

Town of Forestburgh
Local Law No. ____ of the Year 2017

A local law to Regulating the Development and Operation of Certain Solar Energy
Systems in Chapter 85 (Zoning) of the Town Code of the Town of Forestburgh
and

Providing for PILOT Agreements for Certain Solar Energy Systems
in Chapter 153 (Taxation) of the Town Code of the Town of Forestburgh

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

Article I. General Provisions

Section 1.1. Authority for Adoption

This Local Law is adopted pursuant to sections 261 to 263 of the Town Law of the State of New York, which authorizes the Town of Forestburgh to adopt zoning provisions that advance and protect the health, safety and welfare of the community and “to make provision for, so far as conditions may permit, the accommodation of Solar Energy Systems and equipment and access to sunlight necessary therefor.”

Section 1.2. Statement of Purpose

The Town Board of the Town of Forestburgh notes that the State of New York has adopted a \$1 billion initiative known as “NY Sun” to advance the scale up of solar energy and move New York State closer to having a sustainable, self-sufficient solar industry. As the State Department of Environmental Conservation has recognized, solar energy is abundant, non-polluting and does not emit greenhouse gases responsible for global warming and that, even in the northeastern US where sunlight is variable, solar energy can make a significant contribution to meeting demand for electricity and hot water.

In recognition of the foregoing, this Local Law is adopted to advance and protect the public health, safety and welfare of the Town of Forestburgh, including:

- Promoting environmentally sound forms of local energy generation pursuant to its Comprehensive Plan;
- Taking advantage of a safe, abundant, renewable and non-polluting energy resource;
- Decreasing the cost of energy to the owners of commercial and residential properties within the Town of Forestburgh;
- Decreasing the use of fossil fuels, thereby reducing the carbon footprint of the Town of Forestburgh; and
- Aligning the laws of the Town of Forestburgh with several policies of the State of New York, particularly those that encourage renewable energy.

Section 1.3. Definition of “Existing Zoning Code,” this “Local Law,” and “this Law”

As used in this Local Law, the term “Existing Zoning Code” shall mean and be the Local Law of the Town of Forestburgh dated July 2, 1973 (Local Law No. ___ of 1973), as amended.

As used herein, the term this “Local Law” shall mean and be this Local Law No. ___ of 2017.

As used in Article II and III of this Local Law, the term “this Law,” “this Chapter,” and “herein” shall mean, be, and refer to the Existing Zoning Code as amended by this Local Law.

Section 1.4. Interpretation

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Code affected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

Article II. Amendment of Town Code Chapter 85

Section 2.1. The Existing Zoning Code is hereby amended so as to add a new Article X entitled Solar Energy Systems, with the following text:

§85-44. Solar Energy Systems

- A. **Purpose.** The purpose of this section is to provide standards to facilitate the development and operation of solar energy systems in the Town of Forestburgh, subject to the following process and other reasonable conditions that will protect the public health, safety and welfare.
- B. **Applicability.** The requirements of this section shall apply to all solar energy systems proposed, operated, modified, or constructed after the effective date of this Law, but excluding general maintenance and repair of solar energy systems constructed prior to the effective date of this law and building-integrated photovoltaic systems.
- C. **Special Definitions.** The following definitions are applicable to §85-44:
SOLAR ACCESS AREA – A space open to the sun, mostly clear of overhangs or shade that allows the use of solar energy systems on real property.

SOLAR ARRAY – A group of multiple solar panels or modules linked into a single unit or system.

SOLAR COLLECTOR – A photovoltaic cell, panel, solar array, or other device that converts solar radiation into electricity or transfers solar energy to air, water, or another storage media.

SOLAR EASEMENT – A written easement recorded pursuant to the NY Real Property Law §335 b, the purpose of which is to procure the right to receive direct sunlight across real property to operate a solar energy system.

