Local Law No. ___2___ of 2024

Town of Arcadia, Wayne County, NY

A LOCAL LAW AMENDING SECTION 6.14 OF THE TOWN ZONING LAW REGULATING SOLAR ENERGY SYSTEMS AND BATTERY ENERGY STORAGE SYSTEMS

BE IT ENACTED: by the Town Board of the Town of Arcadia, as follows:

Section 1: Authority.

This Local Law is adopted pursuant to §10 and §20 of the Municipal Home Rule Law of the State of New York, which authorize the Town of Arcadia to adopt zoning 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 2: Statement of Purpose.

This Local Law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

A. To take advantage of a safe, abundant, renewable and nonpolluting energy resource;

B. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;

C. To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems;

D. To mitigate the impacts of solar energy systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and

E. To create synergy between solar energy systems and other stated goals of the community;

F. To decrease the use of fossil fuels, thereby reducing the carbon footprint of the Town;

G. To invest in a locally generated source of energy and to increase local economic value, rather than importing nonlocal fossil fuels;

H. To align the laws and regulations of the community with several policies of the State of New York, particularly those that encourage distributed energy systems from renewable sources;

I. To become more competitive for state and federal grants and tax benefits;

J. To make the community more resilient during storm events;

K. To aid in the energy independence of the community as well as the country;

L. To diversify energy resources to decrease dependence on the grid;

M. To improve public health;

N. To encourage a sense of pride in the community;

O. To encourage investment in public infrastructure supportive of solar, such as generation facilities, grid-scale transmission infrastructure, and energy storage sites.

P. To improve and modernize an aging electrical grid to ensure it can meet the needs of current and future populations.

Q. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of solar energy systems;

Section 3: Amendment.

The existing Section 6.14 of the Town Zoning Law, entitled "Solar Energy Systems", shall be repealed, amended, and replaced in its entirety with the below provisions.

Section 4: Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACTIVE AGRICULTURAL LAND:

Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years

APPLICANT

The person or entity submitting an application and seeking an approval under this Article; the owner of a Solar Energy System or a proposed Solar Energy System project; the operator of Solar Energy System or a proposed Solar Energy System project; any person acting on behalf of an Applicant, Solar Energy System or proposed Solar Energy System. Whenever the term "applicant" or "owner" or "operator" are used in this Article, said term shall include any person acting as an applicant, owner or operator of such Solar Energy System.

BATTERY ENERGY STORAGE SYSTEM

A rechargeable energy storage system consisting of one or more devices, assembled together, capable of storing energy in order to supply electrical energy for on-site use at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle), and having an aggregate energy capacity of less than 600kWh. These devices are only permitted for Tier 1 and Tier 2 Solar Energy Systems, for on-site consumption only, and shall require a building permit.

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 on-site consumption.

DECOMMISSIONING

The removal and disposal of all Solar Panels, Solar Energy Equipment, structures, equipment and accessories, including subsurface foundations and all other material, concrete, wiring, cabling, or debris, that were installed in connection with a Solar Energy System and the restoration of the parcel of land to the original state prior to construction on which the Solar Energy System is built to either of the following, at the landowner's (either the initial landowner or its heirs, successors or assigns) sole option: (i) the condition such lands were in prior to the development, construction and operation of the Solar Energy System, including but not limited to restoration, regrading, and reseeding, or (ii) the condition designed by landowner (either the initial landowner or it's heirs, successors or assigns) and the Town. Details of the expected Decommissioning activities and costs are to be described in the decommissioning plan and Decommissioning Agreement as may be required pursuant to this Article.

DECOMMISSIONING AGREEMENT

A written agreement between Applicant, initial landowner and Town that sets forth the obligations of the Applicant and/or the initial landowner to properly decommission the Solar Energy System if the use of such system is discontinued, abandoned or becomes inoperable.

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 statewide 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.

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.

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 on-site or off-site consumption.

