2. Height. Notwithstanding anything in the Site Plan Review Law to the contrary, Building-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Solar Energy System would result in an increase of the overall structure height by six (6) feet or more.
3. Except as provided in paragraph 2, immediately above, or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, Building-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from site plan review under the Site Plan Review Law.

A. Ground-Mounted Solar Energy Systems.

- 1) Ground-Mounted Solar Energy Systems, other than Large-Scale Solar Energy Systems, are permitted as accessory structures for residential use and, except as provided in paragraph 5.B.2) below or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, shall be exempt from any site plan review under the Site Plan Review Law.
- 2) Height. Notwithstanding anything in the Site Plan Review Law to the contrary, Ground-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Ground-Mounted Solar Energy System would exceed twenty (20) feet in height.

- 3) Setback. Any Solar Energy Equipment and any related fencing or other enclosures, other than Large-Scale Solar Energy Systems and related fencing and other enclosures, shall be setback at least twenty (20) feet from the side and back lines of the property owner's lot and at least forty (40) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least twenty (20) feet from all sides of the lot. For setback requirements for Large-Scale Energy Systems, see Section 6.C.2. of this Addendum.
- B. Storage Batteries. When Storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.

## **1. Approval Standards for Large-Scale Solar Systems for a Solar Permit**

- A. Large-Scale Solar Energy Systems are permitted through the issuance of a Solar Permit, subject to the requirements set forth in this Section and Section 7, including a site plan review pursuant to the provisions of the Site Plan Review Law. Notwithstanding anything in the Site Plan Review Law to the contrary, applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Planning Board which can include approval, approval with conditions, or denial.
- B. Solar Permit Application Requirements for a Solar Permit. The site plan application process under the Site Plan Law is to be used as supplemented by the following provisions:
  - 1) If the project is to be located upon lands owned by a third party, then proof of appropriate rights of use for the project duration shall be submitted in their full and complete form, whether they are licenses, easements, leases or other rights in title or estates in land.
  - 2) Site Plans showing the layout of the Solar Energy System signed by a registered professional engineer licensed in the State of New York. The Town reserves the right to have an applicant's engineering drawings, opinions, or conclusions reviewed by an engineer hired by the Town, the cost of which shall be reimbursed by the applicant.
  - 3) The equipment specification sheets shall be documented and submitted for all significant components, including but not limited to, photovoltaic panels, mounting systems, and inverters that are to be installed.
  - 4) A Property Operation and Maintenance Plan shall be submitted. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming. No chemical herbicides or pesticides shall be used in the project.

- 5) Projected production plans showing the annual amount of energy that will be generated and transmitted for each one year period during the life of the project.
- 6) A glare assessment survey and a complaint and mitigation plan reasonably acceptable to the Planning Board to address glare on other parcels of land on an ongoing basis during the life of the project.
- 7) A Decommissioning Plan shall be submitted. See Abandonment and Decommissioning in Section 7.B.
- 8) A general complaint plan, with a procedure for determining mitigation, that is reasonably acceptable to the Planning Board shall be submitted.
- 9) No Solar Permit may be transferred to a new owner and/or operator of a Large-Scale Solar Energy System without the prior approval of the Planning Board. Such approval shall be conditioned upon a written assumption by the new owner and/or operator of any and all requirements imposed upon the original owner and/or operator, including, without limitation, evidence that the new owner and/or operator has either assumed the existing financial surety required under Section 7.B. or has secured an equivalent financial surety, reasonably acceptable to the Town Board, in its place. Failure to comply with these requirements will be deemed an abandonment of the Large-Scale Solar Energy System pursuant to Section 7,B. shall be subject to the terms and provisions of Section 7.B. as such.

#### C. Solar Permit Standards.

- 1) Height. Large-Scale Solar Energy Systems shall not exceed twenty (20) feet in height unless a variance is approved by the Planning Board pursuant to the standards set forth in Section 3.1 of the Site Plan Review Law or any successor provisions.
- 2) Setbacks. Any Solar Energy Equipment and any related fencing or other enclosures of a Large-Scale Solar Energy System shall be setback at least fifty (50) feet from the side and back lines of the property owner's lot and at least one hundred twenty five (125) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least fifty (50) feet from all sides of the lot.
- 3) Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 acres.
- 4) Lot Coverage. The enclosed or fenced in area of a Large-Scale Solar Energy System shall not exceed 60% of the lot on which it is installed.
- 5) Storage Batteries. When storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage

Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.

