

TOWN OF NEW HARTFORD, NEW YORK
LOCAL LAW INTRODUCTORY 1 OF 2022

A LOCAL LAW to amend the Code of the Town of New Hartford, Chapter 118 thereof entitled ZONING, § 118-74. Solar energy systems.

BE IT ENACTED by the Town Board of the Town of New Hartford as follows.

SECTION 1. Chapter 118-74, Solar Energy Systems, shall be amended as follows:

A. Purpose.

The use of solar energy systems/collectors, storage facilities, and distribution components for space heating and cooling, the heating of water, use in industrial, commercial or agricultural processes and to otherwise generate electricity are recognized as a renewable and nonpolluting energy resource. The purpose of this section is to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefore, and to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar energy systems without excess regulation. This section is not intended to override agricultural exemptions that are currently in place.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

FLUSH-MOUNTED SOLAR PANELS/COLLECTORS — Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM/COLLECTORS — A solar energy system that is directly installed in the ground and is not attached or affixed to an existing structure.

LARGE-SCALE SOLAR ENERGY SYSTEM/COLLECTORS — For purposes of this chapter, the term "Large-Scale Solar Energy System/Collectors" refers to any solar thermal or solar photovoltaic system which is not a Small-Scale Solar Energy System/Collectors.

NET METERING — A billing arrangement that allows solar customers to get credit for excess electricity generated and delivered to the grid.

ROOFTOP-MOUNTED or BUILDING-MOUNTED — A solar power energy system/collectors in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or modules fixed to frames. Said panels shall be limited to the roof area.

SMALL-SCALE SOLAR ENERGY SYSTEM/COLLECTORS — For purposes of this chapter, the term "small-scale solar" refers to solar photovoltaic systems rated up to 25 kilowatts (kW) of energy or solar thermal systems which serve the building to which they are attached.

SOLAR COLLECTOR — A solar photovoltaic cell, panel or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

C. Applicability.

1. This section applies to all types of solar energy systems/collectors that are modified or installed after the effective date of this chapter, unless a building permit was properly issued prior to the effective date of this chapter.

2. All solar energy systems/collectors shall be designed, erected and installed in accordance with all applicable codes, regulations and standards, including NYSERDA.

3. Solar energy systems/collectors shall be permitted (a) to provide power or hot water for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected and as an accessory use, and (b) for the purpose generating electricity to be utilized in connection with a net billing or net metering arrangement in accordance with New York Public Service Law § 66-j, or similar state or federal statutes. Nothing herein shall restrict the Town of New Hartford from entering into an Agreement with a private provider to generate electricity to benefit the residents of the Town of New Hartford.

D. Permitting.

1. Rooftop-and building-mounted Small-Scale Solar Energy Systems/Collectors shall be permitted as of right in all zoning districts with issuance of a building permit and located on an existing structure. Applicants must provide the dimensions of all panels; their height and angle from horizontal; detail of materials; location of roof drains and engineer's verification that the roof structure can handle the load, including any additional drifting snow as well as any additional items requested by the codes officer.

2. Freestanding or ground-mounted solar energy systems only on lots greater than 5 acres in size.

a. Small-Scale Solar Energy Systems/Collectors which are freestanding or ground-mounted solar energy systems shall be permitted in all zoning districts and shall require a special permit review from the Town of New Hartford Planning Board and may be subject to additional requirements as prescribed in this section. Large-Scale Solar Energy Systems/Collectors which are freestanding or ground-mounted solar energy systems shall be permitted in those zoning districts which are designated by New Hartford Town Board and shall require a special permit review from the Town of New Hartford Planning Board and may be subject to additional requirements as prescribed in this section. Once the special permit is granted, a building permit shall be required. Initially, the Town of New Hartford designates the Town Property on Middle Settlement Road from Commercial Drive to Clinton Road and Town owned lands adjacent to Sherrillbrook Park Rt. 12 as locations for such Large-scale Solar Energy Systems collectors for a free standing or ground mounted systems. Free standing or ground mounted systems shall not be permitted in residential districts.

b. Upon receipt of a complete special permit application (including the payment of a fee), the Code Enforcement Officer shall submit a copy of the application to the Planning Board for review at the next Planning Board meeting. The Planning Board may condition its approval of any freestanding or ground-mounted solar energy systems on such factors as it may reasonably determine from time-to-time and in accordance with the Town's Comprehensive Plan, provided that such conditions shall not be of such degree or scale so as to either be physically/logistically impractical or otherwise render the proposed use economically unviable.

c. The Planning Board shall review the application and provide a recommendation for approval, disapproval or approval with conditions within 45 days of receipt of the application.

