

Town of Grand Island

Local Law No. 1 of 2017

A Local Law to regulate Solar Energy Facilities in the Town

Be it hereby enacted by the Town Board of the Town of Grand Island as follows:

SECTION 1: Chapter 407 of the Town Code of the Town of Grand Island is amended to add the following section:

407- 165.1 Solar Energy Facilities

A. PURPOSE

1. This Article aims to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefore, to mitigate the impacts of solar energy systems on environmental resources, and to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar energy systems without excess regulation. In particular, this legislation is intended to apply to free standing; ground mounted or pole mounted solar energy system installations based upon certain placement. This legislation is not intended to override agricultural exemptions that are currently in place.

B: DEFINITIONS

ALTERNATIVE ENERGY SYSTEMS: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

BUILDING-INTERGRATED PHOTOVOLTAIC (BIPV): The incorporation of photovoltaic (PV) material into a building's envelope. Technologies include PV shingles or tiles, PV laminates, and PV glass. Examples of placement include vertical facades, semi-transparent skylights, awnings, fixed awnings, and roofs.

COLLECTIVE SOLAR: Installations of Solar Energy Systems that are owned collectively through a homeowner's association, "adopt-a-solar-panel" programs, or other similar arrangements.

DECOMMISSIONING: The process of removing an abandoned Solar Energy System and remediating the land

GLARE: A continuous source of excessive 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: A momentary flash of light that may be produced as a direct reflection of the sun on a solar collection system.

GROUND-MOUNTED SYSTEM: A solar energy system that is anchored to the ground and attached to a pole or similar mounting system, detached from any other structure.

MAJOR SOLAR COLLECTION SYSTEM or SOLAR FARM: An area of land or other area used for a solar collection system principally used to capture solar energy and convert it to electrical energy to transfer to the public electric grid in order to sell electricity to or receive a credit from a public utility entity, but also may be for on-site use. Solar farm facilities consist of one or more freestanding **GROUND-MOUNTED** or **ROOF-MOUNTED** solar collector devices,

MINOR OR ACCESSORY SOLAR COLLECTION SYSTEM: A solar photovoltaic cell, panel, array, solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises for other lawful purposes, Minor solar collection systems may consist of **BUILDING-INTERGRATED**

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 NY DEC.

PHOTOVOLTAICS, GROUND-MOUNTED or ROOF-MOUNTED solar collector devices.

Pollinators: Bees, birds, bats and other insects or wildlife that pollinate flowering plants.

Prime Agricultural Soil: Topsoil – Soil that has the best combination of physical and chemical characteristics for producing crops.

ROOF-MOUNTED SYSTEM: A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption.

SOLAR ACCESS: Space that is open to the sun and clear of overhangs or shade. Structures constructed on private property will not infringe on the rights of adjacent properties.

SOLAR ENERGY EQUIPMENT and other accessory structures and buildings, including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

SOLAR ENERGY EQUIPMENT/SYSTEMS: Energy storage devices, material, hardware, or electrical equipment and conduit associated with the production of electrical energy.

SOLAR PANEL: A device capable of collecting and converting solar energy into electrical energy.

C: APPLICABILITY

1. The requirements of this section shall apply to all solar energy systems installed or modified after the effective date of this ordinance, excluding general maintenance and repair.

2. Solar energy system installations for which a valid building permit has been issued or, if no building permit is presently required, for which installation has commenced before the effective date of this local law shall not be required to meet the requirements herein.

3. 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 Act and the Town Code.

4. Nothing contained in this provision shall be construed to prohibit “Collective Solar” installations or the sale of excess power through a “net billing” or “net metering” arrangement in accordance with New York State Public Service Law § 66-j or similar New York State or federal law or regulation.

5. All solar energy systems shall be designed, erected, and installed so as to prevent undue glare from falling on adjoining properties or creating traffic safety issues.

D: SOLAR COLLECTORS AND INSTALLATIONS FOR MINOR SYSTEMS

1. Roof-mounted systems are permitted as accessory uses in all zoning districts, subject to the following requirements:

- a) The distance between the roof and highest edge of the system shall be in accordance with the New York State Uniform Fire Prevention and Building Code.
- b) Rooftop and building-mounted solar collectors shall not obstruct solar access to adjacent properties.

2. Ground-mounted and freestanding solar collectors are permitted as accessory structures in all zoning districts, subject to the following requirements:

- a) The location of the solar collectors meets all applicable setback requirements of the zone in which they are located.
- b) The height of the solar collectors and any mounts shall not exceed the height restrictions of the zone when oriented at maximum tilt.
- c) The solar collectors are located in a side or rear yard. If the side or rear yard is visible from adjacent properties and roads, there shall be a landscape buffer installed.
- d) Ground-mounted and freestanding solar collectors shall not obstruct solar access to adjacent properties.

2. All solar collector installations must be performed in accordance with applicable electrical and building codes, the manufacturer's installation instructions, and industry standards, and prior to operation the electrical connections must be inspected by Code Enforcement Officer or by an appropriate electrical inspection person or agency, as determined by the Town. In addition, any connection to the public utility grid must be inspected by the appropriate public utility.

3. When solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform 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 Erie County and other applicable laws and regulations.

