

Town of Burns

Local Law No. 3-2022

A Local Law to Repeal and Replace the Local Law for Solar Energy System Facility Regulation

- I. The Town Board of the Town of Burns adopts this Local Law pursuant to:
 - A. Article IX of the New York State Constitution, §2(c)(6) and (10);
 - B. New York Statute of Local Governments, § 10 (1) and (7);
 - C. New York Municipal Home Rule Law, §10(1)(i) and (ii) and § 10 (l)(a)(6), (11), (12), and 14;
 - D. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention),(7)(Use of streets and highways), (7-a)(Location of Driveways), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines);
 - E. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).
- II. The Town of Burns Local Law to Provide for Solar Energy System Regulation, Local Law No. 1 of 2022, is hereby repealed and replaced in its entirety as follows:
 1. Authority: The Town Board of the Town of Burns shall have the authority to issue Solar Energy System Facility Permits in accordance with the provisions of Sections 274-a and 274-b of New York Town Law.
 2. Definitions. As used in this Local Law the following terms shall have the meanings indicated:

Nameplate Capacity - Starting from the initial installation of the Solar Energy System Facility, the maximum electrical generating output that the Solar Energy System Facility is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacturer of the Solar Energy System

Non-Participating Property - Any property that is not a Participating property.

Non-Participating Residence - Any residence located on Non-Participating Property.

Participating Property - A Solar Energy System Facility host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation

to the landowner from the Solar Energy System Facility owner (or affiliate) regardless of whether any part of a Solar Energy System Facility is constructed on the property.

Solar Collector - a device, structure, panel, or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy System Facility – The use of land where a series of one (1) or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one (1) or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of 200 kilowatts (kW) alternating current (ac) or greater when operating at nameplate capacity.

3. Purpose. The requirements of this section are established for the purpose of allowing the development of Solar Energy System Facilities in the Town and to provide standards for the placement, design, construction, operation, monitoring, modification, and removal of these systems.
4. Applicability.
 - (i) The requirements of this Local Law shall apply to all Solar Energy System Facilities permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
 - (ii) Solar energy system facilities constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
 - (iii) Modifications to an existing Solar Energy System Facility that increases the footprint of the Solar Energy System Facility by more than 5 % of the original area of the existing Solar Energy System Facility (exclusive of moving any fencing) shall be subject to this Local Law.
 - (iv) The term "Solar Energy System Facility" shall not be construed to include, so as to prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property.
5. The term "Solar Energy System Facility" shall also not be construed in such a way as to prohibit the installation or mounting of a series of one (1) or more solar collectors upon the roofs of residential and/or commercial structures regardless of whether the said series of one (1) or more solar collectors collectively has a total nameplate generation of a least 200 kilowatts (kW) alternating current (ac) or more when operating at nameplate capacity.

6. General Requirements

- (i) Solar Energy System Facilities are allowed in the Town of Burns only after the owner(s) of the property where such Facility is to be installed, or his or her representative, first obtains a Solar Energy System Facility Permit in accordance with this Local Law
- (ii) A building permit shall be required for the installation of all Solar Energy System Facilities.
- (iii) Issuance of permits and approvals by the Town Board for Solar Energy System Facilities shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].
- (iv) All Solar Energy System Facilities shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Uniform Code”), the NYS Energy Conservation Code (“Energy Code”), and the laws, ordinances, and regulations of the Town.

7. Procedure.

- (i) Applications for a Solar Energy System Facility Permit shall be submitted to the Town Code Enforcement Office. Such applications shall be on forms provided by the Town of Burns and include the application materials described in Section 8 of this Local Law.
- (ii) The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA. Payment of said escrow and all application fees shall be made at the time of application submission.
- (iii) The Town Code Enforcement Officer will review the application for completeness. Applicants shall be advised within 30 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review. An application shall be complete when it addresses all matters listed in this Local Law.
- (iv) The application shall be subject to a public hearing to hear all comments for and against the application. The Town Board shall have a notice printed in a newspaper of general circulation in the Town at least 5 days in advance of such hearing. Applicants shall deliver the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.