SOLAR ENERGY SYSTEM – A combination of components that utilize solar radiation (direct, diffuse, or reflected) to produce energy designed to provide heating, cooling, hot water and/or electricity, including, without limitation, solar panels and facilities, solar arrays, solar collectors, and solar thermal systems and facilities. Solar energy systems shall be classified as follows:

- (1) Roof Mounted Solar Energy System – A solar photovoltaic or solar thermal system that is mounted on the roof of the building to which it provides heating, cooling, hot water and/or electricity, of less than 25 kilowatt (KW). This definition shall not prohibit the sale of excess electricity pursuant to state-authorized net metering regulations.
- (2) Small Scale Ground Mounted Solar Energy System – A Solar Energy System consisting of solar panels that are properly secured by anchors or ballasts to the ground and attached to poles or other mounting system, detached from any other structure, for the primary purpose of producing heating, cooling, hot water and/or electricity for on-site consumption or use at the existing residence, farm, business or commercial establishment, of less than 25 kilowatt (KW). Notwithstanding the foregoing, this definition shall not prohibit the sale of excess electricity pursuant to state-authorized net metering regulations.
- (3) Large Scale Ground Mounted Solar Energy System – A Solar Energy System consisting of solar panels that are properly secured by anchors or ballasts to the ground and attached to poles or other mounting system, detached from any other structure, for the primary purpose of producing electricity for off-site sale or consumption, of 25 kilowatt (KW) or greater.
- (4) Building Integrated Photovoltaic System. - A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other façade material, semitransparent skylight systems, roofing materials and shading over windows.

SOLAR PANEL – A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR THERMAL SYSTEMS – Systems that collect and convert solar radiation into forms of energy for water heating, space heating, or space cooling.

QUALIFIED SOLAR INSTALLER – A person listed as an eligible photovoltaic installer by the New York State Energy Research and Development Authority (NYSERDA) or who is listed as a certified solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be a qualified solar installer for the purpose of this Section.

D. General provisions.

- (1) Qualified Installations. No solar energy system may be constructed, installed, replaced or modified except by a qualified solar installer, provided, however, that homeowners may install their own solar energy system. Any system installed by a qualified installer and/or homeowner must be inspected and approved by a qualified third party electrical inspector approved by the Town of Forestburgh and, if connected to the local electric utility transmission system grid, approved by the appropriate utility.
- (2) Government approval. The owner or operator of a solar energy system shall establish to the satisfaction of the Town Code Enforcement Officer (for a roof mounted solar energy system or a small scale ground mounted solar energy system) or the Town of Forestburgh Planning Board (for a large scale ground mounted solar energy system) that all applicable governmental agencies with jurisdiction over the installation and operation of such solar energy system have provided all permissions, approvals and required inspections necessary to install and operate such system.
- (3) Limitations of Approvals.
 - (a) Nothing in this §85-44 shall be deemed to allow any solar energy system owner or operator the right to remove any trees, vegetation or other obstruction located on any real property over which the owner or operator does not have fee title or a solar easement.
 - (b) Nothing in this §85-44 shall be deemed a guarantee against any future construction or improvements or Town approvals for future construction or improvements that may impede the sunlight flow to any solar energy system.
 - (c) It shall be the sole responsibility of the solar energy system owner or operator to acquire any necessary solar easements or other

appropriate land use rights in order to provide for and maintain appropriate solar access areas.

- (4) Location. The location of small scale or large scale ground mounted solar energy systems shall be one demonstrably suitable and sized for such use including, but not limited to, (i) the proper drainage and provisions for storm water control such that the amount of water leaving the site after development shall not be greater than prior to development, and (ii) the ability to adequately buffer such use from any adjacent residential uses.

- (5) Abandonment, Cessation of Operations and Decommissioning.

- (a) Abandonment or Cessation; Order to Remove and Restore. Small and large scale ground mounted solar energy systems shall be considered abandoned or to have ceased operations if there has been no electrical energy generation for three consecutive months or longer; provided, however, that applications for extensions of time may be approved by the Town Code Enforcement Officer for a period of up to an additional three months. If the owner or operator determines to abandon or cease operations, the owner or operator shall so notify the Town Code Enforcement Officer in writing. Whether or not the notice required by this paragraph is received by the Town Code Enforcement Officer, if the Town Code Enforcement Officer has reason to believe that such system has been abandoned or ceased operation he/she may issue an order that the owner or operator of the system shall remove the system, including all equipment, mounts, solar arrays and solar collectors and restore the property, by no later than ninety (90) days after the date of issuance of said order to undertake such removal. For good cause shown by the owner or operator, the Town Code Enforcement Officer may extend the time to remove the abandoned or non-operational solar energy system. Service of the order shall be by certified mail at the address provided by the applicant to the Town Code Enforcement Officer.

