LOCAL LAW TO BE ENACTED BY
THE BOSTON TOWN BOARD
TOWN OF BOSTON, NEW YORK

2019 LOCAL LAW INTRO. NO. 5
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A LOCAL LAW ENACTING REGULATIONS FOR SOLAR ENERGY SYSTEMS

Be it enacted by the Town of Board of the Town of Boston, County of Erie, State of New York, as follows:

SECTION l. AUTHORITY.

This local law is promulgated pursuant to the authority granted by the New York State Constitution, Statute of Local Governments, Municipal Home Rule Law, and Town Law §§ 64, 130, and 261-265.

SECTION 2. SOLAR ENERGY SYSTEM REGULATIONS.

A new Section 123-128.3, *Solar Energy System Regulations*, hereby is added to the Town of Boston Zoning Code, which shall provide as follows:

123-128.3 – Solar Energy Systems

1) Purpose. The Town Board of the Town of Boston, 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 Boston, does hereby enact this Section to regulate the construction, maintenance, and placement of solar energy systems and equipment in the Town of Boston. The purpose of this regulation is to balance the potential impact on neighbors when solar energy systems may be installed near their property and to mitigate the impact of solar systems on environmental and agricultural resources, while preserving the rights of property owners to install solar energy systems without excess regulation. The Town of Boston 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 emerging solar energy system economic development.

2) Definitions. As used in this Section, the following terms shall have the meaning indicated:

BUILDING-INTEGRATED PHOTOVOLTAIC – A solar energy system that consists of integrating photovoltaic modules into the building structure, as distinguished from separate solar panels that are attached to a building. Technologies include photovoltaic (PV) shingles or tiles, PV laminates and PV glass. Examples of placement include integration into vertical facades, semi-transparent skylights, awnings, fixed awnings, and roofs.

COLLECTIVE SOLAR – Solar installations owned collectively through subdivision homeowner associations or similar groups and which provides energy only for the onsite use of a subdivision or multi-family building. Collective solar installations shall be regulated depending upon generation capacity as either large-scale, or small-scale systems, as defined herein, and the on-site consumption for such a system shall include the parcel where the system is located and the consumption of the collective's member-owners' parcels.

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 "Specular reflection," produced as a direct reflection of the sun on the surface of the solar panel. This is the potential source of the visual issues regarding viewer distraction.

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

KILOWATT (kW) – A unit measurement of electrical power (not energy) equal to 1,000 watts; 1,000 kW is equal to one megawatt (MW).

KILOWATT-HOUR (kWH) – A unit of energy equivalent to one kilowatt of power expended for one hour of time.

LARGE-SCALE SOLAR ENERGY SYSTEM or LARGE SCALE SYSTEM – Solar energy systems located on land in the Town of Boston used primarily to convert solar energy into electricity for off-site consumption or sale and/or systems that have the capacity to produce more than 25 kW per hour of energy.

ROOF-MOUNTED SYSTEM – A solar power system in which solar panels 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 sun at an optimal angle. Roof mounted systems shall be located on a roof of a permitted principal use or accessory structure.

SMALL-SCALE SOLAR – Small Scale Solar means a solar energy system that installed and placed for the production of energy for consumption only on site, which has a system capacity of no more than 110% of the kWH's of electricity consumed over the previous 12-month period on the lot or parcel, and that has the capacity to produce less than 25 kW per hour of energy.

SOLAR ENERGY EQUIPMENT – Energy storage devices, materials, hardware, or electrical equipment and conduit associated with the production of electrical energy.

SOLAR ENERGY SYSTEM – Includes a combination of both solar panels and solar energy equipment.

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

SOLAR STORAGE BATTERY – A device that stores energy from the sun and makes it available in an electrical form.

3) Applicability. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after the effective date of the local law by which it was adopted, including any upgrade, modification, or structural change that alters the physical size, electric generation capacity, location, or placement of a solar-energy system, but excluding general maintenance and repair.

4) Standards. All Solar Energy Systems shall be designed, erected and installed or modified in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

5) A building permit is required for installation of all solar-energy systems.

6) State Environmental Quality Review Act. Under SEQRA regulations, actions are classified as Type I, Type II, or Unlisted Actions. Type II Actions are exempt from review and include actions such as the construction, expansion, or placement of minor or accessory structures. The Town of Boston considers Building-integrated solar components and Small-scale systems to be Type II Actions and therefore exempt from all SEQRA requirements, including the submission of an EAF (Environmental Assessment Form). Large Scale Systems that meet thresholds contained in the SEQRA regulations and are considered more likely than others to have a significant adverse impact shall be considered Type I Actions. However, the need for a complete Environmental Impact Statement (EIS) shall be determined by the Town Board on a case-by-case basis in accordance with the significance of the potential adverse environmental impact.

