

TOWN OF NIAGARA
LOCAL LAW NO. 2024-1

A Local Law Regulating the Zoning of Solar Electric Energy Systems in the Zoning Code of the Town of Niagara.

A New Article XVII shall be added to and included in the Zoning Chapter of the Town Code of the Town of Niagara.

§ 245-78. Authority

This Zoning for Solar Energy Systems is adopted pursuant to Sections 261-264 of the Town Law of the State of New York, which authorizes the Town of Niagara to adopt zoning provisions that advance and protect the health, safety, and welfare of the community and to make provisions for, so far as conditions may permit, the accommodations of solar energy systems and equipment.

§ 245-79. Findings/Statement of Purpose.

The Town Board of the Town of Niagara makes the following findings:

- (a) The Town Board of the Town of Niagara, recognizing that solar energy is a clean, readily available, and renewable energy source that decreases energy costs and provides local business and job opportunities, intends to accommodate, and encourage the use of solar energy systems.
- (b) However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town of Niagara to protect residential, business areas and other land uses, to preserve the overall beauty, nature, and character of the Town of Niagara, to promote the effective and efficient use of solar energy resources, and to protect the health, safety, and general welfare of the citizens of the Town of Niagara.
- (c) Solar Energy Systems, like all land uses, shall be regulated through the zoning of the Town and sited, in accordance with the Community's Comprehensive Plan and the Town's Zoning Map and Code. The larger solar energy systems can have significant impacts on the Town of Niagara and the community's future. In accordance with the Town's Comprehensive Plan these systems will be sited to minimize impacts to the Town's Agricultural community, rural character, neighborhoods, important commercial corridors and other significant features. In considering these impacts, the Town will reference the Town of Niagara, Open Space, Niagara County and Regional Plans.
- (d) Solar energy systems need to be regulated for removal when no longer utilized.

§ 245-80. Definitions.

The following definitions shall apply to this Chapter:

APPLICANT – The person or entity filing an application and seeking an approval under this Article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term “applicant” or “owner” or “operator” are used in this Section, said term shall include any person acting as an applicant, owner or operator.

BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM (Tier 1) – A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS (Tier 1) – A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public.

GROUND-MOUNTED SOLAR ENERGY SYSTEM (Tier 2) – A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public, and that generate up to 110 % of the electricity consumed on the site over the previous 12 months (confirmed by information presented to the Town). Ground mounted solar energy system not meeting the definition as outlined in this law will be treated as a Large-Scale or Utility-Scale Solar Energy systems and the requirements of such.

HOST COMMUNITY AGREEMENT – A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

LARGE-SCALE SOLAR ENERGY SYSTEM (TIER 3) – Any solar energy system that is less than 30 acres in size (as measured by the fenced in area), that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale to the general public, or does not meet the definition of Tier 1, Tier 2 and Tier 4 solar energy systems.

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.

NET METERING – a billing mechanism that credits solar energy system owners for the electricity they add to the grid. For example, if a residential customer has a PV system on their roof, it may generate more electricity than the home uses during daylight hours.

NON-PARTICIPATING PROPERTY – a property that is not affiliated with a Solar Energy System project in any contractual way related to the solar project.

PARTICIPATING PROPERTY – A property that is being leased for solar usage, or a property that has an agreement or lease related to the solar project.

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

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM (Tier 1) – Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on said lot (net metering is allowed), potentially for multiple tenants.

SKYSPACE (SOLAR) – The space between a solar collector and the sun through which solar radiation passes.

UTILITY-SCALE SOLAR ENERGY SYSTEM (Tier 4) – Any solar energy system that is 30 acres or more in size (as measured by the fenced in area), that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale to the general public or does not meet the definition of a Tier 1, Tier 2 or Tier 3 solar energy system.

245-81. Applicability

- (a) The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
- (b) Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- (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 Local Law.
- (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”), NFPA, NEC, other Federal and State Codes, Niagara County regulations and the Town Code.