- (b) Investigation and report. When, in the opinion of the Town Code Enforcement Officer, any small or large scale ground mounted solar energy system shall have been abandoned or ceased operations in accordance with 85-44(D)(5)(a), and the owner/operator thereof fail to comply with an order to remove and restore as set forth in 85-44(D)(5)(a), the Town Engineer, in conjunction with the Code Enforcement Officer, shall make a formal inspection thereof and report in writing to the Town Board his/her findings and recommendations in regard to its

removal. An attorney for the Town shall also provide a judgment and lien search for the property, completed by an established title company.

- (c) Order for hearing on removal and restoration; assessment of costs; time limits. The Town Board shall thereupon consider the report and, if it finds that such small or large scale ground mounted solar energy system has been abandoned or ceased to operate as set forth in §85-44(D)(5)(a), it shall by resolution order removal and restoration and shall further order that a hearing be held before the Town Board within twenty (20) days after issuing the resolution, and on at least five days' notice to the property owner and/or owner/operator of the small or large scale solar energy system or persons having an interest therein. Such hearing shall be to determine whether the order to remove and restore shall be affirmed, modified or vacated and, in the event of affirmance or modification, to assess all costs and expenses incurred by the Town in the inspection and report, and for removal of the solar energy system and restoration of the property, against the land on which such small or large scale ground mounted solar energy system is located and/or, for a large scale ground mounted solar energy system, said expenses may be assessed against any surety held by the Town. The order shall also provide that the removal of the small or large scale ground mounted solar energy system and restoration of the property shall commence within 30 days after service of notice and shall be completed within 60 days thereafter.
- (d) Contents of notice. The notice shall contain the following statements:
- (i) The name of the owner or person in possession of the underlying parcel of property as it appears in tax and deed records;
 - (ii) The name of any owner/operator of a large scale ground mounted solar energy system as set forth in a filed decommissioning plan, as required by §85-44(G)(5);
 - (iii) A brief description of the small or large scale ground mounted solar energy system as well as the underlying parcel of property upon which it is situated;

- (iv) A description of the basis of the finding that the small or large scale ground mounted solar energy system has been abandoned or ceased operation;
- (v) An order requiring that the small or large scale ground mounted solar energy system be removed and property restored;
- (vi) That the removal of such small or large scale ground mounted solar energy system and property restoration shall commence within 30 days of the service of notice and shall be completed within 60 days thereafter;
- (vii) The time and date of a hearing to be held before the Town Board, at which hearing the property owner and/or owner/operator of the small or large scale ground mounted solar energy system shall have the right to contest the order and findings of the Town Board; and
- (viii) That in the event that such property owner and/or owner/operator of the small or large scale ground mounted solar energy system, or other person having an interest in the premises, shall fail to contest such order and fail to comply with the same, the Town Board will order the removal of such system and property restoration in such manner as the Town Board shall determine. For small scale ground mounted solar energy systems the Town Board will further order that all costs and expenses incurred in such removal and restoration be assessed against the land on which the system is located in the same manner as general Town taxes. For large scale ground mounted solar energy systems the Town Board will order that all costs and expenses incurred in such removal and restoration be assessed against any surety held by the Town and, in the event that the costs and expenses of removal and restoration are not satisfied by the surety held, that such unsatisfied costs and expenses be assessed against the land on which such system is located in the same manner as general Town taxes.

(e) Service and filing of notice.

- (i) A copy of the notice shall be personally served upon the local agent who has been designated by the property owner and/or owner/operator of the small or large scale ground mounted solar energy system. Any identified executors, legal representatives, agents, lessees or other person(s) having a vested or contingent interest in the premises as shown by the Collector of Taxes and/or the office of the Sullivan County Clerk or Sullivan County Treasurer and/or as set forth in any filed Decommissioning Plan shall be served with a copy of the notice by certified mail, return receipt requested..
- (ii) A copy of the notice shall also be personally served upon any adult person who may be residing in or occupying the premises and by securely affixing a copy of the notice upon the small or large scale ground mounted solar energy system.
- (iii) A copy of the notice shall be filed in the Sullivan County Clerk's Office, in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules, and shall have the same effect as a notice of pendency as therein provided. A notice so filed shall be effective for a period of one year from the date of filing. It may be vacated, however, upon an order of a Judge or Justice of a court of record or upon the consent of the Town Attorney. When vacated, the Sullivan County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or a certified copy of such order.