LARGE SCALE BATTERY ENERGY STORAGE SYSTEM

A battery energy storage system having an aggregate energy capacity of 600kWh or more, designed to store electrical power received from a generating or transmission source and periodically discharging power from the battery energy storage system into the power grid.

NAMEPLATE CAPACITY

A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

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.

POLLINATOR

Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

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.

ROOF-MOUNTED SOLAR ENERGY SYSTEM

A solar energy system located on the roof of any legally permitted building or structure that produces electricity for on-site or off-site consumption.

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.

SOLAR ENERGY EQUIPMENT

Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment, including battery energy systems, associated with the production of electricity.

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.

A. Tier 1 solar energy systems include the following:

(1) Roof-mounted solar energy systems.

(2) Building-integrated solar energy systems.

B. Tier 2 solar energy systems.

(1) Tier 2 solar energy systems include ground-mounted solar energy systems with nameplate 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; and

(2) Tier 2 solar energy systems include ground-mounted solar energy systems with a total surface area of all solar panels on the lot of up to 4,000 square feet and that generate up to 110% of the electricity consumed on the site over the previous 12 months.

C. Tier 3 solar energy systems are systems that are not included in the list for Tier 1 and Tier 2 solar energy systems.

SOLAR PANEL

A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY

A device that stores energy and makes it available in an electrical form.

TILT

The vertical angle, where 0° minimum tilt means the panel is lying flat, and 90° maximum tilt means that it is vertical.

TOWN

The Town of Arcadia, Wayne County, New York.

Section 5: Applicability.

A. The requirements of this chapter shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this chapter, excluding general maintenance and repair.

B. Solar energy systems approved, 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 New York State Uniform Fire Prevention and Building Code ("Building Code"), the New York State Energy Conservation Code ("Energy Code"), and the Town Zoning Law.

Section 6: General requirements.

A. The Town Board is encouraged to condition its 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.

B. Issuance of Special Use Permits or site plan approval shall include review pursuant to the State Environmental Quality Review Act (ECL Article 8) and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").

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

All Tier 1 solar energy systems, are a permitted use and shall be subject to the issuance of a building permit subject to the following conditions for each tier of solar energy system:

A. Roof-mounted solar energy systems. Roof-mounted solar energy systems shall incorporate, when feasible, the following design requirements:

(1) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface and the highest edge of the system.

(2) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

(3) Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

(4) 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.

(5) All roof-mounted solar energy systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the Town.

(6) All roof-mounted solar energy systems shall not inhibit solar access to the adjacent properties.

B. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system.

C. Glare. All solar panels shall have anti-reflective coating(s) and all other visible components are to be non-reflective.

Section 8: Permitting requirements for Tier 2 Solar Energy Systems.

Tier 2 Solar Energy Systems shall not be permitted in a Residential "R" District.

All Tier 2 Solar Energy Systems shall be subject to site plan approval by the Planning Board and the issuance of a building permit and subject to the following conditions:

A. Glare. All solar panels shall have anti-reflective coating(s) and all other visible components are to be non-reflective.

B. Setbacks. Tier 2 Solar Energy Systems shall be subject to the setback regulations specified in the Town Code.

C. Height:

(1) Tier 2 solar energy systems shall be subject to the height limitations specified for accessory structures within the Town of Arcadia.

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 minimize blockage of views from surrounding properties, and shading of adjacent properties. All Tier 2 solar energy systems shall not inhibit the solar access to adjacent properties.

E. Lot size. Tier 2 solar energy systems shall comply with the existing lot size requirement specified for accessory structures within the Town.

F. All Tier 2 Solar Energy Systems are required to obtain site plan approval from the Planning Board and satisfy the following requirements, in addition to the site plan requirements in Article 12 of the Town Zoning Law:

(1) Sketch plan or survey map that identifies lines, roads, fencing, clearly show setbacks from road right of way, adjacent property lines, residences, and accessory buildings.

(2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

(3) Name, address, and contact information of the 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 the building permit.

(4) Name, address, phone number, and signature of the Applicant, as well as all the property owners, demonstrating their consent to the application.