- (v) The application shall be referred to the Allegany County Planning Board pursuant to General Municipal Law § 239-m.
 - (vi) The application shall be referred to the local Fire Department for comment on compliance with the site access requirements of the Fire Code.
 - (vii) Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and Applicant.
 - (viii) The Town Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the Solar Energy System Facility. Upon its approval of the Solar Energy System Facility, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.
8. **Application Requirements.** The applicant shall submit 7 copies of the application and site plan. Solar Energy System Facility Applications shall contain the following:
- (i) Blueprints or drawings drawn to scale sized not less than 22" x 34" of the Solar Energy System Facility signed by a licensed Professional Engineer showing the proposed layout of the system and any potential shading from nearby structures.
 - (ii) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation, or structures.
 - (iii) A narrative description of the Solar Energy System Facility and the technical reasons for the proposed location and design shall be prepared and signed by a licensed Professional Engineer.
 - (iv) An Environmental Assessment Form prepared in accordance with the NY State Environmental Quality Review act.
 - (v) Demonstration that the Solar Energy System Facility will be constructed and operated in compliance with all applicable Federal, State, and local standards.
 - (vi) One or three line electrical diagram detailing the Solar Energy System Facility layout, Solar Collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices.
 - (vii) Documentation of the major system components to be used, including the solar collector panels, mounting system, and inverter.

- (viii) Information on noise (Inverter) and reflectivity/glare of solar panels and identification of potential impacts to abutting non-participating properties.
- (ix) Certification as to the existing soil classifications for the soil at the proposed development site as provided by the current United State Department of Agriculture Natural Resource Conservation Services Web Soil Survey, or as provided by such other state or local governmental agency maintaining official records of local soil classifications.
- (x) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town Board.
- (xi) Preliminary Property Operation and Maintenance Plan. Such plan shall describe continuing Solar Energy System Facility maintenance and property upkeep, such as mowing, trimming, grazing, maintenance of landscaping that are part of the approved landscaping plan, and chemical vegetation control. The plan should include provisions for emergency inspections and repair after severe weather or natural disasters. The plan shall include list of all chemicals used for maintenance and operation of the Solar Energy System Facility (e.g., pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals.
- (xii) A detailed preliminary safety plan, developed in consultation with the local fire department and code enforcement officer, specifying the measures that will be used to prevent public access to unsafe areas and to provide for emergency response, including but not limited to the location, height, materials, and colors of fencing and other barriers to access and a safety signage plan that contains the locations, sizes and text of signs that will be used to warn the public away from unsafe areas and that shall include the name and phone number of an official of the owner or operator who can be contacted in the event there is an emergency or any question about safety.
- (xiii) A proposal for landscaping and screening including:
 - a) An assessment of the visual impacts of the Solar Energy System Facility 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.
 - b) Plans demonstrating that adequate measures are planned to screen the Solar Energy System Facility from view from roadways and neighboring residential properties. 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.

- (xiv) A Decommissioning Plan including the following provisions:
 - a) Physical removal of all ground-mounted Solar Collectors, structures, equipment, security barriers, feeders and branch circuit wiring from the site.
 - b) Disposal of all solid and hazardous waste in accordance with local, State, and Federal waste disposal regulations.
 - c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Town Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
 - d) Upon the decommissioning of the project and removal of all equipment, the soils at the site shall be restored to the condition and classification that existed prior to the construction of the project and in connection with Section 12 below, except where the underlying fee owner of the land requests otherwise.
- (xv) The identification of any and all requested waivers of approval requirements pursuant to Section 10 of this Local Law.

9. Approval Requirements. Approval of the Solar Energy System Facility permit application requires that the Town Board find that the proposed Solar Energy System Facility protects adjacent land uses, assures that the proposed use is in harmony with Local Laws of the Town, will not adversely affect the neighborhood, and conforms to the following minimum requirements:

- (i) All ground-mounted panels shall not exceed fifteen (15) feet in height from finished grade. The height of the panels shall be measured from the highest natural grade below each solar panel to its maximum potential height.
- (ii) All mechanical equipment on a Solar Energy System Facility, including the Solar Collectors and including any structure for batteries or storage cells, are completely enclosed by a minimum eight (8) foot high fence with a self-locking gate.
- (iii) The Solar Energy System Facility shall use architectural features, landscaping, or other screening methods to provide year-round screening that will harmonize with the character of the property and surrounding area, so that the views of the solar array and appurtenant structures, including but not limited to equipment shelters, storage facilities, transformers and substations, are minimized to the extent reasonably practicable from public right of ways and neighboring non-

participating residential properties. If the buffer utilizes vegetative screening, it shall contain evergreen trees or bushes planted no more than 8 feet apart, or, alternatively, other noninvasive species as recommended by a landscape architect to provide the appropriate level of year-round screening. To the maximum extent practicable, at the time of planting installed vegetation should be a minimum four (4) feet tall and shall adequately screening the Solar Energy System Facility within 5 growing seasons. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening.