- (e) Any application (including variance applications) pending (except those specifically excluded from the Moratorium in place at that time) for solar energy systems on the effective date of this article shall be subject to the provisions of this article.

§ 245.82. General Requirements

- (a) A Building permit shall be required for installation of all Solar Energy Systems.
- (b) Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").
- (c) This Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Niagara.
- (d) Solar applications shall be referred to the applicable fire company for input.

§ 245-83. Permits and Approvals Required and Applicable Zoning Districts

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Niagara shall be permitted only as follows:

- (a) **Tier 1:** Rooftop-mounted, building-mounted and Building Integrated solar energy systems upon issuance of building permit (specific Town of Niagara Building Permit and requirements for rooftop mounted systems).
- (b) **Tier 2:** Ground-mounted solar energy systems, through site plan approval issued by the Town of Niagara Board and upon issuance of a building permit, shall be subject to all provisions of this article.
- (c) **Large-scale solar energy systems (Tier 3)** shall not be considered a permitted use unless shown to meet the requirements (and one is issued) of a special permit pursuant to this Local Law and Article IX of the Town of Niagara Zoning Code, and subject to site plan review by the Town Board and requiring issuance of a building permit within the A, B-1, B-2, LI, PID, HI, SW, and PL districts. These Tier 3 systems are also limited per the following:
 - (1) To further reduce potential impacts, a Tier 3 system shall not be located on a property adjacent (including across the street) to a non-participating property in a district zoned Residential (R-1, R-2, R-3/R-4, and Cluster Residential).
- (d) **Utility-scale solar energy systems (Tier 4)** shall not be considered a permitted use unless shown to meet the requirements (and one is issued) of a special permit pursuant to this Local Law and Article IX of the Town of Niagara Zoning Code, and subject to site plan review by the Planning Board, approval by Town Board, and requiring issuance of a

building permit within the A, B-1, B-2, LI, PID, HI, SW, and PL districts. These Tier 4 systems are also limited per the following:

- (1) To further reduce potential impacts, a Tier 4 system shall not be located on a property adjacent (including across the street) to a property in a district zoned Residential ((R-1, R-2, R-3/R-4, and Cluster Residential)).
- (e) **Tier 3 and Tier 4 systems** are not allowed in the R-1, R-2, R-3/R-4, and Cluster Residential zoning districts.
- (f) Any solar energy system to be used strictly for agricultural use purposes in accordance with NYS Agriculture and Markets Law, may have some requirements of this article waived by the Town Board and will include an expedited approval process, as necessary.

§ 245-84. General Criteria.

- (a) **Rooftop-mounted and building-mounted solar energy systems** shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three (3) feet before the edge of the roof. All rooftop-mounted or building mounted solar energy systems shall meet all Building permit requirements (special Town of Niagara permit for rooftop solar units) including the NYS Uniform Fire Prevention and Building Code standards and the following standards:
 - (1) Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
 - (2) Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (3) Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - (4) 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.
 - (5) All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided at permit application.
- (b) **Building-Integrated Solar Energy Systems** – Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.
- (c) **Tier 2: Ground-mounted** – solar energy systems shall be subject to the following requirements:

