

LOCAL LAW NO. 3 OF THE YEAR 2022
TOWN OF SOMERSET
COUNTY OF NIAGARA, STATE OF NEW YORK

A Local Law Amending Article XXII of Chapter 205 of the Town Code – Solar Energy Systems

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

Article XXII of Chapter 205 of the Town Code is hereby repealed and replaced with the following:

205-104. Authority

This Solar Energy Local Law is adopted pursuant to Sections 261-263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore.”

The Town Board of the Town of Somerset enacts this Solar Energy System section under the authority granted by:

- A. Article **IX** of the New York State Constitution, § 2(c)(6) and (10).
- B. New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
- C. New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii) a (6), (11), (12) and (14).
- D. The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this section differ from the authority granted to the Town by Article 16 of the Town Law.
- E. New York Town Law, Article 16 (Zoning).
- F. New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
- G. New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).
- H. New York Real Property Tax Law § 487.
- I. Police powers of the Town of Somerset; and the laws of the State of New York.

205-105. Findings/ Statement of Purpose

The Town Board of the Town of Somerset recognizes that Solar energy conversion systems is a readily available and renewable energy source, and the Town of Somerset intends to accommodate the use of Solar Energy conversion systems.

However, the Town Board finds a growing need to properly site all types of Solar energy systems within the boundaries of the Town of Somerset to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Somerset, 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 Somerset.

This Solar Energy System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Somerset by creating regulations for the installation and use of solar energy systems, and to be consistent with the Town's Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), and other local and Regional Plans with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of solar energy systems.
- B. To ensure that solar energy systems are compatible with land uses in the vicinity of any proposed solar energy system.
- C. To ensure that the installation of solar energy systems are in conformance with the Town's Comprehensive Plan. The Comprehensive Plan sets basic Town policies for protecting the Town's important drainage features, Agricultural lands and environmentally sensitive areas: the large forested areas of the Town, the creeks, the floodplains and the wetlands and watershed. To mitigate the impacts and damage of solar energy systems on environmental resources such as important agricultural lands and important soils, forests, wildlife and other protected resources, and to minimize the adverse impacts on the Town's character and environment and economy, health and safety of the Town's residents, and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways and the residential and farming communities of the Town. These features add natural beauty to the town and provide important habitats for wildlife. Maps of the Town defining the features listed are available in the Town of Somerset Comprehensive Plan and other local and regional documents.
- D. To protect the health and economic well-being of residents, farms and businesses of the Town in emergency situations.
- E. Solar energy systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.

Findings. The Town Board of the Town of Somerset makes the following findings:

Shortsighted planning has often resulted in creation of problem land uses which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been

proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial Wind energy and Solar Energy facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This section will contribute to this effort. The existence of Article 10 of the Public Service Law and Section 94-c of the Executive Law does not negate this responsibility, and in fact recognizes it. This section is not unduly burdensome to the mandates or the process set forth in Article 10 and Section 94-c but is rather compatible with them.

The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.

1. Commercial/industrial solar energy Systems have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
2. The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
3. The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
4. The Town of Somerset has very few tall structures and large-scale land uses.
5. The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
6. The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community.
7. If not properly regulated, installation of large- scale Solar Energy Systems facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
8. Large- scale Solar Energy facilities, when improperly sited, are known to adversely affect the areas around these facilities which may lead to property value impacts and cause economic hardship to property owners.
9. The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural-pastoral lifestyle.

10. Large- scale Solar Energy System facilities may be significant sources of noise, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
11. Construction of Large-scale Solar Energy System facilities can create traffic problems and can cause damage to local roads and infrastructure during construction.
12. Large-scale Solar Energy System facilities have the potential to cause electromagnetic interference with various types of communications.
13. Solar Energy Systems facilities need to be regulated for removal when no longer utilized. Funding and mechanisms for removal when the facilities are no longer operating need to be in place.
14. The Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this section and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.
15. When considering large-scale construction and maintenance, due weight should be given to the following:
16. The relative distress caused to a community and its residents;
17. The actual necessity for such facility given energy production in the area and region, including clean energy production;
18. Past and present stresses and disruption imposed upon an area due to all types of energy production;
19. Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;
20. Location in areas of highest consumption; and
21. The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.

205-106. Definitions

AGRICULTURAL LAND: Land used for cultivated crops, hay, or pasture in the last five years.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite

consumption.

DWELLING UNIT: Any residence/house/apartment that may be occupied or vacant

ENVIRONMENTALLY SENSITIVE AREA: An area of the Town described and depicted in the Town of Somerset Comprehensive Plan.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

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.