(5) Prior to the issuance of the building permit, engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or NYS registered architect. Also, all electrical, fire, and building codes requirements are to be satisfied.

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

All Tier 3 solar energy systems are permitted through the issuance of a Special Use Permit issued by the Town Board pursuant to Article 7 and site plan approval pursuant to Article 12 of the Town Zoning Law. In the event of any conflict between this Local Law and Articles 7 or 12, the provisions of this Local Law shall take precedence.

A. Application for installation.

(1) Applications for the installation of Tier 3 Solar Energy System shall be:

(a) Reviewed by the Code Enforcement/Zoning Enforcement Officer and Town Attorney for completeness. Applicants shall be advised within 20 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

(b) Subject to a Special Use Permit issued by the Town Board. The Town Board shall conduct a public hearing on the application and shall have a notice printed in a newspaper of general circulation in the Town at least five (5) calendar days in advance of such hearing. The Town shall post notice of the public hearing on the property to be developed in a form and size sufficient to be readable from the road and shall mail a copy of the notice of hearing by first class mail to adjoining landowners or landowners within 500 feet of the property at least ten (10) calendar days prior to such a hearing, or, in the event that the applicant does not mail within the ten-day period, delivery of said notice to each property owner shall be required. The applicant shall be responsible for all costs associated with posting, mailing, and delivery of the aforementioned notices.

(2) The application shall be referred to the Town Planning Board for preliminary review, the Zoning Board of Appeals if variances are required, and the Wayne County Planning Board pursuant to General Municipal Law § 239-m, if required.

(3) Upon closing of the public hearing, the Town Board shall take action on the Special use Permit application within sixty-two (62) calendar days of the public hearing, which

may include approval, approval with conditions, or denial. No Special Use Permit shall be granted in the absence of a decommissioning plan with adequate security meeting the requirements of Subsection H below and such other requirements as the Town Board may impose. The sixty-two day period may be extended upon consent by both the Town Board and applicant.

(4) No construction may begin prior to the issuance of a building permit by the Code Enforcement/Zoning Enforcement Officer which permit shall not be issued until the applicant has been issued a duly authorized Special Use Permit by the Town Board, as well as received final site plan approval from the Planning Board, all consultants' review costs have been paid, and has an approved decommissioning plan and Decommissioning Agreement with adequate security as may be required by the Town Board.

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 twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.

(2) As required by the 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) and all other visible components are to be non-reflective.

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 six inches in diameter should be minimized to the extent possible. If extensive tree cutting (defined as more than three (3) trees) will be performed the applicant will be required to submit a tree management plan to be reviewed and approved by the Planning Board. The tree management plan should include the following:

(1) The total area to be cleared

(2) The location of protective barriers for trees that are not to be removed

(3) The number of trees that are to be removed (6" diameter or greater)

(4) Onsite storage areas

(5) Areas of stump removal and remediation

(6) The method of tree removal

(7) Additional requirements may be requested by the Planning Board at their discretion.

H. 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 a building permit.

I. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, maintenance and replacement of landscaping, and clearing of snow from access roads. This is to be a site/ project specific Operation and Maintenance Plan.

J. Decommissioning.

(1) Solar Energy Systems that have been abandoned and/or not producing 50% of its design capacity electricity for a period of one year shall be removed at the owner and/or operator's expense, which may come from any security made with the Town as set forth in Subsection H(3) herein. The decommissioning plan must ensure the site will be restored to pre-development condition without delay, including, but not limited to, the following:

(a) Removal of aboveground and below-ground equipment, structures, and foundations.

(b) Restoration of the surface grade and soil after removal of equipment.

(c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species.

(d) At the landowner's request, with Town Board approval, some items can remain on the site, i.e., landscaping, tree planning, roads etc.

(2) A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

(a) The decommissioning plan must specify that after the Solar Energy System is no longer being used or is inadequately maintained, it shall be removed by the applicant or any subsequent owner.

(b) The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction.

(c)An itemized decommissioning cost estimate detailing the removal of the Solar Energy System and all of its components including but not limited to fencing, landscaping, and roadways. This is to be signed and stamped by a NYS licensed professional.