- 6) Fencing. All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the emergency contact information shall be placed on the entrance and perimeter of the fencing as required in the judgment of the Planning Board. The type of fencing shall be approved by the Planning Board and shall be a maximum of 8 feet and a minimum of 6 feet in height.
- 7) Screening. The Planning Board may require screening by landscaping to avoid adverse aesthetic impacts.
- 8) Utility Connections. To the extent reasonably practicable, all utility connections for any Large-Scale Solar Energy Systems shall be placed underground, depending upon the appropriate soil conditions, shape and topography of the site and any requirements of the utility provider. Electrical transformers for utility connections may be above ground if required by the utility provider.
- 9) Lighting. The Planning Board may permit motion-activated or staff-activated security lighting around the equipment of a Large-Scale Solar Energy System or accessory structure. Such lighting should only be activated when the area within the fenced perimeter has been entered. Lighting shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- 10) Liability Insurance during Construction. The developer of a Large-Scale Solar Energy System shall provide proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the construction period of the project.
- 11) Liability Insurance during Operation. The owner and/or operator of a Large-Scale Solar Energy System shall provide annual proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the operational period of the project.
- 12) Site Plan Review. Notwithstanding anything to the contrary in the Site Plan Review Law, any application under this Section shall meet any substantive provisions contained in site plan requirements of the Site Plan Review Law that, in the judgment of the Planning Board are applicable to the system being proposed. In addition, notwithstanding anything to the contrary in the Site Plan Review Law, the Planning Board may approve waivers pursuant to the standards set forth in Section 3.1 of the Site Plan Review Law or any successor provisions.



- 13) SEQRA. Permit applications shall be deemed Type I projects under SEQRA. In fulfilling the requirements of the SEQRA, the Planning Board may require a Full Environmental Assessment Form for the proposed Large-Scale Solar Energy System.
  - 14) Notifications. Notwithstanding anything to the contrary in the Site Plan Review Law or SEQRA, any notifications required pursuant to the Site Plan Review Law or SEQRA with respect to any Solar Energy System shall be sent to all landowners within one mile of the boundary of the parcel on which the proposed site is located.
  - 15) Qualified Solar Installer. The project must be installed by a Qualified Solar Installer.
  - 16) Every Solar Energy System shall be built, operated and maintained to acceptable Industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers ("IEEE") and the American National Standards Institute ("ANSI").
  - 17) In order to verify that the Solar Energy System's owners and any and all lessees, renters and/or operators of the Solar Energy System place, construct, modify and maintain such Systems, including solar collectors and solar inverters, in accordance with all applicable technical, safety, fire, building codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said System's placement, construction, modification and maintenance. Any inspections required by the Planning Board that are beyond its scope or ability shall be at the expense of the applicant and/or the operator of the System.
  - 18) Other. The Planning Board may impose conditions on its approval of any Solar Permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under SEQRA. Notwithstanding anything to the contrary in the Site Plan Review Law, the Town Board shall be designated the lead agency and the Planning Board shall be designated an interested party for purposes of any such SEQRA review unless the Town Board determines otherwise.
- D. Large-Scale Solar Energy Systems shall not be located in the following areas unless otherwise approved by the Planning Board in conjunction with the Solar Permit approval process provided in this section:
- 1) Prime farmlands soils as identified by the USDA-NRCS or alternative available resources;
  - 2) Areas of potential environmental sensitivity, including Unique Natural Areas as designated by the Tompkins County Environmental Management Council, flood plains, historic sites, airports, state-owned lands, conservation easements, trails, parkland, prime soils, and wetlands as identified by Tompkins County Planning

Department mapping services, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers; and

- 3) On slopes of greater than fifteen percent (15%), unless the applicant can demonstrate through engineering studies and to the satisfaction of the Planning Board that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
- E. The Planning Board, at the expense of the applicant, may employ its own consultant(s) to examine the application and related documentation and make recommendations as to whether the criteria for granting the Solar Permit has been met, including, but not limited to, whether the applicant's conclusions regarding safety analysis, visual analysis, structural inspection, and storm water management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.