GLINT: Giving out or reflecting small flashes of light.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.

HOST COMMUNITY AGREEMENT – A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

NATIVE PERENNIAL VEGETATION: native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NON-PARTICIPATING PROPERTY; a property that is not affiliated with a Solar Energy System project in any way

PARCEL(S): A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a Solar Energy System is proposed to be constructed.

PARTICIPATING PROPERTY: A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar related improvements constructed upon it.

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

PRIME FARMLAND: Land, designated as “Prime Farmland” or “Prime Farmland where drained” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and

is also available for these land uses.

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

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

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

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System in the Town of Somerset is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy System as follows.

- A. Tier 1 Solar Energy Systems include the following:
 - 1. Roof-Mounted Solar Energy Systems
 - 2. Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months (or calculations provided for new builds).
- C. Tier 3 Solar Energy Systems are systems that do not meet the definition of a Tier 1 or Tier 2 Solar Energy Systems and are 20 acres or less in size (defined as the fenced in area that encloses the panels and other related solar energy equipment) and do not meet the requirements of a Tier 4 Solar Energy System.
- D. Tier 4 Solar Energy Systems meet the definition of a Tier 3 Solar Energy System and are over 20 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

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

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form (see Town law on Battery Storage).

WETLANDS: Any areas designated as such by the NYS Department of Environmental Conservation and the US Army Corps of Engineers

205-106. Applicability

- 1. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
- 2. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

3. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
4. 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"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.
5. This article shall not apply to any lot owned by a municipality.
6. This article shall not apply to any lot located within the Village of Barker.

205-107. General Requirements

1. A Building permit shall be required for installation of all Solar Energy Systems.
2. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").
3. This Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.

205-108. Permitting Requirements for Tier 1 Solar Energy Systems

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

1. Roof-Mounted Solar Energy Systems.
 - a. Roof-Mounted Solar Energy Systems shall incorporate, where appropriate, the following design requirements:
 - i. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface and the highest edge of the system.
 - ii. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - iii. Height: Tier 1 Solar Energy Systems shall have the following height restrictions for all zoning districts: 2 feet above roof of highest existing structure but shall not be higher than the allowed height in the underlying zoning district.
 - iv. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
 - b. Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
 - c. Fire safety: All Roof mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code Standards.
2. Building-Integrated Solar Energy Systems - Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing

the system.

205-109. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems are permitted as accessory structures (with Planning Board site plan approval) in the following districts (unless restricted in any zoning overlay district): Agricultural District (A), Business District (B), Planned Unit Development District (PUD), Industrial district (I), Single-Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential District (RLS). The Site Plan application shall include a site plan and address the following requirements:

1. Glare, Glint and Reflection and Color: 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 spaces in excess of that which already exists. All Solar Panels shall have anti-reflective materials and/or coating(s) and proof of such must be provided with the building permit application. Panel and equipment color shall be consistent with industry standards; usually dark colors or shades of black, dark blue or grey.
2. Ground Screw Installations: Ground screw columns designed to properly support solar panels and equipment are required. Concrete pads or platforms shall not be permitted.
3. Setbacks - Tier 2 Solar Energy Systems shall be setback a minimum of 25 feet from any side or rear property line. All Tier 2 Solar Energy Systems shall only be installed in the side or rear yards in all zoning districts except residential districts. In residential districts, only rear yard installations shall be allowed. Note, the front yard in the RLS district is on the lakeside. In all cases, the solar panels shall be located a minimum of 50 feet from any dwelling unit on an adjoining non-participating property.
4. Height – The height of Tier 2 Solar Energy Systems shall be no greater than 12 feet in any Residential Districts. Height shall be less than 15 feet for all remaining districts.
5. Screening and Visibility.
 - a. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
 - b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access. Tier 2 installations on lake shore properties may create view issues for the neighbors and must be located in a manner that does not impact neighbor views.
6. Site Plan requirements

Site Plans for Tier 2 Solar Energy Systems shall be processed in accordance with the Town Site Plan regulations, and shall include the following minimal information:

- a) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed 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 stormwater or erosion disturbances, and utility lines, both above and below ground,

on the site and adjacent to the site; and

- b) Property lot lines and the location and dimensions of all existing structures and uses on site within 200 feet of the solar panels; and
- c) Any proposed fencing and/or screening for said project; and
- d) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Somerset Planning Board, Town Attorney, Building Inspector or other Town entity.
- e) Tier 2 Solar Energy Systems are not permitted in front yards, or side yards in the R-1, R-2, and RLS zoning districts.