3. Reasonable costs incurred by the Planning Board for private consultation fees or other expenses in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fees required in § 118-140, Fees.

E. Additional accessory use development standards.

1. Solar energy systems/collectors and equipment shall be permitted only if they are determined by the Town of New Hartford not to present any unreasonable safety risks, including, but not limited to, the following:

- a. Weight load.
- b. Wind resistance.
- c. Ingress and egress in the event of fire or other emergency
- d. Maximum height measured to the highest point shall not exceed 20 feet.
- e. All such systems be installed by contractors certified by the North American Board of Certified Energy Practice. Further, the applicant shall provide detailed plans setting forth the locations of all trees that may have to be topped or removed.

2. For purposes of this chapter, freestanding or ground-mounted energy systems are special permit uses in all allowed districts and shall require the issuance of a building permit. They shall be exempt from being counted toward the maximum number of accessory structures and square footage of accessory structures.

3. All freestanding or ground-mounted energy systems/collectors shall be located at least 75 feet from the side and rear lot lines measured from the corresponding side of the solar panel. In no case shall Small-Scale Solar Energy Systems/Collectors be installed in a front yard. Such systems will not be allowed on lots less than 5 acres in size.

4. Additional requirements and criterion to be provided by the applicant.

a. A line-of-sight profile analysis.

b. A computer-generated model of visual impacts on viewpoints noted in §280-40(U)(3)(a)(1), including photo simulations of summer and winter conditions, and before and after simulations of proposed landscaping and buffer.

c. Equipment. All electrical and control equipment shall be labeled and secured to prevent unauthorized access as required by the National Electrical Code and NYS Uniformed Fire Prevention & Building Code and New York Electric Safety Code.

d. Signs. Warning signage shall be placed on solar equipment to the extent appropriate. Solar equipment shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except:

- [1] Manufacturer's or installer's identification;
- [2] Appropriate warning signs and placards;
- [3] Signs that may be required by a federal agency; and
- [4] Signs that provide a twenty-four-hour emergency contact phone

number and warning of any danger.

e. Landscaping management plan. A plan shall specify how the owners and operators will implement, maintain and replace, if necessary, the approved landscaping plan and screening methods.

f. Glare. Solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways. Exterior surfaces of roof-mounted collectors and related equipment shall have a non-reflective finish and shall be color-coordinated to harmonize with roof materials and other dominant colors of the structure. The applicant shall demonstrate that any glare produced does not have significant adverse impact on neighboring properties or roadways.

g. Preservation. Existing on-site vegetation shall be preserved to the maximum extent practicable. The removal of existing non-invasive trees greater than 6 inches in diameter shall be minimized to the greatest extent possible. Any herbicides shall be used to a minimal extent. Clear-cutting of all native and non-invasive trees in a single contiguous area exceeding 20,000 square feet shall be prohibited, except for agricultural and farm management practices as shown in a submitted arborist's report.

h. Height. Ground-mounted arrays shall not exceed 20 feet in height when oriented at maximum tilt.

i. Lot coverage. A major solar energy system shall not exceed sixty-percent lot coverage. "Lot coverage" shall be defined as the area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.

j. Site disturbance. Site disturbance, including, but not limited to, grading, soil removal, excavation, soil compaction, and tree removal shall be minimized to the maximum extent practicable. The siting of a solar energy system shall take advantage of natural topography and vegetative screening. The facility should be located at a lower elevation on the property if practicable. Forested sites shall not be deforested to construct a solar energy facility.

k. Site Operation and Maintenance Plan. A plan showing continued photovoltaic maintenance and property upkeep, such as mowing and trimming. Washing additives shall be non-toxic and bio-degradable.

l. Stormwater Pollution Prevention Plan (SWPPP). A SWPPP prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town.

m. Noise. Substations and inverters shall be located so to provide for no discernable difference from existing noise levels at the property line.

n. Setbacks. Any structure and equipment for a major solar energy facility shall be located an additional 100 feet from the minimum setback requirements for a principal structure under §280-24, and shall be located at least 200 feet from an adjacent residential dwelling unit. The Zoning Board or Planning Board may require further setbacks to provide an adequate buffer and eliminate noise impacts.

o. Fencing. Perimeter fencing shall allow for the movement of small wildlife by using fixed-knot woven wire or other wildlife friendly fencing. Barbed wired fencing is prohibited. Fencing for mechanical equipment, including a structure for storage batteries, may be 7-feet high, as required by the National Electrical Code, with a self-locking gate to prevent unauthorized access.

p. Utility connections. Utility lines and connections for a solar energy system shall be installed underground, unless otherwise determined by the Zoning Board for reasons that may include poor soil conditions, topography of the site, and consideration of the utility provider's engineering requirements. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

q. Access and parking. A road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made.

