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TOWN OF HERKIMER  
LOCAL LAW NO. 3 OF 2019  
LOCAL LAW AMENDING THE TOWN OF HERKIMER ZONING ORDINANCE TO  
ESTABLISH REGULATIONS  
CONCERNING SOLAR ENERGY SYSTEMS

BE IT ENACTED by the Herkimer Town Board as follows:

**ARTICLE 1: Title.**

This local Law shall be referred to as “A Local Law Amending the Town of Herkimer Zoning Ordinance to Establish Regulations Concerning Solar Energy Systems”.

**ARTICLE 2: Definitions.**

The Town of Herkimer Zoning Ordinance is hereby amended by inserting the following definitions in alphabetical order:

**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.

**ROOF-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

**SOLAR ENERGY EQUIPMENT:** Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

**SOLAR ENERGY SYSTEM:** The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. 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** include Ground-Mounted Solar Energy Systems with system capacity up to 25 kW AC and that generate no more than 110 % of the electricity consumed on the site over the previous 12 months.

C. **Tier 3 Solar Energy Systems** are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

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

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

**ARTICLE 3: Solar Energy Law.**

The Town of Herkimer Zoning Ordinance is hereby amended by creating provisions for “Solar Energy Systems” as follows:

**A. Purpose.** The requirements of this section are established for the purpose of allowing the development of Solar Energy Systems in the Town of Herkimer.

**B. Applicability.** The standards found in this section are applicable to “Solar Energy Systems” as defined in this local law.

**C. General Requirements**

1. A Building permit shall be required for installation of all Solar Energy Systems.
2. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

**3. Permitting Requirements for Tier 1 Solar Energy Systems**

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems.

**a). Roof-Mounted Solar Energy Systems**

- 1). Roof-Mounted Solar Energy Systems shall incorporate, 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 system shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

b). **Building-Integrated Solar Energy Systems** shall be shown on the plans submitted for the building permit application for the building containing the system.

#### **4. Permitting Requirements for Tier 2 Solar Energy Systems**

All Tier 2 Solar Energy Systems shall be permitted in Agriculture, Commercial and Industrial zoning districts as accessory structures and shall be subject to site plan review by the Town of Herkimer Planning Board, 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 setback regulations specified for the accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards.

c). Height: Tier 2 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the underlying zoning district.

d). Screening and Visibility: Solar Energy Systems smaller than [10] acres 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.

1). 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.

e). Lot Size: Tier 2 Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

### **5. Permitting requirements for Tier 3 Solar Energy Systems.**

All Tier 3 Solar Energy Systems are subject to the Special Authorization procedure as that procedure is set forth in the Town of Herkimer Zoning Ordinance to be submitted to the Town of Herkimer Codes Enforcement Officer. The fees for all permits required are established by the Town Board by resolution in its Annual Fee Schedule and which may be amended from time to time.

a). **Applications for Special Authorization** shall contain the following:

1. 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.
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures and fences.
3. A description of the Solar Energy System facility and the technical, economic and other reasons for the proposed location and design shall be prepared and signed by a licensed professional engineer.
4. Confirmation prepared and signed by a licensed professional engineer that the

Solar Energy System complies with all applicable Federal and State standards.

5. 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.
6. Documentation of the major system components to be used including the PV panels, mounting system, and inverter.
7. Property Operation and Maintenance Plan. An operation and maintenance plan shall include measures for maintaining safe access to the installation, as well as general procedures for operational maintenance of the installation. Such plan shall describe 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.
9. Glare. All Solar Panels shall have anti-reflective coating(s).
10. Specifications on noise (Inverter) and reflectivity/glare of solar panels and identify potential impacts to abutters.

**b). Minimum Requirements.**

The development shall conform to the following standards, which shall be regarded as minimum requirements:

Tier 3 Solar Energy Systems shall be required to be on a parcel of not less than 10 acres.