7) Solar as an Accessory Use/Structure.
   a) This section governs the placement and installation of Small-scale Solar systems as defined herein.
   b) Roof-mounted Systems. Roof-mounted Systems are permitted as an accessory use in all zoning districts when attached to a lawfully-permitted principal structure and/or accessory structure, subject to the following requirements.

i) 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 and equipment.
ii) Setback. Roof-mounted solar energy systems are subject to the setback requirements of the underlying zoning district, and may not be installed on structures which are non-confirming to setback requirements.
iii) Aesthetics and Safety Design. Solar energy equipment shall incorporate the following design requirements:
(1) Roof-mounted panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
(2) Access and Pathways. Ground access, roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with the Building Code.
(3) Size of solar photovoltaic array. Each photovoltaic array shall not exceed 150 feet in any direction.
(4) Where required by the Building Code to allow for smoke ventilation operations, panels and modules shall not be located less than 18 inches from a roof ridge or peak.
iv) Single ridge roofs and hip roofs. Panels, modules, or arrays installed on single ridge roofs and hip roofs shall be located and shall provide access and pathways in a manner consistent with the Building Code.
v) Ice guards or restraints. Any roof upon which a solar energy system is mounted or integrated must incorporate snow and ice guards or restraints sufficient to mitigate the risk of injury from falling snow or ice to persons or vehicles moving around or under the roof.

c) Ground Mounted Systems.
i) Ground mounted solar energy systems are permitted as an accessory structure in the Agricultural (A) and Residential-Agricultural (R-A) zoning districts, subject to the requirements set forth in this section.
ii) All ground mounted solar panels in R-A districts shall be installed in the rear yard. If a side yard installation is applied for, it shall be subject to all setback requirements of the underlying zoning district, and such an application for side yard shall require site plan review by the Town of Boston Planning Board and approval by the Town Board.
iii) Setback(s). Ground mounted solar panels are subject to setback requirements of the underlying zoning district.
iv) Height. Solar panels are restricted to a height of 15 feet. Height measurements are to be calculated when the solar energy system is oriented at maximum vertical tilt.
v) Lot Coverage. The surface area of ground mounted solar panels shall be included in lot coverage and impervious surface calculations and shall not exceed thirty percent (30%) of the lot size.
vi) Other:
(1) Any application for installation and placement of small scale solar energy system under this section in a side yard location shall require an application containing a site plan showing the location of all solar energy system components, their location on the premises, their location on the premises in relation to the property

line and any and all structures on the premises, and the nearest structure located on the premises adjacent thereto.

(2) The site plan for such installation shall be reviewed by the Planning Board and shall be approved by the Town Board.

d) Solar energy systems attached to the side of a building are prohibited unless they are designed as a building-integrated system.

8) Solar as Principal Use.

a) Large Scale Solar Systems are permitted by the issuance of a special use permit by the Town Board within the Agricultural (A) District, subject to the requirements set forth in this section.

i) Every application for a Large-Scale System within the Town of Boston shall be made to the Town Board and shall be approved by a majority vote thereof.

ii) Prior to Town Board review of the application it may refer said application to the Planning Board for site plan review, report, and recommendation for approval or disapproval.

iii) The Town Board shall hold a public hearing upon ten (10) days' notice duly posted and published in the official newspaper of the Town and on the Town bulletin board, before granting the special use permit.

b) Special Use Permit Application Requirements. Every application for a Special Use Permit under this section shall contain the following information:

i) Verification of utility notification. Foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.

ii) Name, address, and contact information of the applicant, property owner(s), and agent submitting the proposed project application.

iii) If the property of the proposed project is to be leased, legal consent among all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, including an agreement by all parties that the provisions of this Section are binding upon the property owner, system owner, and system operator.

iv) Blueprints showing the layout of the proposed system, including roadways, paths, drainage structures, and other features, signed by a Professional Engineer or Registered Architect.

v) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.

vi) A visual assessment analysis of the impact of the facility on the community shall be prepared if requested by the Planning Board or Town Board.

vii) Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and invertors that are to be installed.

viii) A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.

ix) Any removal of prime soils must be noted in the application, and should be avoided to the extent possible.

x) Decommissioning Plan:

(1) To ensure the proper removal of large scale systems, the decommissioning plan shall include details regarding the removal of all infrastructure, including the removal of concrete to a depth of four feet, 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 estimates shall take inflation into account.

(2) A form of surety, through escrow, bond, or the equivalent as approved by the Town Board, shall be established by the applicant and owner of record prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required shall be 125% of the estimated cost to decommission, plus an escalator of 2% annually for the lift of the solar energy system.

c) Special Use Permit Standards for Large Scale Solar Energy Systems

i) The minimum lot area shall be 15 acres.

ii) The maximum lot area shall be 50 acres.

iii) The maximum overall height shall not exceed twenty (20) feet when oriented at maximum tilt.

iv) Setbacks.