5. Safety. A solar energy system shall be certified under the National Electrical Code and NYS Uniform Fire Prevention & Building Code and New York Electric Safety Code as required, and shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal, at a level acceptable to the local fire department. Storage batteries shall meet the requirements of the NYS Uniform Fire Prevention

& Building Code and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

6. Financial surety. Prior to the issuance of a building permit and for each year thereafter, the major solar energy system owner and/or landowner shall file with the Codes Officer evidence of financial security to provide for the cost of decommissioning and removing the solar energy system and restoring the site, including, but not limited to, legal fees, court costs, and expenses, in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit, surety bond, or other security acceptable to the Town Board. The financial security shall include an auto extension provision, be non-terminable, and issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw on the financial security in the event that the major energy system's owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit or surety bond. Upon completion of decommissioning, the owner and/or landowner may petition the Town Board to terminate the letter of credit or surety bond. 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 year thereafter, as provided herein.

Amount. The amount of the financial security shall be determined by the Codes Officer after consulting with Town-designated engineer regarding costs of decommissioning, removal and restoration and with the Town Attorney regarding legal fees, court costs, and expenses. The amount of the financial security may be adjusted by the Codes Officer upon receipt of updated cost estimates for decommissioning, removal and restoration, and legal fees, court costs, and expenses.

7. Annual report. The major solar energy system owner shall, on a yearly basis, provide the Codes Officer 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. The report shall also identify any change in ownership of the major 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 days after the end of the calendar year. Every year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the major solar energy system. The Codes Officer may require an adjustment 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 subject to the penalties of §280-59 of this chapter.

8. Ownership Changes. If the owner or operator of the solar energy system or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the solar energy system shall notify the Codes Officer within 30 days of the ownership change.

9. Decommissioning and removal.

(a) A major solar energy system that fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a period of 12 consecutive months shall be deemed to be abandoned. The Town Board may, after holding a public hearing on notice to the owner and operator of the system and site owner, determine that the system shall be decommissioned on an approved time schedule. The decommissioning and removal of a major solar energy system shall consist of:

- [1] Physical removal of the major solar energy system from the lot to include, but not be limited to, all aboveground and below-ground equipment, structures and foundations, fences, electric transmission lines and components, roadways and other physical improvements to the site;
- [2] Restoration of the ground surface and soils to its preinstalled condition, including grading and vegetative stabilization to eliminate any negative impacts to surrounding properties;
- [3] Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations, and certification of proper removal and disposal as required by the NYS Department of Environmental Conservation or other government agency;
- [4] Stabilization and re-vegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

(b) Decommissioning and removal by the Town. If the major solar energy system owner and/or landowner fail 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 Town Board that a major solar energy system has been abandoned, the Codes Officer shall notify the system owner and operator, and property owner by certified mail: a) in the case of a facility under construction, to complete construction and installation of the facility within 180 days; or b) in the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.

[b] Being so notified, if the system owner, landowner and/or permittee fails to perform as directed by the Codes Officer within the one-hundred-eighty-day period, the Codes Officer shall notify the system owner, landowner and permittee, by certified mail, that the major solar energy system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing the notice. The notice shall also state that the permittee may appeal the Codes Officer's determination of abandonment to the Zoning Board and request a public hearing.

[c] The appeal and request for hearing shall be made and received by the Codes Officer within 20 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the twenty-day period shall result in the special use permit being deemed revoked as stated herein.

In the event the permittee appeals the determination of the Codes Officer and requests a hearing, the Zoning Board shall schedule and conduct the hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Zoning Board shall determine whether

the major solar energy system has been abandoned, whether to continue the special use penult with conditions as may be appropriate to the facts and circumstances presented to the Zoning Board, or whether to revoke the permit and order removal of the major solar energy system.

[d] Upon a determination by the Codes Officer or Zoning Board that a special use 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 fail 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.

[2] Removal by the 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 major solar energy system, including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in §280-40(U)(5)(c). 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.

SECTION 2. SEQRA Determination.

The Town Board declares that this Local Law's amendments to Chapter 280 is an Unlisted Action under the State Environmental Quality Review Act and determines that its adoption will not have a significant impact upon the environment and that a negative declaration should issue.

SECTION 3. All provisions of Chapter 118-74 of the Code of the Town of New Hartford, and amendments thereto, are hereby replaced by this Local Law.

SECTION 4. This Local Law shall become effective immediately upon filing with the Secretary of State.