(d) The salvage value of any system components should not be included in the decommissioning estimate.

(e) The time required to decommission and remove the Solar Energy System and any ancillary structures.

(f) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

(3) Decommissioning Agreement.

(a) Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant, initial landowner, the proposed Solar Energy System owner and operator, and all leaseholders must enter into a Decommissioning Agreement with the Town Board, with advice from the Town Attorney and Town Engineer, that sets forth the joint and several obligations of the Applicant, the initial landowner, the Solar Energy System operator and Solar Energy System owner, all leaseholders, and all of their heirs, successors and assigns to properly maintain the Solar Energy System and decommission it when in the determination of the Town Board the use of such system is discontinued, abandoned, becomes inoperable or is otherwise terminated.

(b) The Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security instrument as surety, preferably a letter of credit or other form of surety, acceptable in form, substance, and amount to the Town Board in its sole discretion for maintaining the system during its life as well as decommissioning of the system, with the Town as the designated assignee/beneficiary. Said surety shall be in effect before the Special Use Permit is granted and before any site work is commenced.

(c) The surety's payment obligation shall be triggered upon presentation of notice of any default (not event of default), after any opportunity to cure has expired.

The surety's payment obligation shall be absolute and unconditional and shall not be subject to any legal or equitable defenses under the Decommissioning Agreement, and any such defenses shall be expressly waived. The Decommissioning Agreement shall expressly contain the provisions of this subsection.

(d) The surety shall provide for an annual increase in the amount of the surety as determined yearly in the sole discretion of the Town Board to compensate for any use of the surety, the cost of inflation and any other then-anticipated increases in costs of maintenance and decommissioning. Each year after a Solar Energy System has been constructed, and no later than thirty (30) days after being notified by the Town of the new amount of the surety, the then system owner/permit holder for the system shall provide the Town written proof that the required surety is still operable and valid and that such surety has been properly increased to the new amount determined by the Town. Full value of the bond is to be provided for the life of the project.

(e) The Decommissioning Agreement shall provide that the initial landowners, the Applicant, the initial Owners and initial Operator of the Solar Energy System, all leaseholders and all of their successors and assigns shall be jointly and severally responsible for the timely completion of all obligations pursuant to the Decommissioning Agreement. If any obligation(s) is not timely completed, the Town may complete the obligation(s) at the aforesaid obligors' expense; the Town shall have the irrevocable right to execute upon and be paid in advance from said bond for all anticipated expenses of completion including but not limited to all consultant costs.

(f) Said Agreement shall be recorded at the office of the Wayne County Clerk and shall be indexed as a deed restriction against all the property upon which the Solar Energy System is constructed, with the Town as the benefitted party, thus placing all future owners and interested parties of the subject real property on notice of the obligations contained in the said Agreement.

(4) Security.

The deposit, executions, or filing with the Town Clerk of cash, Letter of Credit, or other form of security reasonably acceptable to the Town Board in form approved by 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 Special Use Permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.

(a)Said amount shall equal 150% of the estimated cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of at least 3% annually for the life of the solar energy system. The estimated decommissioning cost, including but not limited to the removal and cost of disposal of all solar energy system related materials and equipment, piers and foundations, and the total restoration of the premises and rejuvenation of the soil to their original preconstruction conditions. The salvage value of the solar energy equipment shall not be accounted for in the estimated cost of implementing the decommissioning plan.

(b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the surety shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The surety 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 d0efault or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this Local Law.

K. Applicant will be required to submit a Road Use Agreement for review and approval by the Town Board. The Road Use Agreement shall benefit the Town of Arcadia and be in a format acceptable to the Town Attorney. The Road Use Agreement shall require the Applicant to provide a road security for any required repairs to Town roads related to construction in an amount acceptable to the Town, and shall require the Applicant to indemnify and hold the Town harmless from any and all damage to Town roads that may result from the construction or decommissioning of a Tier 3 Solar Energy System.

