

## **Local Law No. 1 of 2017**

**A Local Law to establish specific regulations and approval standards for Solar Energy Systems, which shall supplant those definitions and provisions applicable to Solar Energy and Solar Energy Systems as set forth in the Town of Westerlo Zoning Law #1 of 1989, as amended and modified**

**Local Law No. 1 of 2017, entitled “Regulation and Approval Standards for Solar Energy Systems”**

### **Section 1. TITLE**

This law shall be known as the Solar Regulation and Approval Standards Law No. 1 of 2017.

### **Section 2. PURPOSE AND INTENT**

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”) recognizes that in recent years the installation of solar energy systems on commercial and residential properties has become widespread due to various tax incentives and leasing and provider incentives. Solar panels are promoted by both New York State and the Federal Government as sustainable, renewable energy sources that reduce dependence on fossil fuels. Solar panels are becoming typical accessory uses for residential and commercial properties, and the Town of Westerlo recognizes that solar panels have many benefits for the property owner and the community in general.

The Town of Westerlo (hereinafter referred to as “Town”) has always recognized the existence, importance and relevance of solar energy. The Town of Westerlo, in its Zoning Law (hereinafter referred to as “Zoning Law”) adopted in 1989 addressed solar energy. The Zoning Law (which is still in effect) defines solar energy as “radiant energy (direct, diffuse, and/or reflected) received from the sun. The Zoning Law further defines “solar energy system” as “an arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy”. The Zoning Law specifically includes “solar energy systems” as a use permitted by right in the rural development/agricultural district and the hamlet district, subject to the remainder of the zoning requirements (to wit, setbacks, height, etc.).

This law is intended to provide more specific standards and guidance to the Town, the Town’s Code Enforcement Officer and Building Department, and the regulatory boards within the Town, including but not limited to the Zoning Board of Appeals and the Planning Board, with respect to the construction and installation of roof mount and

ground mount Solar Energy Systems, as defined herein. This law is intended to establish guidelines for such construction and installation that take into consideration the impact of these systems on the surrounding neighbors and street traffic, and ensure that solar collectors are located in a manner that reasonably minimizes shading of adjacent property while still providing adequate solar access for collectors, while preserving the rights of property owners to install Solar Energy Systems.

### **Section 3. APPLICABILITY**

This Law is applicable to all Solar Energy Systems, for which a building permit or special use permit has not yet been issued by the Town: however, any modification, expansion or alteration of an existing system or approved, but not yet constructed system, shall be subject to the terms and provision set forth herein.

### **Section 4. DEFINITIONS**

As set forth herein, the following terms shall mean:

1. **COMMERCIAL SOLAR ENERGY SYSTEM:** A solar collector or other device or structural design feature of a structure that relies upon sunshine as an energy source and is capable of collecting, distributing, and storing the sun's radiant energy for a beneficial use which is intended to be utilized for any purpose other than private residential or agricultural use, including community-based systems.
2. **EXPEDITED PROCESS:** The application, review and approval process for any solar Energy system with a rated capacity of 25 kilowatt (KW) or less, which process is further detailed in Section 5 herein.
3. **GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system that is directly installed in or on the ground and is not attached or affixed to an existing structure. Also referred to as a "freestanding" solar energy system.
4. **RESIDENTIAL SOLAR ENERGY SYSTEM:** A solar collector or other device or structural design feature of a structure that relies upon sunshine as an energy source and is capable of collecting, distributing, and storing the sun's radiant energy for a beneficial use which is intended to be used solely in a direct private residential or agricultural capacity.

### **Section 5. EXPEDITED PROCESS**

1. **APPLICABILITY:** This section shall apply to Solar Energy Systems with a rated capacity of 25 KWs or less, notwithstanding the use therefor. No ground

mounted system, however, shall be permitted on a nonconforming lot, as the same is described in the Zoning Law.