(f) Hearing. The Town Board shall conduct the public hearing at the time and place specified in the notice to remove and restore. It may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of the hearing, the Town Board shall determine by resolution to revoke the order to remove and restore, modify said order or continue and affirm the order and direct the owner or other persons to complete the work within a time specified by the Town Board.

(g) Failure to comply. In the event of the refusal, failure or neglect of

the owner or person so notified to comply with the resolution of the Town Board within the time specified in the resolution and after the public hearing, the Town Board shall provide that such small or large scale ground mounted solar energy system be removed in such manner as the Town Board shall determine. Except for emergency cases as herein provided, any contract for removal and restoration shall be subject to Town of Forestburgh Procurement Guidelines.

- (h) Assessment of expenses. All expenses incurred by the Town in connection with the proceedings to remove a small scale ground mounted solar energy system and restore the property, including the costs of actual removal, shall be assessed against the land on which such system is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and ad valorem levy. All expenses incurred by the Town in connection with the proceedings to remove a large scale ground mounted solar energy system and restore the property, including the costs of actual removal and restoration, shall be assessed against any surety held by the Town and, should said expenses not be satisfied by the surety, any unsatisfied expenses shall be assessed against the land on which such system is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and ad valorem levy.
 - (i) Emergency cases. Where it reasonably appears that there is a clear and imminent danger to the life, safety or health of any person or property, unless a small or large scale ground mounted solar energy system is removed and the property restored, the Town Board may, by resolution, authorize the Town Code Enforcement Officer to take all such steps and measures that the Code Enforcement Officer in his or her discretion deems necessary, in consultation with the Town Engineer, to eliminate or abate the immediate danger. The expenses of such actions shall be a charge against the land on which it is located and/or surety and shall be assessed, levied and collected as provided in §85-44(G)(5)(F) and §85-44(D)(5)(h).
 - (j) Additional requirements. Additional abandonment and decommissioning requirements shall apply to large scale ground mounted solar energy systems as set forth at §85-44.G(5).
- (6) NYS Real Property Tax Law provisions. The Town elects not to opt out of the tax exemption provisions of §487 of the NY Real Property Tax Law, but reserves its right to do so in the future. Owners, operators and land

owners who intend to construct or operate a solar energy system will be subject to Article VIII of Chapter 153 "Taxation" of the Town Code.

- (7) Expert and Professional Fees. Any reasonable expert or professional fees incurred by the Town Board, Town Planning Board, Town Code Enforcement Officer or Town Zoning Board of Appeals that are related to (i) the review of any application for a building permit, special use permit or site plan review for a solar energy system or (ii) the monitoring or inspection of any solar energy system shall be paid by the applicant as provided by Town Code §885-31(E).

E. Roof Mounted Solar Energy Systems.

- (1) Roof mounted solar energy systems are permitted in all zoning districts as an accessory use provided such systems comply with the requirements of §85-44.D(1) through (4) and this §85-44.E.
- (2) Roof mounted solar energy systems shall include such systems mounted on the top of a structure either as a flush mounted system or as solar panels fixed to frames located on a roof and mounted at an optimal angle towards the sun.
- (3) Roof mounted solar energy systems may be mounted on a principal and/or accessory structure and shall not be more than two (2) feet higher than the highest point of the roof of the structure to which such system is mounted.
- (4) A building permit applicant for a roof mounted solar energy system shall comply with the permit application requirements of the Town's standard permit, as applicable.