- (1) The location of said solar energy system shall be placed the greater of: two (2) times the standard primary structure side yard setback requirement of the use district in which it is located or at a minimum of 20 feet from any side yard property line. The system shall also be located a minimum of 20 feet from any rear property line. This distance shall be measured from the panels and any associated equipment to the property line; and
 - (2) The location of said solar energy system shall be only located in the side or rear yard (as defined in the Town Code); and
 - (3) A remote disconnect must be provided and shown on the site plan.
 - (4) The height of said solar energy system shall not exceed twelve (12) feet when oriented at maximum tilt on a lot situated in a R-1, R-2, R-3/R-4, and Cluster Residential District; and
 - (5) The height of said solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt on a lot situated in an A, B-1, B-2, LI, PID, HI, SW, and PL districts; and
 - (6) The total area occupied by said solar energy system on a lot shall not exceed 500 square feet in a R-1, R-2, R-3/R-4, and Cluster Residential Zoning District (Units proposed that exceed this area limitation will require a variance through the Town Zoning Board); and
 - (7) The total area occupied by said solar system on a lot which is two (2) acres or less situated in an A, B-1, B-2, LI, PID, HI, SW, and PL districts shall not exceed 1,000 square feet (Units proposed that exceed this area limitation will require a variance through the Town Zoning Board); and
 - (8) The total area occupied by said solar energy system on a lot which is greater than two (2) acres and but less than five (5) acres situated in an A, B-1, B-2, LI, PID, HI, SW, and PL districts shall not exceed five (5) percent of the total square footage of the entire lot; and
 - (9) The total area occupied by said solar energy system on a lot which is greater than five (5) acres or more situated in an A, B-1, B-2, LI, PID, HI, SW, and PL districts shall not exceed ten (10) percent of the total square footage of the entire lot.
- (d) **Site plan Requirements for a ground-mounted, Tier 2 solar energy system.** Site plan approval is required by this article for ground-mounted Tier 2 solar energy systems and the applicant shall be required to submit a site plan drawn in sufficient detail as follows:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the solar energy system along with a description of all components, existing

vegetation, any proposed clearing and grading of the lot involved, any storm water or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and

- (2) Property lot lines and the location and dimensions of all existing structures and uses on site within two hundred (200) feet of the proposed solar panels; and
 - (3) Any proposed fencing and/or screening for said project; and
 - (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Niagara Planning Board, Town Attorney, Building Inspector, or Town Board; and
 - (5) A public hearing on said site plan may be required by the Planning Board in accordance with the Town's Site Plan requirements (Chapter 135)
- (e) Any solar energy system shall be accessible for all emergency service vehicles and personnel. All applications will be referred to the applicable emergency service providers and the Town Fire Company for input.
- (f) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- (g) Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (h) If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned (and removed per this law).

§ 245-85. Special permit requirements (Tier 3 and 4).

Applications for Tier 3 and 4 systems under this article shall be made in accordance with Town Zoning Code Article IX, Special Use Permits and as follows. Applicants for a special permit to place, construct, and make a major modification to a large-scale or utility-scale solar energy systems within the boundaries of the Town of Niagara shall submit six (6) sets (and an electronic copy) of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems

appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- (a) A completed State Environmental Quality Review Act (SEQRA) full environmental assessment form (FEAF), with the Town of Niagara Town Board to be designated as lead agency for the SEQRA process.
- (b) Necessary Permit Information:
 - (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
 - (2) Documentation of access to the project site(s), including location of all access roads (meeting State, Town, and emergency service provider's requirements), gates, parking areas, etc.; and
 - (3) Documentation of the clearing, grading, storm water and erosion control plans; and
 - (4) Fire Safety Plan (to be reviewed by the Building Department and Fire Company).
 - (5) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies), maintenance of access drives, maintenance of ditches or other waterways through the site (potential emergency access easement provided to the Town), and maintenance of the plantings for the required screening. This Operation and Maintenance Plan shall reflect all lands that are being leased or owned by the applicant.
 - (6) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and
 - (7) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices; and
 - (8) A property owner or applicant who has installed or intends to install a large-scale or utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace because of uses or development performed in accordance with Town Code.

- (9) Copy of the lease or contract of sale for the property (redacted as necessary).
 - (10) A copy of a letter acknowledging Niagara County's Solar Panel Recycling Regulations.
- (c) A site plan drawn in sufficient detail meeting the Town of Niagara requirements and as follows:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
 - (3) Proposed fencing and/or screening for said project.
- (d) A Decommissioning Plan to ensure the proper removal of a large-scale or utility-scale solar energy systems. The Decommissioning Plan is to be submitted as part of the special use permit application to the Building Inspector for approval and must specify that after the large-scale or utility-scale solar energy system is no longer in use (as determined by the owner/operator or the Building Inspector per this law), it shall be removed by the applicant or any subsequent owner. The Decommissioning Plan shall identify the anticipated life of the project. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate for decommissioning prepared by a Professional Engineer or qualified Contractor. Cost estimates shall take inflation into consideration and be revised every five (5) years during operation of the system (recycle and salvage value shall be excluded in these estimates as they are unpredictable in nature). Removal of the large-scale or utility-scale solar energy system must be completed in accordance with the approved Decommissioning Plan and the standards provided as follows:
- (1) All structures and foundations associated with the large-scale or utility scale solar energy systems shall be removed;
 - (2) All disturbed ground surfaces shall be restored to original conditions including topsoil and seeding as necessary; and
 - (3) All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.
- (e) A bond or other approved security shall be provided to cover the cost of removal and restoration of the area impacted by the solar system.

