

## **LOCAL LAW NO. \_\_ OF 2019**

### **A Local Law in repealing and replacing Article 18 of Local Law 1 of 1989 related to Commercial Solar Energy Systems**

**BE IT ENACTED** by the Town Board of the Town of Westerlo, County of Albany as follows:

#### **Section One. Title**

This local law shall be known as the “Commercial Solar Energy Systems” law.

#### **Section Two. Purpose**

The purpose of this local law shall be to repeal and replace existing laws, rules and regulations related to commercial solar energy systems and provide for appropriate siting, development, and decommissioning of commercial solar energy systems subject to reasonable conditions to reduce potential impacts to adjoining properties and the community as a whole, while promoting development of renewable energy sources.

#### **Section Three. Authority**

This local law is adopted pursuant to sections 10 and 22 of the Municipal Home Rule Law.

#### **Section Four. Repealing and Adopting the Commercial Solar Energy Systems” law and amending the Town of Westerlo Zoning Law**

Article 18 of the Town of Westerlo Zoning Law (Local Law 1 of 1989) related to Commercial Solar Energy Systems is hereby repealed in its entirety and replaced with the following:

#### **ARTICLE 18. SOLAR ENERGY SYSTEMS**

##### **Section 18.10: Purpose**

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.

## DRAFT LAW

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 properties while still providing adequate solar access for collectors, while preserving the rights of property owners to install Solar Energy Systems.

### **Section 18.20: 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. All applications hereunder shall be on the application form designated by the Town of Westerlo.

### **Section 18.30: 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, and all

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ground-mount systems must meet the set-back requirements set forth for said zoning district 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 and height measurements for all ground mounted systems. 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 18.40: 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 NAFFPA 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 comply with the height limitations for the subject zoning district as set forth in the Zoning Law.
    - 2. 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 NAFFPA 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 viii 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 50' from any lot line, and must be located in compliance with NYS Department of Environmental Conservation ("DEC") and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- 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 15 feet in height or greater than 30 feet in length, or if the solar array surface area is greater than 400 square feet in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

**Section 18.50: 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 NAFFPA 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 must be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands
- 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 structures 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:
  - i. For lots located in the Hamlets of Westerlo and South Westerlo, the maximum coverage shall be  $1/3$  (33  $1/3$ %) of the entire parcel
  - ii. For lots consisting of 3 acres to 10 acres, the maximum total coverage shall be  $1/3$  (33  $1/3$ %) of the entire parcel
  - iii. For lots consisting of 10 acres to 20 acres, the maximum total coverage shall be  $2/5$  (40%) of the entire parcel

- iv. For lots consisting of 20 acres to 30 acres, the maximum total coverage shall be 1/2 (50%) of the entire parcel
- v. 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.
- j. The application shall include a decommissioning plan, consistent with the decommissioning requirements under § 18.50(4)(d)(ii), which ensures that the solar PV site will be restored to its original condition prior to construction or in a natural condition with any landscaping and grading approved under the decommissioning plan. The decommissioning plan must be implemented upon abandonment and/or in conjunction with removal of the facility as defined in § 18.50(4)(d)(i). A permit for removal activities shall be obtained from the Code Enforcement Department prior to any decommissioning work. Compliance with the decommissioning plan shall be a condition of the special use permit issued under this section. In addition to all other requirements set forth in § 18.50(4)(d), the decommissioning plan must include:
  - i. photographs of the property prior to construction
  - ii. a timeframe for the completion of the site restoration work
  - iii. a cost estimate detailing the projected cost of executing the decommissioning plan prepared by a professional engineer or contractor. Cost estimates shall take inflation into account. Applicant's cost estimate may be taken into consideration by the Town when determining the decommissioning security requirements set forth in 18.50 (4)(e)(ii) but will not be binding upon the Town. Final determination of the security amount shall be at the discretion of the Town Planning Board in consultation with the Town's engineer.

- iv. details on how the removal of the solar energy system and all related equipment and structures will be conducted and how the remediation of soil and vegetation will be conducted to restore the site to its original condition prior to construction or in a natural condition with any landscaping and grading.
  - k. Any subsequent owner or operator of the permitted commercial solar system operating under a special use permit granted under this section shall be bound to all requirements or conditions under the Zoning Code, established by the Planning Board, or otherwise set forth in the special use permit., including compliance with the decommissioning plan and consent from the permit holder to allow the Town to enter onto the subject property for inspection or removal and restoration under § 18.50 (4) (d) (iv).
3. PROCEDURE: All commercial Solar Energy Systems shall provide a professionally prepared 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. Where feasible, 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 fencing of not less than 2.1 m (7 feet) in height or a combination of 1.8 m (6 ft) or more of fence fabric and a 300 mm (1 ft) or more extension utilizing strands of barbed wire or equivalent, as currently set forth in the National Electric Code. In the event that fencing as specified in the National Electric Code is changed, this provision shall default to those specifications set forth in the National Electric Code.
- 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. ESCROWS, INSURANCE, INDEMNIFICATION:

- i. The applicant for a commercial solar system shall be responsible for reimbursing the Town for the cost of the engineering and legal review by a Town designated engineer or attorney.

