

Hector Solar Energy Local Law #1 of 2021

1. Authority

This Solar Energy Local Law is adopted pursuant to sections 261-263 of the Town of the State of New York, which authorize the Town to adopt 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 therefore,” and section 10 of New York State Municipal Home Rule Law.

2. Statement of Purpose

A. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of Hector 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 non-polluting energy resource;
- 2) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family home;
- 3) To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
- 4) To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and;
- 5) To protect and enhance the visual and physical environment within the Town and the health, safety and welfare of residents of the Town.

3. Definitions

BUILDING CODE: The New York State Uniform Fire Prevention and Building Code, as amended from time to time.

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 predominantly for onsite consumption.

CODE ENFORCEMENT OFFICER: The person designated by the Town as the person charged with enforcing the laws of the Town and/or the Building Code and/or the Energy Code.

ENERGY CODE: The New York State Energy Code, as amended from time to time.

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 state wide 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 onsite or offsite 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.

OPERATOR: The party(ies) responsible for the operation, maintenance and decommissioning of a Tier 3 Solar Energy System, as set forth in this Solar Energy Local Law.

OWNER: The party(ies) that hold fee title to the land upon which a Solar Energy System is located.

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 predominantly for onsite 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 and all other materials and equipment related thereto. 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. 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:

- a. Roof-Mounted Solar Energy Systems
- b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems are (i) a Ground-Mounted Solar Energy System with system capacity up to [25] kW AC that generates no more than 110 % of the electricity consumed on the site over the previous 12 months; or (ii) a Ground-Mounted Solar Energy System with a total surface area of all Solar Panels included in the System not exceeding 4,000 square feet that generates no more than 110 % of the electricity consumed on the site over the previous 12 months.

C. Tier 3 Solar Energy Systems are all Solar Energy Systems except Tier 1 Solar Energy Systems 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.

4. Applicability

A. The requirements of this Local Law shall apply to all Solar Energy Systems constructed or installed in the Town of Hector after the effective date of this Local Law.

B. Modifications to an existing Solar Energy System that increase size of the Solar Energy System area by more than five percent (5%) of the original area of the Solar Energy System (exclusive of moving any fencing), or that increase the electricity-generating capacity of a Solar Energy System by more than five percent (5%), or that materially alter the physical components of the Solar Energy System, shall be subject to this Local Law.

5. General Requirements

- A. A Building permit shall be required for installation of all Solar Energy Systems.
- B. All Solar Energy Systems shall be designed, erected, and installed in accordance with the Building Code, the Energy Code and all applicable codes, regulations, and industry standards.

6. Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems are permitted within all parts of the Town of Hector 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, when feasible, the following design requirements:
 - a. 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.
 - 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).
- 3) Height: All Roof-Mounted Solar Energy Systems shall be no more than two feet above the roof.

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 shall be subject to approval by the Code Enforcement Officer.

7. Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems are permitted within all parts of the Town of Hector as accessory structures to otherwise legal uses on the same lot, subject to the following conditions:

A. Glare: All Solar Panels shall have anti-reflective coating(s).

B. Setbacks: Tier 2 Solar Energy Systems shall be subject to the following setback requirements; 30' side and rear setbacks and 50' front setback.

C. Height: Tier 2 Solar Energy Systems shall not exceed fifteen [15'] feet in height measured from ground level.

D. Screening and Visibility.

- 1) All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
- 2) Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

8. Tier 3 Solar Energy Systems

A. Tier 3 Solar Energy Systems are subject to the requirement for issuance of a special use permit as herein provided.

B. All Tier 3 Solar Energy Systems shall be subject to the requirements of this section 8(B), which shall be deemed to be incorporated by reference into all special use permits issued for Tier 3 Solar Energy Systems.

- 1) 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.
- 2) Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- 3) Signage.

a) 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.

b) 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.

4) Glare. All Solar Panels shall have anti-reflective coating(s).

5) 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.

6) Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.

7) Area and Coverage Standards.

- a) Lot size: The property on which the Tier 3 Solar Energy System is placed be no less than five [5] acres.
- b) Setbacks: The Tier 3 Solar Energy Systems shall comply with the setback requirements of
- c) Front: 100'
- d) Side: 50'
- e) Rear: 50'
- f) Height: Tier 3 Solar Energy Systems shall not exceed fifteen [15] feet in height measured from ground level.
- g) Lot coverage: Lot coverage of a Tier 3 Solar Energy System shall not exceed fifty percent (50%) maximum lot coverage. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:

- I. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
- II. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
- III. Paved access roads servicing the Solar Energy System.

8. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

9. Screening and Visibility.

a. Solar Energy Systems smaller than 10 acres in size shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

b. Solar Energy Systems larger than 10 acres shall be required to:

I. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.