1. Must be located at least 500 feet from all property lines bordering a residential district.
2. Must be located at least 100 feet from all property lines.
3. Must be located at least 250 feet from any building or structure, unless said building is used for the actual operation of the large-scale solar energy system.
4. Must be located at least 200 feet from any public road or railroad (as measured from the right-of-way).
5. Must be located at least 750 feet from any school or public park.

v) All large scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs shall be placed on the entrance and perimeter of the fencing. The height and type of fencing shall be determined by the Town Board and must meet the minimum requirements of the Building Code.

vi) On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility.

vii) A minimum thirty-five percent (35%) of lot coverage shall be preserved as natural and undisturbed open space.

viii) The removal of existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar installation.

ix) Vehicular paths must be designed to minimize the extent of impervious materials and soil compaction.

x) A visual screen of the large-scale solar system from residential uses shall be accomplished, to the extent practicable, by the use of berms, landscaping, or other means, as determined by the Town Board.

d) Annual report. The owner and/or operator of a large-scale solar energy system must submit to the Town's code enforcement officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
   i) The rated capacity of the system;
   ii) The amount of electricity generated by the system in the most recent 12-month period;
   iii) The amount of electricity transmitted to the power grid in the most recent 12-month period;
   iv) Identifying any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
   v) Identifying any change in the party responsible for decommissioning and removal of the system upon its abandonment; and
   vi) Evidence that the surety required for decommissioning remains in effect and is irrevocable for at least the next two years.

e) Abandonment.
   i) A large-scale solar energy system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year, if following site plan approval a building permit is not obtained within one year, or if following issuance of the first building permit for the project, construction has not been completed within 18 months.
   ii) A large-scale solar energy system also shall be deemed abandoned if it is in default on the performance of any conditions of its special use permit or of any requirements of the Town Code, including the surety and annual report requirements of this Section.
   iii) In the event of abandonment, the owner and/or operator of the large-scale solar energy system shall be given notice of the abandonment and 60 days to cure the condition resulting in abandonment. In the event that the abandonment is not cured, the Town may instruct the owner and/or operator of the large-scale solar energy system to implement the decommissioning plan, which must be completed within 300 days of notification.
   iv) An owner and/or operator may contest the abandonment by a written request to the Town Board for a hearing. Such a hearing request must be made and received within 20 days of the date the Town's notice to the owner and/or operator of the abandonment.
   v) If the owner and/or operator fails to comply with decommissioning requirements upon any abandonment, the Town may, at its discretion, enter onto the property to decommission and remove the large-scale solar energy system. The Town may draw on the surety required to cover the cost of decommissioning, and to the extent the Town or its representatives incurs costs or expenses, including legal fees, that are not reimbursed by the surety, these costs shall be assessed against the property where the system is located, shall become a lien and tax upon the property, shall be added to the

taxes levied and assessed thereon, and shall be enforced and collected as provided by law for the collection and enforcement of real property taxes in the Town.

9) 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 Building Code. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by the Building Code and the National Electric Code.
   b) When batteries are no longer in use, they shall be disposed of in accordance with the laws of the State of New York and any applicable Federal or Local disposal rules or regulations.

10) Notification to the Fire Service. Notification in writing to the Fire Company having operational authority at the location where any Solar Energy Collection System will be installed shall be made no later than 10 days following installation and before the Solar Energy Collection System becomes operational:
    (1) Notification shall include a site map showing the location of the solar energy electrical panel or equivalent equipment, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the property owner, homeowner, tenant or other personnel is not available or familiar with the safe shutdown operation of unit so as to have the ability to cut power from the solar panels.
    (2) In addition, a written statement showing the method of shutdown shall be posted inside the main electrical panel or equivalent equipment of the unit that can be readily accessible for and to firefighting personnel.
    (3) The notification to the fire service must include the method of fire suppression required by the installed equipment (e.g. foam or water).

11) Glare and Glint. All solar panels shall have anti-reflective coating(s) to reduce glare. Solar panels must be situated to avoid glare or glint that would pose a danger to aviators or to motorists, bicycles, or pedestrians using any street, sidewalk, or path.

12) Sales and purchases of solar power not prohibited. Nothing contained in this Section shall be construed to prohibit the purchase of electricity from "community solar" installations or the sale of excess power through a "net billing" or "net metering" arrangement in accordance with New York Public Service Law § 66-j or similar state or federal law or regulation.

13) Violations and enforcement. Any violation of any provisions of this section shall be punishable by penalty or a term of imprisonment as prescribed in Section 268 of the Town Law of the State of New York. Notwithstanding the above, the Town Board of the

Town of Boston hereby reserves the right to proceed to enforce the provisions of this Section by civil action, injunction, and any other remedy afforded to it by the laws of the State of New York or the United States.

14) Validity and Severability. If any part or provision of this Section shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Section shall remain in full force and effect as if the invalidated portion had not been enacted.

SECTION 4. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.