

For 12/27/2016 meeting

**TOWN OF Aurora
LOCAL LAW NO. OF THE YEAR,**

**A Local Law Entitled:
“Adding Solar Energy Systems Article to the Code of the Town of Aurora”**

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

Article XXVIII shall be added to the Zoning Chapter of the Code of the Town of Aurora entitled “Solar Energy Systems” as follows:

§.200-198. 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 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.

§.200-199. 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” or “owner” or “operator” is used in this Section, 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 electricity solely for use on said lot, through a distribution system that is not available to the general public.

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 solely for use on said lot, through a distribution system that is not available to the general public.

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 electricity solely for use on said lot, through a distribution system that is not available to the general public.

UTILITY-SCALE SOLAR ENERGY SYSTEM – Any solar energy system that cumulatively on a lot is designed and intended to supply energy solely into a utility grid for sale to the general public.

§200-200. 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 a:
 - (1) Residential/Agriculture (RA), Business (B1), Business (B2) or Industrial.
 - (2) Rural Residential (RR), Residential (R1, R2 and R3) Districts only if the lot on which the ground-mounted solar energy system is situated is greater than two (2) acres.
- 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.

§200-201. 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 and code review check list.
- 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 20kw of energy or less require only 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 20 kw of energy require Site Plan approval from the Town Board and a building permit.

E. Utility-scale solar energy systems shall be permitted only in the approved districts (B1, B2 and I), by Special Permit and site plan approval from the Town Board, and upon issuance of a building permit and shall be subject to all provisions of this article.

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 Aurora.

J. This article shall not apply to any lot owned by a municipality.

§ 200-202. General criteria.

- A. Rooftop-mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and must meet all NYS Building Codes with regard to array, size and location upon the roof. All proposed installations must be accompanied with a set of drawings stamped by a NYS licensed engineer verifying the structural integrity of the building and a NYS Code Compliance checklist.
- 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 roof line or 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 structure of the use 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 orientation of said solar energy system shall not be directed towards any adjoining residential dwelling.
- (4) The height of said solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt.
- (5) The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in a Residential (R-1, R-2, R-3 or RR) district.
- (6) The total surface area of said solar system on a lot which is two (2) acres or less situated in a Residential Agriculture (RA), Business (B-1 and B-2) or industrial Use District shall not exceed two thousand square feet.
- (7) The total surface area of said solar energy system on a lot which is greater than two (2) acres situated in a Residential Agriculture (RA), Business (B1 and B2) or Industrial (I) Use District shall not exceed five (5) 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 professional engineer registered in New York State 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 systems 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 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.

§ 200-203. Special permit requirements.

Applications under this article shall be made as follows: Applicants for a special 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) short form environmental assessment form (EAF), if required, or unless a long form is required by the Town's professional engineer or consultant or the Town board with the Town Board designated as lead agency for the SEQRA process.
- 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 location of all access roads, gates, parking areas, etc;

- (3) Documentation of the clearing, grading, storm water and erosion control plans;
 - (4) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection;
 - (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 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 infrastructure 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.

§ 200-204. Special permit criteria.

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

- A. Maximum lot area: The maximum lot area shall be 50 acres.
- B. Setbacks: 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 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. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.

- M. 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.
- N. 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.
- O. 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.
- P. 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.

§ 200-205. Maintenance, procedures, and fees.

- A. Time limit on completion. *Upon receipt of any required approval by the Aurora Town Bd. 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 Bd. 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 or her 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, and 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) 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) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, upon 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) 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 the Town Board, by resolution.
 - (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 Permit Fee Schedule, 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 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 permits under the New York State Town Law.

K. The Town Board may:

- (1) For utility-scale solar energy systems, grant a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. Denial of a Special Permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a Special 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 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 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 Permit and/or site plan (if required) subject to all requirements of this Code.

M. Special 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 permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

§ 200-206. Revocation.

If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special 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.

§ 200-207. Interpretation; conflict with other law.

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.

§ 200-208. 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.

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