II. Submit a screening and 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 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, following the applicable rules and standards established by the Code Enforcement Officer.

10. Agricultural Resources. Any Tier 3 Solar Energy System located in whole or in part on Prime Farmland or Farmland of Statewide Importance shall not be located on or otherwise impact an area exceeding fifty percent (50%) of the Prime Farmland or Farmland of Statewide Importance on a parcel. Tier 3 Solar Energy Systems located in whole or in part on Prime Farmland or Farmland of Statewide Importance shall be required to seed an area equal to 20 % of the total surface area of all Solar Panels in the Solar Energy System with native perennial vegetation designed to attract Pollinators. Tier 3 Solar Energy Systems located in whole or in part on Prime Farmland or Farmland of Statewide Importance shall be constructed in accordance with applicable construction requirements of the New York State Department of Agriculture and Markets. Operators of Tier 3 Solar Energy System shall develop, implement, and

maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and 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 native plant species and seed mixes.

C. The application for a special use permit for a Tier 3 Solar Energy System shall be on a form promulgated by the Town Planning Board and/or Code Enforcement Officer. The application shall include a site plan including the following:

- 1) Property lines and physical features, including roads, for the project site
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- 3) 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.
- 4) 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 building permit.
- 5) Name, address, and contact information of proposed or potential system installer the Owner and the Operator. Such information for the final system installer shall be submitted prior to the issuance of building permit.
- 6) Written consent of the Owner to the application and the use of the property for the Solar Energy System.
- 7) An operation and maintenance plan describing, at a minimum, continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- 8) 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 Town Planning Board.

D. Applications for a special use permit for Tier 3 Solar Energy Systems shall be subject to the following review process:

- 1) The application shall be reviewed by the Code Enforcement Officer for completeness. Applicants shall be advised within 10 business days of the

completeness of their application or any deficiencies that must be addressed prior to substantive review.

- 2) Once the application is deemed complete by the Code Enforcement Officer, the application shall be transmitted by the Code Enforcement Officer to the Town Planning Board. Following receipt of the application the Town Planning Board shall schedule a public hearing to hear all comments for and against the application. Notice of the public hearing shall be printed in a newspaper of general circulation in the Town at least 5 days in advance of such hearing. Applicants shall deliver notice of the hearing by first class mail to adjoining landowners or landowners within 200 feet of the boundary lines of the lot upon which any part of the Solar Energy System is to be located at least 10 days prior to such a hearing. Proof of mailing shall be provided to Town Planning Board at or before the public hearing.
- 3) The application shall be referred to the Schuyler County Planning Department pursuant to General Municipal Law § 239-m if required.
- 4) At the option of the Town Planning Board the application for any Solar Energy System impacting Prime Farmland or Farmland of Statewide Importance may be referred to the New York State Department of Agriculture and Markets for review and comment.

E. The Town Planning Board shall take action on the application within 62 days following the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Planning Board and applicant. If an application is disapproved the reasons for disapproval shall be set forth in a writing delivered to the applicant, which reasons may include, but shall not be limited to, the following: Conflict with safety and safety-related codes and requirements; the operation of a Solar Energy System would be a net economic liability to the community; the operation of a Solar Energy System would create unacceptable health or environmental risks to the public; the placement and operation of a Solar Energy System that would create unacceptable risks to wildlife and/or ecosystems; the placement and location of a Solar Energy System would result in a conflict with, or compromise or change in, the nature or character of the surrounding area; and/or the Solar Energy System application requests for a permit which is inconsistent with the findings and any provisions of this Local Law.

F. A special use permit for a Tier 3 Solar Energy System shall be issued to the Operator designated for the Solar Energy System and shall not be transferrable without the consent of the Town Planning Board. Such consent shall be conditioned upon the Board's review of the financial character and condition of the proposed transferee, a finding that the Solar Energy System is not in violation of the permit and/or has not been in persistent or

repeated violation of the permit in the past, and that the proposed transferee has the necessary financial resources, management experience, skill, and creditable ability to perform according to the terms of the Permit. The Town Planning Board shall have the authority to incorporate new conditions to the permit reasonably related to Solar Energy Project and/or the Operator as a condition of approval of the transfer. An approved transfer of the permit shall not release any present or future permittee from the decommissioning obligations, both financial and performance related, set forth in the decommissioning agreement as herein provided.

G. Decommissioning. The issuance of a special use permit for a Tier 3 Solar Energy System shall be conditioned upon the execution by the Operator of a decommissioning agreement in favor of the Town. The decommissioning agreement shall address the following, and any other matters required by the Town Planning Board.

