

Town of Burns

Local Law No. 1-2019

A local law to Provide for Solar Energy System Facility Regulation

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

1. Definitions. As used in this section, unless the context requires otherwise, the following terms shall have the meanings indicated;

Solar Collector - a device, structure, panel, or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy System Facility – The use of land where a series of one (1) or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one (1) or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of 200 kilowatts (kW) direct current (dc) or greater when operating at maximum efficiency, and produces energy primarily for the purpose of offsite sale or consumption.

2. Purpose. The requirements of this section are established for the purpose of allowing the development of Solar Energy System Facility in the Town and to provide standards for the placement, design, construction, operation, monitoring, modification, and removal of these systems.

3. Applicability. The standards found in this section are applicable to "Solar Energy System Facility" as defined above and shall supersede the general standards applicable to building sites in Article 10 of Local Law No. 1 of 2005 (as amended). The term "Solar Energy System Facility" shall not be construed to include, so as to prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. The term "Solar Energy System Facility" shall also not be construed in such a way as to prohibit the installation or mounting of a series of one (1) or more solar collectors upon the roofs of residential and/or commercial structures regardless of whether the said series of one (1) or more solar collectors collectively has a total nameplate generation of a least 15 kilowatts (kW) direct current (dc) or more when operating at maximum efficiency.

The Town Board of the Town of Burns enacts this Local Law under the authority granted by:

(i) Article IX of the New York State Constitution, §2(c)(6) and (10).

(ii) New York Statute of Local Governments, § 10 (1) and (7).

(iii) New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and 14,

(iv) New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass),

and

(25)(Building lines).

(v) New York Town Law §64(17-a) (protection of aesthetic interests), (23)(General powers).

(vi) The Town of Burns Planning Board in accordance with the provisions of 274-A of New York State Town Law shall have the authority to issue Solar Energy System Facility Permits for those uses set forth.

4. Procedure.

(i) Solar Energy System Facilities are allowed in the Town of Burns, in all soil districts, providing the owner(s) of the property where such Facility is to be installed, or his or her representative, first obtains permit in accordance with this local law.

(ii) Applications for a permit shall be submitted to the Town Code Enforcement Officer, who shall submit such application to the Town Clerk to be recorded in the public record within five (5) business days. Such applications shall be on forms provided by the Town of Burns in writing accompanied by maps and plans drawn to scale sized not less than 24' x 36' along with a narrative description of the project. The Town Planning Board shall approve, conditionally approve, or disapprove such application within sixty-two (62) days of the meeting at which it is considered. Grounds for conditional approval or disapproval must be in writing. In the event that the Planning Board does not take any action on the application within such sixty-two (62) days period; the application shall be deemed to be approved. The Town shall be entitled to retain engineering and/or other technical review services at the discretion of the Board, the expense thereof which shall be paid by the applicant. Where requested by the Planning Board, the applicant shall deposit a stipulated sum of funds to be used for third party review, with any unused portion returned to the applicant within 30 days of written resolution of the application. The sixty-two (62) days period shall begin on the date the Planning Board receives such engineering or other technical review services report in final form. If the application is disapproved, the applicant shall have, if he/she desires, the opportunity to make revisions, and resubmit the application following the procedure set forth above. In the alternative, the applicant may submit the application to the Burns Town Board at a regular Meeting thereof, providing such submission is made within ninety (90) days after Planning Board disapproval.

(iii) In the event that the applicant follows the above procedure and submits the application, following disapproval by the Town Planning Board, to the Town board, the Town Board shall approve, conditionally approve, or disapprove such application within sixty-two (62) days of the meeting at which it is considered. Grounds for conditional approval or disapproval must be in writing. In the event that the Town Board does not take any action on the application within such sixty-two (62) days period, the application shall be deemed to be approved. In the event the Town Board retains engineering or other technical or review services, the expense thereof which shall be paid by the applicant, the sixty-two (62) days period shall begin on the date the Town Board receives such engineering or other technical review services report in final form. If the application is disapproved by the Town Board, the applicant shall have whatever rights are afforded under New York State law for further review.

5. Solar Energy System Facility Applications shall contain the following:

(i) Blueprints or drawings of the solar photovoltaic installation signed by a licensed Professional Engineer showing the proposed layout of the system and any potential shading from nearby

structures.

