

LOCAL LAW NO. 1 OF 2019 TO AMEND THE ZONING LAW OF THE TOWN OF RUSH, CHAPTER 120 OF THE CODE OF THE TOWN OF RUSH, BY ADDING SECTION 120-74 OF THE ZONING LAW OF THE TOWN OF RUSH REGARDING SOLAR ENERGY SYSTEMS.

BE IT ENACTED, by the Town Board of the Town of Rush, Monroe County, State of New York, as follows:

Chapter 120, Article V, of the Zoning Law of the Town of Rush (the “Town Zoning Law”), shall be amended so as to add new Section 120-74 of the Town Zoning Law entitled “Solar Energy Systems” as follows:

§ 120-74. Solar Energy Systems

- A. Purpose. The purpose of this section is to provide for the location, regulation and processing of applications for solar energy systems within the Town of Rush. The intent is to both encourage the use of renewable energy systems based on sunlight while at the same time protecting the health, safety and general welfare of the residents of the Town of Rush. In doing so, these regulations provide standards for the safe provisions of solar energy systems in order to protect the natural and aesthetic character of the Town of Rush with special attention to open space, vistas, farmland, and neighboring property owners.
- B. Enabling Authority. The regulations contained in this section have been adopted pursuant to New York Town Law §§ 261-263 and are made in accordance with the comprehensive plan for the development of the Town of Rush. The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove site plans for solar energy systems pursuant to the criteria set forth herein.
- C. Definitions.

BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM: A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other façade material, semitransparent skylight system, roofing materials and shading over windows.

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.

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, which generates electricity for onsite or offsite consumption.

ROOF MOUNTED SOLAR ENERGY SYSTEM: A series of Solar Panels located on the roof of any legally permitted building and/or structure for the purpose of producing electricity for onsite and/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 energy storage devices, material, hardware, inverters and/or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM: An electrical generating system comprised of 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. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

1. Tier 1 Solar Energy Systems include the following:

- a. Roof-Mounted Solar Energy Systems
- b. Building-Integrated Solar Energy Systems

2. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25 kW AC and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.

3. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

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

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

D. Applicability.

1. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after its effective date.
2. 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 of Rush Code.

E. General Requirements

1. A Building permit shall be required for installation of all Solar Energy Systems.

2. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.
3. 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”).

F. Permitting Requirements for Tier 1 Solar Energy Systems

1. Roof-Mounted Solar Energy Systems and Building Integrated Photovoltaic Systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.
 - a. Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located.
 - b. Aesthetics. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:
 - i. Solar Panels on pitched roofs shall be installed at the same angle as the roof’s surface with a maximum distance of 8 inches between the roof and 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. 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.
 - iv. Glare: All Solar Panels shall have anti-reflective coating(s).
2. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

G. Permitting Requirements for Tier 2 Solar Energy Systems

1. All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall be exempt from site plan review under the local zoning code or other land use regulations, subject to the following conditions:
 - a. Setback. Ground-Mounted Solar Energy Systems shall adhere to the setback requirements for accessory structures in the zoning district within which they

are located.

- b. Height. Tier 2 Solar Energy Systems shall be subject to have a maximum height of 15 feet.
- c. All Tier 2 Solar Energy Systems in residential districts shall be installed in the side or rear yards. Tier 2 Solar Energy Systems may not be located between the front lot line and principal structure.
- d. Glare: All Solar Panels shall have anti-reflective coating(s).
- e. Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.
- f. Screening and Visibility.
 - i. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 - ii. 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.

H. Permitting Requirements for Tier 3 Solar Energy Systems.

1. Tier 3 Solar Energy Systems are permitted through the issuance of a special permit and site plan approval, and subject to the requirements set forth in this Section, within all zoning districts in the Town, as well as any agricultural district as designated by Monroe County.
2. Escrow Agreement. The Town shall require the applicant seeking to develop any Tier 3 Solar Energy Systems to fund an escrow agreement or to sign a developer's agreement to cover the amount by which the Town's estimated costs and expenses of review, including reasonable legal and engineering fees, exceed (or will exceed) the application fees paid by the applicant.
3. Tier 3 Solar Energy Systems will occupy no more than a total of 150 acres in the Town of Rush including solar panels and setback areas. There is a minimum of 20 acres and a maximum of 50 acres for a single installation.
4. Location. Tier 3 Solar Energy Systems shall not be located within the following areas of potential sensitivity: (i) one hundred year flood hazard zones considered an AE Zone on the FEMA Flood Maps; and (ii) properties included on the New York State or National Register of Historic Places, or otherwise identified as, or eligible for