2. **PROCEDURE:** To utilize this procedure the applicant shall submit to the Town Building Department/Code Enforcement Officer the following:
  - a. A completed application, as provided by the Town;
  - b. A set of project plans which includes, at a minimum:
    - a. The project address
    - b. Section, block and lot number of the subject property (tax identification number)
    - c. Property owner's name, address and telephone number
    - d. Name, address and telephone number of the person preparing the plans
  - c. A site plan showing the location of the major components of the solar Energy system and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks. The plan should set forth the relative location of the components at the site, including but not limited to, location of the solar array, existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.
3. **APPROVAL:** Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer, and the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for a grid-tied solar electric system.

## **Section 6: RESIDENTIAL SOLAR ENERGY SYSTEM**

1, **APPLICABILITY:** This provision shall apply to small scale Solar Energy Systems used strictly for private residential or agricultural purposes, and which have a capacity of not greater than 25 KW.

### **2. PROCEDURE:**

All small scale Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the International Building Code, International Fire Prevention Code and NAFPA 70 .

- a. **Rooftop and flush-mount Solar Energy Systems:** Solar Energy Systems that are installed on rooftops and/or are flush with existing

legal structures are permitted in all zoning districts in the Town, subject to the following conditions:

- i. A building permit shall be required for installation of all rooftop and flush-mounted Solar Energy Systems
  - ii. The structure upon which the solar Energy system is installed must:
    1. be legally permitted
    2. comply with the height limitations for the subject zoning district as set forth in the Zoning Law.
    3. comply with all setback requirements for the subject zoning district as set forth in the Zoning Law
  - iii. Solar Energy System must be installed a minimum of three feet away from any chimney and shall not be installed on any roof overhangs.
  - iv. Solar Energy Systems installed on any pitched roof shall not extend more than eighteen inches from the surface of the angle of the roof
- b. Ground-mount and freestanding Solar Energy Systems: Ground mount and freestanding Solar Energy Systems shall be permitted as an accessory structure in the Rural Residential/Agricultural Districts in the Town, subject to the following conditions:
- i. No ground mounted system, shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.
  - ii. All Solar Energy Systems shall be designed and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NFPA 70 Standards.
  - iii. A building permit shall be required for installation of all ground-mount and freestanding Solar Energy Systems. In the event that the proposed solar Energy system requires a Special Use Permit (see subsection vii below) no building permit shall be issued until and unless a Special Use Permit has first been issued by the Town of Westerlo Planning Board (“Planning Board”).
  - iv. All solar collectors shall be installed at least 100’ from any lot line, and 200’ from any waterway or waterbody, including designated wetlands (see Sect. D herein)
  - v. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property’s lot lines.

- vi. All solar collectors shall have a maximum height of 20 feet from ground elevation, measured from the base of the unit or support structure, as it touches the ground.
- vii. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFPA 70 . When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- viii. A Special Use Permit from the Planning Board is required for all ground-mounted and freestanding Solar Energy Systems greater than 10 feet in height or greater than 20 feet in length, or if the solar array surface area is greater than 200 square feet in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

## **Section 7: COMMERCIAL SOLAR ENERGY SYSTEMS**

1, APPLICABILITY: This provision shall apply to Solar Energy Systems that are intended to be used for purposes other than residential or agricultural. Commercial Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Section 2 below. No ground mounted system, shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

2. GENERAL REQUIREMENTS: All Commercial Solar Energy Systems require issuance of a Special Use Permit and are subject to site plan review approval by the Planning Board as set forth in the Zoning Law and in accordance with the following specifications:

a. All Solar Energy Systems shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.

b. A building permit shall be required for installation of all commercial Solar Energy Systems, which shall only be issued after a Special Use Permit has first been issued by the Town of Westerlo Planning Board (“Planning Board”).

c. All solar collectors shall be installed at least 100’ from any lot line, and 200’ from any waterway or waterbody, including designated wetlands (see Sect. D herein)