- (ii) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation, or structures.
- (iii) A description of the solar farm facility and the technical reasons for the proposed location and design shall be prepared and signed by a licensed Professional Engineer.
- (iv) An Environmental Assessment Form prepared in accordance with the NY State Environmental Quality Review act.
- (v) Verification that the Solar Energy System Facility will be constructed and operated in compliance with all applicable Federal and State standards.
- (vi) Stamped plans signed by a licensed Professional Engineer.
- (vii) One or three line electrical diagram detailing the Solar Energy System Facility layout, Solar Collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices.
- (viii) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
- (ix) An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
- (x) Information on noise (Inverter) and reflectivity/glare of solar panels and identification of potential impacts to abutters.
- (xi) Certification as to the existing soil classifications for the soil at the proposed development site as provided by the current United State Department of Agriculture Natural Resource Conservation Services Web Soil Survey, or as provided by such other state or local governmental agency maintaining official records of local soil classifications.

6. Minimum Requirements. The development shall conform to the following standards which shall be regarded as minimum requirements:

- (i) All ground-mounted panels shall not exceed twelve (12) feet in height.
- (ii) All mechanical equipment on a Solar Energy System Facility, including the Solar Collectors and including any structure for batteries or storage cells, are completely enclosed by a minimum eight (8) foot high fence with a self-locking gate. Notwithstanding the foregoing, the Planning Board has the discretion to lower the required minimum fence height for a Solar Energy System Facility.
- (iii) The installation of a vegetated buffer to provide year-round screening of the system is required along a public right of way and, if a solar array or appurtenant structures including but not limited to equipment shelters, storage facilities, transformers and substations, will be in the field of view from a residence on an adjoining property, along such field of view. Installed vegetation must be at least two

(2) feet in height at the time of planting.

(iv) Because of neighborhood characteristics and topography, the Planning Board shall examine the proposed location on a case-by-case basis in order to ensure no detrimental impact to Town residents, businesses, or traffic.

(v) All solar energy production systems are designed and located in order to prevent reflective glare toward any habitable buildings, as well as streets and rights-of-way.

(vi) All onsite utility and transmission lines are, to the extent feasible, placed underground.

(vii) The installation of a clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

(viii) All Solar Collectors and structures shall have a one hundred (100) foot setback in the front from the center line of the highway and twenty (20) foot setbacks from the sides and the back unless there exist abutting residential uses, in which case all such components shall be a minimum two hundred (200) feet from any principal residential structures that are off-site, deviation from which requires an Area Variance. The foregoing side and back setback requirements shall not apply to adjacent participating parcels that share a common boundary line.

(ix) Lighting of Solar Energy System Facility shall be consistent with State and Federal Law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.

(x) A sign is required that identifies that owner and operator with an emergency telephone number where the owner and operator can be reached on a 24-hour basis. There shall be no other signs except announcement signs, such as "No Trespassing" signs or any signs required to warn of danger.

(xi) There shall be a minimum of two (2) parking spaces to be constructed and maintained for use in connection with the periodic maintenance and inspection of the solar photovoltaic facility and the site. Such parking spaces shall not be used for permanent storage of vehicles or equipment.

7. Additional Conditions.

(i) The Solar Energy System Facility owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the Solar Energy System Facility shall be placed in a location approved by the Fire Chief and clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. A Knox® box shall be required for access by the local fire department.

(ii) No Solar Energy System Facility shall be approved or constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the

installation is to be located has been informed of the Solar Energy System Facility owner's or operator's intent to install an interconnected customer-owned generator.

- (iii) A Solar Energy System Facility owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local fire chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the Solar Energy System Facility and any access road(s), unless accepted as a public way. No vegetation above 24 inches in height inside the solar field.
- (iv) Owners and operators of solar farms are encouraged to consider secondary use of the real property where such solar farms are located with respect to grazers and pollinators, subject to the approval of the Fire Chief and the Board.