- (1) The deposit, execution, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and Town Engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 or Tier 4 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. The bond shall be renewed every five (5) years or, as necessary, to reflect adjustments in the projected costs of decommissioning.
 - (2) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - (3) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.
- (f) All applications shall submit a proposal for a Host Community Agreement (to be reviewed and approved by the Town Board prior to issuance of the SUP). The Host Community Agreement should reflect a value of at least 50% of the estimated overall PILOT/Allowed payments for the project.
- (g) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Niagara Planning Board, Town Attorney, Building Inspector, or Town Board.
- (h) Applications for large-scale and Utility-scale Tier 3 and 4 solar energy systems shall meet the following additional criteria:
- (1) Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs and photos of the proposed solar energy system, solar collectors, and all other components. These photo simulations must include before and after simulations from locations where the solar energy system will be viewed from off-site locations as determined by the Planning Board. "After simulations" must include landscaping at the condition when first planted and another at maturity (see section on screening and visibility for other requirements).
 - (2) Any site containing a large-scale or utility-scale solar energy system shall contain fencing or another type of enclosure acceptable to the Town (and meeting State

and National Code standards) enclosing all solar energy system components that present safety hazards. The style of fencing shall fit into the character of the area and be approved by the Town Board.

- (3) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, shall be provided along any property line that abuts an important community resource, an existing residence or any property zoned other than LI, PID, HI, or SW. See following paragraphs for additional information on screening.
- (4) After completion of a large or utility-scale solar energy system, the applicant shall provide a postconstruction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.

(i) Screening and Visibility.

- (1) Solar Energy Systems shall have views minimized from adjacent properties using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
- (2) Solar Energy Systems shall be required to:
 - (i) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties and as directed by the Planning Board. As required previously, this analysis must consider conditions at day one of operation and when the landscaping has matured. At a minimum, a line-of-sight profile analysis shall be provided, but photo-simulations are required for all areas that will have a view of the project site. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital view shed report, may be required to be submitted by the applicant. The Town may hire an independent consultant, at the cost of the applicant, to review and/or conduct their own visual assessment.
 - (ii) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The Town Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - (iii) The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall, at a minimum, be comprised of evergreen/coniferous trees (planted at

recommended spacing for the type of tree), at least 8-10 feet high at the time of planting (depending on site conditions and the result of the visualizations; may need to be installed in a zig-zag pattern to maximum screening), plus supplemental shrubs (deer resistant) placed in between the evergreen trees at the reasonable discretion of the Town Board. These plantings are to be planted, typically, within 10 linear feet of the Solar Energy System fencing or as directed by the Planning Board to achieve maximum screening. In some cases, existing vegetation located on participating properties, may be used to satisfy all or a portion of the required landscaped screening. Suitable evergreen tree and shrub species are to be determined by a professional arborist and approved by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties. All plantings shall come with a 10-year guarantee and must be replaced if dead or diseased (include this in Operation and Maintenance Plan). This will be enforced by the Town through the required yearly inspections. Berms can also be utilized to reduce heights of proposed plantings, but the berms must not interfere with site drainage and must be properly designed to maintain vegetation.

Landscape plans must be completed by a NYS registered Landscape Architect.