- d. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.
  - e. All solar collectors shall have a maximum height of 20 feet from ground elevation.
  - f. All buildings and accessory structures, other than the actual solar collectors, associated with the solar Energy system shall be in compliance with the height limitations in the Zoning Law.
  - g. All buildings and accessory structure associated with solar Energy systems shall be a minimum of 100' from any lot line.
  - h. A solar energy system, inclusive of buildings and accessory structures, shall only cover a particular parcel as set forth herein, with a maximum coverage of a parcel being 20 acres:
    - a. For lots located in the Hamlets of Westerlo and South Westerlo, the maximum coverage shall be  $\frac{1}{3}$  (33  $\frac{1}{3}$ %) of the entire parcel
    - b. For lots consisting of 3 acres to 10 acres, the maximum total coverage shall be  $\frac{1}{3}$  (33  $\frac{1}{3}$ %) of the entire parcel
    - c. For lots consisting of 10 acres to 20 acres, the maximum total coverage shall be  $\frac{2}{5}$  (40%) of the entire parcel
    - d. For lots consisting of 20 acres to 30 acres, the maximum total coverage shall be  $\frac{1}{2}$  (50%) of the entire parcel
    - e. For any parcel 30 acres and more, the maximum total coverage shall be 20 acres
  - i. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFPA 70 . When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
3. **PROCEDURE:** All commercial Solar Energy Systems shall provide a site plan in accordance with the site plan requirements of the Zoning Law. The Site Plan, in addition to said requirements, shall also include and/or comply with the following:
- a. All signage pertaining to the solar Energy system shall be indicated on the site plan and shall be in conformance with the sign requirements in the Zoning Law.
  - b. All commercial Solar Energy Systems shall be sited in a manner to have the least possible visual effect on the immediate neighbors and general environment.

- c. The Site Plan shall include a Visual Environmental Assessment Form (Visual EAF) , landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key points identified in the Visual EAF, existing tree lines, surrounding topography and proposed elevation.
- d. Proposed landscaping, screening and/or earth berming to minimize the potential visual impacts associated with the commercial solar Energy system and its accessory buildings, structures and/or equipment. If the same is deemed inadequate by the Planning Board, additional landscaping, screening and/or earth berming may be required to mitigate visual and aesthetic impacts.
- e. Any associated structure shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the Site Plan. All utilities serving the site shall be underground.
- f. A lighting plan shall be included with the Site Plan. No artificial light is permitted, unless the same is required by a federal, state or local authority. Exterior lighting may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only.
- g. The Site Plan shall also include written confirmation that the electric grid has the capacity to support the energy generated from the commercial Energy system.
- h. The Site Plan shall identify all existing and proposed access routes to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities, existing and proposed, within the property boundaries of the proposed location. Whenever possible, existing roadways shall be used for access to the site.
- i. The Site Plan shall include a minimum of an eight-foot security fence to prevent unauthorized access and vandalism to the commercial solar Energy system. The Planning Board may require additional security measures for the site upon site plan review.
- j. The Site Plan shall provide for placement of noise-producing equipment such that placement of the same minimizes noise impacts on adjacent properties.

#### 4. ADDITIONAL REQUIREMENTS:

- a. LEASE: Where a commercial solar Energy system is to be located on private lands owned by a party other than the applicant, a copy of the

lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department

- b. **STATUS OF SYSTEM:** The applicant shall provide to the Building Department on an annual basis on the anniversary date of the commencement of operation of the commercial solar Energy system documentation from the utility company verifying that said system is active.
- c. **INSURANCE, ESCROWS AND INDEMNIFICATION:**
  - i. Prior to the processing an application, the applicant will establish an escrow account of not less than \$7,500.00 (seven thousand five hundred and 00/100 dollars) to cover all costs and expenses incurred by the Town for the attorney's and consultant's/expert's evaluation and consultation with the town, as may be necessary to review the proposal, including but not limited to the review of financial and technical aspects of the proposal and of the financial and technical practicability of alternatives which may be available to the applicant. The total fee may vary with the scope and complexity of the project and the degree of cooperation of the applicant. Additional funds, as required, shall be paid by the applicant.
  - ii. Insurance:
    - a. The system owner shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the special use permit, which shall be no less than \$1,000,000.00 (one million and 00/100 dollars) in coverage. The Building Department in conjunction with the Town Attorney shall establish the appropriate insurance amount for each individual system.
    - b. The public and personal liability and property damage insurance shall specifically include the Town and its officials, employees and agents as additional insured, shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
    - c. Renewal or replacement policies of certificates shall be delivered to the town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
    - d. Within 15 days of issuance of the special use permit, and prior to construction of a permitted solar energy system, the system owner shall deliver to the Town a copy of each of