1) Solar Energy Systems that have been abandoned and/or not producing commercially material amounts of electricity for a period of twelve months shall be decommissioned and removed at the Owner and/or Operator's expense. Decommissioning shall include removal of all energy facilities, structures and equipment including any subsurface wires and footings from the parcel. Any access roads created for building or maintaining the system shall also be removed and re-planted with vegetation.

2) The parcel shall be fully restored to its original state prior to construction of the Solar Energy System, or as close thereto as is reasonably possible, with photographs of the property prior to construction is required, unless such restoration is demonstrated to be unreasonable or unnecessary as determined by the Town Planning Board.

3) The agreement shall include a decommissioning plan addressing the following:

- a. Anticipated life of the proposed panels and of the Solar Energy System itself, based on the actual Solar Panels to be used in the Solar Energy System. Any change in the character, make, model or composition of any such Solar Panels shall require an amendment to the decommissioning plan addressing how such change affects the plan and/or the security for performance thereof.
- b. Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer.
- c. A verifiable means of determining if the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility stating that it will notify the Code Enforcement Officer within ten (10) business days if electricity is not received from any array within the Solar Energy System for any thirty (30) consecutive days.

- d. The Applicant's plan to legally dispose offsite all hazardous waste contained in the Solar Energy System.

4) The decommissioning agreement shall require at its execution the deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the attorney and/or engineer for the Town. The amount of the cash, bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property, with a 2 % annual escalator, for the life of the Solar Energy System. 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.

5) Decommissioning shall be completed in accordance with the decommissioning plan within 360 days after notice from the Code Enforcement Officer that the Solar Energy System has been abandoned and/or has ceased providing commercially material amounts of electricity for a period of twelve months.

H. Decommissioning by the Town. In the event decommissioning of a Solar Energy System is not completed in accordance with the requirements of the applicable decommissioning agreement, the Town may, at its option, complete the decommissioning to such standards as the Town shall determine. The Town may apply the proceeds of the bond, the cash deposit or other security maintained by the Town under the decommissioning agreement to the costs incurred by the Town in the decommissioning, which costs may include engineering, legal and other professional fees and expenses. Any such expenses in excess of the bond proceeds, cash deposit or other security may be levied upon the land upon which the Energy System is situated and collected by the Town with the next installment of Town taxes.

I. Construction of a Tier 3 Solar Energy System must be commenced within 18 months following issuance of a special use permit and substantially completed within 24 months following issuance of a special use permit, failing which the special use permit shall expire and the Operator will be required to re-apply for the special use permit in order to commence or resume construction of the Solar Energy System. The Town Planning Board may extend these deadlines by up to 180 days upon good cause shown by the Operator for failure to commence and/or complete construction as required.

9. Safety

A. All Solar Energy Systems 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 to Tier 3 Solar Energy Systems 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. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

10. Host Community Benefit Agreement:

All Tier 3 Solar Energy Systems with a capacity of 1 MWac and larger shall be required, as a condition to issuance of a special use permit, to enter into a Host Community Benefit Agreement with the Town. The Host Community Benefit Agreement shall be of such form and content as the Town Board by resolution shall prescribe from time to time, and shall a host community fee based on a per MWac charge as determined by the Town Board by resolution from time to time.

11. Enforcement

A violation of any provision of this Local law shall be a violation under the New York State Penal Law punishable by a fine not to exceed \$1,000 and imprisonment for a term not to exceed fifteen (15) days, or both. For purposes of this Local law, each week's continued existence of a violation shall constitute a separate violation. For purposes of the preceding sentence, a "week" shall constitute any period of seven (7) consecutive days. The Code Enforcement Officer or a representative designated by the Code Enforcement Officer, as the case may be, is hereby authorized to issue appearance tickets pursuant to the Criminal Procedure Law in the enforcement of this or any related laws of the Town.

An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Local law. No such action or proceeding shall be commenced except upon resolution by the Town Board authorizing same.

No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation of this Local Law, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, or otherwise available under applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section or in any other applicable law.

12. Costs

All costs incurred by the Town, including but not limited to engineering, legal and other professional fees, in connection with the review of an application for a special use permit for a Tier 3 Solar Energy System, for the administration or enforcement of the terms and conditions of any special use permit, and/or in enforcing this Local Law, shall be borne by the Owner. The Town Board may require a deposit in such amount as it shall determine to cover such costs, with such deposit to be replenished from time to time in accordance with procedures established by the Town Board. Failure by the Owner to pay these costs upon demand by the Town Board shall be a violation of this Local Law. Any such costs may be levied upon the property upon which a Solar Energy System is situated and collected with the next installment of real property taxes.

13. 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.

14. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State.

Public Hearing: September 14, 2021

Adopted: October 12, 2021

Filed: November 5, 2021

APPENDIX 1: EXAMPLE DECOMMISSIONING PLAN

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at:
[Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for [12] months
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: _____ Date: _____