205-110. Permitting Requirements for Tier 3 Solar Energy Systems

1. Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town's definition are large solar energy projects that can have a significant impact on the Town. Tier 3 solar energy systems shall not be installed in environmentally sensitive areas, such as flood plains, wetlands and watershed protection areas as designated by the Town, County or other Agency, waterfront areas of the Town and wood lots or in areas of important farm soils and tourism related facilities. Specifically, Tier 3 systems are not allowed in the Waterfront Protection, Agriculture/ Agri-tourism and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).

All Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts (as restricted above), and subject to site plan application requirements set forth in this Section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset requires the applicant to enter into a Solar Energy System Host Community Agreement with the Town of Somerset.

Notwithstanding Article XVA of Section 205 of the Town Code of the Town of Somerset, Tier 3 Solar Energy Systems shall be permitted through the process set forth in this Article. The requirements set forth in Article XV of Section 205 of the Town Code shall not be applicable to Tier 3 Solar Energy System within a Planned Unit Development District.

2. Applications (Process) for the installation of Tier 3 Solar Energy System shall be:
 - a. Received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents and fees have been submitted. The CEO will then forward to the Planning Board, by having it placed on the next available agenda, for them to determine completeness of the application. Applicants shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the Special Use Permit and Site Plan.
 - b. Once the application is deemed complete and while the Planning Board is completing their reviews, the project/application shall be referred to the Town Board to begin completion of the Host Community Agreement, this agreement will need to be finalized before the Planning Board acts on the Special Use Permit.

- c. Subject to a public hearing to hear all comments for and against the application. The Town shall complete all public notice requirements in accordance with the Special Use requirements of the Town.
- d. Referred to the Niagara County Planning Department pursuant to General Municipal Law § 239-m if required.
- e. Acted upon by the Planning Board, once the required steps are completed and the Planning Board has completed the SEQR process.

3. Design and Application Requirements

Applications for Tier 3 Solar projects shall address and include the following:

- a. **Battery Storage:** The applicant must identify whether or not Battery Energy Storage is part of the solar energy system project. Solar storage batteries, equipment and facilities are only permitted as prescribed in the Town of Somerset Battery Energy Storage law.
- b. **Drainage:** Solar energy systems must comply with NYS Stormwater regulations. Applicants must demonstrate that solar systems will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties. Applicants are required to submit drainage design plans to the Planning Board that may be forwarded to the Town Engineer for review.-
- c. **Groundwater and Wells:** The applicant must identify the groundwater conditions in the area and all public and private wells within 1000 feet of the site.
- d. **Vehicular Paths:** Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- e. **Signage.**
 - i. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
 - ii. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- f. **Glare/Glint:** All Solar Panels shall have anti-reflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.
- g. **Lighting:** Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.
- h. **Noise:** The project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or other sensitive receptors. The 1-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants

may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the solar energy system to demonstrate compliance with this standard.

- i. Tree-cutting: Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible. The standard being no more than 10% of the existing trees larger than 6 inches in diameter should be removed.

4. Decommissioning.

- i. Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity of the system for a period of at least 6 months) for a period of 1 year shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
- ii. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - (a) The cost of removing the Solar Energy System (no allowance for recycle value).
 - (b) The time required to decommission and remove the Solar System and any ancillary structures.
 - (c) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - (d) If on Agricultural lands, the plan must include meeting the NYS Agriculture and Markets standards.
- iii. Security
 - (a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.
 - (b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - (c) In the event of default or abandonment of the Solar Energy System, the system shall be

decommissioned as set forth in this law.

5. Maintenance Plan: applications shall include a maintenance plan for all leased and owned lands (including required setbacks/buffers). Maintenance includes equipment, roadways/access drives, plantings under the panels, landscaped areas, and all other areas of the site.
6. Safety; applications shall include a safety plan (including communication with emergency service providers).
 - 1) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
 - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
 - b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - c. Procedures to be followed in response to notifications from the Solar Energy System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
 - d. The property must be inspected after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did not sustain damage. Report to be filed with Town Planning Board
 - e. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and/or extinguishing the fire.
 - f. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - g. Procedures for dealing with solar energy system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged solar energy system equipment from the facility. System owner shall provide guaranteed non-emergency and emergency response times of a qualified subject matter expert to the Town Hall and local first responders.
 - h. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders, that shall include but not limited to a smoke plume test for evacuation purposes. All smoke plume test findings shall be made public.
 - i. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures. Training of local first responders shall be done bi-annually. Training in a classroom setting shall

be done annually in the winter and an onsite training session shall be done annually in the spring. This training shall include local and mutual aid first responders.