- (iv) Because of neighborhood characteristics and topography, the Town Board shall examine the proposed location on a case-by-case basis in order to ensure no detrimental impact to Town residents, businesses, or traffic.
- (v) All solar energy production systems are designed and located in order to prevent reflective glare toward any habitable buildings, as well as streets and rights-of-way.
- (vi) All onsite utility and transmission lines are, to the extent feasible, placed underground.
- (vii) The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- (viii) With the exception of designated, seasonal public roads, all Solar Collectors and structures shall have a minimum one hundred (100) foot setback from the centerline of public roads and twenty (20) foot setbacks from the sides and the back unless there exist abutting non-participating residential uses, in which case all such components shall be a minimum two hundred fifty (250) feet from any non-participating principal residential structures. The foregoing side and back setback requirements shall not apply to adjacent participating parcels that share a common boundary line. For designated, seasonal public roads, all solar collectors and structures shall have a minimum twenty-five (25) foot setback in the front from edge of the right of way of the road.
- (ix) Lighting of Solar Energy System Facility shall be consistent with State and Federal Law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
- (x) A sign is required that identifies that owner and operator with an emergency telephone number where the owner and operator can be reached on a 24-hour basis. There shall be no other signs except announcement signs, such as "No

Trespassing" signs or any signs required to warn of danger.

- (xi) There shall be a minimum of two (2) parking spaces to be constructed and maintained for use in connection with the periodic maintenance and inspection of the solar photovoltaic facility and the site. Such parking spaces shall not be used for permanent storage of vehicles or equipment.
 - (xii) Vehicular Paths. Vehicular paths within the site shall be designed to minimize, to the maximum extent practicable, the extent of impervious materials and soil compaction consistent with the New York State Standards and Specifications for Erosion and Sediment Control and the Solar Energy System Facilities' Stormwater Pollution Prevention Plan, as applicable, and, in consultation with the Fire Department and Code Enforcement Officer, shall be demonstrated to be compliant with access requirements of the Fire Code for emergency responders.
 - (xiii) If applicable, the Solar Energy System Facility will comply with the construction, restoration, monitoring, development and operation agricultural mitigation measures of Section 12 of this Local Law.
10. Waiver of Requirements. The Town Board may waive, when reasonable, any of the approval requirements contained in Sections 9(i) through 9(xiii) of this Local Law in the event that any such requirements are found by the Town Board not to be requisite in the interest of the public health, safety, or general welfare, or are inappropriate to a particular Solar Energy System Facility Permit.
11. Conditions to Approval. The Solar Energy System Facility Permit approval shall include appropriate conditions to ensure ongoing compliance with the permit standards, including, but not limited to:
- (i) The Solar Energy System Facility owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the Solar Energy System Facility shall be placed in a location approved by the Fire Chief and clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. A Knox® box shall be required for access by the local fire department.
 - (ii) No building permit for a Solar Energy System Facility shall be approved until evidence has been given to the Code Enforcement Officer that the utility company that operates the electrical grid where the installation is to be located has been informed of the Solar Energy System Facility owner's or operator's intent to install an interconnected customer-owned generator.
 - (iii) A Solar Energy System Facility owner or operator shall maintain the facility

in good condition. Maintenance shall comply with the approved Operations and Maintenance Plan and include, but not be limited to, painting, structural repairs, and integrity of security measures, Site access, including but not limited to snow removal, shall be maintained to a level acceptable to the local fire chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the Solar Energy System Facility and any access road(s), unless accepted as a public way. No vegetation above 24 inches in height inside the solar field.

