

**TOWN OF CARMEL
LOCAL LAW #5 OF 2024
A LOCAL LAW ESTABLISHING A SIX MONTH MORATORIUM PROHIBITING
THE REVIEW AND APPROVAL OF APPLICATIONS AND PERMITS FOR
“SOLAR ENERGY SYSTEMS” IN THE TOWN OF CARMEL**

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

SECTION 1: PURPOSE

The purpose of this local law is to protect the public health, safety and welfare of the residents of the Town of Carmel and to maintain the status quo by temporarily suspending the processing of land use approvals as provided herein and to further suspend the rights of land owners and their designees to obtain development approvals as identified below for a period of six months from the date of the adoption of this local law while the Town Board studies, analyzes and determines potential appropriate revisions and amendments to the Town Code regarding the propriety of Solar Energy Systems (as defined below).

SECTION 2: DEFINITIONS

ACTIVE AGRICULTURAL LAND: Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle).

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

FACILITY AREA: The cumulative land area occupied during the commercial operation of the solar energy generating facility. This shall include all areas and equipment within the facility’s perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment – as well as any site improvements beyond the facility’s perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

FARM OPERATION: Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11]).

GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System which is secured to the ground via a pole, ballast system, or other mounting system; is detached from any other structure; and which generates electricity for onsite or offsite consumption.

KILOWATT (kW): A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial solar energy systems may be described in terms of kW.

MEGAWATT (MW): A unit of power equal to 1,000 kW. The nameplate capacity of larger solar energy systems may be described in terms of MW.

MINERAL SOIL GROUPS 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

NAMEPLATE CAPACITY: A solar energy system's maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

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 NYS Department of Environmental Conservation.

ON-FARM SOLAR ENERGY SYSTEM: A Solar Energy System located on a farm which is a "farm operation" (as defined by Article 25-AA of the Agriculture and Markets Law, which may include one or multiple contiguous or non-contiguous parcels) in an agricultural district, which is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed by the farm operation.

POLLINATOR: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, energy storage devices, or other electrical and photovoltaic equipment associated with the production and storage of electricity.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or Tier 4 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted Solar Energy Systems.
 - 2. Building-Integrated Solar Energy Systems.
 - 3. Ground-Mounted Solar Energy Systems with a Nameplate Capacity of up to 25 kW AC, or Ground-Mounted Solar Energy Systems with a total solar panel surface area of up to 4,000 square feet.
 - 4. On-Farm Solar Energy Systems
- B. Tier 2 Solar Energy Systems include the following:
 - 1. Ground-Mounted Solar Energy Systems not included under Tier 1 Solar Energy Systems with a Nameplate Capacity of up to 1 MW AC and which generate no more than 110% of the electricity consumed on the site over the previous 12 months; or Ground-Mounted Solar Energy Systems not included under Tier 1 Solar Energy Systems with a Facility Area of up to 8 acres in size and which generate up to 110% of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 Solar Energy Systems include the following:
 - 1. Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Nameplate Capacity of up to 5 MW AC; or Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Facility Area of up to 40 acres in size.
- D. Tier 4 Solar Energy Systems are Solar Energy Systems which are not included under Tier 1, Tier 2, or Tier 3 Solar Energy Systems.

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

SECTION 3: LEGISLATIVE FINDINGS

The Town of Carmel is a rural, largely residential community, having a population of approximately 33,576 people according to the results of the 2020 census.

The three hamlets in Carmel – Carmel, Mahopac, and Mahopac Falls (Red Mills), have been the historic centers of the Town since its founding.

The Town of Carmel is home to a number of lakefront residential communities that surround the many small and large lakes and reservoirs within the Town.

The Town's geography, like much of the Hudson Highlands region within which it is

situated, consists of a series of hills and valleys. The road names in Carmel are evidence of the Town's geography – Seminary Hill, Cherry Hill, Weber Hill, Shear Hill, Barrett Hill, Hitchcock Hill roads – lots are carved into the hillsides and valleys, many providing attractive vistas to the Town's lakes and reservoirs. Within the valleys, remnant farmsteads still exist.

The Town of Carmel is actively engaged in the revision of its comprehensive plan and zoning code, in order to address issues of growth and development on a community-wide basis. One specific area of concern and inquiry is Solar Energy Systems within the Town.

Without study, there is a possibility that certain solar energy systems could be located in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of, and lack of proper dimensional regulations for, such uses would have materially adverse and irreversible impacts on the Town, e.g., detrimental visual impact.

In addition, the Town intends to study monitoring and mitigation strategies, heat island effect, fire hazards, runoff management, habitat disruption and recycling plans to minimize the negative impacts of solar farms on the environment and surrounding communities.

In short, the Town is very concerned with the detrimental effects of Solar Energy Systems on the health, safety, welfare and quality of life of the residents and citizens of the Town of Carmel. Thus, the Town Board has decided to review the Town Code and consider potential revisions thereto to address the Town's concerns with Solar Energy Systems.

In order to allow the Town Board time to complete its review, draft proposed new legislation and enact any such legislation, the Town Board deems it in the best interest of the general health, safety and welfare of the residents of the Town of Carmel to impose a moratorium prohibiting the review and approval of applications and permits for Solar Energy System in the Town of Carmel.

SECTION 4: MORATORIUM

Pursuant to the statutory authority vested in the Town to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Carmel hereby declares a six-month moratorium on the review and approval of new as of yet unfiled and all pending applications for any and all land use approvals, including site plan approvals, subdivision plats, building permits, special use permits and variances (hereinafter "Land Use Approvals") for all Solar Energy Systems within the Town. During the period of this local law:

- The Planning Board shall not accept any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit or other permit that includes the permitting, construction and/or development of

- a Solar Energy System within the Town.
- The Zoning Board of Appeals shall not accept any application or grant any approval for a variance or other permit that would have as a result the permitting, construction and development of a Solar Energy System within the Town.
- The Building Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for a Solar Energy System within the Town.
- Projects currently under construction and projects that have received final approvals are not subject to this moratorium.

SECTION 5: TERM

The moratorium imposed by this Local Law shall be effective six months from the effective date of this Local Law.

SECTION 6: HARDSHIP WAIVER

- A. Should any owner of property affected by this Local Law suffer any unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Town Board of the Town of Carmel in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
 - b. the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.
- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Town Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and five hundred 00/100 Dollars (\$1,500.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Town Board, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a hardship waiver from the provisions of this Local Law, the Town Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town of Carmel. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render its

decision either granting, denying, granting in part or denying in part, the application for a hardship waiver from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

- D. Standard of Review. In reviewing an application for an exception based upon a claim of necessary or extraordinary hardship, the Town Board shall consider the following criteria:
- a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Town.
 - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

SECTION 7: HOME RULE

Nothing in this Local Law is intended or shall be construed to limit the home rule authority of the Town under State Law or to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.

SECTION 8: SEVERABILITY

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 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 Carmel hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 9: REPEAL

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency.

SECTION 10: SEQRA

This local law constitutes a Type II Action under the State Environmental Quality Review Act inasmuch as it constitutes the adoption of a moratorium on land development or construction. As such this project is not subject to review under the State Environmental Quality Act.

SECTION 11: EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of

State in accordance with Section 27 of the Municipal Home Rule Law.