- j. The system owner shall notify the local Fire Department, County Emergency Management office and the Town Hall at least 1 week prior to any scheduled maintenance or battery swap out.
 - k. In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.
7. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Somerset) on the subject property and surrounding properties.

205-111. Site Plan Requirements

Site plan application - For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. This required site plan application shall include a site plan and the following information:

- a. A Plan illustrating property lines and physical features, including roads, for the project site.
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- c. 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.
- d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- f. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep (especially the landscaped areas used for screening), such as mowing and trimming (or other methodologies).
- i. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- j. Engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- k. A completed SEQR Full Environmental Assessment Form (if over 10 acres or requested by

the Planning Board).

- l. A Landscape Plan in accordance with the Special Use Permit requirements of this law.
- m. An overall project location map (illustrating surrounding properties within 1000 feet) illustrating zoning (including any overlays), land use, environmental features and structures.
- n. Application Fees: All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Somerset Town Board (see section 205- 13).

205-112. Special Use Permit Standards

1. Specific Standards

- a. Lot size – There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law.
- b. Setbacks – All Tier 3 Solar Energy Systems shall be setback a minimum of 200 feet from the fence surrounding the solar panels and equipment to all non-participating property lines and to the edge of any road ROW. This setback shall be a minimum of 50 feet from a participating property line. Additionally, the setback from the fence line shall be a minimum of 400 feet from a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet.
- c. Height - The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.
- d. Fencing Requirements - All solar panels and mechanical equipment, and any related structures shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a typical lifespan of a minimum of thirty years.
- e. Screening and Visibility.
 - i. Solar Energy Systems smaller than 5 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - ii. Solar Energy Systems larger than 5 acres shall be required to:
 - (a) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
 - (b) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical, from public roadways and adjacent

properties to the extent feasible at the start of activation. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.

- (c) 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 planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by Section 205-112(1)(d) above. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor in conjunction with a local nursery should recommend shrub screening for planning board approval

For all Tier 3 projects, the recommendations of a landscape professional are required.

The Planning Board can require that Tier 3 systems involving complex or sensitive visual and/or aesthetic concerns be approved by a NYS registered landscape architect.

All Tier 3 solar energy systems landscape plans must be approved by a NYS

registered landscape architect.

- (d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, any buildings can be made to look like agricultural structures such as barns.

f. **Agricultural Resources.** For projects located on agricultural lands:

- i. Any Tier 3 Solar Energy System shall not be permitted on any property, lot, parcel that contains 50% or more land classified as Prime Farmland soils or Farmland soils of Statewide Importance. Prime farmland is determined and classified by the US Department of Agriculture (USDA) and the percentage of Prime Farmland and Farmland of Statewide Importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, NYS Agriculture & Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the town engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.
- ii. Tier 3 Solar Energy Systems located on Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).

- iii. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.
- iv. Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines (this will be a condition of the Special Use Permit).
- g. Noise: The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).
- h. Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.). MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.

Solar Energy System Liability Insurance:

- i. The Holder of a Special Use Permit for a Solar Energy System Shall Agree to secure and maintain for the duration of the permit, public liability insurance as follows:
 - (a) Commercial general liability covering personal injuries, death and property damage:

\$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Somerset and its officers, councils, employees, attorneys, agents and consultants as additional named insured.
 - (b) Umbrella coverage: \$10,000,000.
- ii. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".
- iii. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Somerset with at least thirty (30) days prior written notice in advance of cancellation.
- iv. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Somerset at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- v. Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Somerset a copy of each of the policies or certificates representing the insurance in the required amounts.
- vi. Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Somerset shall not be deemed to comply with this Law.
- vii. Indemnification: Any application for a Solar Energy System within the Town of Somerset

shall contain an indemnification provision. The provision shall require the Applicant/Owner/Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the town of Somerset and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said Solar Energy System, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Somerset or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Somerset.

205-113. Permitting Requirements for Tier 4 Solar Energy Systems

All Tier 4 Solar Energy Systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Zoning Districts, and subject to site plan and special use permit requirements as set forth previously in this law and in addition to the Tier 3 requirements set forth above.

Notwithstanding Article XVA of Section 205 of the Town Code of the Town of Somerset, Tier 4 Solar Energy Systems shall be permitted through the process set forth in this Article. The requirements set forth in Article XV of Section 205 of the Town Code shall not be applicable to Tier 4 Solar Energy System within a Planned Unit Development District.