- (iv) Owners and operators of Solar Energy System Facilities are encouraged to consider secondary use of the real property where such Solar Energy System Facilities are located with respect to grazers and pollinators.
 - (v) Initial and annual site-specific training for the Code Enforcement Officer, Fire Department, Emergency Response, Allegany County Emergency Management System, and Police Department, with expenses for such training covered by the Operator.
 - (vi) Releases to soils from damaged solar panels shall be managed as hazardous material spills, including removal of all related soil contamination and confirmatory soil testing.
 - (vii) The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the Solar Energy System Facility until the completion of the Decommissioning Plan.
 - (viii) Prior to obtaining a certificate of completion, the Decommissioning Plan will be updated to reflect as-built conditions and the approved financial security required in Section 15(iii) will be in place.
 - (ix) The operator shall notify the Town Code Enforcement Officer at least 24 hours prior to the performance of on-site maintenance of the Solar Energy System Facility.
12. For projects regulated under Section 94-c of the Executive Law, the construction, restoration, monitoring, development and operation of the Solar Energy System Facility will follow agricultural mitigation measures consistent with its Section 94-c permit. - Solar Energy System Facilities that are not regulated under Section 94-c will adhere to the following agricultural mitigation guidelines to the maximum extent practicable:
- (i) An environmental monitor, hired and paid for by the owner or operator, shall be on site whenever construction or restoration work is occurring on agricultural land and shall coordinate with the New York State Department of Agriculture and Markets, Division of Land and Water Resources with the purpose of developing an appropriate schedule for inspections, to assure that this law is being met. In all cases, the environmental monitor shall contact the New York State Department of Agriculture and Markets, Division of Land and Water Resources, if farm resource

concerns, management matters pertinent to the agricultural operation, and site-specific implementation conditions found in these guidelines, cannot be resolved.

(ii) The owner and operator of the Solar Energy System Facility shall comply with the following:

a) Construction Requirements.

- 1) The surface of access roads located outside the generation facility's security fence and constructed through agricultural fields must be level with the adjacent field surface.
- 2) Culverts and waterbars must be installed to maintain natural drainage patterns.
- 3) Strip all topsoil from agricultural areas used for vehicle and equipment traffic, parking, and equipment laydown and storage areas. Limit all vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas.
- 4) When an open trench is required for cable installation, topsoil stripping from the entire work area will be necessary. Stockpile topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Clearly designate topsoil stockpile areas in the field and on construction drawings.
- 5) Interconnect cables must be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground must be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, minimize agricultural impacts by using taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.
- 6) All buried electric cables in cropland, hayland and improved pasture, must have a minimum depth of forty-eight inches of cover. In unimproved grazing areas and land permanently devoted to pasture, the minimum depth of cover must be thirty-six inches. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables must be buried entirely below the top of the bedrock or

at the depth specified for the particular land use whichever is less. At no time shall the depth of cover be less than twenty-four inches below the soil surface.

- 7) When buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns, rectify the effects with measures such as subsurface intercept drain lines. Consult the local Soil and Water Conservation District concerning the type of intercept drain lines to install to prevent surface seeps and the seasonally prolonged saturation of the cable installation zone and adjacent areas. Install all drain lines according to Natural Resource Conservation Service standards and specifications. Drain tile must meet or exceed the AASHTO M252 specifications.
 - 8) Remove all excess subsoil and rock from the site. On-site disposal of such material is only allowed if approved by the owner and the Board.
 - 9) Construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.
 - 10) Pick up all pieces of wire, bolts, and other unused metal objects and properly dispose of as soon as practical to prevent mixing with any topsoil.
 - 11) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
 - 12) Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the owner when required.
- b) Restoration Requirements.
- 1) All agricultural areas temporarily disturbed by construction must be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results must be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction must be conducted prior to topsoil replacement. Following decompaction, remove all rocks 4 inches and larger in size, from the surface of the subsoil prior to replacement of the topsoil. Replace the topsoil to original depth and reestablish original contours where practicable.

- 2) Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement must be avoided after October 1st. If areas are to be restored after October 1st, necessary provision must be made to restore and/or reseed any eroded or poorly germinated areas in the springtime, to establish proper growth.
 - 3) Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns where practicable, or other drainage pattern incorporated into the design.
 - 4) Seed all restored agricultural areas with the seed mix specified by the owner to the extent practicable in order to maintain consistency with the surrounding areas.
 - 5) Repair all surface or subsurface drainage structures damaged during construction as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design. Correct any surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the Environmental Monitor, Soil and Water Conservation District and the Landowner.
 - 6) On affected farmland, postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration must not be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil must not be regraded and subsoil must not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities shall occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.
 - 7) Following restoration, remove all construction debris from the site.
- c) Monitoring and Remediation.
- 1) The owner or operator shall provide a monitoring and remediation period of no less than 365 days following the date upon which the project achieves commercial operation. The one-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase is used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

