

THE FOLLOWING RESOLUTION WAS OFFERED BY
COUNCILMEMBER JENDROWSKI, WHO MOVED
ITS ADOPTION, SECONDED BY COUNCILMEMBER DUGAN, TO WIT:

WHEREAS, the Town Board of the Town of Newstead, New York, previously adopted the Solar Energy Law of the Town of Newstead by Local Law No. 4 of the Year 2017, which was amended in its entirety by Local Law No. 8 of the year 2021 (the "Solar Law"); and

WHEREAS, the Town Board has determined that, given the increased interest in solar installations within the Town coupled with enhanced guidance on how to best regulate solar facilities, it is in the best interest of the Town of Newstead to update the Solar Law; and

WHEREAS, Supervisor Izydorczak introduced the following proposed "Local Law No. 7 of the Year 2023" known as "2023 Amendment No. 1 to the Solar Law" and presented a copy to each member of the Town Board, which Local Law is attached hereto and made a part hereof:

A Local Law known as Local Law No. 7 of the Year 2023 entitled "2023 Amendment No. 1 to the Solar Law."

Be it enacted by the Town Board of the Town of Newstead as follows:

SECTION 1. TITLE

This Law shall be known as Local Law No. 7 of the Year 2023 entitled "2023 Amendment No. 1 to the Solar Law".

SECTION 2. PURPOSE

The purpose of this local law is to update the Town's law concerning solar energy systems located within the Town.

SECTION 3. AMENDMENT OF PRIOR LAW

Chapter 180 of the Code of the Town of Newstead, originally adopted on August 14, 2017 by Local Law No. 7 of the Year 2017 and amended in its entirety by Local Law No. 8 of the year 2021 is replaced in its entirety as follows:

§ 180-1. Authority.

This Solar Energy Local Law is adopted pursuant to § 261-263 of the Town Law and § 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

§ 180-2. Statement of purpose.

- A. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Newstead (the "Town") and its residents by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
- (1) To take advantage of a safe, abundant, renewable, and nonpolluting energy resource;
 - (2) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
 - (3) To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems; and
 - (4) To mitigate the impacts of solar energy systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

§ 180-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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 on-site consumption.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "farmland of statewide importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

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 that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for on-site or off-site consumption.

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 New York State Department of Environmental Conservation.

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

PRIME FARMLAND — Land, designated as "prime farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

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, storage devices, or other electrical and photovoltaic equipment associated with the production 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. The area of a solar energy system includes all the land inside the perimeter of the solar energy system, which extends to any interconnection equipment. Adjacent or nearby solar energy systems, built as part of a single or phased project, regardless of ownership, constitute a single solar energy system. A solar energy system is classified as a Tier 1, Tier 2, or Tier 3 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.

- B. Tier 2 solar energy systems are ground-mounted solar energy systems designed to supply power, no more than 110% of the anticipated on-site demand, to a single residence or property owner while generating excess power to the grid on a limited and secondary basis. A solar energy system associated with agricultural operations and supplying a portion of the operation's electrical needs (not exceeding 110% of the operation's anticipated demand) shall be considered a Type 2 solar energy system.
- C. Tier 3 solar energy systems are systems that are not included in the list for Tier 1 and Tier 2 solar energy systems.

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

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form.

§ 180-4. Applicability.

- A. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town of Newstead after the effective date of this article or adoption of amendments to this article, excluding general maintenance and repair.
- B. Solar energy systems constructed or installed prior to adoption of amendments to this article shall be governed by the effective Article at the time of construction or issuance of a special use permit, whichever is earlier, except as provided in subsection §180-4(C).
- C. Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this article.
- D. All solar energy systems 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 ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

§ 180-5. General requirements.

- A. A building permit shall be required for installation of all solar energy systems.
- B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ("SEQRA").
- C. A solar energy system may not be artificially divided into separate solar energy systems to comply with the provisions of this Article. Multiple solar energy systems will be treated as one solar energy system under this article regardless of ownership at the discretion of the Code Enforcement Officer.

§ 180-6. Permitting requirements for Tier 1 solar energy systems.

