

TOWN OF ELLERY
COUNTY OF CHAUTAUQUA, STATE OF NEW YORK
LOCAL LAW NO. 1 FOR THE YEAR 2026

A LOCAL LAW ESTABLISHING A MORATORIUM ON COMMERCIAL SOLAR AND BATTERY ENERGY STORAGE SYSTEMS IN THE TOWN OF ELLERY, COUNTY OF CHAUTAUQUA AND STATE OF NEW YORK AS FOLLOWS:

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ELLERY AS FOLLOWS: :

SECTION 1. ENACTMENT AND TITLE:

The Town Board of the Town of Ellery does hereby enact the Town of Ellery Moratorium on Solar and Battery energy Storage Systems Law. This Local Law shall impose a Moratorium on applications, proceedings for applications for, the review of applications for, or the issuance of approvals or permits for the construction of any Commercial Solar Energy and battery Energy Storage System that is not a Residential Solar Energy Installation within the Town of Ellery.

The capitalized terms in the foregoing sentences and as used throughout this Local Law, shall have the following meanings ascribed to them:

Applicant: All landowners and those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract or by owner's designation as an agent for purposes of making any application or land use review or approval, whether for a permit or otherwise.

Battery Energy Storage System: A rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems, and associated electrical equipment with an aggregate energy capacity greater than or equal to 600kWH, designed mainly but not exclusively to store and distribute energy produced by a Commercial Solar or Wind Energy Facility.

Commercial Solar Energy Facilities: Any collection of solar panels which are designed to capture photons or sunlight and transform it into electricity and any and all related infrastructure, electrical lines, substations, access roads, and accessory structures that cover more than ¼ acre of land, which are designed with the intent of producing electricity to be consumed off site.

Residential Solar Energy Installations: Any collection of solar panels which are designed to capture sunlight and transform it into electricity and require less than ¼ acre of land. This definition shall also include, for purposes of this Local Law, all traditional agricultural uses and alternative agricultural energy uses that are intended to principally generate power for the agricultural enterprise when located within a designated Agricultural District, or as otherwise protected or recognized under New York State Agriculture and Markets Law Article 25-AA, including without limitation §305(3), §305(4), §305-a therein, and all implementing regulations and rules, and further including policies therein implemented and hereby adopted relative to supporting traditional and generally acceptable farming practices, further including but not limited to heat recover from composting systems, biogas recovery systems, anaerobic digester gas-to-electricity systems, and other alternative energy systems that significantly support or advance agriculture and agribusiness within the Town of Ellery and its Agricultural Districts.

SECTION 2. AUTHORIZATION, PURPOSE, AND INTENT:

Pursuant to the authority and provisions of the New York State Constitution, and Section 10 of the Municipal Home Rule Law, and the statutory powers vested in the Town of Ellery to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Ellery hereby declares a Moratorium on applications or proceedings for applications for, the review of applications, or the issuance of approvals or permits for the construction of a Commercial Solar Energy Facility and / or Battery Energy Storage System within the Town of Ellery, lasting six (6) months from the date of passage of this Local Law. This Local Law is subject to review and renewal by the Town Board of the Town of Ellery for two (2) additional three (3) month extensions by Town Board Resolution.

This Moratorium will allow time for Town officials to review, clarify, amend, and update the Town's Regulations for commercial solar and battery development to encourage appropriate development, reimburse the Town for expert review of applications, protect community character, and promote and preserve the health, safety and welfare of the Town and its residents.

SECTION 3. SCOPE OF CONTROLS:

During the effective period of this Local Law:

- A. Neither the Town Board, nor the Planning Board shall conduct any review or consider any grant or any special permit or other permit or approval that will result in the approval establishment, or construction of any Commercial Solar Energy Facility or Battery Energy Storage System within the Town.
- B. To the extent permitted by law, this Moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town Local Law and any other applicable law, rule, or regulation, that may be in conflict herewith. If any ambiguity or conflict exists, this Local Law shall govern, and the presumption shall in each case be that the Moratorium is in effect.

