

TOWN OF AURORA

LOCAL LAW 3-2017

**A Local Law Entitled
Solar Energy Systems**

A LOCAL LAW, TO AMEND LOCAL LAW 1-1990 "ADOPTION OF CODE" ADOPTED BY THE TOWN BOARD OF THE TOWN OF AURORA ON JANUARY 22, 1990, BY THE ENACTMENT OF A CHAPTER ENTITLED "SOLAR ENERGY SYSTEMS".

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF AURORA OF A CHAPTER ENTITLED "SOLAR ENERGY SYSTEMS" AS FOLLOWS:

Section 1: LEGISLATIVE INTENT

This Local Law will amend the Code by the enactment of regulations and provisions for Solar Energy Systems.

Section 2: CHAPTER 95-1

Chapter 95-1 shall be enacted as part of the Code of the Town of Aurora entitled "Solar Energy Systems":

ARTICLE I
GENERAL PROVISIONS

Section 95-1-1. PURPOSE:

The Town finds that restrictions of regulations in regard to the use of land within the town for solar power projects or private solar projects are appropriate to properly address community impact, concerns or issues in a manner in which is meaningful and consistent with the comprehensive plan of the Town.

Section 95-1-2. FINDINGS:

The Town Board of the Town of Aurora makes the following findings:

- A. The Town Board of the Town of Aurora recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Aurora intends to accommodate the use of solar energy systems.
- B. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town of Aurora to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Aurora, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Aurora
- C. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- D. Solar energy systems need to be regulated for removal when no longer utilized.

Section 95-1-3. DEFINITIONS:

The following definitions shall apply to this Chapter:

APPLICANT – The person or entity filing an application and seeking an approval under this Article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term “applicant”, “owner”, or “operator” is used in this Chapter, said term shall include any person acting as an applicant, owner or operator.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS – A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate energy primarily for onsite consumption.

GROUND-MOUNTED SOLAR ENERGY SYSTEM – A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for onsite consumption.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM – Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate energy primarily for onsite consumption.

UTILITY-SCALE SOLAR ENERGY SYSTEM – Any solar energy system that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for offsite sale or consumption.

Section 95-1-4. USE DISTRICTS:

Use districts where allowed. Subject to the provisions of this Article, solar energy systems shall be allowed as follows:

- A. Rooftop-mounted and building-mounted solar energy systems are permitted in all zoning districts in the Town.
- B. Ground-mounted solar energy systems are permitted as accessory structures in all

zoning districts of the Town subject to the restrictions in section 95-1-7:

- C. Utility-scale solar energy systems are only permitted in Business (B1 and B2) and Industrial (I) Zoning Districts.
- D. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to allow solar energy systems in other districts are hereby superseded.
- E. The provisions of this Article apply to solar electricity generation and solar water heating systems.

Section 95-1-5. GENERAL REGULATIONS:

General regulations. The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Aurora shall be permitted only as follows:

- A. All proposed solar energy systems are required to follow at least the minimum standards set forth by the New York State Building Codes and all specifications for such systems must be accompanied by a set of drawings stamped by a NYS certified Engineer or Registered Architect and code review checklist.
- B. All solar energy systems are required to obtain a permit from the Town of Aurora Building Department.
- C. Building mounted, ground mounted and roof mounted solar energy systems capable of producing 25kw of energy or less require a permit from the Town of Aurora Building Department.
- D. Building mounted, ground mounted and roof mounted solar energy systems capable of producing more than 25 kw of energy require Site Plan approval from the Town Board and a building permit from the Town of Aurora Building Department.
- E. Utility-scale solar energy systems and all solar energy systems over 25 kW shall be subject to all provisions of this article and permitted only in the approved districts (B1, B2 and I). These systems shall require a Special Use Permit, Site Plan approval from the Town Board and a building permit from the Town of Aurora Building Department. .
- F. All solar energy systems existing on the effective date of this Article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this chapter.
- G. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- H. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- I. This article shall take precedence over any inconsistent provisions of the Zoning Law of The Town of Aurora.
- J. This article shall not apply to any lot owned by a municipality.

Section 95-1-6. GENERAL CRITERIA:

- A. Rooftop-mounted solar energy systems shall meet the height requirements of the underlying zoning district. All proposed installations must be accompanied with a set of drawings stamped by a NYS licensed engineer or Registered Architect verifying the structural integrity of the building and a NYS Code Compliance checklist.