- (iv) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures such as barns.
- (j) Additional Application and Permitting Requirements for Utility-Scale Tier 4 Solar Energy Systems:
- (1) All the information/requirements listed for a Tier 3 system plus the following additional information/requirements.
 - (2) Submittal of an Agricultural Impact Statement to determine the impact to Agriculture in the Town and community. The Town Board, on a project-by-project basis, will work with the applicant on finalizing the requirements of this Agricultural Impact Statement, but at a minimum will include whether the farmland is active (how long it has been farmed or not farmed) and if it is farmed by the property owner or leased. If leased, how the removal of this leased land will affect the farmer who leases this site and other farmlands and other leases that the farmer has in the Town. Include information on the improvements that have been made to the lands (tiling, irrigation, etc.), history of the farm and its products, number of workers, products purchased, and used for farming operations, etc.

- (3) Submittal of an Economic Impact Analysis to determine the impact of the project on the economy of the Town. This includes the agricultural impacts in the Agricultural Impact statement and information as noted by the Town Board (Town to work with the applicant on the scoping of this study, but will include, at a minimum, the estimated PILOT and HCA payments to the Town).
 - (4) Proposal for a Host Community Agreement (to be reviewed and approved by the Town Board prior to any approvals granted by other boards or agencies) that reflects the large-scale impacts of the project.
- (k) **Additional Agricultural Resources Requirements.** For projects located on agricultural lands:
- (1) Tier 3 and 4 Solar Energy Systems allowed to be located on Farmland (through the processes described in this law) shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).
 - (l) **Noise:** The Tier 3 or 4 project shall not result in any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise). Specifically, the project must be shown to not generate noise at 45 dBA or above at any non-participating property line.
 - (m) **Hazardous Materials:** The Tier 3 or 4 project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous substances). Specific material data information/specifications (SDS/MSDS sheets) shall be submitted on all components of the project. The applicant must ensure that no harmful chemicals will be leaked into the soils over the life of the project. For certain components of the project, information on spill containment systems will need to be provided. This required information shall be reviewed by the Planning Board, their consultants, and the Fire Company.
 - (n) **Airport Impacts (NFARS Encroachment issues):** All Tier 3 or 4 Solar energy projects must complete a study to be submitted to the Niagara Falls Air Reserve Station and the Niagara Falls International Airport that discusses the following:
 - (1) Distance from installation
 - (2) Location relative to approach/departure and flight patterns associated with the base or special use/training areas
 - (3) Glare Impact on airport sensitive receptors at Niagara Falls Air Reserve Station. Analysis should include a knowledge of sun position, observer location, and the solar module/array characteristics (e.g. tilt, azimuth or orientation, location, extent and if tracking those parameters for the entire path of the moving panels). Note: Though not required by the FAA it is strongly encouraged to utilize the Solar Glare Hazard Analysis Tool (SGHAT) to predict potential glare with assessed

results relative to the FAA's solar Policy and Ocular hazard standard (also adopted by the U.S. Department of Defense DoD) under Instruction (DODI) 4165.57 and implemented by US Air Force AFI 32-7063

- (4) Any additional lighting of the field to include anti-collision.
 - (5) Storm water runoff which may affect the base or the tributaries transitioning through the base or the creation of storm ponds which would attract wildlife and waterfowl
 - (6) Possible changes to wildlife habitat or migratory patterns that will affect aircraft flight path.
- (o) **Utility Grade Solar Energy System (Tier 3 and 4) Liability Insurance**
- (1) The Holder of a Special Use Permit for a Solar Energy System shall agree to secure and maintain for the duration of the permit, public liability insurance as follows (unless waived by the Town Board for smaller Tier 3 systems):
 - (i) Commercial general liability covering personal injuries, death, and property damage:

\$5,000,000 per occurrence which shall specifically include the Town of Niagara and its officers, councils, employees, attorneys, agents and consultants as additional named insured;
 - (2) Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A."
 - (3) Insurance Policy cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Niagara with at least thirty (30) days prior written notice in advance of cancellation.
 - (4) Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Niagara Town Clerk at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
 - (5) Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town of Niagara a copy of each of the policies or certificates representing the insurance in the required amounts.
 - (6) Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Niagara shall not be deemed to comply with this Law.

