

LOCAL LAW #1 – Town of Thurston
Filed with the State of New York this _____ of _____, 2021

TOWN OF THURSTON

LOCAL LAW #1 OF THE YEAR 2021

A local law – **THE SOLAR ENERGY LAW OF THE TOWN OF THURSTON**

Be it enacted by the TOWN BOARD of the TOWN OF THURSTON as follows:

Section 1: Title.

This Local Law shall be entitled as: “A Local Law Regulating the Installation, Operation, Maintenance and Decommissioning of Solar Energy Systems in the Town of Thurston.”

Section 2: Purpose.

Solar energy is a renewable and non-polluting energy resource that can prevent fossil fuel emissions and reduce a municipality’s energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated. The use of solar energy equipment for the purpose of providing electricity and energy for heating and/or cooling is a priority and is a necessary component of the Town of Thurston’s current and long-term sustainability agenda. Because it is in the public interest to provide for and encourage renewable energy systems and a sustainable quality of life, the purpose of this law is to facilitate the development and operation of renewable energy systems based on sunlight while minimizing adverse impacts on neighboring properties to protect the public health, safety and welfare.

Section 3: Authority.

This Solar Energy Local Law is adopted pursuant to §§ 261-263 of the Town Law and §20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.”

Section 4: Definitions.

- A. As used in this local law, the following words shall have the following respective meanings:
 - a. **BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:** A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system

such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

- b. **FARMLAND OF STATEWIDE IMPORTANCE:** Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.
- c. **GLARE:** The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.
- d. **GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.
- e. **NATIVE PERENNIAL VEGETATION:** Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.
- f. **POLLINATOR:** Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.
- g. **PRIME FARMLAND:** Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.
- h. **ROOF-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.
- i. **SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.
- j. **SOLAR ENERGY EQUIPMENT:** Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

- k. SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.
 - 1. Tier 1 Solar Energy Systems include the following:
 - a. Roof-Mounted Solar Energy Systems
 - b. Building-Integrated Solar Energy Systems
 - 2. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25 kW AC and that generate no more than 110 % of the electricity consumed on the site over the previous 12 months.
 - 3. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.
- l. SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.
- m. STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

Section 5: Applicability.

- A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
- B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5 % of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
- D. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

Section 6: General Requirements.

- A. A Building permit shall be required for installation of all Solar Energy Systems.

- B. The Town Board is encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.
- C. Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act [E.C.L. Article 8 and its implementing regulations at 6 N.Y.C.R.R. Part 617 (“SEQRA”)].

Section 7: Permitting Requirements for Tier 1 Solar Energy Systems.

All Tier 1 Solar Energy Systems shall be permitted and be exempt from site plan review under the local code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

A. Roof-Mounted Solar Energy Systems

1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
 - a. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
 - b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
2. Glare: All Solar Panels shall have anti-reflective coating(s).
3. Height: All Roof-Mounted Solar Energy Systems shall comply with the height limitations in Appendix 3.

- B. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

Section 8. Permitting Requirements for Tier 2 Solar Energy Systems.

All Tier 2 Solar Energy Systems shall be permitted as accessory structures and shall be exempt from site plan review under the local code or other land use regulations, subject to the following conditions:

- A. Glare: All Solar Panels shall have anti-reflective coating(s).
- B. Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the Town. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.
- C. Height: Tier 2 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the Town.
- D. Screening and Visibility.
 - 1. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 - 2. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.
- E. Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the Town.

Section 9. Permitting requirements for Tier 3 Solar Energy Systems.

All Tier 3 Solar Energy Systems are permitted within the Town, subject to site plan application requirements set forth in this Section.

- A. Applications for the installation of Tier 3 Solar Energy System shall be:
 - 1. Reviewed by the Code Enforcement Officer and/or Town Board for completeness. Applicants shall be advised within 10 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
 - 2. Subject to a public hearing to hear all comments for and against the application. The Town Board shall have a notice printed in a newspaper of general circulation in the Town of Thurston at least 5 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.
 - 3. Referred to the County Planning Department/Board pursuant to General Municipal Law § 239-m if required.
 - 4. Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval,

approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and applicant.

- B. **Underground Requirements.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- C. **Vehicular Paths.** Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- D. **Signage.**
 - 1. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
 - 2. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- E. **Glare.** All Solar Panels shall have anti-reflective coating(s).
- F. **Lighting.** Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- G. **Tree-cutting.** Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
- H. **Decommissioning.**
 - 1. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the Owner and/or Operators expense, which at the Owner's option may come from any security made with the Town as set forth in Section 11(b) herein.
 - 2. A decommissioning plan (see Appendix 4) signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - a. The cost of removing the Solar Energy System.
 - b. The time required to decommission and remove the Solar Energy System any ancillary structures.

- c. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

3. Security.

- a. The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2.5 % annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System.
 - b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - c. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in Section 11(b) and 11(c) herein.
- I. Site plan application. For any Solar Energy system, site plan approval shall be required. Any site plan application shall include the following information:
1. Property lines and physical features, including roads, for the project site.
 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
 3. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
 4. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
 5. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

6. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
7. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
8. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
9. Prior to the issuance of the building permit or final approval by the Town Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

J. Special Standards.

1. Lot size
 - a. The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements in Appendix 1.
2. Setbacks
 - a. The Tier 3 Solar Energy Systems shall meet the setback requirements in Appendix 2.
3. Height
 - a. The Tier 3 Solar Energy Systems shall comply with the height limitations in Appendix 3.
4. Lot coverage
 - a. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:
 - i. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
 - ii. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
 - iii. Paved access roads servicing the Solar Energy System.

- b. Lot coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirement of the Town.
- 5. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
- 6. Screening and Visibility.
 - a. Solar Energy Systems smaller than 10 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - b. Solar Energy Systems larger than 10 acres shall be required to:
 - i. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report may be required to be submitted by the applicant.
 - ii. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.
 - aa. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the Town.
- 7. Agricultural Resources. For projects located on agricultural lands:
 - a. Any Tier 3 Solar Energy System located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 50 % of the area of Prime Farmland or Farmland of Statewide Importance on the parcel.
 - b. To the maximum extent practicable, Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

- c. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.
- K. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the above conditions remain in effect provided that the successor owner or operator assumes in writing all of the obligations of the prior owner, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

Section 10. Safety.

- A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar Energy Systems 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 and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
- C. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use 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.

Section 11. Permit Time Frame and Abandonment

- A. The Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction [or] construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.

- C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Section 12. Road Use Agreement.

Pursuant to this Local Law, the Town requires the execution of a Town of Thurston “Road Use Agreement” by and between the Town and any Solar Energy System Developer, its agents, heirs and/or assigns, related to any installation, operation, maintenance and/or decommissioning of any Solar Energy System located within the Town of Thurston. The “Road Use Agreement” shall be negotiated by and between the Town and Solar Energy System Developer, its agents, heirs or assigns, and shall be incorporated in its entirety herein by reference as a condition of the development of any Solar Energy System within the municipality.

Section 13. Enforcement.

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

Section 14. 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.

Section 15. Repealer

This local law shall supersede all prior local laws, ordinances, rules and regulations relative to Solar Energy Systems within the Town and they shall be, upon the effectiveness of this local law, null and void.

Section 16. Effective Date

This Local Law shall take effect _____, 2021 or immediately upon adoption and filing as required by the Laws of the State of New York, whichever occurs last.