8. For projects regulated under Article 10 of the PSL, the construction, restoration, monitoring, development and operation of the Solar Farm will follow agricultural mitigation measures consistent with its Article 10 certification. - Solar Farms that are not regulated under Article 10 will adhere to the following agricultural mitigation guidelines to the maximum extent practicable:

- (i) An environmental monitor, hired and paid for by the owner or operator, shall be on site whenever construction or restoration work is occurring on agricultural land and shall coordinate with the New York State Department of Agriculture and Markets, Division of Land and Water Resources with the purpose of developing an appropriate schedule for inspections, to assure that this law is being met. In all cases, the environmental monitor shall contact the New York State Department of Agriculture and Markets, Division of Land and Water Resources, if farm resource concerns, management matters pertinent to the agricultural operation, and site-specific implementation conditions found in these guidelines, cannot be resolved.
- (ii) The owner and operator of the solar farm shall comply with the following:
 - a) Construction Requirements.
 - 1) The surface of access roads located outside the generation facility's security fence and constructed through agricultural fields must be level with the adjacent field surface.
 - 2) Culverts and waterbars must be installed to maintain natural drainage patterns.
 - 3) Strip all topsoil from agricultural areas used for vehicle and equipment traffic, parking, and equipment laydown and storage areas. Limit all vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas.
 - 4) When an open trench is required for cable installation, topsoil stripping from the entire work area will be necessary. Stockpile topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) separate from other

excavated material (rock and/or subsoil). At least 50 feet of temporary workspace needed along "open-cut" electric cable trenches for proper topsoil segregation. A topsoil will be stockpiled immediately adjacent to the area where stripped/remove and shall be used for restoration on that particular site. Clearly designate topsoil stockpile areas in the field and on construction drawings.

- 5) Interconnect cables must be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground must be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, minimize agricultural impacts by using taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.
- 6) All buried electric cables in cropland, hayland and improved pasture, must have a minimum depth of forty-eight inches of cover. In unimproved grazing areas and lands permanently devoted to pasture, the minimum depth of cover must be thirty-six inches. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables must be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time shall the depth of cover be less than twenty-four inches below the soil surface.
- 7) When buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns, rectify the effects with measures such as subsurface intercept drain lines. Consult the local Soil and Water Conservation District concerning the type of intercept drain lines to install to prevent surface seeps and the seasonally prolonged saturation of the cable installation zone and adjacent areas. Install all drain lines according to Natural Resource Conservation Service standards and specifications. Drain tile must meet or exceed the AASHTO M252 specifications.
- 8) Remove all excess subsoil and rock from the site. On-site disposal of such material is only allowed if approved by the owner and the Board.
- 9) Construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.
- 10) Pick up all pieces of wire, bolts, and other unused metal objects and properly dispose of as soon as practical to prevent mixing with any topsoil.
- 11) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
- 12) Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the owner when required.

b) Restoration Requirements.

- 1) All agricultural areas temporarily disturbed by construction must be decompacted to depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results must be no more than 250 pounds per square inch (PSI) as measured with soil penetrometer. In areas where the topsoil was stripped, soil decompaction must be conducted prior to topsoil replacement. Following decompaction, remove all rocks 4 inches and larger in size, from the surface of the subsoil prior to replacement of the topsoil. Replace the topsoil to original depth and reestablish original contours where practicable.
 - 2) Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement must be avoided after October 1st. If areas are to be restored after October 1st, necessary provision must be made to restore and/or reseed any eroded or poorly germinated areas in the springtime, to establish proper growth.
 - 3) Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns where practicable, or other drainage pattern incorporated into the design.
 - 4) Seed all restored agricultural areas with the seed mix specified by the owner to the extent practicable in order to maintain consistency with the surrounding areas.
 - 5) Repair all surface or subsurface drainage structures damaged during construction as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design. Correct any surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the Environmental Monitor, Soil and Water Conservation District and the Landowner.
 - 6) On affected farmland, postpone any restoration practices until favorable (workable/relatively dry) topsoil/subsoil conditions exist. Restoration must not be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil must not be regraded and subsoil must not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities shall occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.
 - 7) Following restoration, remove all construction debris from the site.
- c) Monitoring and Remediation.
- 1) The owner or operator shall provide a monitoring and remediation period of no less than 365 days following the date upon which the project achieves commercial operation. The one-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase is used to identify any remaining agricultural impacts associated with construction that are in

need of mitigation and to implement the follow-up restoration.

- 2) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severe subsurface drain lines, fences, etc.
 - 3) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Determine excessive amounts of rock and oversized stone material by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. Remove and dispose of all excess rocks and large stones.
 - 4) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the owner or operator as well as other appropriate parties, must determine the appropriate rehabilitation measures to be implemented
- (iii) Notwithstanding anything else contained herein, the provisions of this section (8) may be waived by the Code Enforcement Officer upon a showing of hardship by the property owner or operator to the complete and sole satisfaction of the Code Enforcement Officer.