Tier 1 solar energy systems shall be allowed upon issuance of a building permit in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of solar energy systems:

- A. Roof-mounted solar energy systems:
 - (1) Roof-mounted solar energy systems shall incorporate the following design requirements, which may be modified with a building/architectural plan review

approved by the Code Enforcement Officer; the modified plan cannot exceed underlying zoning requirements:

- (a) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface the highest edge of the system.
 - (b) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (c) Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - (d) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
- (2) Glare: All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.
- B. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system and must have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade. Building mounted solar energy systems shall not be more than two feet from the building wall nor extend beyond the roofline or parapet wall.
- C. Use of any storage battery or electrical energy storage system is not permitted.

§ 180-7. Permitting requirements for Tier 2 solar energy systems.

Tier 2 solar energy systems shall be permitted in all zoning districts as accessory structures, shall require site plan review, and shall be subject to the following additional conditions:

- A. Glare: All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.
- B. Setbacks: Tier 2 solar energy systems shall be subject to the setback regulations specified for accessory structures within the underlying zoning district. In R-A, R-1, R-2, and R-3 districts, all ground-mounted solar energy systems shall only be installed in side or rear yards.
- C. Height: Tier 2 solar energy systems may not exceed the permitted height of accessory structures in the zoning district where the system is to be installed or 16 feet from the ground, whichever is less. Approval may be granted for a Tier 2 solar energy system up to 20 feet from the ground if during the site plan approval process it is determined that a lesser height will not be suitable.
- D. Screening and visibility:
 - (1) All Tier 2 solar energy systems shall have views minimized from adjacent properties. Proposed Tier 2 solar energy systems are required to submit a screening and landscaping plan, stamped and signed by a New York State licensed landscape architect, showing adequate measures to screen through landscaping, grading, or other means so that the solar energy system's visibility is as limited as practicable from roadways and neighboring properties. The screening and landscaping plan shall include the locations, elevations, height, plant species, and/or materials that will

- comprise the structures, landscaping and/or grading used to screen as practicable any adverse aesthetic effects of the system.
- (2) Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize from view the solar energy system from surrounding properties and the road.
- E. Lot size: Tier 2 solar energy systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.
- F. Use of any storage battery or electrical energy storage system is not permitted.

§ 180-8. Permitting requirements for Tier 3 solar energy systems.

Tier 3 solar energy systems are permitted through the issuance of a special use permit, subject to site plan application requirements, and must meet all requirements set forth in this section. Tier 3 solar energy systems shall only be permitted on parcels zoned C-1, C-2, I-1, and I-2 in the Town of Newstead.

- A. Applications for the installation of a Tier 3 solar energy systems shall be reviewed by the Code Enforcement Officer and referred to the Planning Board for its review and comment prior to forwarding to the Town Board for final approval, approval with conditions, or denial.
- B. Underground requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- C. Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- D. Signage.
 - (1) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty- four-hour emergency contact information. Said information shall be depicted within an area no more than 16 square feet.
 - (2) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- E. Glare. All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.
- F. Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- G. Tree-cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible.
- H. Use of any storage battery or electrical energy storage system is not permitted.
- I. Additional Requirements.

- (1) Lot size. Tier 3 solar energy systems shall not be permitted on a lot under five acres in size.
- (2) Setbacks. Tier 3 solar energy systems must be setback 50 feet. The required setbacks are measured from the parcel line to the nearest part of the system. No part of the Tier 3 solar energy system shall extend into the required setbacks, including any movement as a result of a tracking system or other adjustment of the solar energy system, related equipment, or parts.
- (3) Height. Tier 3 solar energy systems may not exceed twenty feet.
- (4) Lot coverage. All land within the perimeter of the components of Tier 3 solar energy systems shall be considered included in the calculation for lot coverage requirements or the fenced area, whichever is greater. Lot coverage of the solar energy system shall not exceed the maximum lot coverage requirement of the zoning district.
- (5) Fencing requirements. All mechanical equipment shall be enclosed by a seven-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
- (6) Screening and visibility. All Tier 3 solar energy systems shall have views minimized from adjacent properties. Proposed Tier 3 solar energy systems must include a screening and landscaping plan, stamped and signed by a New York State licensed landscape architect, showing adequate measures to screen through landscaping, grading or other means so that the Tier 3 solar energy system is not visible from roadways and neighboring properties. The screening and landscaping plan shall include the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen the system.
- (7) Agricultural resources. For projects located on agricultural lands, the following additional requirements must be met:
 - (a) Any solar energy system located on an area that consists of prime farmland, prime farmland if drained, or farmland of statewide importance shall not exceed the lesser of:
 - [1] 25% of the area of prime farmland, prime farmland if drained, or farmland of statewide importance on the parcel; or
 - [2] 100 acres.
 - (b) Further, solar energy systems on prime farmland, prime farmland if drained, or farmland of statewide importance shall be required to seed 20% of the total surface area of all solar panels on the lot with perennial vegetation designed to attract pollinators approved by the Conservation Advisory Committee.
 - (c) Solar energy systems located on prime farmland, prime farmland if drained, or farmland of statewide importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.
 - (d) Solar energy system owners shall develop, implement, and maintain approved vegetation to the extent practicable pursuant to a vegetation management plan by providing approved perennial vegetation and a foraging habitat beneficial to

