

**LOCAL LAW NO. \_\_\_\_ of 2023**

**Solar Energy Systems**

**BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF FORESTBURGH,  
NEW YORK AS FOLLOWS:**

The Town Code of the Town of Forestburgh shall be amended by adding a new chapter 134 as follows:

**§ 134-1 Title.**

This local law shall be known as the “Solar Energy Systems” local Law of the Town of Forestburgh, New York.

**§ 134-2 Authority.**

This Solar Energy Facilities local law is adopted under Article IX of the New York State Constitution, New York Municipal Home Rule Law § 10, New York Statute of Local Governments § 10, and New York Town Law §§ 261-263, which authorize adoption of land use regulations 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.

**§ 134-3 Purpose and Applicability.**

- 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. The development of solar energy systems shall be consistent with the goals of the Comprehensive Plan to conserve the quality and quantity of natural, historic and scenic resources for the use and enjoyment of all residents by preserving the visual quality of the Town as viewed from its highways and by protecting important wildlife habitats.
- B. Applicability.
  - (1) The requirements of this section shall apply to all solar energy systems proposed, operated, modified, or constructed after June 12, 2018, but excluding general maintenance and repair of solar energy systems constructed prior to June 12, 2018, and building-integrated photovoltaic systems.
  - (2) Solar Energy Systems constructed or installed prior to June 12, 2018, shall not be required to meet the requirements of this chapter.

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- (3) All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), NYSEDA, the NYS Energy Conservation Code ("Energy Code"), and the Forestburgh Town Code.

**§ 134-4 Definitions.**

The following definitions are applicable:

**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

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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 facade material, semitransparent skylight systems, roofing materials and shading over windows which produce electricity for onsite consumption.

**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.

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

**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.

**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.

**NATIVE PERENNIAL VEGETATION:** native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and not including any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation, Cornell Cooperative Extension, National Park Service, New York State Department of Transportation, and Catskill Regional Invasive Species Partnership (CRISP).

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

**§ 134-6 General Provisions.**

(A) **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.

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(B) 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.

(C) Limitations of Approvals.

- (1) Nothing in this section 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.
- (2) Nothing in this section 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.
- (3) 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.

(D) 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,

- (1) 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
- (2) the ability to adequately buffer such use from any adjacent residential uses.
- (3) no large scale ground mounted solar energy system shall be constructed or operated within three (3) miles of the boundary line of the parcel of an existing Large Scale Solar Energy System or a proposed Large Scale Solar Energy System that has been granted approval by the Planning Board.

(E) Abandonment, Cessation of Operations and Decommissioning.

- (1) Abandonment or Cessation; Order to Remove and Restore. Unless otherwise set forth in a decommissioning plan under § 134-15(F), small scale 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 unless the inoperability of the facility is caused by the interconnection utility or other factors beyond the control of the operator; 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

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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.

- (2) 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 180-29(d)(5)(a) and the owner/operator thereof fail to comply with an order to remove and restore as set forth in §180-29 (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.
- (3) 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 §180-29 (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.

**§ 134-7 Notice.**

- (A) Contents of notice. The notice shall contain the following statements:

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- (1) The name of the owner or person in possession of the underlying parcel of property as it appears in tax and deed records;
  - (2) 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 §180-29 (G)(5);
  - (3) 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;
  - (4) 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;
  - (5) An order requiring that the small or large scale ground mounted solar energy system be removed and property restored;
  - (6) 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;
  - (7) 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
  - (8) 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.
- (B) Service and filing of notice.
- (1) 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

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any filed Decommissioning Plan shall be served with a copy of the notice by certified mail, return receipt requested.

- (2) 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.
- (3) 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.

**§ 134-8 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.

**§ 134-9 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.

**§ 134-10 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 New York State 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.

**§ 134-11 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 (G)(5)(F) and §180-29 (D)(5)(h).

**§ 134-12 Roof Mounted Solar Energy Systems.**

(A) Roof mounted solar energy systems are permitted in all zoning districts as an accessory use provided such systems comply with the requirements of §180-29D (1) through (4) and this §180-29E.

(B) 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.

(C) 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.

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

(E) 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.

**§ 134-13 Building-Integrated Solar Energy Systems.**

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

(B) Glare: All components of a building-integrated Solar energy system shall have anti-reflective coating(s)

**§ 134-14 Small Scale Ground Mounted Solar Energy Systems.**

(A) 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 §180-29D and this §180-29F. 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).



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(B) 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.

(C) 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.

(D) All small scale ground mounted solar energy systems shall be placed and arranged such that reflected solar radiation or glare 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.