- (1) Pitched roof – solar energy panels shall not be more than three feet higher than the finished roof to which they are mounted.
- (2) Flat roof – the maximum height of a solar energy panel at its highest pitch shall be no more than 8 feet above the parapet wall.
- B. Building- mounted solar energy systems shall not be more than eighteen (18) inches from the building wall and in no instance shall any part of the system extend beyond the eave line or top of a parapet wall. All proposed installations must be accompanied by a set of drawings stamped by a NYS licensed engineer verifying the structural integrity of the building and a NYS Code Compliance checklist.
- C. Ground-mounted solar energy systems shall be subject to the following requirements:
 - (1) The location of said solar energy system shall be placed no closer than two (2) times the standard setback requirements for an accessory building/structure of the zoning district in which it is located.
 - (2) The location of said solar energy system shall be only located in the side or rear yard
 - (3) The height of said solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt.
 - (4) The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in a R-1, R-2, R-3 or RR
 - (5) The total surface area of a non-utility scale said solar energy system on a lot situated in an Agriculture (A), Business (B-1 and B-2) or industrial Use District shall not exceed five (5) percent of the total square footage of the entire lot.
 - (6) The total surface area of a utility-scale solar energy system on a lot which is greater than two (2) acres situated in a Business (B1 and B2) or Industrial (I) Use District shall not exceed ten (10) percent of the total square footage of the entire lot.
- D. Site plan Requirements for ground mounted solar energy systems. If site plan approval is required by this article for a ground mounted solar energy system or a site plan is requested by the Building Inspector for any ground mounted solar energy system, the applicant shall be required to submit a site plan in accordance with the Town of Aurora's site plan requirements and also drawn in sufficient detail as set forth below :
 - (1) Plans and drawings of the solar energy system installation signed by a NYS certified engineer or Registered Architect showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any storm water or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - (2) Property lot lines and the location and dimensions of all existing structures and uses within five hundred (500) feet of the solar panels.
 - (3) Any proposed fencing and/or screening for said project.
 - (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town Board, Town Attorney, Building Inspector or other Town entity; and
 - (5) A public hearing on said site plan may be waived by the Town Board.
- E. Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the requirements of the New York State Building Code.
- F. All solar energy systems shall adhere to all applicable federal, state, county and Town of Aurora laws, regulations and building, plumbing, electrical, and fire codes.
- G. Any solar energy system shall be accessible for all emergency service vehicles and personnel complying with the requirements of the NYS Building Code.
- H. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth tone color.

I. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

J. The development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Aurora or other federal or state regulatory agencies.

K. Artificial lighting of any solar energy system shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

L. If the use of an approved solar energy system which required a special use permit is discontinued, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned.

M. Any solar energy system to be used strictly for Agricultural use purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Building Inspector or Town Board.

ARTICLE II SPECIAL USE PERMIT REQUIREMENTS

Section 95-1-7. SPECIAL USE PERMIT REQUIREMENTS:

Applications under this article shall be made as follows: Applicants for a special use permit to place, construct, and make a major modification to a utility-scale solar energy systems within the boundaries of the Town of Aurora shall submit twelve (12) sets of the following information to the Town Board, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals, as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

A. A completed State Environmental Quality Review Act (SEQRA) long form environmental assessment form (EAF).

B. Necessary Permit Information:

- (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
- (2) Documentation of access to the project site(s), including, but not limited to location of all access roads, gates, and parking areas.
- (3) Documentation of the clearing, grading, storm water and erosion control plans;
- (4) Utility interconnection data, a copy of written notification to the utility of the proposed interconnection and any related agreements for the purchase of electricity.
- (5) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices;

- (6) A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code.

C. A site plan in accordance with the Town of Aurora's site plan requirements and drawn in sufficient detail as follows:

- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State or a registered architect showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site;
- (2) Property lot lines and the location and dimensions of all existing structures and uses within five hundred (500) feet of the solar panels; and
- (3) Proposed fencing and/or screening for said project.
- (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Aurora Town Board, Town Attorney, Building Inspector or other Town entity.

D. Decommissioning Plan: To ensure the proper removal of utility-scale solar energy systems, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special permit under this section. The decommissioning plan must specify that after the utility-scale solar energy system can no longer be used, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimates shall take into account inflation. Removal of utility scale solar energy systems must be completed in accordance with the decommissioning plan. If the utility-scale solar energy system is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover the costs to the municipality.

Section 95-1-8. SPECIAL USE PERMIT CRITERIA:

Special Use Permits issued for utility-scale solar energy systems shall meet the following conditions:

- A. Maximum lot area: The maximum lot area shall be 15 acres.
- B. Setbacks: In addition to the setback requirements of the underlying district, any utility-scale solar energy system shall adhere to the following setbacks:
 - (1) A minimum one hundred feet (100) feet from all property lot lines bordering a residential (R) use district,
 - (2) As regulated for accessory structures in the Business (B1 and B2), and Industrial (I) uses in Chapter 116 of the Town Code.
 - (3) From public roads and railroads: A minimum of seventy five (75) feet from any public road or railroad (measured from the road right-of-way or property line).

