

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of CHAUTAUQUA

Local Law No. 2 of the year 2023

A local law Amending the Town's Solar Energy Systems Regulations
(Insert Title)

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of CHAUTAUQUA as follows:

-SEE ATTACHED-

(If additional space is needed, attach pages the same size as this sheet, and number each.)

TOWN OF CHAUTAUQUA

LOCAL LAW NO. 2 OF 2023

A LOCAL LAW AMENDING THE TOWN'S SOLAR ENERGY SYSTEMS REGULATIONS

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

SECTION 1. AUTHORITY.

This local law is promulgated pursuant to the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(10);
2. New York Statute of Local Governments, §10(1) and (7);
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);
4. New York Town Law §130 (11)(peace, good order and safety), (15)(promotion of public welfare); and
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(general powers).

SECTION 2. SOLAR ENERGY SYSTEM REGULATIONS.

Section 143-53.2 of the Town of Chautauqua Zoning Code is hereby revised to provide as follows:

Section 143.53.2. Solar Energy Systems.

A. **Purpose.** The Town Board of the Town Chautauqua, exercising the authority granted to 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 Chautauqua, does hereby enact this Section to regulate the construction, maintenance and placement of solar energy systems and equipment in the Town of Chautauqua. The purpose of this regulation is 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 collection systems without excess regulation. The Town of Chautauqua recognizes the importance of solar systems in generating electricity for on-premises and off-premises use, the reduction of greenhouse gas emissions and support for emerging solar system economic development.

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

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) - A solar energy system that consists of integrating photovoltaic modules into the building structure. 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

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.

LARGE-SCALE SYSTEM - Solar energy systems located on land in the Town of Chautauqua 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 25KW 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, and that has the capacity to produce less than 25KW 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 PRODUCTION FACILITY - Energy Generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of wholesale or retail sales of electricity.

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.

C. Applicability.

- (1) 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, excluding general maintenance and repair.
- (2) 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 New York State Building Code and the Town Code as well as the National Electrical Code (NEC), National Fire Protection Code 70 (NFPA 70), and local regulations.
- (3) 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 Chautauqua 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 and solar energy production facilities 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 permitting board on a case-by-case basis in accordance with the significance of the potential adverse environmental impact.

D. Solar as an Accessory Use/Structure. This section governs the placement and installation of Small-scale Solar systems as defined herein. The installation of Small-scale Solar systems does require the applicant to obtain a building permit from the Town of Chautauqua.

- (1) 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:

- (a) 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.
- (b) Setback. Solar energy systems are subject to the setback requirements of the underlying zoning district.
- (c) Aesthetics. Solar energy equipment shall incorporate the following design requirements:
 - [1] Solar energy equipment shall be installed outside the primary residence or accessory structure and as close to a public utility electrical meter as possible.
 - [2] 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.
 - [3] Access and Pathways (NFPA Section 324.7) Roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with NFPA Sections R324.7.1 through R324.7.6

EXCEPTIONS:

- [a] Roof access, pathways and spacing requirements need not be provided where an alternative ventilation method has been provided, or where vertical ventilation techniques will not be employed.
- [b] Detached garages and accessory units.
- [4] Size of solar photovoltaic array (324.7.1). Each photovoltaic array shall not exceed 150 feet in any direction. (45,720 mm).
- [5] Roof Access Points (324.1.2). Roof access points shall be located:
 - [a] In areas that establish access pathways which are independent of each other and as remote from each other as practicable so as to provide escape routes from all points along the roof.
 - [b] In areas that do not require the placement of ground ladders over openings such as windows or doors or areas that may cause congestion or create other hazards.
 - [c] At strong points of building construction, such as corners, pilasters, hips, and valleys and other areas capable of supporting the live load from emergency responders.
 - [d] Where the roof access point does not conflict with overhead obstructions such as tree limbs, wires, or signs.

- [e] Where the roof access point does not conflict with ground obstructions such as decks, fences, or landscaping.
 - [f] In areas that minimize roof tripping hazards such as vents, skylights, satellite dishes, antennas, or conduit runs.
- [6] Ground access areas (324.7.3). Ground access areas shall be located directly beneath access roofs and roof access points. The minimum width of the ground access area shall be the full width of the access roof or roof access point, measured at the eave. The minimum depth shall allow for the safe placement of ground ladders for gaining entry to the access roof.
- [7] Single ridge roofs (324.7.4). Panels, modules, or arrays installed on roofs with a single ridge shall be located in a manner that provides two (2), 36 inches wide (914mm) access pathways extending from the roof access point to the ridge. Access pathways on opposing roof slopes shall not be located along the same plane as truss, rafter, or other such framing system that supports the pathway.

EXCEPTIONS:

- [a] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) and less.
 - [b] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders.
 - [c] One access pathway shall be required when a roof slope containing panels, modules or arrays is located not more than 24 inches (610 mm) vertically from an adjoining roof which contains an access roof.
- [8] Hip roofs (324.7.5). Panels, modules and arrays installed on dwellings with hip roofs shall be located in a manner that provides a clear access pathway not less than 36 inches (914mm), extending from the roof access point to the ridge or peak, on each roof slope where panels, modules or arrays are located.

EXCEPTIONS:

- [a] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.
 - [b] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders
- [9] Roofs with valleys (324.7.6), Panels and modules shall not be located less than 18 inches (457 mm) from a valley.