- inclusion as, historic and/or culturally significant resources by the New York State Historic Preservation Office. Significant archeological resources shall be protected and preserved. Any mitigation measures proposed as part of the development of a Tier 3 Solar Energy System shall be undertaken in consultation with the New York State Historic Preservation Office or other similar historic preservation authority.
5. Tier 3 Solar Energy Systems shall, to the extent practicable, be designed in such a way as to allow agricultural use of the soil after the System is decommissioned.
 6. A landscape buffer shall be provided around the Tier 3 Energy System and Solar Panels to provide screening from adjacent properties.
 7. Removal of trees and other existing vegetation shall be minimized or offset with planting elsewhere on the property. Tier 3 Solar Energy Systems shall require the preparation of a vegetation management plan that includes the planting and/or protection of pollinators and perennial vegetation.
 8. Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
 9. All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
 10. Glare. All Solar Panels shall have anti-reflective coating(s).
 11. Signage.
 - a. 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.
 - b. As required by the 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.
 12. 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 from abutting properties.
 13. Decommissioning.
 - a. Solar Energy Systems that have been abandoned and/or not producing electricity 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 of Rush as set forth in Section J(b) herein.

- b. A Decommissioning Plan (see Appendix 1) signed by the owner, and containing the following, in addition to any such other terms and conditions as may be required by the Town of Rush:
 - (i) The cost of removing the Solar Energy System.
 - (ii) The time required to decommission and remove the Solar Energy System and any ancillary structures.
 - (iii) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
- c. Security.
 - (i) The deposit, executions, or filing with the Town of Rush Clerk of cash, bond, or other form of security reasonable acceptable to the Town of Rush attorney and/or engineer, 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 the 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 be reduced by the amount of the estimated salvage value of the Solar Energy System.
 - (ii) 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 of Rush, 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.
 - (iii) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in Section J(b) and J(c).

14. Special Permit Required.

- a. The special permit application and its requirements for obtaining a special permit shall be supplemented by the following additional provision:
- b. Height. Tier 3 Solar Energy Systems shall be no more than 15 feet in height

- c. Setback. Tier 3 Solar Energy Systems shall adhere to the setback requirements of 50' from property line if adjacent property is agricultural, 200' from property line if adjacent property is residential and 200' feet from the centerline of the road.
- d. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
- e. Referral to Planning Board. The Town Board shall refer the special permit application to the Planning Board for review, which shall review the site development plan and render its recommendations to the Town Board. The Planning Board may recommend approval, disapproval or conditional approval subject to modification(s) being made to the special permit application. The Planning Board shall report its recommendation(s) to the Town Board within thirty (30) days of the referral by the Town Board. In reviewing the application and making its recommendations, the Planning Board shall consider the objectives contained in Section 120-69(D)(4)(a)[1]-[3] of the Town Zoning Law.

15. Site Plan Approval Required.

- a. Tier 3 Solar Energy Systems shall be required to obtain Site Plan Approval from the Town Planning Board.
- b. The site plan application and its requirements for obtaining site plan approval (Section 120-69(B) of the Town Zoning Law) shall be supplemented by the following additional provisions:
 - (i) If the property of the proposed project is to be leased, legal consent between all parties, specifying the uses(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
 - (ii) Property lines and physical features, including roads, for the project site.
 - (iii) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
 - (iv) 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.

- (v) The equipment specification sheets shall be documented and submitted for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.
- (vi) Property Operation and Maintenance Plan. Such a plan shall describe continuing photovoltaic maintenance and property upkeep and maintenance, such as mowing and trimming.
- (vii) Erosion and Storm Water Management Plan. Such a plan shall provide for erosion control measures and storm water management subject to the requirements of Chapter A125-8, A125-9, and A125-10.
- (viii) Detailed plans and specifications for any proposed fencing to be installed, including but not limited to the location(s), height and type of fencing material(s) to be installed. Such plans shall ensure perimeter security and safety for any and all beings.
- (ix) Prior to the issuance of the building permit or final approved by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

16. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

I. Safety.

- a. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- b. 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 Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
- c. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed in accordance with the laws and regulations of the Town of Rush and any applicable federal, state, or county laws or regulations.

J. Permit Time Frame and Abandonment

- a. The Special Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction or construction is 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 of Rush may extend the time to complete the construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- b. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town of Rush shall notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
- c. If the owner and/operator fails to comply with decommissioning upon any abandonment, the Town of Rush 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.

K. Effect on Other Laws. To the extent that any law, ordinance, rule or regulation, or parts thereof, are in conflict with the provisions of this Section (including all provisions of the Code concerning subdivision or site plan applications, and applications to the Zoning Board of Appeals), this Section shall control.

L. Enforcement. Any violation of this Section shall be subject to the same civil and criminal penalties as provided for in the zoning regulations of the Town of Rush.

M. Severability. If any provision of this Section shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provision directly involved in the controversy in which such judgment shall have been rendered.

Appendix 1: EXAMPLE DECOMMISSIONING PLAN

Decommissioning Plan for [Solar Project Name], located at:
[Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for [12] months
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: _____ Date: _____