

TOWN OF CLYMER

LOCAL LAW NO. 3 OF 2021

A LOCAL LAW ENACTING REGULATIONS FOR SOLAR ENERGY SYSTEMS

Be it enacted by the Town of Board of the Town of Clymer, County of Chautauqua, and State of New York, as follows:

SECTION 1. AUTHORITY.

This local law is promulgated pursuant to the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(10);
2. New York Statute of Local Governments, §10(1) and (7);
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);
4. New York Town Law §130 (11)(peace, good order and safety), (15)(promotion of public welfare); and
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(general powers).

SECTION 2. NEW REGULATIONS FOR SOLAR ENERGY SYSTEMS.

A new Section V(D) is hereby added to the Town of Clymer Zoning Code, which shall provide as follows:

D. Solar Energy Systems

1. Purpose. The Town Board of the Town Clymer, exercising the authority granted to under the Town Law of the State of New York to protect the health, safety, and welfare of the residents and property owners of the Town of Clymer, does hereby enact this Section to regulate the construction, maintenance and placement of solar energy systems and equipment in the Town of Clymer. The purpose of this regulation is to balance the potential impact on neighbors when solar collectors may be installed near their property, while preserving the rights of property owners to install solar collection systems without excess regulation. The Town of Clymer recognizes the importance of solar systems in generating electricity for on-premise and off-premise use, the reduction of greenhouse gas emissions and support for emerging solar system economic development.

2. Definitions. For purposes of this sub-Section, the following terms shall have the meaning indicated:

APPLICANT – The individual(s), entity, or entities applying for any federal, state, or local government permit or permission for the installation of a Solar Energy System.

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) - A solar energy system that consists of integrating photovoltaic modules into the building structure. Technologies include PV shingles or tiles, PV laminates and PV Glass. Examples of placement include vertical facades, semi-transparent skylights, awnings, fixed awnings and roofs

GROUND MOUNTED SYSTEMS - A solar energy system that is anchored to the ground and attached to a pole or similar mounting system, detached from any other structure.

LARGE-SCALE SYSTEM - Solar energy systems used primarily to convert solar energy into electricity for off-site consumption or sale and/or systems that have the capacity to produce more than 25KW per hour of energy.

ROOF-MOUNTED SYSTEM - A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush mounted system or as modules fixed to frames which can be tilted toward the sun at an optimal angle. Roof mounted systems shall be located on a roof of a permitted principal use or accessory structure.

SMALL-SCALE SOLAR - Small Scale Solar means a solar energy system that is installed and placed for the production of energy for consumption only on-site and that has the capacity to produce less than 25KW per hour of energy.

SOLAR ENERGY EQUIPMENT - Energy storage devices, materials, hardware, or electrical equipment and conduit associated with the production of electrical energy.

SOLAR ENERGY PRODUCTION FACILITY - Energy Generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of wholesale or retail sales of electricity.

SOLAR ENERGY SYSTEM – A system of components intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, battery energy storage systems, storage, maintenance and/or other accessory buildings, inverters, fans, combiner boxes, meters, transformers, and all other mechanical structures. The area for the solar energy system is all of the area within the project fence line, as well as the area covered by all facility components including, but not limited to, solar panels and solar energy equipment.

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

SOLAR STORAGE BATTERY - A device that stores energy from the sun and makes it available in an electrical form.

3. Applicability.

a. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after the effective date of the local law by which it was adopted, excluding general maintenance and repair.

b. All Solar Energy Systems shall be designed, erected, and installed or modified in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Building Code and the Town Code as well as the National Electrical Code (NEC), National Fire Protection Code 70 (NFPA 70), and local regulations.

c. Under SEQRA regulations, actions are classified as Type I, Type II, or Unlisted Actions. Type II Actions are exempt from review and include actions such as the construction, expansion, or placement of minor or accessory structures. The Town of Clymer considers Building-integrated solar components and Small-scale systems to be Type II Actions and therefore exempt from all SEQRA requirements, including the submission of an EAF (Environmental Assessment Form). Large-scale Systems and solar energy production facilities that meet thresholds contained in the SEQRA regulations and are considered more likely than others to have a significant adverse impact shall be considered Type I Actions. However, the need for a complete Environmental Impact Statement (EIS) shall be determined by the permitting board on a case-by-case basis in accordance with the significance of the potential adverse environmental impact.

d. All fees for applications made pursuant to this local law shall be established by resolution of the Town Board. Nothing herein shall be read to limit the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or Impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required under SEQRA if an EIS is required.