game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use fast-growing, native plant species and seed mixes.

§180-9. Decommissioning.

A. Decommissioning Plan. For all Tier 2 and Tier 3 solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the site plan application. The decommissioning plan shall identify the anticipated life of the project, the method and process of removing all components of the solar energy system and returning the site to its preexisting or a suitable condition outlined below, along with the anticipated time to complete decommissioning and restoration, and the estimated decommissioning and restoration costs. The applicant shall submit an updated decommissioning plan every five years during the life of the solar energy system. The decommissioning plan, every updated decommissioning plan, and associated costs for removal, shall receive approval from the Town Engineer and Town Attorney as a condition of acceptance. The Decommissioning Plan shall be binding upon and shall transfer to bind all of the Applicant's successors, assigns, and heirs.

A suitable condition of the site is an arable condition planted with a soil retaining ground cover such as white clover, red clover, alfalfa, and other grasses approved by the Town's Conservation Advisory Committee.

B. Decommissioning Bond. A bond or other appropriate form of security acceptable to the Town shall be provided to cover the cost of the removal of the entire solar energy system along with site restoration. Should the applicant/owner/operator fail to complete the decommissioning plan within 180 days of an event triggering the decommissioning plan, such bond or security will be forfeited to the Town of Newstead. Such forfeiture shall not preclude the Town from taking any further action against the applicant/owner/operator. The bond or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

Said bond or security shall transfer to cover any subsequent owner or operator of the system. Said bond or security shall not be revocable and shall extend for a period of not less than the anticipated life of the system plus the time to complete decommissioning as set forth in the decommissioning plan plus one year. Any subsequent bonds shall be updated every five years, in conjunction with submittal of the updated decommissioning plan to cover the estimated cost of actual removal and remediation of the site. Costs for decommissioning shall be reduced to present day costs, along with a 3.5% acceleration, per year, with the decommissioning bond covering all costs for each calendar year. The Code Enforcement Officer reserves the right to require a different yearly acceleration percentage based on the economic environment at the time of the review and acceptance of the plan.

C. Updated Decommissioning Plans and Bonds. Decommissioning Plans and Bonds shall be reviewed and updated every five years from the effective date of the Decommissioning Bond. Updated Plans and Bonds must be approved by the Town Engineer and Town Attorney.

Applicant/owner/operator shall coordinate a review of the Decommissioning Plan and Bond with the Town no later than six months prior to the end of each five-year review.

D. In addition to decommissioning at the end of the solar energy system's life, solar energy systems that are constructed/operated in violation of this Article, are in default, have been abandoned, and/or are not producing electricity for a period of six consecutive months shall be removed per the Decommissioning Plan.

§180-10. Site plan application.