F. Small Scale Ground Mounted Solar Energy Systems.

- (1) Small scale ground mounted solar energy systems are permitted in all zoning districts as an accessory use provided such systems comply with the requirements of §85-44D and this §85-44F. The small scale ground mounted solar energy system may be placed on a lot adjacent to the property it serves, provided such lots are owned by the same party and further provided that the parcels are located in the Town of Forestburgh No small scale ground mounted solar energy systems shall be permitted in a flood zone that is so designated by the Federal Emergency Management Agency (FEMA).
- (2) All small scale ground mounted solar energy systems shall only be

permitted in the side or rear yard, shall not exceed a height of ten feet and shall comply with all set back and bulk requirements for the zoning district in which they are located. All height measurements shall be calculated when the ground mounted solar energy system is oriented at maximum tilt.

- (3) Small scale ground mounted solar energy systems shall be limited to the minimum lot size, setback requirements and other restrictions as apply to accessory structures of the zoning district in which the system is sited.
- (4) All small scale ground mounted solar energy systems shall be placed and arranged such that reflected solar radiation, glare or glint shall not be directed onto adjacent properties, buildings or roadways. All panels and structures must be screened by vegetative landscaping , which must be non-invasive species, fencing or architectural features to ensure that the solar energy system is sufficiently screened from the public and adjacent properties.
- (5) All small scale ground mounted solar energy systems are subject to site plan review and approval by the Town Code Enforcement Officer, who may, in his/her discretion, refer the site plan review to the Town Planning Board for its review and approval. Notwithstanding the foregoing, small scale ground mounted solar energy systems to be located on farmland, as defined in the State Agriculture and Markets Law, shall be subject solely to site plan review and approval by the Town Code Enforcement Officer and shall not be subject to review and approval by the Town Planning Board. An applicant for a small scale ground mounted solar energy system shall comply with the permit application requirements of the Town.
- (6) If the owner of the property on which the small scale ground mounted solar energy system does not reside at the property, the owner shall designate a local agent residing in Sullivan County, who shall be an individual, and his/her physical address, along with the names and mailing addresses of any executors, legal representatives, agents, lessees, or other persons having a vested or contingent interest in the premises for the service of notices pursuant to §85-44D(5)(e).

G. Large Scale Ground Mounted Solar Energy Systems.

(1) General Application. Large scale ground mounted solar energy systems are permitted in the Recreational Residential and Business zoning districts as a special use subject to the requirements of this §85-44(D) and §85-44(G). No large scale ground mounted solar energy systems shall be permitted in a flood zone that is so

designated by the Federal Emergency Management Agency (FEMA).

(2) Special Use and Site Plan Requirements. Large scale ground mounted solar energy systems require a special use permit issued in accordance with Town Code §85-26 and 85-27 and a site plan prepared and approved in accordance with Town Code §85-28, 85-29 and 85-30. In addition to the requirements of Town Code § 85-27, applications before the Planning Board for a special use permit shall include the following:

- (a) A description of the solar energy system and the technical, economic and other reasons for the proposed location and design;
- (b) 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, or such other diagrams or details as required by the Town Engineer;
- (c) All proposed changes to the landscape of the site, including, without limitation, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (d) A confirmation that the solar energy system complies with all applicable local, state and federal laws and regulations;
- (e) Equipment specification sheets of the major system components to be used including, without limitation, photovoltaic panels, mounting systems, batteries, and inverters;
- (f) An operation and maintenance plan that shall include measures for maintaining safe access to the installation, general procedures for operation and maintenance of the solar energy system, and procedures for property upkeep;
- (g) Location of the nearest residential structures on the site and on any adjacent parcel, and the distance from the nearest proposed solar energy system equipment to any such residential structures;
- (h) If the property of the proposed large scale ground mounted solar energy system project is to be leased, legal consent among all parties specifying the use(s) of the land for the duration of the project, including but not limited to easements, other agreements, and lease(s).
- (i) Erosion and sediment control and storm water management plans

prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board;

(j) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles;

(k) A list of real property owners located within 500 feet of the property line of the proposed site and the mailing address of each real property owner;

(l) Part 1 of a Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA); and

(m) Compliance with the provisions of Town Code Chapter 153 Article VIII.

(n) A copy of the application that has been submitted to the local distribution company for a Coordinated Electric System Interconnection Review (CESIR).

(o) The designation of a local agent residing in Sullivan County, who shall be an individual, and his/her physical address, along with the names of any executors, legal representatives, agents, lessees, or other persons having a vested or contingent interest in the premises, with their individual mailing addresses, for the service of notices pursuant to §85-44D(5)(e).