1. All ground-mounted panels shall not exceed twelve (12) feet in height.

2. All mechanical equipment on a Solar Energy System, including any structure for batteries or storage cells, is completely enclosed by a minimum 7(seven) feet high fence with a self-locking gate.
3. The total surface area of all ground-mounted and freestanding solar collectors, including solar voltaic cells, panels and arrays, shall not exceed 80% of the total parcel area.
4. The installation of a vegetated perimeter buffer to provide year-round screening of the system from adjacent properties.
5. Because of neighborhood characteristics and topography, the proposal shall be subject to site plan review by the Planning Board. Ensuring the potential impact to its residents, business or traffic is not a detriment.
6. All onsite utility and transmission lines are, to the extent feasible, placed underground.
7. The system is designed and situated to be compatible with the existing uses on adjacent and nearby properties.
8. All Solar Energy System components shall have a 50-foot setback from property lines of non-participating parcels.
9. All appurtenant structures including but not limited to equipment shelters, storage facilities, transformers and substations shall be architecturally compatible with each other and shall be screened from the view of persons not on the parcel.
10. All lighting shall be consistent with State and Federal Law Lighting of appurtenant structures and 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.

11. Signage.
  - a. There shall be no signs except announcement signs, such as “No Trespassing” signs or any signs required to warn of danger.
  - b. No signage or graphic content shall be displayed on the Solar Energy System 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.
  - c. 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.
12. There shall be a minimum of one (1) parking space to be used in connection with the maintenance of the solar photovoltaic facility and the site. However, it shall not be used for the permanent storage of vehicles.
13. Screening and Visibility. Solar Energy Systems larger than [10] acres shall be required to:
  - a. 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, shall be required to be submitted by the applicant.
  - b. 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 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 Town of Herkimer or New York State.

**c). Additional Conditions:**

1. Owners or operators of Solar Energy Systems 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 clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
2. No Solar Energy System 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 agreed of the solar energy system owner's or operator's intent to install an interconnected customer-owned generator. A letter from said utility company indicating that if constructed to specifications, the Solar Energy System would be permitted is sufficient evidence.
3. A Solar Energy System 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 in accordance with the international fire code as adopted by New York State.

The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way

4. A valid performance bond with an inflation rider assigned to the Town of Herkimer for all systems with dates and monetary amounts to be determined by the Planning Board for decommissioning purposes.

**d). Decommissioning/Removal.**

All applications for a Solar Energy Systems shall be accompanied by a Decommissioning Plan (see Appendix 1) to be implemented upon abandonment and/or in conjunction with removal of the facility. Prior to removal of the Solar Energy System, a permit for removal activities shall be obtained from the Code Enforcement Officer. The Decommissioning Plan shall include the following provisions:

1. The owner, operator, his 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 twelve (12) months after the date of discontinued operations. The owner or operator shall notify the Town Codes Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal.
2. Physical removal of all ground-mounted solar collectors, structures, foundations, equipment, security barriers and transmission lines from the site.
3. Disposal of all solid hazardous waste in accordance with local, state, and federal waste disposal regulations.
4. Stabilization or re-vegetation of the site as necessary to minimize erosion and the

restoration of area to natural condition shall be completed within 12 months of removal. The Town Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

5. Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the Solar Energy System shall be considered abandoned when it fails to operate for more than one year without the written consent of the Town Board. If the owner or operator of the Solar Energy System fails to remove the installation in accordance with the requirements of this section within twelve (12) months of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation and restore area to its natural condition at the operators or owners/successors expense, which at the Owners option may come from any security made with the Town of Herkimer as set forth in Section Estimate and Financial Surety herein. The owners of record have an affirmative duty to notify the Town of Herkimer Codes Enforcement Officer of any interruption of operations that exceeds or is scheduled to exceed seven (7) continuous days.

**e). Estimate and Financial Surety.**

In addition to the Decommissioning Plan, the applicant shall also provide an estimate prepared by a qualified engineer, setting forth the costs associated with decommissioning the Solar Energy System at issue. In the event the Town Board grants a Special Authorization, the applicant must also establish the amount of such surety to be established by the applicant prior to building permit issuance. The surety may be in the form of escrowed funds, bonds or other form

acceptable to the Town, but it is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations and restore landscaping consistent with the Decommissioning/Removal Section d. above, in the event the applicant fails to comply with its decommissioning obligations.