A site plan application is required for all Tier 2 and Tier 3 solar energy systems. Any site plan application shall include the following information:

- (1) Prior to the issuance of the building permit or final approval by the Town Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- (2) Property lines and physical features, including roads, for the project site.
- (3) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- (4) A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- (5) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.
- (6) Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the solar energy system. Such information for the final system installer shall be submitted prior to the issuance of a building permit.
- (7) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.
- (8) Zoning district designation for the parcel(s) of land comprising the project site.
- (9) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- (10) 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 Planning Board and Town Engineer.
- (11) A Decommissioning Plan consistent with the requirements of §180-9 of this Article must be submitted with the Decommissioning Bond to be provided prior to issuance of a building permit.
- (12) Location of the nearest fire hydrant. If distance exceeds fifty feet from the entrance, a plan to provide an additional fire hydrant within fifty feet of the entrance.
- (13) 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, in the Town's sole discretion, either the current owner or operator, the new owner or operator, or both shall be responsible for all of the obligations of the special use permit, site plan approval, and decommissioning plan. The current owner or operator of the solar energy system shall notify the Town Code Enforcement Officer of such change in ownership or operator at least 30 days prior to any such ownership change.

(14) Any of these requirements may be waived by the Code Enforcement Officer

§ 180-11. Safety.

- A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 solar energy system is located in an ambulance district, the local ambulance corps.
- C. Storage batteries or electrical energy storage systems are not permitted as part of any solar energy system.

§ 180-12. Permit time frame and abandonment.

- A. The special use permit and site plan approval for a solar energy system shall be valid for a period of 12 months, provided that a building permit is issued for construction or construction is commenced. Once issued, the building permit is valid for 12 months. In the event construction is not completed in accordance with the final site plan/building permit, as may have been amended and approved, as required by the Town Board, within 12 months after approval, the Town may, in its sole discretion, extend the time to complete construction for up to an additional 180 days. A special use permit which has expired pursuant to this section may be renewed upon application by the permit holder, payment of the application fee, and approval of the application by the Code Enforcement Officer.
- B. Upon cessation of electricity generation of a solar energy system on a continuous basis for six 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 180 days of notification.
- C. 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. Utilization of such bond and/or security shall not preclude the Town from taking any further action against the owner and/or operator to make the Town whole in the event the owner and/or operator fails to comply with decommissioning.

§ 180-13. Enforcement.

- A. Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

- B. Annually, permit holders shall certify to the Town that the solar energy system is being used on a continuous basis and that it has not stopped generating electricity for a continuous six-month period in the prior 12 months.

§ 180-14. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

A hearing before the Town Board of the Town of Newstead, in the County of Erie shall be held at the Town Hall, 5 Clarence Center Road, Akron, New York at 7:25 p.m. on the 27th day of November 2023, for the purpose of hearing all persons interested in the proposed Local Law No. 7 of the Year 2023; and

BE, IT FURTHER ORDERED, that the Town Clerk is directed to (a) publish a notice of public hearing in the Akron Bugle, designated as the official newspaper for this publication, such publication to be not less than five days before the date of the public hearing; and post as required by law one copy of the Notice of Public Hearing no later than the day such Notice is published; and (b) notify by mail all parties of interest pursuant to the General Municipal Law and the Town Law of the Public Hearing, not less than five days before the date of the Public Hearing; and

BE, IT FURTHER ORDERED, that the Town Clerk is to make copies of the proposed "Local Law No. 7 of the Year 2023", entitled "2023 Amendment No. 1 to the Solar Law", available at her office for inspection and distribution to any interested person during business hours.

The question of the adoption of the foregoing order was duly put to roll call vote at a regular meeting of the Town Board on November 13, 2023, the results of which were as follows:

| | | |
|---------------|------------|-----------|
| Councilmember | Pope | Voted Aye |
| Councilmember | Burke | Voted Aye |
| Councilmember | Dugan | Voted Aye |
| Councilmember | Jendrowski | Voted Aye |
| Supervisor | Izydorzak | Voted Aye |

LEGAL NOTICE
NOTICE OF PUBLIC HEARING
TOWN OF NEWSTEAD, NEW YORK

PLEASE TAKE NOTICE, that there has been presented to the Town Board on November 1, 2023, for adoption a proposed Local Law to be known as "Local Law No. 7 of the Year 2023" entitled "2023 Amendment No. 1 to the Solar Law." The purpose of this local law is to update the Town's Law concerning solar energy systems located within the Town.