EXCEPTIONS:

- [a] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

- [10] Allowance for smoke ventilation operations (324.7.7). Panels and modules shall not be located less than 18 inches (457 mm) from a ridge or peak.

EXCEPTIONS:

- [a] Where an alternative ventilation method has been provided or where vertical ventilation methods will not be employed between the uppermost portion of the solar photovoltaic system and the roof ridge or peak.
- [b] Detached garages and accessory structures.
- (d) Notification to the Fire Service. Notification in writing to the Fire Department having operational authority at the location where the system will be installed shall be made no later than 10 (ten) days following installation:
- [1] Notification shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shut down operation of unit so as to have the ability to cut power from the solar panels.
- [2] In addition a proper written statement showing the method of shut down shall be posted inside the main electrical panel of the unit which can be readily accessible for and to firefighting personnel.
- (2) Ground Mounted Systems.
- (a) Ground mounted solar energy systems are permitted as an accessory structure in all zoning districts, subject to the requirements set forth in this section.
- (b) All ground mounted solar panels in residential 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 Chautauqua Zoning Board of Appeals.
- (c) Setback(s). Ground mounted solar panels are subject to setback requirements of the underlying zoning district.
- (d) Height. Solar panels are restricted to a height of fifteen (15) feet when located with a minimum set back distance of ten (10) feet from a lot line; a height of twenty (20) feet when located with a minimum set back distance of fifteen (15) feet from a lot line; and maximum height of twenty five (25) feet when located with a setback distance of twenty five (25) feet or greater. All height measurements are to be calculated when the solar energy system is oriented at maximum tilt.
- (e) 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.
- (f) 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 Zoning Board of Appeals and shall be approved by a majority thereof.

E. Solar as Principal Use.

- (1) Large Scale Solar Systems are permitted by the issuance of a special use permit by the Town Board within the Residential-Agricultural (R-A) District, subject to the requirements set forth in this section.
 - (a) Every application for a Large Scale System within the Town of Chautauqua shall be made to the Town Board and shall be approved by a majority vote thereof.
 - (b) Prior to Town Board review of the application it may refer said application to the Zoning Board of Appeals for site plan review, report and recommendation for approval or disapproval.
 - (c) 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.
- (2) Special Use Permit Application Requirements. Every application for a Special Use Permit under this section shall contain the following information:
 - (a) Verification of utility notification. 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 proposed project application.
 - (c) 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.
 - (d) Blueprints showing the layout of the proposed system signed by a Professional Engineer or Registered Architect.
 - (e) Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and invertors that are to be installed.
 - (f) A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.
 - (g) Decommissioning Plan:
 - [1] To ensure the proper removal of large-scale systems, the decommissioning plan shall include details regarding the removal of all infrastructures 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. *In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner.*

[2] A form of surety, through escrow, bond or the equivalency of, shall be established prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required may not exceed 125 percent of the estimated cost to decommission.

(3) Special Use Permit Standards

- (a) Setback(s): All large-scale solar energy systems shall be set back a minimum of 100 feet from any property line and a minimum of 300 feet from any residential building, school, place of public worship, or designated historic district or landmark. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the “property line” for purposes of determining setbacks.
- (b) 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 special use permit process.
- (c) On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility.
- (d) The removal of existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar installation.

(4) Ownership Changes.

If the owner 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 Code Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Code Enforcement Officer in writing. The special use permit and all other local approvals for the solar energy system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications.

F. **Solar Storage Batteries.**

- (1) 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 New York State Building Code. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by New York State Building Code and the National Electric Code.

- (2) 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.

G. Waiver Relief.

The Town Board recognizes that no regulation can anticipate every creative plan that may be devised, which, though not in strict compliance with the provisions of this article, nevertheless, is not objectionable. Accordingly, the Town Board is hereby empowered to grant relief to an applicant from the strict application of this Section where the applicant provides sufficient grounds for a finding that the proposal comports as much as feasible with the spirit and letter of this Section and, though not in strict compliance therewith, remains aesthetically pleasing, protects neighboring properties, and preserves property values within the Town of Chautauqua.

H. Reimbursement of Fees and Expenses.

- (1) An Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law or Article 94-c of the Executive Law complies with the substantive provision of this local law.
- (2) The applicable fees for any review or permit required by this local law shall be set from time to time by resolution of the Town Board.
- (3) An Applicant for either state or local siting approval shall deliver to the Town Board, along with its application, if local approval is sought, or one-hundred eighty (180) days prior to the filing of an Article 10 or Article 94-C application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"). This sum shall be held by the Town in a non-interest bearing account and shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in its review of and preparation for an Article 10 or Article 94-c application. Should the Town be awarded intervenor funds, it shall switch to and deplete those funds before making further use of the Initial Deposit. Following the approval or denial of the state or local application, the Town shall return to the Applicant any excess funds remaining in escrow. If the escrow account has been depleted prior to approval or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding consulting fees.

I. **Violations.**

- (1) 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.
- (2) Notwithstanding the above, the Town Board of the Town of Chautauqua 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.

SECTION 3. VALIDITY AND SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law 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.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2023 of the (County)(City)(Town)(Village) of CHAUTAUQUA was duly passed by the TOWN BOARD on March 8, 2023, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

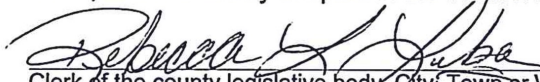
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.


Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: March 15, 2023

(Seal)