SECTION 4. NO CONSIDERATION OF NEW, REVISED, OR RENEWAL APPLICATIONS:

No new, revised, or renewal applications shall be accepted for filing, review, or consideration, and no approvals or reviews that purport to allow or advance the development siting, or construction of any Commercial Solar Energy Facility and / or Battery Energy Storage System shall be undertaken, review, considered, or issued by any board, officer, employee or agent of the Town, except as specifically set forth in Section 10 of this Local Law. Nor shall any language or term in this Moratorium effect, or be construed to result in any default approval, and any matter now pending shall be stayed in place during the pendency of this Moratorium and any extension thereof, with all deadlines or other timelines suspended for the same number of days that this Moratorium is in effect.

SECTION 5. TERM:

The Moratorium imposed by this Local Law shall be in effect for six (6) months from its effective date. This Moratorium may be extended, or rescinded, or removed, by Local Law.

During the period of this Moratorium, the Town shall endeavor to amend or adopt a new Local Law with regard to the siting, establishment and construction of Solar Energy Facilities and Battery Energy Storage Systems, and all manner of energy storage and generation.

SECTION 6. LOCATION:

The Moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Ellery. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the official tax maps of Chautauqua County and the official New York Corporate Boundary maps for the Town of Ellery.

SECTION 7. PENALTIES:

The following provisions shall apply generally, and the violation of this Local Law shall allow and permit enforcement in any one or more of the following manners:

- A. When any term, provision, or requirement of this Local Law is violated, the Enforcement Officer may issue a written notice of violation to the Applicant (or other person in violation of). The notice of violation shall contain: (1) the name and address of the Person alleged to have violated this Local Law; (2) the address, when available, or a description of the building, structure, or place upon which alleged violation is occurring; (3) a brief statement specifying the nature of the violation; (4) a statement of the fine or penalty that may or may not be assessed; and (5) a clear statement identifying whether the notice commences or may commence a civil or criminal proceeding. The failure to comply with a written notice of violation by correcting the violation is in itself a separate violation of this Local Law and may be further enforced as such. In addition, the Executive Law §382 may be fully enforced separately from any such notice, and both notices may take the form of a single notice, which must, in addition to the above, contain the information and be served as required by Executive Law §382.
- B. The Enforcement Officer may issue a stop work order for violation of this Local Law. Any person or entity receiving the same shall be required to halt all activity until the Enforcement Officer or a court of competent jurisdiction allows work to re-commence.
- C. The Town of Ellery may also maintain actions or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with, restrain by injunction the violation of any provision or requirement of this Local Law, including to prevent, enjoin, correct, enforce, or abate any violation of, or non-conformance with, any provision or requirement of this Local Law or the terms and conditions set forth in any waiver or approval issued hereunder. In any such proceeding the Town shall not be required to: (1) prove the lack of adequate remedy at law; (2) post a bond or other undertaking as a condition or requirement for any preliminary, interim, or permanent restraining order or injunction.
- D. This Local Law may be enforced civilly or criminally. The following civil and criminal fines and penalties shall apply for any violation of this Local Law:
 - 1. First Offense: (a) A fine of not more than \$500, or (2) subject to a civil penalty of not more than \$500 to be recovered by the Town in a civil action. For the purposes of this Local Law, every week of ongoing violation is deemed a separate offense and violation, subject to a separate and accumulating fine.
 - 2. Second Offense: Being any violation within two (2) years of the above, (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500 or (2) subject to a civil penalty of not more than \$2,500 to be recovered by the Town in a civil action. Every such person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or

refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

3. The above fines are in addition to any penalty, fine, or sentence allowed or impossible pursuant to said Executive Law §382.
- E. Any person violating this Local Law shall be required to restore land to its prior or undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the Town may take the necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence a civil action to recover such costs of restoration.
- F. Criminal matters arising in relation to enforcement matters under this Local Law shall be classified as offenses per the following guidelines: (1) first offense shall be deemed violations; (2) second offenses shall be deemed unclassified misdemeanors; and (3) violations of Executive Law §382 shall be classified as set forth therein.
- G. No remedy or penalty specified in this Local Law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirement of this Local Law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not a limitation of or in substitution of any other right or remedy of the Town, whether sounding in law, equity or admiralty. Further, the election by the Town of any one right or remedy does not forestall or prevent the simultaneous or future election of any other right or remedy, whether relating to enforcement, sentencing, or otherwise.