THEREFORE, pursuant to the Municipal Home Rule Law Rules and Local Law No. 7, the Town Board of the Town of Newstead shall hold a Public Hearing on the aforesaid Local Law at the Town Hall, 5 Clarence Center Road, Akron, New York at 7:25 p.m. on the 27th day of November 2023, at which time persons interested may be heard. Copies of the aforesaid proposed Local Law are available at the office of the Town Clerk for inspection and distribution to any interested person during business hours. The meeting room is wheelchair accessible. Those needing special arrangements should call the Town Hall at 542-4573 by November 22, 2023.

BY ORDER OF THE TOWN BOARD
OF THE TOWN OF NEWSTEAD

Dated: November 13, 2023

THE FOLLOWING RESOLUTION WAS OFFERED BY
COUNCILMEMBER BURKE, WHO MOVED ITS ADOPTION,
SECONDED BY COUNCILMEMBER JENDROWSKI, TO WIT

**RESOLUTION ADOPTING
DETERMINATION OF NON-SIGNIFICANCE
OF
LOCAL LAW NO 7**

WHEREAS, the Town Board of the Town of Newstead is considering adoption of a Local Law to update the Town's law concerning solar energy systems located within the Town; and

WHEREAS, the Town Board has reviewed the Short Form EAF form submitted and has determined that the proposed action will not have a significant impact on the environment.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Newstead, after considering the action proposed herein, in reviewing the criteria contained in Section 617.11 of the Rules and Regulations of the SEQRA Regulations and thoroughly analyzing the project with respect to potential environmental concerns, determines that the action will not have a significant effect on the environment and that no further action is required by the Town of Newstead

The question of the adoption of the foregoing SEQRA neg dec was duly put to a vote on roll call, at a regular meeting of the Town Board on November 13, 2023 the results of which were as follows:

| | | |
|---------------|------------|-----------|
| Councilmember | Pope | Voted Aye |
| Councilmember | Burke | Voted Aye |
| Councilmember | Dugan | Voted Aye |
| Councilmember | Jendrowski | Voted Aye |
| Supervisor | Izydorzak | Voted Aye |

COUNCILMEMBER POPE
MOVED THE ADOPTION OF THE FOLLOWING
LOCAL LAW NO. 7 OF THE YEAR 2023, SECONDED
BY COUNCILMEMBER JENDROWSKI

WHEREAS, the Town Board of the Town of Newstead previously determined that it was necessary to update Section 180 of the Town of Newstead Town Code, known as the Solar Law; and

WHEREAS, Local Law No. 7 of the Year 2023 was proposed for consideration; and

WHEREAS, a public hearing was held on November 27, 2023, at which time interested persons were heard; and

WHEREAS, the Town Board previously determined that the proposed Local Law No. 7 of the Year 2023 will not have a significant impact on the environment and a negative declaration was passed.

NOW, THEREFORE, BE IT

RESOLVED, that the following Local Law No. 7 of the Year 2023 as set forth fully below is hereby adopted:

A Local Law known as Local Law No. 7 of the Year 2023 entitled "2023 Amendment No. 1 to the Solar Law."

Be it enacted by the Town Board of the Town of Newstead as follows:

SECTION 1. TITLE

This Law shall be known as Local Law No. 7 of the Year 2023 entitled "2023 Amendment No. 1 to the Solar Law".

SECTION 2. PURPOSE

The purpose of this local law is to update the Town's law concerning solar energy systems located within the Town.

SECTION 3. AMENDMENT OF PRIOR LAW

Chapter 180 of the Code of the Town of Newstead, originally adopted on August 14, 2017 by Local Law No. 7 of the Year 2017 and amended in its entirety by Local Law No. 8 of the year 2021 is replaced in its entirety as follows:

§ 180-1. Authority.

This Solar Energy Local Law is adopted pursuant to § 261-263 of the Town Law and § 20 of the

Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

§ 180-2. Statement of purpose.

- A. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Newstead (the "Town") and its residents by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
- (1) To take advantage of a safe, abundant, renewable, and nonpolluting energy resource;
 - (2) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
 - (3) To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems; and
 - (4) To mitigate the impacts of solar energy systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

§ 180-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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 on-site consumption.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "farmland of statewide importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

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 that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for on-site or off-site consumption.

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 New York State Department of Environmental Conservation.