- 2) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.
 - 3) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Determine excessive amounts of rock and oversized stone material by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. Remove and dispose of all excess rocks and large stones.
 - 4) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the owner or operator as well as other appropriate parties, must determine the appropriate rehabilitation measures to be implemented
- (xiv) Notwithstanding anything else contained herein, the provisions of this section 12 may be waived by the Code Enforcement Officer upon a showing of hardship by the property owner or operator to the complete and sole satisfaction of the Code Enforcement Officer.
13. Traffic Routes. Construction and delivery vehicles for Solar Energy System Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include;
 - (i) minimizing traffic impacts from construction and delivery vehicles.
 - (ii) minimizing Solar Energy System Facility related traffic during times of school bus activity.
 - (iii) minimizing wear and tear on local roads.
 - (iv) minimizing impacts on local business operations.
 - (v) Solar Energy System Facility Permit conditions may limit Solar Energy System Facility related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
14. Road Remediation. The applicant shall be responsible for remediation of damaged roads upon or if necessary during the construction of or completion of the installation of Solar Energy System Facility. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Highway Superintendent, sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant.

15. Decommissioning/Removal.

- (i) The owner or operator shall notify the Town Code Enforcement Officer by certified mail of the proposed date of decommissioning and plans for executing the Decommissioning Plan. Prior to removal of the Solar Energy System Facility, a permit for removal activities shall be obtained from the Code Enforcement Officer. Notwithstanding the foregoing, projects regulated under Section 94-c of the Executive Law shall be subject to the decommissioning requirements set forth set forth in 19 NYCRR 900-2.24 and 19 NYCRR 900-6.6. For all other Solar Energy System Facilities subject to regulation under this Local Law, the owner, operator, or his/her successors in interest shall remove the Solar Energy System Facility in conformance to the approved Decommissioning Plan. The owner or operator shall execute the Decommissioning Plan no more than one hundred fifty (150) days after the date of discontinued operations.
- (ii) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances approved by the Town Board, the Solar Energy System Facility shall be considered abandoned when it fails to operate for more than one (1) year ("Abandonment"). If the owner or operator of the Solar Energy System Facilities fails to execute the Decommissioning Plan in accordance with the requirements of this section within one hundred fifty (150) days of Abandonment or the proposed date of decommissioning, the Town may enter the property and implement the Decommissioning Plan. In the event that the owner or operator is diligently implementing the Decommissioning Plan, the Town Board, at its sole discretion, may extend the time to implement the Decommissioning Plan by up to two consecutive extensions each of six (6) months.
- (iii) As part of the Decommissioning Plan, the owner or operator of a Solar Energy System Facilities Solar Energy System Facility shall provide the Town with an irrevocable standby letter of credit or other form of security reasonably acceptable to the Town attorney, which shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the letter of credit or other security shall be in the amount of one hundred percent (100%) of the cost of removal of the Solar Energy System Facilities and restoration of the property, which shall be renewed every five (5) years. Delivering of the letter of credit or other security to the Town shall occur prior to the commencement of operations, accompanied by a detailed estimate of the costs association with all decommissioning efforts.
- (iv) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the letter of credit or other security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The letter of credit or other security shall remain in full force and effect until restoration of the property as set forth in the Decommissioning Plan is completed.

- (v) Costs of Decommissioning/Removal. The operator of an installation and the owner of the real property on which such installation is located shall be jointly and separately liable for all costs and expenses of the Town incurred in implementing the Decommissioning Plan. Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the operator of the installation; however, in the event the Town is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the Town reserves all rights to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located.

16. Permit Time Frame.

- (i) The Solar Energy System Facility Permit a shall be valid for a period of 24 months, provided that construction is commenced within that period of time. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved within 24 months after approval, the Town may extend the time to complete construction for up to two consecutive extensions each of twelve (12) months.
- (ii) If the owner and/or operator fails to achieve substantial completion within 48 months, the approvals shall expire. If the owner and/or operator fails to perform, the Town may direct the owner and/or operator to implement the Decommissioning Plan. In such instance, the Decommissioning Plan must be completed within one-hundred-eighty (180) days of notification by the Town.

III. The invalidity of any clause, sentence, paragraph, or provision of this Local Law shall not invalidate any other clause, sentence, paragraph, or part thereof.

IV. This Local Law shall take effect upon filing in the office of the New York State Secretary of State.