In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset shall require all Tier 4 applicants to enter into a Solar Energy System Host Community Agreement.

These Tier 4 systems are very large systems that have a potential to significantly impact on the Town of Somerset, its citizens, the character, and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, or include revisions to Tier 3 requirements:

- 1) Any Tier 4 Solar Energy System shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as Prime Farmland or Farmland of Statewide Importance.
- 2) Tier 4 systems shall not be allowed in the waterfront Protection, Agriculture/ Agri-tourism, Land of statewide importance and Environmentally Sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file with the Town Clerk). They also cannot be located within a one-half mile of any other Tier 3 or Tier 4 system.
- 3) Submittal of an Agricultural Impact Statement to determine the solar system's impact on agriculture in the Town. The Planning Board, on a project-by-project basis, can amend the scope and detail of information required from the applicant; and the applicant should consult with NYS Agriculture and Markets, USDA and the Natural Resources Conservation District (NRCS) representatives in preparation of this statement.

- 4) Submittal of an Economic Impact Analysis to determine the effect a solar energy project will have on the economy of the town. This includes those outlined in the Agricultural Impact Statement and other factors related to commerce, employment, housing, transportation, tourism, education, environmental protection, municipal services, revenues and taxation. The Planning Board, on a project-by-project basis, can further amend the scope and detail of information required from the applicant

205-114. Ownership Changes

If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. The new owner/operator must also submit new "security/bonds" for approval by the Town attorney. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer, Town Planning Board, Niagara County Planning Board and Town attorney of such change in ownership or operator 30 days prior to ownership change.

205-115. Safety

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Solar Energy System is located in an ambulance district, the local ambulance corps.
3. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable Local Law (including the Town of Somerset's Battery Energy Storage law), fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

205-116. Permit Time Frame, Maintenance, Abandonment and Fees

1. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for a one-time extension of 6 months. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
2. Inspections. Upon reasonable notice, the Town of Somerset 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 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.

3. Construction inspections.

- a. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subdivision B of this section is ready for inspection.
- b. Elements of work to be inspected. The following minimal elements of the construction process shall be inspected, where applicable:
 - i. Work site prior to the issuance of a building permit;
 - ii. Footing and foundation;
 - iii. Preparation for concrete slab;
 - iv. Framing;
 - v. Building systems, including underground and rough-in;
 - vi. Fire-resistant construction;
 - vii. Fire-resistant penetrations;
 - viii. Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - ix. Energy Code compliance; and
- c. Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and town Engineer.
- d. A final inspection by the fire marshal must be completed prior to activation.
- e. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- f. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees required by this article must be paid prior to or at the time of each inspection performed pursuant to this section.

4. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit 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.

5. 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.

- a) Annual report. The owner and/or operator of a large-scale solar energy system must submit to the Town's code enforcement officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
 - i) The rated capacity of the system;
 - ii) The amount of electricity generated by the system in the most recent 12-month period;
 - iii) The amount of electricity transmitted to the power grid in the most recent 12-month period;
 - iv) Identifying any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
 - v) Identifying any change in the party responsible for decommissioning and removal of the system upon its abandonment; and
 - vi) Evidence that the surety required for decommissioning remains in effect and is irrevocable for at least the next two years.
 - vii) Annual testing of groundwater and wells and a report of the findings provided to the town.
6. 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 of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 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. All materials to be removed shall be disposed of in a proper manner and in accordance with Niagara County law, preferably recycled.
7. 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 Somerset Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing by 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 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. Removal of the system must be in accordance with the approved Decommissioning Plan.
8. If the owner and/or operator fails to comply with decommissioning upon any abandonment as outlined previously, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

9. Application and annual fees; Application and annual fees shall be set by the Town Board and include the following:
- a. Tier 3 and 4 solar energy systems. An applicant shall pay an initial application fee 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 to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
 - b. Site plan application for a ground-mounted solar energy system. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - c. The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.-
 - d. The Town of Somerset reserves the right to, by local law, provide that no exemption pursuant to the provision of New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
10. The Town of Somerset requires that the applicant to complete all the requirements of the Town Infrastructure Preservation Law. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained
11. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/operator of the Solar Energy System to implement the decommissioning plan.

205-117. Enforcement

If the applicant violates any of the conditions of its special permit or 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 Somerset Planning Board holds a hearing on same.

Any violation of this Solar Energy Law shall also be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

205-118. 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.

This local law shall take effect immediately upon the filing with the Secretary of State.