(3)Minimum Design Standards. Large scale ground mounted solar energy systems shall conform to the following minimum standards:

(a) The system shall comply with minimum lot size and other restrictions as apply to residential structures within the zoning district where the solar energy system is sited, except that the solar energy system shall be set back 100 feet from any property line and lot coverage shall not exceed 40 percent. The total surface area covered by the solar panels, regardless of the mounted angle, shall be included in determining lot coverage;

(b) All large scale ground mounted solar energy systems shall not exceed a height of twelve feet. All height measurements shall be

calculated when the ground mounted solar energy system is oriented at maximum tilt;

- (c) All large scale ground mounted solar energy systems shall be enclosed by fencing to prevent unauthorized access. The type, height and color of fencing shall be approved by the Town Planning Board, which shall not be restricted by the requirements of Chapter 93 "Fences" of the Town Code. The fencing and the solar energy system may be further screened by year-round landscaping to avoid adverse aesthetic impacts as required by the Town Planning Board;
- (d) Town Code §85-30 shall be applicable to large scale ground mounted solar energy systems; and
- (e) There shall be no signs posted on the real property of the large scale ground mounted solar energy system except announcement signs, such as "no trespassing," or warning signs, such as "high voltage" or "danger." Notwithstanding the foregoing, a sign shall be posted at the entrance of the parcel in question that identifies the owner and operator of the solar energy system and provides an emergency telephone number where the owner and/or operator can be reached on a 24 hour basis. In addition, a clearly visible warning sign denoting high voltage must be placed at the base of all pad mounted transformers and substations. All signs are subject to the requirements for signs contained in this Chapter, and shall be in general harmony with the character and appearance of the surrounding neighborhood.

(4) Additional Conditions.

- (a) The large scale ground mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic and site plan to the local fire department. The owner or operator shall cooperate with local emergency services in developing an emergency response plan and provide proof of approval thereof. All means of shutting down the solar system shall be clearly marked and instructions shall be provided to the local fire department, along with any additional information or documentation that is required by the fire department or the Planning Board. The owner or operator shall identify a person responsible for responding to safety inquiries throughout the life of the system.
- (b) The owner or operator of a large scale ground mounted solar energy system shall maintain it in good condition and in accordance with

industry standards. Maintenance shall include, but not be limited to, painting, structural repairs, mowing, trimming and landscape maintenance, and such examinations and repairs as necessary to ensure the integrity of all equipment and structures. The owner or operator shall maintain and keep in good repair all approved security measures that govern the site including, but not limited to, fence painting and repair, lighting and any alarm systems. Site access shall be maintained at a level acceptable to emergency responders.

- (c) Use of herbicides at the parcel in question to control plant growth in and around the large scale ground mounted solar energy system and its components and equipment shall be prohibited without the express prior written authorization of the Town Planning Board.

(5) Abandonment and Decommissioning and Restoration of Land. All applications for a large scale ground mounted solar system shall be accompanied by a Decommissioning Plan, which includes restoring the property, to be implemented upon abandonment or cessation and/or in conjunction with removal of the large scale ground mounted solar energy system. Compliance with this plan shall be made a condition of the issuance of a special use permit under this §85-44.G. The Decommissioning Plan must specify that after the large scale ground mounted solar energy system has been abandoned, ceased operations or can no longer be used, it shall be removed by the applicant or any subsequent owner, and the manner in which the property shall be restored. Prior to removal of such solar energy system, a permit for removal activities shall be obtained from the Town Code Enforcement Officer. The Decommissioning Plan shall include details on how the applicant plans to address the following requirements:

- (a) The manner in which the owner, operator, or its successors in interest will remove the large scale ground mounted solar energy system in accordance with the requirements of §85-44.D(5);
- (b) The time to complete any decommissioning, removal of the large scale ground mounted solar energy system and restoration of the property on which it is sited;
- (c) A demonstration as to how the removal of all infrastructure, including anchors, ballasts or foundations, and the remediation of soil and vegetation shall be conducted to return the parcel to its original state as it existed prior to construction of the system;
- (d) A description of the means and location of disposal of all solid and hazardous waste in accordance with local, state and federal waste

disposal regulations;