the policies of certificates representing the insurance in the required amounts.

- e. Failure to comply with the foregoing shall automatically deem the special use permit revoked without further proceeding. Written revocation of the special use permit shall be forward to the system owner within five days of the revocations.

iii. Any special use permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a solar energy system within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

D. SURETIES/BONDS: The applicant shall be required to provide sureties, as set forth below, for the construction, maintenance and removal of the commercial solar Energy system/

i. Construction and maintenance: Prior to the issuance of a building permit for the commercial solar Energy system and any associated accessory structure, the applicant shall post a surety in an amount and form acceptable to the Town of the purposes of construction and maintenance. The amount shall be 20% of the construction value. Acceptable forms, in order of preference are: cash, letter of credit, perpetual bond, or any combination thereof. Such surety will be used to guarantee compliance with the conditions of the approval for the commercial solar Energy system. If the owner of the site fails to comply with any conditions of the Site Plan Approval during construction or as part of the long-term maintenance of the site, all costs incurred by the Town to ensure compliance with the conditions of approval shall be paid using the surety provided by the applicant. Failure to comply with the conditions of the approval or to maintain an acceptable level of surety will result in revocation of the Certificate of Occupancy issued by the Building Department.

ii. Abandonment/Removal:

- a. The owner of a solar energy system shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said system installed subject to these regulations, as well as the status notification set for in 4(c) above. Failure to file a declaration shall mean that the system is no longer in use and shall be considered abandoned.
- b. At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town by certified U.S. Mail of the proposed date of abandonment, or discontinuance of operations. In the event that a system owner fails to give notice, the system shall be deemed abandoned upon such discontinuance of operations. In any event, a solar energy system shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of twelve months.
- c. Upon abandonment or discontinuance of use, the system owner shall physically remove the solar energy system, and all accessory structures and/or equipment within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to:
  - i. removal of panels, collectors, support units, mounts, equipment shelters and security barriers from the property
  - ii. proper disposal of the waste material from the site in accordance with local and state solid waste disposal regulations.
  - iii. Restoring the location of the solar energy system to its natural condition, except that any landscaping and grading shall remain in the "after" condition.
- d. If the owner of the system fails to properly remove said solar energy system and associated structures and equipment within 90 days from the date of abandonment, the Town may exercise its option to remove said system at its own discretion upon notification to the owner of the system and the property owner, at the expense of the owner for which the surety set forth in section f herein shall be used.
- e. The applicant must provide the Town with written authority from the owner or owners of record for the subject property where the solar energy system is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the system in the event that the owner fails to remove the system in accordance with the requirement of this law.
- f. The applicant shall provide the Town with a bond in an amount determined by the Planning Board, but in no case less than 20% of the construction cost to cover the cost for the removal of the system and remediation of the landscape, in the event the Town must remove the facility. The bond shall be in a form acceptable to the Town Attorney, which include but are not limited to cash, letter of credit, perpetual

bond, or any combination thereof. . The amount shall be reviewed every year by the Planning Board and shall be adjusted if deemed necessary. If the bond is deemed to be adjusted the applicant shall have 90 days from notice to provide an adjustment bond.

5. FEES: The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover application and permitting, review and approval, and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

6. SEVERABILITY OF PROVISIONS

Should any section or provision of this local law be declared null, void, voidable or invalid, such finding shall not affect the validity of the remaining portions of this local law.

7. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the New York State Secretary of State's Office.