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

PRIME FARMLAND — Land, designated as "prime farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and

chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

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, storage devices, or other electrical and photovoltaic equipment associated with the production 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. The area of a solar energy system includes all the land inside the perimeter of the solar energy system, which extends to any interconnection equipment. Adjacent or nearby solar energy systems, built as part of a single or phased project, regardless of ownership, constitute a single solar energy system. A solar energy system is classified as a Tier 1, Tier 2, or Tier 3 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.
- B. Tier 2 solar energy systems are ground-mounted solar energy systems designed to supply power, no more than 110% of the anticipated on-site demand, to a single residence or property owner while generating excess power to the grid on a limited and secondary basis. A solar energy system associated with agricultural operations and supplying a portion of the operation's electrical needs (not exceeding 110% of the operation's anticipated demand) shall be considered a Type 2 solar energy system.
- C. Tier 3 solar energy systems are systems that are not included in the list for Tier 1 and Tier 2 solar energy systems.

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

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form.

§ 180-4. Applicability.

- A. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town of Newstead after the effective date of this article or adoption of amendments to this article, excluding general maintenance and repair.
- B. Solar energy systems constructed or installed prior to adoption of amendments to this article shall be governed by the effective Article at the time of construction or issuance of a special use permit, whichever is earlier, except as provided in subsection §180-4(C).
- C. Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this article.
- D. All solar energy systems 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 ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

§ 180-5. General requirements.

- A. A building permit shall be required for installation of all solar energy systems.
- B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ("SEQRA").
- C. A solar energy system may not be artificially divided into separate solar energy systems to comply with the provisions of this Article. Multiple solar energy systems will be treated as one solar energy system under this article regardless of ownership at the discretion of the Code Enforcement Officer.

§ 180-6. Permitting requirements for Tier 1 solar energy systems.

Tier 1 solar energy systems shall be allowed upon issuance of a building permit in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of solar energy systems:

- A. Roof-mounted solar energy systems:
 - (1) Roof-mounted solar energy systems shall incorporate the following design requirements, which may be modified with a building/architectural plan review approved by the Code Enforcement Officer; the modified plan cannot exceed underlying zoning requirements:
 - (a) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface the highest edge of the system.
 - (b) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (c) Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - (d) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
 - (2) Glare: All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.
- B. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system and must have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade. Building mounted solar energy systems shall not be more than two feet from the building wall nor extend beyond the roofline or parapet wall.
- C. Use of any storage battery or electrical energy storage system is not permitted.

§ 180-7. Permitting requirements for Tier 2 solar energy systems.

Tier 2 solar energy systems shall be permitted in all zoning districts as accessory structures, shall require site plan review, and shall be subject to the following additional conditions:

- A. Glare: All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.

- B. Setbacks: Tier 2 solar energy systems shall be subject to the setback regulations specified for accessory structures within the underlying zoning district. In R-A, R-1, R-2, and R-3 districts, all ground-mounted solar energy systems shall only be installed in side or rear yards.
- C. Height: Tier 2 solar energy systems may not exceed the permitted height of accessory structures in the zoning district where the system is to be installed or 16 feet from the ground, whichever is less. Approval may be granted for a Tier 2 solar energy system up to 20 feet from the ground if during the site plan approval process it is determined that a lesser height will not be suitable.
- D. Screening and visibility:
 - (1) All Tier 2 solar energy systems shall have views minimized from adjacent properties. Proposed Tier 2 solar energy systems are required to submit a screening and landscaping plan, stamped and signed by a New York State licensed landscape architect, showing adequate measures to screen through landscaping, grading, or other means so that the solar energy system's visibility is as limited as practicable from roadways and neighboring properties. The screening and landscaping plan shall include the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen as practicable any adverse aesthetic effects of the system.
 - (2) Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize from view the solar energy system from surrounding properties and the road.
- E. Lot size: Tier 2 solar energy systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.
- F. Use of any storage battery or electrical energy storage system is not permitted.

§ 180-8. Permitting requirements for Tier 3 solar energy systems.

Tier 3 solar energy systems are permitted through the issuance of a special use permit, subject to site plan application requirements, and must meet all requirements set forth in this section. Tier 3 solar energy systems shall only be permitted on parcels zoned C-1, C-2, I-1, and I-2 in the Town of Newstead.