- (e) A description of site stabilization and/or re-vegetation measures necessary to minimize erosion and the manner in which the property shall be restored; and
- (f) Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the Decommissioning Plan shall provide that the large scale solar energy system shall be considered abandoned if construction is not completed, the system does not become operational and/or, once operational, it ceases operations for more than three (3) consecutive months. The Decommissioning Plan shall also provide that if the owner or operator of the large scale ground mounted solar energy system fails to remove it in accordance with the requirements of this section within ninety (90) days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation and restore the property at the expense of the property owner or against any financial surety assigned to the Town as provided for in Section §85-44(D)(5).

- (6) Cessation of Operation. Non-function or lack of operation of the large scale ground mounted solar energy system may be established (i) through reports submitted by or on behalf of its owner or operator to the Public Service Commission, NYSERDA, the local utility or the New York Independent System Operator, or (ii) by lack of income generation for a commercial enterprise. The owner or operator of a large scale ground mounted solar energy system shall promptly furnish on request such records as required by the Town Code Enforcement Officer to establish that the large scale ground mounted solar energy system is functioning or in operation.

- (7) Estimate and Financial Surety.

- (a) The applicant for a special use permit to site and operate a large scale ground mounted solar energy system shall provide an estimate, prepared by a professional engineer licensed in the State of New York, setting forth the projected costs associated with decommissioning the system in question, consistent with an approved decommissioning plan as set forth in §85-44(G)(5), and the projected costs to restore the property pursuant to the Decommissioning Plan. Cost estimations shall account for inflation. The estimate shall be subject to approval by the Planning Board.
- (b) Security for decommissioning any large scale ground mounted solar energy system shall be furnished to the Town in an amount determined

by the Town Board and in a form that is approved by the Attorney for the Town. Such security shall be posted with the Town prior to the issuance of any building permit for construction of any portion of a large scale ground mounted solar energy system. The security shall be available to and held by the Town during the projected life of the large scale ground mounted solar energy system in question and until proof of successful decommissioning and payment of all expenses thereof has been submitted to the Town.

- (c) If the large scale ground mounted solar energy system is not decommissioned after it is no longer in use, abandoned during its useful lifetime or never completely constructed, the Town of Forestburgh may use the security to decommission the large scale ground mounted solar energy system, remove all infrastructure, and to restore the property. The Town may use the security notwithstanding that the notice required pursuant to §85-44.D(5) has not been given by the system's owner or operator. Prior to using the security, the Town Code Enforcement Officer must serve the order required by §85-44.D(5) and wait for the termination of the ninety (90) day period required by that section.

(8) Issuance of Special Use Permit.

- (a) The special use permit application and approval process shall be governed by §85-27 of the Town Code.
- (b) If the special use permit application is approved, the Town Code Enforcement Officer may issue a building permit upon satisfaction of all conditions necessary for the issuance of the special use permit, including compliance with applicable portions of the New York State Building Code.
- (c) The Town Planning Board may, in its discretion, waive certain requirements of §85-44G otherwise applicable to a large scale ground mounted solar energy system that it believes is compatible with land uses in the area where it is proposed to be built and where, because of its size, ownership model or other considerations, the Town Planning Board finds that the large scale ground mounted solar energy system does not need to be subjected to all of the special use permit and site plan regulations imposed by §85-44G.
- (d) The Town Planning Board may impose any additional conditions on its approval of any special use permit under this Section in order to enforce the standards set forth in this §85-44(D), §85-44.G, §85-27 and §85-28 or in order to discharge its obligations under the State Environmental

Quality Review Act.

- (e) A completed Coordinated Electric System Interconnection Review (CESIR) from the receiving utility company shall be a condition for final approval if a special use permit is granted.
- (f) As a condition of the special use permit, the Town Planning Board shall require that the applicant appear before the Planning Board every three (3) years, or more frequently, to review compliance with the conditions of the special use permit, the adequacy of screening and the adequacy of the financial security for decommissioning and restoring the property.