L. Site plan application. For any Solar Energy System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

(1) Property lines and physical features, including roads, fencing, site access for the project site. Clearly show setbacks from road right of way, adjacent property lines, residences, and accessory buildings.

(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 overcurrent devices.

(4) Name, address, and contact information of the 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 the building permit.

(5) 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.

(6) Erosion and sediment control and stormwater 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.

(7) Prior to the issuance of the building permit, engineering documents must be signed and sealed by a NYS licensed professional engineer or NYS registered architect.

(8) Point of interconnection, overhead utility poles, and all underground transmission lines.

(9) Emergency Requirements including but not limited to providing vehicular access on at least two sides of the project location. Installation of man gates on each side of the fence surrounding the site. Ensuring adequate emergency vehicle access and turnarounds in compliance with Appendix D of the New York State Fire Code. Emergency requirements are subject to review and approval by the Code Enforcement Officer, local fire department and the Wayne County Emergency Management Department.

M. Special Use Permit standards.

(1) Lot size.

(a) The property on which the Tier 3 Solar Energy System is placed shall be no less than forty (40) acres in size;

(2) Setbacks - The Tier 3 Solar Energy Systems shall comply with the following setback requirements:

(a) Setback from the front fence line(s) of no less than 100 feet;

(b) Setback from the side fence line(s) of no less than 50 feet;

(c) Setback from the rear fence line(s) of no less than 50 feet;

(3) Height.

(a) The Tier 3 Solar Energy Systems shall not exceed a maximum height of fifteen (15) feet as measured from the highest point of any Solar Panel (orientated at maximum tilt) or Solar Energy Equipment, to the ground directly beneath it.

(4) Lot coverage.

(a) Lot coverage is considered everything within the fenced area of the solar energy system. The following components of a Tier 3 Solar Energy System shall be included in the calculations for lot coverage requirements:

[1] Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.

[2] All mechanical equipment of the Solar Energy System, including any pad-mounted structure for batteries, switchboard, transformers, or storage cells.

[3] Paved access roads servicing the Solar Energy System.

[4] Space between the panels

(b) Lot coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirements of the Town.

(5) Fencing Requirements. All mechanical equipment, including any structure for storage shall be enclosed by a seven-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 ten (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 ten (10) acres shall be required to:

[1] Conduct a visual assessment of the 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.

[2] Submit a screening and 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.

[a] The screening and 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. The landscaped screening shall consist of a minimum of two staggered rows of trees, comprised of a minimum of one evergreen tree, at

least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Board, all planted within ten (10) linear feet of each other and the Solar Energy System. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species, prepared by a licensed Landscape Architect must be provided to the Town Board for approval; or

[b] In the event the above screening plan is deemed inadequate by the Town Board due to the design of the system, topography of the land or other reason, the screening and 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 Board.

(c) Submit a noise and glare study that addresses potential visual and audible impacts to abutters.

(i) The noise study should identify the current ambient noise and the anticipated post-construction noise levels at the property line and the nearest exterior wall of abutting residential structures.

(ii)Noise mitigation measures, such as additional plantings and/or earth berms, may be required at the discretion of the Town Board.

(iii)Information regarding anti-reflective coating included in the equipment specifications sheets may be used to demonstrate the impact of glare on abutting properties and roadways.

(7) Agricultural resources. For projects located on agricultural lands:

(a) Prime Farmland or Farmland of Statewide Importance.

[1] Any Tier 3 Solar Energy System located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 25% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel; or

[2] Any Tier 3 Solar Energy System located on the areas that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed 25% of the entire lot.

(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.

(8) Maintenance. All grounds shall be maintained on a regular basis to avoid unsightly vegetation growth.

(9) Coordinated Electric System Interconnection Review (CESIR) will need to be provided prior to issuance of a Special Use Permit

(10) A sequence of construction activities that outlines a timeline and anticipated schedule for construction activities on site for the Solar Energy System shall be provided to the Town Board. This should include stages of construction, anticipated delivery windows, and anticipated construction start and completion dates.