- A. Applications for the installation of a Tier 3 solar energy systems shall be reviewed by the Code Enforcement Officer and referred to the Planning Board for its review and comment prior to forwarding to the Town Board for final approval, approval with conditions, or denial.
- B. Underground requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- C. Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- D. Signage.
 - (1) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than 16 square feet.

- (2) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- E. Glare. All solar panels shall have anti-reflective coating(s) and the property owner shall be responsible for ensuring that the anti-reflective coating(s) do not significantly degrade.
- F. Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- G. Tree-cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible.
- H. Use of any storage battery or electrical energy storage system is not permitted.
- I. Additional Requirements.
 - (1) Lot size. Tier 3 solar energy systems shall not be permitted on a lot under five acres in size.
 - (2) Setbacks. Tier 3 solar energy systems must be setback 50 feet. The required setbacks are measured from the parcel line to the nearest part of the system. No part of the Tier 3 solar energy system shall extend into the required setbacks, including any movement as a result of a tracking system or other adjustment of the solar energy system, related equipment, or parts.
 - (3) Height. Tier 3 solar energy systems may not exceed twenty feet.
 - (4) Lot coverage. All land within the perimeter of the components of Tier 3 solar energy systems shall be considered included in the calculation for lot coverage requirements or the fenced area, whichever is greater. Lot coverage of the solar energy system shall not exceed the maximum lot coverage requirement of the zoning district.
 - (5) Fencing requirements. All mechanical equipment shall be enclosed by a seven-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
 - (6) Screening and visibility. All Tier 3 solar energy systems shall have views minimized from adjacent properties. Proposed Tier 3 solar energy systems must include a screening and landscaping plan, stamped and signed by a New York State licensed landscape architect, showing adequate measures to screen through landscaping, grading or other means so that the Tier 3 solar energy system is not visible from roadways and neighboring properties. The screening and landscaping plan shall include the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen the system.
 - (7) Agricultural resources. For projects located on agricultural lands, the following additional requirements must be met:
 - (a) Any solar energy system located on an area that consists of prime farmland, prime farmland if drained, or farmland of statewide importance shall not exceed the lesser of:
 - [1] 25% of the area of prime farmland, prime farmland if drained, or farmland of statewide importance on the parcel; or
 - [2] 100 acres.

- (b) Further, solar energy systems on prime farmland, prime farmland if drained, or farmland of statewide importance shall be required to seed 20% of the total surface area of all solar panels on the lot with perennial vegetation designed to attract pollinators approved by the Conservation Advisory Committee.
- (c) Solar energy systems located on prime farmland, prime farmland if drained, or farmland of statewide importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.
- (d) Solar energy system owners shall develop, implement, and maintain approved vegetation to the extent practicable pursuant to a vegetation management plan by providing approved perennial vegetation and a foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use fast-growing, native plant species and seed mixes.

§180-9. Decommissioning.

A. Decommissioning Plan. For all Tier 2 and Tier 3 solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the site plan application. The decommissioning plan shall identify the anticipated life of the project, the method and process of removing all components of the solar energy system and returning the site to its preexisting or a suitable condition outlined below, along with the anticipated time to complete decommissioning and restoration, and the estimated decommissioning and restoration costs. The applicant shall submit an updated decommissioning plan every five years during the life of the solar energy system. The decommissioning plan, every updated decommissioning plan, and associated costs for removal, shall receive approval from the Town Engineer and Town Attorney as a condition of acceptance. The Decommissioning Plan shall be binding upon and shall transfer to bind all of the Applicant's successors, assigns, and heirs.

A suitable condition of the site is an arable condition planted with a soil retaining ground cover such as white clover, red clover, alfalfa, and other grasses approved by the Town's Conservation Advisory Committee.