Article III. Amendment of Town Code Chapter 153

Section 3.1 Chapter 153 of the Town Code (Taxation”) is hereby amended so as to add the following:

Article VIII
Solar Energy Generating System Exemption
PILOT Agreements

§153-23. Purpose.

Section 487 of the Real Property Tax Law provides for a real property tax exemption for a solar or wind energy system or a farm waste energy system in accordance with the provisions of §487 to the extent of any increase in value of the real property due to the improvement thereof by such systems.

§153-24. Definitions.

The terms “Solar Energy System”, “Roof Mounted Solar Energy System”, “Small Scale Ground Mounted Solar Energy System” and “Large Scale Ground Mounted Solar Energy System” shall have the same meanings respectively as set forth at Town Code §85-44.C.

§153-25. Exemption granted.

An owner of real property upon which is constructed a Solar Energy System which has been approved in accordance with Town Code §85-44 and complies with the provisions of Real Property Tax Law §487, is entitled to the 15 year tax exemption provided by §487(2) of the Real Property Tax Law.

§153-26. Qualifying conditions.

- (a) In accordance with §487(9) of the Real Property Tax Law, an owner of real property upon which a Large Scale Ground Mounted Solar Energy System is to be constructed must enter into an agreement with the Town to make payments in lieu of taxes (“PILOT Agreement”). Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under Real Property Tax Law §487(2).
- (b) The PILOT Agreement shall not operate for a period of more than fifteen years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.
- (c) Upon filing an application to construct a Large Scale Ground Mounted Solar Energy System upon real property located in whole or in part in the Town of Forestburgh, the owner of the property, or agent or representative thereof, must file written notice with the Town Supervisor providing that an application to construct a Large Scale Ground Mounted Solar Energy System has been filed with the Town and that the owner is ready to enter into a PILOT Agreement with the Town subject to the ultimate construction of such system.
- (d) The Town shall not enter into a PILOT Agreement unless the amount of the payment to be made is not less than 90% of the amount that would be due but for the exemption under Real Property Tax Law §487(2).
- (e) In the event that the parties are unable to agree on the terms and conditions of a PILOT Agreement, then the Town shall provide notice to the Town Planning Board that, in the absence of a PILOT Agreement, approval for the construction of a Large Scale Ground Mounted Solar Energy System shall not be granted.

Article IV. Miscellaneous Provisions.

Section 4.1 RATIFICATION, READOPTION AND CONFIRMATION

Except as specifically modified by the amendments contained herein, the Code of the Town of Forestburgh as adopted and amended from time to time thereafter is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 4.2 INCLUSION IN CODE

It is the intention of the Forestburgh Town Board and it is hereby enacted that the provisions of this local law shall be included in the Code of the Town of Forestburgh; that the sections and subsections of this local law may be renumbered or re lettered to accomplish such intention; and that the word “local law” shall be changed to “chapter,”

“section” or other appropriate word, as required for codification.

Section 4.3 RENUMBERING

The location and numerical designation of this local law and the sections included herein shall be delegated to the discretion of the codifier, General Code, which may renumber or re letter this local law and sections as are necessary to accommodate these amendments.

Section 4.4 CODIFIER’S CHANGES

This local law shall be included in the Code of the Town of Forestburgh. The codifier shall make no substantive changes to this local law, but may renumber, rearrange and edit it without first submitting it to the Forestburgh Town Board. Any such rearranging, renumbering and editing shall not affect the validity of this local law or the provisions of the Code affected thereby.

Section 4.5 SEVERABILITY

The provisions of this Local Law are severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 4.6 REPEAL OF MORATORIUM

This Local Law hereby repeals Local Law 1 of 2017 entitled, “A Local Law Imposing a Six-Month Moratorium on the Processing of Applications for, and the Issuance of any Approvals or Permits for, Solar Farms and Solar Power Plants in the Town of Forestburgh”.

Section 4.7 SUPERCESSION OF OTHER LAWS

This Local Law supersedes, amends, and takes precedence over any inconsistent provisions of New York Town Law under the Town’s Municipal Home Rule powers, pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3), §10(1)(ii)(a)(14), and §22.

Section 4.8 EFFECTIVE DATE

This Local Law shall take effect immediately upon adoption and filing with the Secretary of State as provided by the Municipal Home Rule Law.