9. Town of Burns Road Preservation Law. Notwithstanding anything to the contrary contained therein, the applicant must comply fully with Local Law No. 1 of the year 2012 of the Town of Burns Road Preservation Law. For This Solar Energy System Facility Law, the definition of High Frequency Truck Traffic as found in Section 4 of Local Law No. 1 of the year 2012 is hereby negated and replaced with a vehicle or related vehicles that have 3 or more axles which traverse/travels any miles of Town roads or other town property during any 5 consecutive days. This definition shall be used for both individual permits and blanket permits.

10. Traffic Routes. Construction and delivery vehicles for Solar Energy System Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include;

- (i) minimizing traffic impacts from construction and delivery vehicles.
- (ii) minimizing Solar Energy System Facility related traffic during times of school bus activity.
- (iii) minimizing wear and tear on local roads.
- (iv) minimizing impacts on local business operations.
- (v) Solar Energy System Facility Permit conditions may limit Solar Energy System Facility related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

11. Road Remediation. The applicant shall be responsible for remediation of damaged roads upon or if

necessary during the construction of or completion of the installation of Solar Energy System Facility. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Planning Board, sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant.

12. Decommissioning/Removal. All applications for a Solar Energy System Facility shall be accompanied by a Decommissioning Plan to be implemented upon abandonment and/or in conjunction with removal of the installation. Prior to removal of the Solar Energy System Facility, a permit for removal activities shall be obtained from the Code Enforcement Officer. Notwithstanding the foregoing, projects regulated under Article 10 of the PSL shall be subject to the decommissioning requirements set forth set forth in 16 NYCRR 1001.29. For all other Solar Energy System Facilities subject to regulation under this Local Law, the Decommissioning Plan shall include the following provisions:

(i) The owner, operator, or his/her successors in interest shall remove any ground-mounted solar collectors which have reached the end of their useful life or have been abandoned. The owner or operator shall physically remove the installation no more than one hundred fifty (150) days after the date of discontinued operations. The owner or operator shall notify the Town Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal.

(ii) Physical removal of all ground-mounted Solar Collectors, structures, equipment, security barriers, feeders and branch circuit wiring from the site.

(iii) Disposal of all solid and hazardous waste in accordance with local, State, and Federal waste disposal regulations.

(iv) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

(v) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the Solar Energy System Facility shall be considered abandoned when it fails to operate for more than one (1) year without the written consent of the Planning Board ("Abandonment"). If the owner or operator of the solar farm fails to remove the installation in accordance with the requirements of this section within one hundred fifty (150) days of Abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

(vi) (a) Upon the decommissioning of the project and removal of all equipment, the soils at the site shall be restored to the condition and classification that existed prior to the construction of the project and in connection with Section (12) (iv) above, except where the underlying fee owner of the land requests otherwise, as specified in the project application pursuant to Section (5)(x) above.

(b) As part of the decommissioning plan, the owner or operator of a solar farm shall provide the Town with an irrevocable standby letter of credit or other form of security reasonably acceptable to the Town attorney, which 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 letter of credit or other security shall be in the amount of one hundred percent (100%) of the cost of removal of the solar farm and restoration of the property, which shall be renewed every five (5) years. Delivering of the letter of

credit or other security to the Town shall occur prior to the commencement of operations, accompanied by a detailed estimate of the costs association with all decommissioning efforts.

(c) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the letter of credit or other security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The letter of credit or other security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

(d) In the event of default or abandonment of the solar farm, the system shall be decommissioned as set forth in this subsection 12).

12. Costs of Decommissioning/Removal. The operator of an installation and the owner of the real property on which such installation is located shall be jointly and separately liable for all costs and expenses of the Town incurred during and relating to the removal of an installation under Section 11(v) above. Notwithstanding the foregoing, the Town shall first attempt to secure payment for such costs and expenses from the operator of the installation; however, in the event the Town is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the Town reserves all rights under the Code to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located.

13. The invalidity of any clause, sentence, paragraph, or provision of this Local Law shall not invalidate any other clause, sentence, paragraph, or part thereof.

14. All Local Laws or Ordinances or parts of Local Laws or Ordinances in conflict with any part of this Local Law prior are hereby repealed.

15. For projects regulated under Article 10 of PSL, any provisions of this Local Law that conflict with Article 10 of PSL shall be read to mean that the provisions of Article 10 of PSL shall apply.

This Local Law shall take effect upon filing in the office of the New York State Secretary of State.