An Applicant shall execute the Town's escrow agreement and deposit with the Town Clerk funds commensurate with the scale of the project and sufficient to reimburse the Town for all reasonable costs of its consultant evaluation connection with the review of any application. An initial deposit of \$2,500.00 (the "Initial Deposit") shall be filed with the application. The Town will maintain such funds in escrow and pursuant to the terms of the escrow agreement which shall be binding on the applicant and Town. The Town's consultants/experts shall invoice the Town for their services in reviewing the application.

The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. In the event the Planning Board determines that the Initial Deposit will be insufficient for review of the application, the Planning Board shall notify the applicant, and the applicant shall supplement the escrow fund within thirty (30) days of notice from the Building Inspector of the estimated amount of the review fees necessary to process the application.

Should the sums being maintained in the escrow account by the Town of Westerlo become reduced to the point where there remains \$ 500.00 or less in said escrow account, upon receipt of written notice of such balance from the Town, Applicant will be required to replenish the escrow account with a deposit of an amount acceptable to the Town, which may be specified in the written notice. Failure on the part of Applicant to timely make such replenishment may result in the suspension of all activities by the Town in connection with the review or determination of any pending Application(s). In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.

ii. Insurance:

- a. The system owner shall secure and at all times maintain a \$1,000,000.00 commercial insurance policy, including coverage for the Town of Westerlo and its officials, employees and agents as insureds. The policy 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.
- b. 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.
- c. 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.
- d. 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 forwarded 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. DECOMMISSIONING: 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. 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

i. Commercial solar energy systems are deemed abandoned after:

- a. 12 months without electrical energy generation;
- b. 18 months after issuance of all municipal permits and construction is not complete;
- c. upon the effective date of notice the applicant or subsequent owner provides to the Town
- d. upon a failure to file a declaration as set forth above.

ii. Within 90 days after a commercial solar system is deemed abandoned, the system must be removed and the property restored to its original condition by the applicant or any subsequent owner as set forth below. Applications for extensions are reviewed by the Planning Board and may be granted for a period of 30-90 days at the discretion of the Planning Board.

iii. Removal and restoration shall include:

- a. removal of all infrastructure and accessory structures and/or equipment such as panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property
- b. removal of all above- and below-ground equipment, structures and foundations
- c. proper disposal of all solid and hazardous waste from the site in accordance with local and state solid waste disposal regulations;
- d. restoration of the surface grade and soil after removal of equipment;
- e. re-vegetation of restored soil areas; and

- f. remediation of soil and vegetation shall be conducted to return the property to either its original state prior to construction or in a natural condition with any landscaping and grading approved under the decommissioning plan.

Iv. Upon the applicant or subsequent owner's failure to comply with the decommissioning requirements set forth herein or in the decommissioning plan, the Town may remove the commercial solar system and restore the site upon notification and at the sole cost and expense of the applicant or subsequent owner.

e. SURETIES/BOND: The applicant shall deposit with the Town Clerk security in an amount sufficient to pay for the costs and expenses of removal of the solar energy system and related equipment and structures and the restoration of the site as follows:

- i. The security may be in the form of cash, letter of credit, bond or another instrument acceptable to the Town's attorney and the Town Board and shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and site restoration is complete.

- ii. The security amount shall be determined by the Planning Board in consultation with its professional engineer. The amount of the security shall be sufficient, during the first five (5) years of operation, to cover:

- a. the costs to deconstruct and dispose of all equipment, structures and materials related to the solar energy system;

- b. costs to restore the site; and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process.

- iii. Such amount shall be re-evaluated every five (5) years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.

- iv. If the amount of the security does not fully cover such fees, costs and expenses ("costs") or if the Town cannot recover adequate proceeds of the security, then the owner and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered. In addition, the Town may assess such costs

against the property, which assessment shall constitute a lien on the property, and which amount may be collected in the same manner as real property taxes.

**Section 18.60 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.

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**Section Five. SEQRA DETERMINATION**

The Town Board hereby determines that the adoption of this local law is an unlisted action that

**Section Six. SEVERABILITY**

Each separate of this local law or the amendments herein shall be deemed independent of all other provisions, and if any provision shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

**Section Seven. EFFECTIVE DATE**

This local law shall become effective upon its filing with the NYS Secretary of State.

Supervisor William Bichteman Jr. (Acting)	Non-voting
Councilwoman Amie L. Burnside	Aye – Nay – Abstain
Councilman Richard Filkins	Aye – Nay – Abstain
Councilman Joseph J. Boone	Aye – Nay – Abstain
Councilman Anthony W. Sherman	Aye – Nay – Abstain

Adopted this \_\_\_ day of \_\_\_\_\_ 2019.

**By Order of the Westerlo Town Board**

**Kathleen Spinnato, Town Clerk**

I, KATHLEEN SPINNATO, Town Clerk of the Town of Westerlo, Albany County, New York, **DO HEREBY CERTIFY** that the foregoing local law was approved by the Town Board of the Town of Westerlo on \_\_\_\_\_, 2019 and that the foregoing is a true and correct transcript of the original local law and of the whole thereof and that said original local law is on file in the Town Clerk's office.

**I DO FURTHER CERTIFY** that each of the members of the Town Board had due notice of the said Town Board meeting.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the Town of Westerlo this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kathleen Spinnato, Town Clerk

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TOWN SEAL