B. Decommissioning Bond. A bond or other appropriate form of security acceptable to the Town shall be provided to cover the cost of the removal of the entire solar energy system along with site restoration. Should the applicant/owner/operator fail to complete the decommissioning plan within 180 days of an event triggering the decommissioning plan, such bond or security will be forfeited to the Town of Newstead. Such forfeiture shall not preclude the Town from taking any further action against the applicant/owner/operator. The bond or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

Said bond or security shall transfer to cover any subsequent owner or operator of the system. Said bond or security shall not be revocable and shall extend for a period of not less than the

anticipated life of the system plus the time to complete decommissioning as set forth in the decommissioning plan plus one year. Any subsequent bonds shall be updated every five years, in conjunction with submittal of the updated decommissioning plan to cover the estimated cost of actual removal and remediation of the site. Costs for decommissioning shall be reduced to present day costs, along with a 3.5% acceleration, per year, with the decommissioning bond covering all costs for each calendar year. The Code Enforcement Officer reserves the right to require a different yearly acceleration percentage based on the economic environment at the time of the review and acceptance of the plan.

C. Updated Decommissioning Plans and Bonds. Decommissioning Plans and Bonds shall be reviewed and updated every five years from the effective date of the Decommissioning Bond. Updated Plans and Bonds must be approved by the Town Engineer and Town Attorney. Applicant/owner/operator shall coordinate a review of the Decommissioning Plan and Bond with the Town no later than six months prior to the end of each five-year review.

D. In addition to decommissioning at the end of the solar energy system's life, solar energy systems that are constructed/operated in violation of this Article, are in default, have been abandoned, and/or are not producing electricity for a period of six consecutive months shall be removed per the Decommissioning Plan.

§180-10. Site plan application.

A site plan application is required for all Tier 2 and Tier 3 solar energy systems. Any site plan application shall include the following information:

- (1) Prior to the issuance of the building permit or final approval by the Town Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- (2) Property lines and physical features, including roads, for the project site.
- (3) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- (4) A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- (5) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.
- (6) Name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the solar energy system. Such information for the final system installer shall be submitted prior to the issuance of a building permit.
- (7) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.
- (8) Zoning district designation for the parcel(s) of land comprising the project site.

- (9) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- (10) 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 Planning Board and Town Engineer.
- (11) A Decommissioning Plan consistent with the requirements of §180-9 of this Article must be submitted with the Decommissioning Bond to be provided prior to issuance of a building permit.
- (12) Location of the nearest fire hydrant. If distance exceeds fifty feet from the entrance, a plan to provide an additional fire hydrant within fifty feet of the entrance.
- (13) 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, in the Town's sole discretion, either the current owner or operator, the new owner or operator, or both shall be responsible for all of the obligations of the special use permit, site plan approval, and decommissioning plan. The current owner or operator of the solar energy system shall notify the Town Code Enforcement Officer of such change in ownership or operator at least 30 days prior to any such ownership change.
- (14) Any of these requirements may be waived by the Code Enforcement Officer

§ 180-11. Safety.

- A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 solar energy system is located in an ambulance district, the local ambulance corps.
- C. Storage batteries or electrical energy storage systems are not permitted as part of any solar energy system.

§ 180-12. Permit time frame and abandonment.

- A. The special use permit and site plan approval for a solar energy system shall be valid for a period of 12 months, provided that a building permit is issued for construction or construction is commenced. Once issued, the building permit is valid for 12 months. In the event construction is not completed in accordance with the final site plan/building permit, as may have been amended and approved, as required by the Town Board, within 12 months after approval, the Town may, in its sole discretion, extend the time to complete construction for up to an additional 180 days. A special use permit which has expired pursuant to this section may be renewed upon application by the permit holder, payment of the application fee, and approval of the application by the Code Enforcement Officer.
- B. Upon cessation of electricity generation of a solar energy system on a continuous basis for six 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 180 days of notification.
- C. 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. Utilization of such bond and/or security shall not preclude the Town from taking any further action against the owner and/or operator to make the Town whole in the event the owner and/or operator fails to comply with decommissioning.

§ 180-13. Enforcement.

- A. Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.
- B. Annually, permit holders shall certify to the Town that the solar energy system is being used on a continuous basis and that it has not stopped generating electricity for a continuous six-month period in the prior 12 months.

§ 180-14. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

The above local law was duly put to a roll call vote at a regular meeting of the Town Board held on November 27, 2023, the results of which were as follows:

| | |
|--------------------------|--------|
| Councilmember Dugan | Absent |
| Councilmember Burke | Aye |
| Councilmember Jendrowski | Aye |
| Councilmember Pope | Aye |
| Supervisor Izydorzak | Aye |