- (7) **Indemnification:** Any application for a Solar Energy System within the Town of Niagara shall contain an indemnification provision. The provision shall require the Applicant/Owner/Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Niagara and its officers, Town Board, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said Solar Energy System, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Niagara or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Niagara.

§ 245-86. Special permit criteria (Tier 3 and 4).

Special Permits issued for large-scale or utility-scale solar energy systems shall meet the following conditions:

- (a) **Minimum lot area:** None
- (b) **Maximum lot area** (as measured by the fenced in area): Less than 30 acres for Tier 3 systems.
- (c) **Lot Coverage:** There are no lot coverage requirements, except if the land is presently being farmed or has been farmed in the last five years, then the maximum lot coverage is 60%.
- (d) **Setbacks:** Any large-scale or utility-scale solar energy system shall adhere to the following setbacks (this setback distance shall be measured from the fence that surrounds all panels and equipment):
- (1) From any non-participating property lot line: A minimum of two hundred (200) feet from any property lot line, plus appropriate screening.
 - (2) From any participating property lot line: A minimum of fifty (50) feet from any property lot line, plus any screening required by the Planning Board (if necessary). If the property line separates two parcels that are being leased or purchased to have panels placed on them, the 50-footsetback does not apply.
 - (3) From buildings, structures, or homes (non-participating/participating):

- (i) Non-participating: a minimum of three hundred (300) feet
 - (ii) Participating: a minimum of fifty (50) feet
- (4) From public roads:
- (i) A minimum of five hundred (500) feet from any public road (measured from the fence to the road right-of-way or property line); and,
 - (ii) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
- (e) **Maximum overall height.** The height of a utility-scale solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt.
- (f) A large-scale or utility-scale solar energy system shall only be located in a rear yard if there is a principal structure or dwelling on said lot.
- (g) A large-scale or utility-scale solar energy system shall adhere to all applicable federal, state, county, and Town of Niagara laws, regulations, building, plumbing, electrical, and fire codes.
- (h) Development and operation of a large-scale or utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Niagara or other federal or state regulatory agencies.
- (i) The design, construction, operation, and maintenance of a large-scale or utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists. A glare study to Town requirements must be submitted to illustrate this. The Town may hire an independent consultant to review and verify this study at the cost of the applicant.
- (j) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- (k) All transmission lines and wiring associated with a large-scale or utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead (where necessary) and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- (l) All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection (proof to be provided).

- (m) Artificial lighting of large-scale or utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (n) Any signage shall be in accordance with the Town's signage regulations and meet the following:
 - (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 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 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, invertors, and substations.
- (o) Any site containing a large-scale or utility-scale solar energy system shall contain fencing or other device/structure acceptable to the Town and meeting Fire Safety and Electric Codes enclosing all solar energy system components that prevent safety hazards. (Fencing shall be a minimum of 7 feet in height as prescribed by the Code; this supersedes any other zoning requirement for fence heights.)
- (p) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.
- (q) After completion of a large-scale or utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State (agreed to by the Town of Niagara) that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. All costs for such inspection and certification shall be paid for by the applicant/owner.
- (r) The Special Permit approval will include the requirement that the applicant/owner shall return to the Town Board one year after construction is certified as being completed. The Town Board will review the project's Special Permit conditions, reports from the Building Inspector, Town Engineer, and other Town officials, and any complaints received on the project. The Town Board will then determine if the project is in accordance with the Special Permit and all conditions placed on that permit. If the Town Board finds that the project is in accordance with the Special Permit and all conditions, the applicant will not need to return to the Town Board. If the Town Board finds that the project is not operating in accordance with the Special Permit and the conditions of that permit, that applicant shall remedy those deficiencies to the satisfaction of the Town and/or be subject to fines and penalties (as set by the Town), and potential loss of the Special Permit. In this case, the applicant shall return again to the Town Board after one

year of remedying these deficiencies for the Town Board to again review the project against the Special Permit and the conditions of that permit.

