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Division of Corporations, State Records and Uniform Commercial Code
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LOCAL LAW FILING

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate new matter.

County

City

Town of DUNKIRK

Village

Local Law No. of the year 2017.

A **local law** regulating the installation, placement of solar energy equipment and systems in the Town of Dunkirk.

Be it enacted by the Town Board of the Town of Dunkirk

Section One – Purpose

- A. The Town of Dunkirk recognizes the importance of solar energy systems in generating electricity for on-premises and off-premises use, the reduction of greenhouse gas emissions, and support for the emerging market for solar energy systems. The Town Board of the Town of Dunkirk exercising the authority granted to it under the Town Law of the State of New York to protect the health, safety and welfare of the residents and property owners of the Town of Dunkirk does hereby desires to enact this Local Law to regulate the construction, maintenance, and placement of solar energy systems and equipment greater than 1 kw in the Town of Dunkirk. The purpose of this Local Law is to mitigate potential impacts on neighboring properties from solar systems installed near their property, while preserving the rights of property owners to install solar collection systems on their property.

Section Two – Definitions

Accessory Building: A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use.

Building-Integrated Photovoltaic (BIPV) Systems: A solar energy system that consists of integrating photovoltaic modules into the exterior skin of the structure such as the roof or the facade and which does not alter the general configuration of the roof.

Collective Solar: Solar installations owned collectively through subdivision homeowner associations or similar groups. Collective Solar installations shall be regulated depending upon generation capacity as either large scale system, or small-scale system, all as defined herein.

Flush-mounted Solar Panel: Photovoltaic panels and tiles that are installed parallel to the surface of a roof on low-profile mounting brackets.

Freestanding or Ground-mounted Solar Energy System: A solar energy system that is directly installed in or on the ground and is not attached or affixed to an existing structure. Includes pole and rack mount.

Glare: A continuous source of brightness, relative to diffused lighting. This is not a direct reflection of the sun, but rather a reflection of the bright sky around the sun. Glare is significantly less intense than glint.

Glint: Also, known as a "specular reflection", produced as a direct reflection of the sun on the surface of the PV solar panel. This is the potential source of the visual issues regarding viewer distraction.

Large-Scale System: Solar energy systems located on land in the Town of Dunkirk used primarily to convert solar energy into electricity for onsite or offsite consumption or sale, and/or have the capacity to produce more than 20KW per hour of energy.

Net-Metering: A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

Photovoltaic (PV) Systems: A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

Principal Use: The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.

Principal Building: A building in which is conducted the primary use of the lot on which it is located.

Qualified Solar Contractor/Installer: A firm that employs or subcontracts a qualified person (installer) to supervise the installation. The installer shall have the skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Contractors who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), Underwriters Laboratory (UL), or Journeymen

Wiremen who have completed the International Brotherhood of Electrical Workers/National Electrical Contractors Association installers for the purposes of this definition. Person who are not of NYSERDA's list or do not hold these credentials may be deemed to be qualified solar installers if the Building Inspector determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely.

Rooftop-Mounted System: A solar energy system in which solar modules are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle. Roof mounted systems shall be located on a roof of a permitted principal use or accessory structure.

Small -Scale Solar: Solar energy system(s) installed and placed for the production of energy for consumption only on-site, and that has capacity to produce 20 KW or less per hour of energy.

Solar Collector: A solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of or transfer of stored heat.

Solar Easement: An easement recorded pursuant to New York Real Property Law 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

Solar Energy Equipment/System: Solar collectors, modules, inverters, charge controllers, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar energy systems include solar thermal, photovoltaic and concentrated solar.

Solar Module: A solar photovoltaic cell, panel, or array, which relies upon sunlight as an energy source for the generation of electricity.

Solar Storage Battery: A device that stores energy from the sun and makes it available in an electrical form.

Solar Thermal Systems: Solar-thermal systems directly heat water or other liquid using the heat of the sun. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, heating pool water.

Yard: A portion of a lot, upon which the principal use building is situated, unobstructed artificially from the ground to the sky, except as otherwise provided herein.

1. **Front Yard:** An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest wall line or portion thereof of the principal building. (The front yard of a lot is considered where the designated 911 for that street is located).
2. **Rear Yard:** An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest wall line or portion thereof of the principal building.

3. **Side Yard:** An open space between the principal building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point of the side lot line to the nearest point of the principal building.