(E) 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.

(F) 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 §180-29 D(5)(e).

(G) Glare: All Solar Panels used in a small scale ground mounted solar energy system shall have anti-reflective coating(s)

**§ 134-15 Large Scale Ground Mounted Solar Energy Systems.**

(A) General Application. Large scale ground mounted solar energy systems are permitted in the Recreational Residential and Rural Conservation zoning districts as a special use subject to the requirements of this §180-29 (D) and §180-29 (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).

(B) Special Use and Site Plan Requirements. Large scale ground mounted solar energy systems require a special use permit issued in accordance with §180-34 and a site plan prepared and approved in accordance with §180-35. In addition to the requirements of Town Code § 180-34, applications before the Planning Board for a special use permit shall include the following:

- (1) A description of the solar energy system and the technical, economic and other reasons for the proposed location and design; 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;

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- (2) All proposed changes to the landscape of the site, including, without limitation, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (3) A confirmation that the solar energy system complies with all applicable local, state and federal laws and regulations;
- (4) Equipment specification sheets of the major system components to be used including, without limitation, photovoltaic panels, mounting systems, batteries, and inverters;
- (5) Documentation that the solar energy system is composed of FCC Part 15 (47 CFR 15) Class A compliant equipment;
- (6) 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;
- (7) 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;
- (8) 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).
- (9) 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;
- (10) 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;
- (11) 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;
- (12) Part 1 of a Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA);
- (13) Compliance with the provisions of Town Code Chapter 153 Article VIII;
- (14) A copy of the application that has been submitted to the local distribution company for a Coordinated Electric System Interconnection Review (CESIR); and
- (15) 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 §180-29 D(5)(e).

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

- (1) 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 200 feet from any property line and lot coverage shall not exceed 40 percent. Inverters shall be no less than 200 feet from any property line. The total surface area covered by the solar panels, regardless of the mounted angle, shall be included in determining lot coverage;
- (2) All large scale ground mounted solar energy systems shall not exceed an average height of twelve feet. All height measurements shall be calculated when the ground mounted solar energy system is oriented at maximum tilt;
- (3) 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 Code of the Town of Forestburgh. Town Code §180-35 shall be applicable to large scale ground mounted solar energy systems; and
- (4) 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.

(D) Additional Conditions.

- (1) 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.
- (2) 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.

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- (3) 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.
- (4) The owner or operator of a large scale ground mounted solar energy system shall develop, implement, and maintain native vegetation pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. When establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes
- (5) The owner or operator of a large scale ground mounted solar energy system shall submit to the Planning Board a visual assessment of the 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.
- (6) The owner or operator of a large scale ground mounted solar energy system shall 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.
- (E) The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of [1] evergreen tree, at least [6] feet high at time of planning, plus [2] supplemental shrubs at the reasonable discretion of the Planning Board, all planted within each [10] linear feet of the Solar Energy System. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species may be provided by the Planning Board.
- (F) 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 §180-29G. 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:
- (1) 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 §180-29D (5);
- (2) 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;

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(3) 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;

(4) 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;

(5) 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

(6) 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, unless the inoperability of the facility is caused by the interconnection utility or other factors beyond the control of the operator. 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 §180-29 (D)(5).

(G) 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.

(H) Estimate and Financial Surety.

(1) 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 §180-29 (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.

(2) Security: A decommissioning bond 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. This 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. 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

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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 §180-29 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 §180-29D(5) and wait for the termination of the ninety (90) day period required by that section.

(I) Issuance of Special Use Permit.

(1) The special use permit application and approval process shall be governed by §180-34 of the Code of the Town of Forestburgh.

(2) 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.

(3) The Town Planning Board may, in its discretion, waive certain requirements of §180-29 G 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 §180-29 G.

(4) 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 §180-29 (D), §180-29 G, §180-34 and §180- 35 or in order to discharge its obligations under the State Environmental Quality Review Act.

(5) 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.

(6) 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.

**§ 134-16 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 in accordance with Town Code Chapter 180 Article   .

**§ 134-17 Payment in Lieu of Taxes (PILOT); Tax Exemption Opt-Out.**

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

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

**§ 134-18. Enforcement; Penalties for Offenses; Remedies for Violations.**

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the Laws of the State of New York, and Chapter 180 of the Town Code.

**§ 134-19. 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.

**§ 134-20. Supersession**

All local laws, ordinances, or parts of local laws and ordinances of the Town of Forestburgh that are in conflict with the provisions of this Local Law are hereby suspended to the extent necessary to give this Local Law full force and effect.

**§ 134-21. Effective Date**

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