- (s) **Compliance with regulatory agencies:** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large-scale or utility-scale solar energy system.
- (t) A bond or other appropriate form of security shall be offered by the applicant as part of their Decommissioning Plan (the bond/security and decommissioning plan is prescribed in this law) to cover the cost of the removal and site restoration by the Town of Niagara Town Board and said proof of appropriate form of security shall be filed prior to construction and on an annual basis with the Town Clerk.
- (u) **Clearing, grading, storm water and erosion control:**
 - (1) Before the Town of Niagara shall issue a clearing, grading, storm water or building permit for a large-scale or utility-scale solar energy system, the applicant shall submit a storm water and Erosion Control Plan to the Town of Niagara for its review and approval; and
 - (2) The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

§ 245-87. Maintenance, procedures, and fees.

- (a) **Time limit on completion.** After the granting of a special permit of a large-scale or utility-scale solar energy system with concurrent site plan approval or site plan approval of a freestanding or ground-mounted solar energy system by the Town Board, the building permit shall be obtained within six months and the project shall be completed within twelve months. A six-month extension to obtain a building permit or the completion time can be issued by the Town Board upon application by the applicant. If not constructed, the special permit and/or site plan approval shall automatically lapse within twelve months after the date of approval by the Town of Niagara Town Board (unless an extension is granted).
- (b) **Inspections.** Upon reasonable notice, the Town of Niagara Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected once every five years by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report

shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

- (c) **General complaint process.** During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a Tier 3 or Tier 4 solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- (d) **Continued Operation.** A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- (e) **Removal.** All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Niagara Town Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.
- (f) **Determination of Abandonment or Inoperability.** A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Niagara Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- (g) **Application and annual fees.**
 - (1) Large-Scale and Utility-scale solar energy system. An applicant shall pay an initial application fee in the amount as set by the Town Board, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. Per sections of this law, if the Planning Board needs to hire specialists/consultants to review reports/materials submitted by the applicant, the Town will charge the costs of these reviews to the applicant (may require escrow money to be deposited). If the project is approved, the Owner shall pay an

annual fee in the amount as set by the Town Board, to cover the cost of processing and reviewing the annual inspection reports and for administration, inspections and enforcement, as well as the building permit fee and the special permit fee set by the Town Board.

- (2) Site Plan Application for ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - (3) All fees contained in this Article may be revised or changed from time to time by Town Board resolution.
 - (4) The Town of Niagara reserves the right to, by local law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
- (h) Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- (i) Special permits for a large-scale or utility-scale solar energy system granted under this article shall be issued only as required by the Town Zoning Law.
- (j) **The Planning Board may:**
- (1) For large-scale or utility-scale solar energy systems, recommend the granting of a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. The Town Board in making this decision shall make Findings in accordance with Section 245-41 of Article IX of the Town Zoning Code. Denial of a Special Permit shall be by written decision based upon substantial evidence considered by the Board. If a Special Permit is granted, the Town Board may grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a Special Permit and Site Plan approval, the applicant shall obtain a building permit for the large-scale or utility-scale solar energy system.
 - (2) For ground-mounted (Tier 2) solar energy systems, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the freestanding or ground-mounted solar energy system.
- (k) Any changes or alterations post construction to a large-scale or utility-scale, freestanding or ground-mounted solar energy system shall be done only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.

- (l) Special permits for a large-scale or utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto. The Town shall notify the applicant of receipt of the notice and provide instructions for the new owners on meeting the requirements of the special use permit (bonds, decommissioning plans, etc.).
- (m) In addition to the requirements of this Article, the special permit application shall be subject to any other site plan approval requirements set forth in the Town Zoning Code.

§ 245-88. Revocation.

If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state, or federal laws, rules, or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Niagara Town Board holds a hearing on same.

§ 245-89. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations, or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 245-90. Enforcement

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 Code.

§ 245-91. Severability

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 245-92. Waiver

Upon request, the Town Board may, in its sole discretion, waive any of the requirements of this Article regulating solar electric energy systems.

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