SECTION 8. EXEMPTIONS AND NON-CONFIRMING USES:

Notwithstanding any provision hereof to the contrary, and Commercial Solar Energy Facility and / or Battery Energy Storage System that has / have already been issued all necessary approvals or permits from the Town Board, or Planning Board, or other relevant Board (the "Town Approvals") may continue such projects and such support activities that are being conducted in the Town as of the effective date of this Local Law, as long as such supporting activities are in all respects being conducted in accordance with all applicable laws and regulations and any conditions of approval, including all Town Approvals.

Any expansion of a lawful, pre-existing, non-conforming use shall not be grandfathered under this Section and instead shall in all respects be prohibited as contemplated in Section 3 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

This Local Law shall not apply to solar systems installed for residential use.

SECTION 9. VALIDITY:

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this of this Local Law that can be given effect without such invalid provision.

Section 10. Hardship:

The Town Board is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of the law and this Local Law) requests for waiver application of the provisions of this Local Law by persons aggrieved hereby.

No such waiver shall be granted by the Town Board without a showing by the Applicant that applicable regulations and restriction have caused unnecessary hardship.

- a. Unnecessary Hardship. In order to prove such unnecessary hardship the Applicant is required to demonstrate to the Town Board that, with respect to every permitted use under Town land use, each of the following criteria is satisfied: (1) the Applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (2) the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood; (3) granting a waiver will not change the essential character of the neighborhood; and (4) the alleged hardship has not been self-created.
- b. Reasonable Rate of Return. In evaluating whether the Applicant can realize a reasonable rate of return, the Town Board must examine whether the entire original or expanded property holdings of the Applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No waiver shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the Applicant has clearly demonstrated by detailed "dollars and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the area of the Town the property is located.
- c. Unique Hardship. No waiver shall be granted unless, in addition to satisfying all other applicable provisions of the law and this Law, the Town Board finds that the entire parcel of which the project is a part of, possesses unique characteristics that distinguish it from other properties in the area.
- d. Essential Character of the Neighborhood. In making this determination, of whether the proposed development project will alter the essential characteristics of the neighborhood, the Town Board shall take into account factors that are of vital importance to the residents of the Town, including without limitation: (1) the rural residential and agricultural character of the Town; (2) irreplaceable recreation, historic, or tourism sites; (3) the extent of hazard to life, limb, property may result from the proposed development project; (4) health impacts; (5) social and economic impacts on traffic congestion, noise, dust, odors, emissions, solid waste generation, water quality, or scenic or other natural resources of the Town. In order to find that the proposed development does not alter the essential character of the neighborhood, the Town Board shall interpret the public interest in said essential character of the neighborhood to require, at minimum, that the project will not do any of the following: pose a threat to public health safety, water quality or air quality, cause extraordinary public expense, or create a nuisance.
- e. Self-Created Hardship. The Town Board may find that the Applicant suffers from a self-created hardship in the event that the Board finds that (1) the Applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (2) the Applicant previously divided the property and is left with only a portion which suffers from a unique condition(s) from which relief is sought and which not apply to the property as a whole; (3) when the Applicant purchased the property,

he or she knew or should have known that the property was subject to land use restrictions; or (4) that the Applicant transferred or obtained property rights with only a unilateral expectation of development or investment character, and it shall be material to this question to examine the degree to which opposed to in fee (actual acquisition of fee simple title), and whether the anticipated income, profits, or receipts were conditional, contingent, or guaranteed.

If the Town Board grants a waiver from the provisions of this Local Law to the Applicant, the Applicant shall be required to comply with all provisions of the Town's then applicable land use regulations and other laws and regulations, together with any amendment to such law or regulations which may be enacted during the term of this Local Law. Any waiver that is granted shall grant only the minimum waiver that the Town Board deems necessary and adequate to address the unnecessary hardship proven by the Applicant, and at the same time, preserve and protect the character of the neighborhood and health, safety and welfare of the community.

SECTION 11. EFFECTIVE DATE:

This Local Law shall become effective immediately upon being filed in the office of the New York State Secretary of State.