## **2. Abandonment and Decommissioning**

- A. Applicability and purpose. This section governing abandonment and decommissioning shall apply to Large-Scale Solar Energy Systems. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Enfield, by the Town requiring abandoned Large-Scale Solar Energy Systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities, serve as an attractive nuisance and/or may create an environmental hazard.
- B. Abandonment. A Large-Scale Solar Energy System shall be deemed abandoned if the system fails to generate and transmit electricity over a continuous period of one year at a rate of at least 25% of its projected production based on the application approved by the Planning Board for the project. A Large-Scale Solar Energy System also shall be deemed abandoned if following site plan approval construction of the system is not completed within 18 months of issuance of the first building permit for the project.
- 1) Extension of time. The time at which a Large-Scale Solar Energy System shall be deemed abandoned may be extended by the Planning Board for an additional period of up to one year, provided the system owner presents to the Planning Board a viable plan, reasonably acceptable to the Planning Board, outlining the steps and schedules for placing the system in service or back in service within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the Large-Scale Solar Energy System owner and/or operator prior to abandonment as defined herein. Extenuating circumstances as to why the Large-Scale Solar Energy System has not been operating or why construction has not been

completed may be considered by the Planning Board in determining whether to grant an extension.

- C. Removal required. A Large-Scale Solar Energy System which has been abandoned shall be decommissioned and removed. The Large-Scale Solar Energy System owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the Large-Scale Solar Energy System shall be in accordance with a decommissioning plan approved by the Planning Board.
- D. Decommissioning and Removal.
- 1) Decommissioning and removal of a Large-Scale Solar Energy System shall consist of:
    - (a) Physical removal of all above ground and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site related to the Large-Scale Solar Energy System;
    - (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
    - (c) Restoration of the ground surface and soil;
    - (d) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
  - 2) Upon petition to the Planning Board, the Planning Board shall permit the system owner and/or landowner to leave certain underground or above ground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment, and do not adversely affect community character or the environment.
- E. Solar Permit conditions. The following conditions shall apply to all Solar Permits issued for a Large-Scale Solar Energy System. No Solar Permit shall be issued unless the Planning Board finds that the conditions have been or will be met.
- 1) Decommissioning plan. All applications for a Large-Scale Solar Energy System shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in the above section and include:
    - (a) An estimate of the anticipated operational life of the system;
    - (b) Identification of the party responsible for decommissioning;

- (c) Description of any agreement with the landowner regarding decommissioning;
- (d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work;
- (e) A certified and sealed cost estimate prepared by a qualified structural engineer or professional engineer, who shall be reasonably acceptable to the Planning Board, estimating the full cost of decommissioning and removal of the solar PV system, including, but not limited to, the cost of solid waste disposal and the cost to clean-up any hazardous waste leakage on the property. No scrap value shall be taken into account for purposes of estimating these decommissioning and removal costs. The Planning Board shall have the sole discretion to require a structural engineer or a professional engineer and regardless of which type of engineer is chosen, such engineer shall be licensed by the State of New York. The Planning Board shall have the right, in its sole discretion, to have this estimate reviewed by an independent structural engineer at the system owner's and/or operator's expense;
- (f) A financial plan to ensure that financial resources will be available to fully decommission the site.

1) Financial surety. Prior to the issuance of a building permit and every two years thereafter, the Large-Scale Solar Energy System owner and/or operator shall file with the Town evidence of financial security to provide for one hundred twenty five percent (125%) of the full cost of decommissioning and removal of the solar PV system, which amount shall automatically be increased by two percent (2%) the following year. Evidence of financial security shall be in effect throughout the life of the system and shall be, in the sole discretion of the Town Board, either in the form of an irrevocable letter of credit or cash security acceptable to the Town Board. The irrevocable letter of credit shall include an auto extension provision if possible, to be issued by an A-rated institution solely for the benefit of the Town and for the benefit of the landowner if the land is leased to the operator of the system. Any letter of credit shall provide that issuer shall notify the Town in the event such letter of credit is canceled or otherwise terminated which notice shall be made no later than seven (7) business days after such event. The Town shall be entitled to draw on the letter of credit in the event that the Large-Scale Solar Energy System owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. In the event a demand for decommissioning is made by the Town to a landowner that leases his or her property to the operator of the system, such landowner may also be entitled to draw on such letter of credit if the owner and/or operator of such system is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or operator shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of

financial security with the Town at the time of transfer, and every two years thereafter, as provided herein. Failure to keep a surety in place as required by this law shall result in the revocation of the Solar Permit and the termination of the project unless and until such surety is restored; provided, however, that any lapse of a surety in excess of 180 days shall be deemed an abandonment of the project pursuant to Section 7.F. herein and subject to complete decommissioning in accordance with this law.