- (4) From schools, public parks: A minimum of seven hundred and fifty (750) feet from all property lot lines bordering a school or public park.
- C. Maximum overall height. The height of a utility-scale solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt.
- D. There shall only be allowed one utility-scale solar energy systems per lot.
- E. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Aurora laws, regulations, building, plumbing, electrical, and fire codes.
- F. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Aurora or other federal or state regulatory agencies.
- G. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- H. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- I. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried or utilize existing overhead transmission line structures and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- J. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- K. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- L. All utility-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- M. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- N. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.
- O. After completion of a utility-scale solar energy system, the applicant shall provide a post construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices, and has been constructed and is operating according to the design plans.
- P. Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
- Q. Clearing, grading, storm water and erosion control:
- (1) Before the Town of Aurora shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a SWPPP to the Town Engineering Consulting firm for its review and approval; and
 - (2) The SWPPP shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

ARTICLE III
MAINTENANCE, PROCEDURES AND FEES

Section 95-1-9 MAINTENANCE, PROCEDURES AND FEES:

- A. Time limit on completion. Upon receipt of any required approval by the Aurora Town Board, the applicant shall have 6 months to apply for a building permit. After issuance of a building permit, the applicant shall have 6 months to begin the project and 12 months to complete the project.
- B. Upon receipt of any required approval by the Aurora Town Board, the applicant shall have 12 months to begin the project before those approvals lapse. Prior to the lapse of any approvals the applicant may, for just cause, apply by written request to the Town Board for an extension to this time line.
- C. Inspections. Upon reasonable notice, the Town of Aurora Building Inspector or his designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred. A copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- D. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- E. Continued Operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- F. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) consecutive days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.
- G. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Aurora Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a

court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

H. Application and annual fees.

- (1) Utility-scale solar energy system. An applicant shall pay an initial application fee of Two Thousand Five (\$2500.00) Dollars or such other amount as the Town Board may from time to time determine by resolution, at the time of filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the owner shall pay an annual fee of One Thousand (\$1000.00) Dollars or such other amount as the Town Board may from time to time determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
- (2) Site plan application for ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by resolution of the Town Board.
- (3) Fee for issuance of a building permit: In addition to any special permit or site plan application fee or utility-scale annual fee, an applicant shall pay a building permit fee for a:
 - (a) Building-mounted, ground-mounted, or rooftop-mounted solar energy system: As listed on the Town of Aurora Approved Building Permit Fee Schedule or such other amount as the Town Board may from time to time determine by resolution.
 - (b) Utility-scale solar energy systems: As listed on the Town of Aurora Approved Schedule of Fees or such other amount as the Town Board may from time to time determine by resolution.

I. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.

J. Special use permits for a utility-scale solar energy system granted under this article shall be issued only following a public hearing held as required for special use permits under the New York State Town Law.

K. The Town Board may:

- (1) For utility-scale solar energy systems, grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. Denial of a special use permit shall be by written decision based upon substantial evidence considered by the Town Board. Upon issuance of a special use permit, the applicant shall obtain a building permit for the utility-scale solar energy system.
- (2) For ground-mounted solar energy systems when review is required by the Town Board pursuant to this article, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Town Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the ground-mounted solar energy system.

L. Any changes or alterations post construction to a utility-scale or ground-mounted solar energy system shall be done only by amendment to the special use permit and/or site plan (if required) subject to all requirements of this Code.

M. Special use permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto.

- N. In addition to the requirements of this Article, the special Use permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

ARTICLE IV REVOCATION

Section 95-1-10. REVOCATION:

Violations of any of the conditions of the special use permit, site plan approval or any other local, state or federal laws, rules or regulations, shall be grounds for revocation of the special use permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Aurora Town Board holds a hearing on same.

Section 95-1-11. INTERPRETATION, CONFLICT WITH OTHER LAWS:

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

Section 95-1-12. SEVERABILITY:

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE V PENALTIES FOR OFFENSES

Section 95-1-13. PENALTIES FOR OFFENSES.

- A. Any person or persons, association or corporation committing an offense against this chapter or any section or provision thereof is guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.
- B. This chapter may also be enforced by civil action or by proceedings by the Town of Aurora.
- C. Each week that a violation is permitted to exist shall constitute a separate offense.

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