E: MAJOR SOLAR SYSTEMS

1. **Major Solar Systems** are permitted through the issuance of a special use permit and site plan review in accordance with this Chapter in the M-1, M-2, R1-A, R1-B, R1-C, and R1-D Districts. The minimum lot size required is five acres in the M-1 and M-2 Districts, twenty-five acres in the R-1A District, and fifteen acres in the R1-B, R1-C, and R1-D Districts. In addition, Major Solar Systems must meet the criteria set forth below.

2. A **Major Solar System** may be permitted M-1, M-2, R1-A, R1-B, R1-C, and R1-D Districts when authorized by site plan review and special use permit from the Town Board subject to the following terms and conditions.

- a) The total coverage on a lot, including freestanding solar panels, shall not exceed 80%.
- b) Height and setback restrictions.
 - i. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 20 feet in height above the ground.
 - ii. The minimum setback from property lines shall be 25 feet, unless adjacent to residential neighbor.
 - iii. A landscaped buffer of trees, shrubs or bushes shall be provided around all equipment and solar collectors to provide screening from adjacent properties and roads.
- c) Design standards.
 - i. Removal of trees and other existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar facility. Removal of existing trees larger than six inches in diameter at breast height (DBH) should be minimized to the extent possible.
 - ii. Removal of any prime agricultural soil from the subject parcel is prohibited.
 - iii. Proposed major solar systems shall not negatively impact Federal or NYS DEC State recognized wetlands.
 - iv. Proposed major solar systems shall not negatively impact the viability of prime agricultural soils on-site.
 - v. Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
 - vi. All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
 - vii. Solar collectors and other facilities shall have anti-reflective coating and be designed and located in order to minimize reflective glare and/or glint toward any inhabited buildings on adjacent properties and roads.
 - ix. Major systems or solar farms shall not obstruct solar access to adjacent properties.
- d) Signs.
 - i. A sign not to exceed eight square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number.
 - ii. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations not to exceed four square feet.

3. A piece of equipment meets the definition of oil-filled operational equipment at 40 CFR part 112.2 (e.g. transformers, capacitors and electrical switches) shall comply with the secondary containment procedures of that regulation.

F. SPECIAL USE PERMIT REQUIREMENTS

1. In addition to the other special use permit requirements of this Code, the following shall be provided to the Town at the time application for a Special Use Permit is filed and this special use permit must be renewed annually.

- a) Verification of utility notification. Any foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.
- b) Name, address, and contact information of the applicant, property owner(s), and agent submitting the project.
- c) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
- d) Site Plan: Site plan approval is required.
- e) Blueprints signed by a Professional Engineer or Registered Architect of the solar installation showing the layout of the system.
- f) Property Operation and Maintenance Plan: A property operation and maintenance plan is required, describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.
- g) Landscaping and Screening Plan. All applications for a special use permit for the installation and operation of a Solar Systems shall include a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that the views of Solar Panels and Solar Energy Equipment from adjacent properties and roadways will be minimized as reasonably practical.
- i. The Landscaping and Screening plan shall specify the locations, elevations, height, plant species, and/or materials that will compromise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening.
 - ii. Landscaped Screening shall be comprised of a minimum of one evergreen tree, at least six feet high at the time of planning, plus two supplemental shrubs at the reasonable discretion of the Town Board, all planted within each ten linear feet of the solar energy system. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening requirement.
 - iii. The Landscaping and Screening Plan shall identify the number of existing trees larger than six inches in diameter at breast height (DBH) proposed to be removed to complete the installation.
 - iv. The Landscaping and Screening plan shall include native pollinator habitats that may include planting short-growing, low-maintenance native seed mix beneath the panels; planting of a diverse pollinator seed mix between the rows of panels; planting buffers with vegetation that benefit pollinators and early successional species as well as the planting of shrubs along the property; or any other measure intended to promote the growth of native vegetation and presence of native pollinators.
- h) Applications for a special use permit for Solar Energy Systems larger than 10 acres shall include a visual impact assessment of the solar energy system with respect to public roadways and adjacent properties. At a minimum, a line-of-sight analysis shall be provided. Depending upon the scope and potential significance of the visual impacts,

additional impact analysis, including for example a digital viewshed report may be required to be submitted by the applicant.

i) Fencing requirements. All high voltage electric equipment, including any structure for storage batteries, shall be enclosed by a fence, as required by NEC, with a self-locking gate to prevent unauthorized access. Fencing must be black vinyl coated 18ga chain link fence.

j) 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, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within [30] days of the ownership change.

G. DECOMMISSIONING AND ABANDONMENT

1. Major Solar Energy Systems shall have a decommissioning plan (see Appendix 1) signed by the owner and/or operator of the Solar Energy System and shall be submitted by the applicant, addressing the following:

- a. The cost of removing the Solar Energy System.
- b. The time required to decommission and remove the Solar Energy System and any ancillary structures.
- c. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

2. Major Solar Energy Systems Decommissioning Financial Security.

- a. The Operator of the Solar Energy System shall provide a bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, 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 bond or security shall be 125% of the cost of removal of the Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System.
- b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan as completed.
- c. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth herein.

3. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for eighteen 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 one year of notification.

4. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

H: SEVERABILITY

1. If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Grand Island hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

I: EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law

Appendix 1:

Example Decommissioning Plan

Date: [Date]: _____

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the “Facility”).

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for 18 months
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within 18 months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: _____ Date: _____