Section Three – Applicability

- A. The requirements of this Town of Dunkirk Local Law shall apply to all solar energy systems installed or modified after the effective date of this Local Law. All solar energy systems shall be designed, erected, installed, and maintained in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Building Code, the National Electrical Code (NEC), the Town of Dunkirk Zoning Code and other local regulations.
- B. The Town of Dunkirk considers small-scale solar energy systems, as defined herein, to be Type II Actions as defined under Part 617 of New York Codes, Rules and Regulations and therefore are not subject to environmental review under Article 8 of the Environmental Conservation Law. Large-scale solar energy systems are considered likely to have a potentially significant adverse environmental impact and therefore shall be considered Type I Actions and therefore, must undergo an Environmental Quality Review pursuant to New York State laws and regulations. The need for a complete Environmental Impact Statement (EIS) shall be determined per application by the permitting board.

Section Four – Solar Energy Systems as an Accessory Use/Structure

- A. This section governs the placement and installation of small-scale solar systems as defined herein. A building permit must be obtained from the Town of Dunkirk prior to the installation of any small-scale solar energy system. Small scale solar energy systems shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises on which they are erected. Nothing contained in this local law shall be construed to prohibit “collective solar” installations.
- B. General design considerations for all small-scale solar energy systems
 1. All small-scale solar energy systems shall be located such that no solar glint or glare is directed onto adjoining properties or roadways. To limit solar glint or glare, the face of the panels can be configured as to not face a public way or neighboring property. If the small scale solar energy system creates an adverse impact to the public or neighboring properties, the owner of the solar energy system will be required to take measures to mitigate the impact. Failure to take appropriate action will be considered a violation of this local law and the owner will be subject to a monetary fine and require removal of the solar installation.
 2. A small-scale solar energy system shall not be used to display any advertising or signage, including, but not limited to, streamers, pennants, spinners, flags, reflectors, ribbons, balloons, banners or other similar materials.

3. All small-scale solar energy systems shall be installed using an engineered mounting structure.
4. All small-scale solar energy system wiring shall be neatly grouped, routed and continuously supported.
5. Where feasible, solar systems shall be consolidated into array groupings, rather than situated in a disjointed manner.

C. Roof-Mounted Systems

Roof-mounted solar energy systems are permitted as an accessory use in all zoning districts when attached to lawfully permitted principal structure or accessory structure, subject to the requirements set forth in this section:

1. Height: Solar energy systems shall not exceed maximum height restrictions within any zoning district and are provided the same height exemptions granted to building mounted mechanical devices or equipment.
2. Aesthetics: Solar energy systems shall incorporate the following design requirements:
 - i. Solar energy equipment shall be installed inside walls and attic spaces when possible, to reduce their visual impact. If some energy equipment is visible from a public right of way, it should match the color scheme of the underlying structure.
 - ii. In order to ensure firefighter and other emergency responder safety, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for walking around all rooftop and building-mounted solar systems. Additionally, all installations shall provide for adequate access and spacing to:
 - i. Ensure access to the roof
 - ii. Provide pathways to specific areas of the roof
 - iii. Provide smoke ventilation opportunity areas
 - iv. Provide emergency egress from the roof
 - iii. Flat roof. Any part of the solar energy system shall not exceed nine feet in overall height, or extend more than five feet above the building parapet, whichever results in less height. Residential rooftops that are flat shall have a minimum three-foot wide clear perimeter and commercial buildings that are flat shall have minimum four-foot wide clear perimeter between a solar energy system and the roofline, as well as a three-foot wide clear perimeter around and three-foot-wide access pathway to roof-mounted mechanical equipment such as HVAC units.

- iv. Pitched roof. Solar energy systems must be mounted parallel with the roof, and the surface of the system shall not extend any further than 18 inches from the roof surface at any point. For buildings with pitched roofs, solar energy systems shall be in a manner that provides a minimum of a three-foot wide clear access pathway from the eave to the ridge on each roof slope where solar energy systems are located as well as one three-foot smoke ventilation buffer along the ridge.
- v. Other. Systems may be mounted to the sides of structures, such that no part of the system projects more than 18 inches from the structure or into the side or rear setback of the property.

D. Ground-Mounted Systems

Ground-mounted solar energy systems are permitted as an accessory use and structure in all zoning districts, subject to the requirements set forth in this section.

1. All ground-mounted solar energy systems in residential districts shall be installed in the rear yard. If a side yard installation is applied for, the property upon which the solar energy system is installed must be equal to or larger than two acres and shall be subject to all setback requirements of the underlying zoning district. Small-scale solar energy systems located in the side yard shall require site plan approval from the Planning Board.
2. Setback: Ground-mounted solar energy systems are subject to accessory building setback requirements of the underlying zoning district.
3. Height: The height of solar energy systems, including mounts, shall not exceed 15 feet when oriented at maximum tilt.
4. Lot Coverage: The surface area of ground-mounted solar panels shall be included in lot coverage and impervious surface calculations at its maximum horizontal configuration of the underlying zoning district.