**f). Change of Ownership.**

If the owner or operator of the Solar Energy System changes or the owner of the property changes, the Special Authorization shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the Special Authorization, site plan approval, and decommissioning plan.

A new owner or operator of the Solar Energy System shall notify the Codes Enforcement Officer of such change in ownership or operator by completing and filing with the Codes Enforcement Officer a Transfer of Ownership/Operator Form (See Appendix 2), with proof of surety (escrowed funds, bonds or other form acceptable to the Town) and completed Decommissioning Plan attached, within thirty (30) days of the date of ownership or operator change.

**Penalty.** Failure to file the Transfer of Ownership/Operator Form placing the Codes Enforcement Officer for the Town of Herkimer on notice of the change in ownership or operator of a Solar Energy System and providing evidence of bond and completed decommissioning plan shall result in the imposition of a penalty to be established by the Town Board by resolution in its Annual Fee Schedule which may be amended from time to time.

**D. Appeals.** If a building permit or Special Authorization is denied based on failure to meet the requirements of this Local law, the applicant may seek relief in accordance with the established

procedures and time limits described in the Town of Herkimer Zoning Ordinances and New York State Law.

**E. Penalties for Offenses.** The Zoning Ordinances of the Town of Herkimer applies to violations of this Local Law.

**K. Safety.**

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
3. 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 of Herkimer and any applicable federal, state, or county laws or regulations.

**ARTICLE 4: Severability.**

If any word, clause, sentence, paragraph section or subsection or provision of this Local Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, clause, sentence, paragraph section or subsection or provision of this Local Law or the proscribed application thereof, shall be severable, and the remaining provisions of this Local Law, and all applications thereof, not having been declared

void, unconstitutional, or invalid, shall remain in full force.

**ARTICLE 5: Conflict with other Laws.**

All Town of Herkimer Local Laws or Ordinances or parts of Local Laws or Ordinances in conflict with any part of this Local Law are hereby repealed. Where this Local Law differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal Government, the more restrictive or protective of the Town of Herkimer and public safety will apply.

**ARTICLE 6: Authority.**

This Local Law is enacted pursuant to the Municipal Home rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is consistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

The laws of the State of New York shall govern all matters not specifically covered by this article and any conflict shall be resolved in favor of the laws of the State of New York.

**ARTICLE 7: Effective Date.**

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

## 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 System Name]

As required by Town of Herkimer, [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: \_\_\_\_\_

**APPENDIX 2: TRANSFER OF OWNERSHIP/OPERATOR OF SOLAR ENERGY SYSTEM**

Date: [Date]

Transfer of Ownership from [Owner/Operator Name, Address], to [Owner/Operator Name, Address].

Date of Ownership Transfer:

[Solar Energy System Address]

New Owner/Operator Information:

[Owner/Operator Name]

[Address]

[Telephone number]

[Contact person]

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

[Solar Project Address]

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

As required by Town of Herkimer, [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 New Owner/Operator of the Facility, [Owner/Operator Name], is responsible for this decommissioning.

**Please note:** Any proposed modifications to the existing Solar Energy System would be subject to issuance of a building permit by the Town of Herkimer and/or Special Authorization as that procedure is set forth in the Town of Herkimer Zoning Ordinance.


New Owner/Operator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mandatory Attachments:

Proof of Surety (escrowed funds, bonds or other form acceptable to the Town)

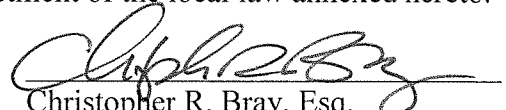
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1. I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2019 of the Town of Herkimer, was duly passed by the Town Board on May 20, 2019 in accordance with the applicable provisions of law.
  2. I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

(SEAL)

  
Jennifer DeMetro, Town Clerk  
Dated: 5-28-19

STATE OF NEW YORK  
COUNTY OF HERKIMER

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
Christopher R. Bray, Esq.  
Town Attorney  
Town of Herkimer  
Dated: 5/28/2019