(11) PILOT Agreement.

(a) The Applicant shall enter into a PILOT Agreement with the Wayne County Industrial Development Agency ("IDA"), as may be required by the IDA.

N. Ownership changes. If the owner or operator of the Solar Energy System changes 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, decommissioning plan, and Decommissioning Agreement, including assumption of the obligation to maintain an adequate surety as provided for herein. A new owner or operator of the Solar Energy System shall notify the Code Enforcement Officer/Zoning Enforcement Officer of such change in ownership or operator no less than thirty (30) days prior to the ownership change.

O. Application for waiver from requirements of Special Use Permit.

(1) A waiver from any of the foregoing requirements for a Special Use Permit may be requested from the Town Board by the applicant, provided the applicant must show the requirements set forth in this Local Law cannot be achieved in any other reasonable manner. The determination whether to grant a waiver is left to the sole and absolute discretion of the Town Board.

P. Preconstruction Meeting

Prior to construction commencing, a preconstruction meeting with the Code Enforcement Officer is required.

Section 10: Permitting Requirements for Large Scale Battery Energy Storage Systems.

Unless otherwise allowed as a permitted use in the Town Zoning Code, Large Scale Battery Energy Storage Systems are permitted only for Tier 3 Solar Energy Systems through the issuance of a special use permit from the Town Board and shall be subject to current applicable state, federal, and Uniform Code and the requirements set forth in this Section.

A. An application for the installation of a Large Scale Battery Energy Storage System (LSBES) shall be subject to the provisions of Section 9, with the following additional requirements:

(1) Signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the LSBES, any special hazards associated, the type of suppression system installed in the area of the LSBES, and 24-hour emergency contact information, including reach-back phone number.

(2) Vegetation and tree-cutting. Areas within ten (10) feet on each side of the LSBES shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

(3) Noise. The 1-hour average noise generated from the LSBES, components, and associated ancillary equipment shall not exceed a noise level of sixty (60) dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The Applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the LSBES to demonstrate compliance with this standard.

B. The LSBES shall be included in any Operation and Maintenance Plan, Decommissioning Plan, Decommissioning Agreement, and Decommissioning Surety. Such documents shall be updated accordingly where an LSBES is added or otherwise modified to a previously approved Solar Energy System. The Decommissioning Plan shall also include the following:

(1) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all

LSBES components, structures, equipment, security barriers, and transmission lines from the site;

(2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

(3) The anticipated life of the LSBES;

(4) The estimated decommissioning costs and how said estimate was determined;

C. An application and review for a LSBES may be combined with a pending application and review for a Tier 3 Solar Energy System.

D. In addition to the site plan requirements in Section 9, the application shall include the following:

(1) A preliminary equipment specification sheet that documents the proposed LSBES components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

(2) Commissioning Plan. Such plan shall document and verify that the LSBES and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, LSBES commissioning shall be conducted by a NYS Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Code Enforcement Officer prior to final inspection and approval and maintained at an approved on-site location.

(3) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

(4) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the fire department, and Fire Marshall. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

(a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

(b) Procedures for inspection and testing of associated alarms, interlocks, and controls.

(c) Procedures to be followed in response to notifications from the LSBES Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

(d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

(e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

(f) Procedures for dealing with LSBES equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged LSBES equipment from the facility.

(g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

(h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

E. Special Use Permit Standards. The LSBES special use permit application shall satisfy the requirements set forth in Section 9(M).

F. Permit Time Frame and Abandonment. The time periods set forth in Section 12 shall apply to LSBES approvals.

Section 11: 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 12: Permit time frame and abandonment.

A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of eighteen (18) months, provided that a building permit is issued for construction and construction is commenced within that timeframe. 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, within eighteen (18) months after approval, the Town Board, for good cause shown, may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after twenty-four (24) months of the issuance of the Special Use Permit and site plan approval, the approvals shall expire.

B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for twelve (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 180 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 surety for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Section 13: Enforcement.

Any violation of this Local Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the Town Zoning Law.

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. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.