Section Five – Solar as Principal Use

A. Large-Scale Solar Energy Systems

Large-scale solar energy systems, larger than 20 kw, may be permitted by special-use permit within zoning districts AR-1; M-1 and M-2. Only large-scale roof-mounted solar energy systems are permitted by special use permit in zoning districts C-1 and C-2 only. In addition to the requirements set forth in the underlying zoning district in which the property lies, the following standards apply:

1. Height and Setback: Large-scale solar energy systems shall adhere to the height and setback requirement of the underlying zoning district. Additional restrictions may be required as deemed necessary by the Planning Board as part of the conditional use.
2. No large-scale solar energy system will be permitted to be located across multiple parcels.

3. All large-scale ground-mounted solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. The height and type of fencing shall be determined by the special-use permit process.
4. On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility company.
5. The removal of existing vegetation shall be limited to the maximum extent necessary for the construction and maintenance of the solar installation.
6. Property Operation and Maintenance Plan: A property operation and maintenance plan is required, describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, and replacement or repair of visibly broken or cracked panels etc.
7. Decommissioning Plan:
 - i. To ensure the proper removal of large-scale solar energy systems, a decommissioning plan shall be required. The plan shall include the removal of all infrastructures and the remediation of soil and vegetation back to its original state prior to construction, unless otherwise permitted. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a Professional Engineer or contractor. Cost estimations shall consider inflation.
 - ii. Financial Surety: A form of surety, through escrow, bond or the equivalency, shall be established prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required by the municipality may not exceed 125 percent of the estimated cost to decommission.
8. Special Use Permit: Special permit application for a large-scale solar energy system within the Town of Dunkirk shall be made in accordance with the town zoning local law for special permit review and approval.
 - i. Site plans and contract drawings of the solar energy system submitted with special permit applications shall be signed by a New York state Licensed Engineer or registered Architect.
 - ii. Equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and invertors that are to be installed.

Section Six – Removal of Solar Energy Systems

- A. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months or one year after the meter is removed, the property owner shall make repairs or remove the solar energy system, mount, and associated equipment by no later than 90 days after the end of the twelve-month period.

Section Seven - Solar Storage Batteries

- A. If solar storage batteries are included as part of the Solar Energy Collection System, they must be placed in a secure container or enclosure meeting the requirements of the New York

State Building Code. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by New York State Building Code, and the National Electric Code.

- B. When batteries are no longer in use, they shall be properly disposed of in accordance with the laws of the State of New York and any applicable Federal or Local disposal rules or regulations.

Section Eight – Violations

- A. Any violation of any provision of this local law is an offense punishable by a fine not to exceed \$150.00 and/or imprisonment not to exceed fifteen calendar days. Whenever such person or entity shall have received notification from the Code Enforcement Officer of the Town of Dunkirk, or by service of a summons, or commencement of a prosecution under this local law, that they are committing such a violation of this local law, each week such violation continues may constitute a separate offense punishable by a like fine or penalty.

Notwithstanding the above, the Town Board of the Town of Dunkirk hereby reserves the right to seek civil and/or injunctive relief as permitted by law; an order revoking any permit issued hereunder; and removal of any solar installation found not to be in compliance with this local law.

Such remedies shall not be mutually exclusive, and are solely within the discretion of the Town of Dunkirk Town Board.

- B. If a building permit for a solar energy system under Section Four herein, Solar as an accessory use – Small scale solar, is denied based upon a failure to meet the requirements of the Local Law, the applicant may seek relief from the Zoning Board of Appeals in accordance with the established procedures and time limits of the Town of Dunkirk Zoning Code and New York State Town Law, to appeal the interpretation and decision of the Code Enforcement Officer, denying such building permit.

Section Nine – Validity

- A. If any part of provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgement shall be confined in its operation to part or provision or application directly involved in the controversy in which such judgement shall have been rendered and shall not effect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. Where this local law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State, or Federal government, the more restrictive or protective of the Town and the public safety shall apply.

Section Ten – Fee Schedule

The Town Board of the Town of Dunkirk is hereby authorized to adopt a fee schedule for application and permit fees under this local law for solar equipment systems in the Town of Dunkirk. Such fee schedule

to be adopted by Town Board Resolution, with authority to amend the fee schedule from time to time by Town Board Resolution.

Section Eleven – Effective Date

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

The Town Board shall also consider all matters under the State Environmental Quality Review Act as relates to the proposed local law at the public hearing.

1. I hereby certify that the local law annexed hereto, designated as local law No. of 2017 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on July _____, 2017, in accordance with the applicable provisions of law.

(Seal)

Jean Crane
Clerk of the Town of Dunkirk

Date: _____