2) Amount. The amount of the surety shall be determined by the Town Board based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent bi-annual reports required pursuant to paragraph 3 below. For purposes of this determination, any subsequent bi-annual decommissioning report shall be required to meet the same requirements set forth in Section 7.E.1.e. as the original decommissioning cost estimate. The amount of the surety shall be adjusted by the Town Board as appropriate upon receipt of a bi-annual report containing an updated cost estimate for decommissioning and removal.

3) Annual report. The Large-Scale Solar Energy System owner and/or operator shall on a yearly basis provide the Town Clerk a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period compared to the amount of energy that was projected to be generated in the application approved by the Planning Board. The Town Clerk shall forward such report to the Town Board, the Planning Board and the Code Enforcement Officer within five (5) business days of receipt of the report. The report shall also identify any change in ownership of the Solar Energy System and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 calendar days after the end of the calendar year. Every second year, to coincide with the filing of evidence of financial security, such report shall also include a recalculation of the estimated full cost of decommissioning and removal of the Large-Scale Solar Energy System in accordance with the provisions of this Section 7. The Town shall require an adjustment, as appropriate, in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation of Section 7 of this Solar Energy Law.

F. Decommissioning and removal by Town. If the Large-Scale Solar Energy System owner and/landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

1) Procedure

(a) Upon a determination by the Planning Board that a Large-Scale Solar Energy System has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility

under construction, to complete construction and installation of the facility within 180 calendar days; or (b) in the case of a fully constructed facility that is operating at a rate of less than 25% of its projected production level as outlined in the application approved by the Planning Board, to restore operation of the facility to no less than 80% of rated capacity within 180 calendar days, or the Planning Board will deem the system abandoned and commence action to revoke the Solar Permit and require removal of the system.

- (b) Being so notified, if the system owner, operator, landowner and/or Permittee fails to perform as directed by the Code Enforcement Officer within the 180 day period, the Code Enforcement Officer shall notify the system owner, operator, landowner and permittee, by certified mail, that the Large-Scale Solar Energy System has been deemed abandoned and the Town intends to revoke the Solar Permit within 60 calendar days of mailing said notice. The notice shall also state that the Permittee is entitled to appeal the decision of the Planning Board to the Town Board. The Town Board shall schedule an appeal hearing no later than 60 calendar days from the receipt of any such written request for an appeal hearing. A final determination regarding such appeal shall be made by the Town Board no later than 60 calendar days following such hearing, which determination can be further appealed pursuant to Article 78 of the New York Civil Practice Laws and Rules.
- (c) Upon a determination by the Planning Board or Town Board that a Solar Permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.
- (d) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a Large-Scale Solar Energy System, including legal costs and expenses, shall be reimbursed either from the financial surety posted by the system owner or landowner as provided in section 7.D. Decommission and Removal Plan herein and/or by the owner of the land upon which such Large Scale Energy System is located. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

### **3. Enforcement**

Any violation of this law shall be fully subject to the enforcement provisions of Section 5.3 of the Site Plan Review Law or any successor provisions thereunder; provided, however, that in lieu of the monetary fines and/or civil penalties specified in Section 5.3 of the Site Plan Review Law for a First, Second or Third Violation, the monetary fines and/or civil penalties for any such violations shall be Five Hundred Dollars (\$500) per day . For this purpose, any reference to “this Local Law” in Section 5.3 of the Site Plan Review Law shall be deemed to include a reference to this Solar Energy Law as well.

### **9. Fees and Escrow**

An application fee, as determined by the Town Board, shall accompany the application for a Large-Scale Solar Energy System. The amount of such required Large-Scale Solar Energy System fees may be revised from time to time by the Town Board in the future by resolution.

The applicant shall deliver with its application an amount as determined by the Town Board from time to time by resolution or as specifically agreed upon between the Town and the applicant to be held in escrow during the application review process. The sum shall be held by the Town in a non-interest bearing account and these funds shall be available to the Town to pay for the costs of reviewing the application, including, but not limited to, the costs of consultants engaged by the Town to assist in any review of the application as well as any costs related to any related notices and/or hearings. Following grant or denial of the application, the Town shall return to the applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the applicant shall deposit such funds as are then necessary for the Town to pay any outstanding fees before the Town is required to proceed with any further review of the project.

### **10. Host Community or PILOT Agreement**

Nothing in this Law shall be read as limiting the ability of the Town Board to enter into host community agreements or Paid in Lieu of Taxes (PILOT) agreements with any applicant to compensate the Town for expenses or impacts on the community.

### **11. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment 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.