4. Solar as an Accessory Use/Structure. This section governs the placement and installation of Small-scale Solar systems as defined herein. The installation of Small-scale Solar systems does require the applicant to obtain a building permit from the Town of Clymer.

a. Roof-mounted Systems. Roof-mounted Systems are permitted as an accessory use when attached to a lawfully-permitted principal structure and/or accessory structure, subject to the following requirements:

(1) Aesthetics. Solar energy equipment shall incorporate the following design requirements:

(a) Solar energy equipment shall be installed outside the primary residence or accessory structure and as close to a public utility electrical meter as possible.

(b) Roof-mounted Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.

(c) Access and Pathways (NFPA Section 324.7). Roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with NFPA Sections R324.7.1 through R324.7.6

EXCEPTIONS:

[1] Roof access, pathways and spacing requirements need not be provided where an alternative ventilation method has been provided, or where vertical ventilation techniques will not be employed.

[2] Detached garages and accessory units.

(d) Size of solar photovoltaic array (324.7.1). Each photovoltaic array shall not exceed 150 feet in any direction. (45,720 mm).

(e) Roof Access Points (324.1.2). Roof access points shall be located:

[1] In areas that establish access pathways which are independent of each other and as remote from each other as practicable so as to provide escape routes from all points along the roof.

[2] In areas that do not require the placement of ground ladders over openings such as windows or doors or areas that may cause congestion or create other hazards.

[3] At strong points of building construction, such as corners, pilasters, hips, and valleys and other areas capable of supporting the live load from emergency responders.

[4] Where the roof access point does not conflict with overhead obstructions such as tree limbs, wires or signs.

[5] Where the roof access point does not conflict with ground obstructions such as decks, fences or landscaping.

antennas, [6] In areas that minimize roof tripping hazards such as vents, skylights, satellite dishes, or conduit runs.

roofs (f) Ground access areas (324.7.3). Ground access areas shall be located directly beneath access and roof access points. The minimum width of the ground access area shall be the full width of the access roof or roof access point, measured at the eave. The minimum depth shall allow for the safe placement of ground ladders for gaining entry to the access roof.

shall (g) Single ridge roofs (324.7.4). Panels, modules, or arrays installed on roofs with a single ridge extending not be located pathway be located in a manner that provides two (2), 36 inches wide (914mm) access pathways from the roof access point to the ridge. Access pathways on opposing roof slopes shall along the same plane as truss, rafter, or other such framing system that supports the pathway

EXCEPTIONS:

[1] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

[2] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders.

arrays contains an [3] One access pathway shall be required when a roof slope containing panels, modules or is located not more than 24 inches (610 mm) vertically from an adjoining roof which access roof.

extending arrays (h) Hip roofs (324.7.5). Panels, modules and arrays installed on dwellings with hip roofs shall be located in a manner that provides a clear access pathway not less than 36 inches (914mm), from the roof access point to the ridge or peak, on each roof slope where panels, modules or are located.

EXCEPTIONS:

[1] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

[2] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders

inches [i] Roofs with valleys (324.7.6), Panels and modules shall not be located less than 18 (457 mm) from a valley.

EXCEPTIONS:

[a] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.

[ii] Allowance for smoke ventilation operations (324.7.7). Panels and modules shall not be located less than 18 inches (457 mm) from a ridge or peak.

EXCEPTIONS:

[a] Where an alternative ventilation method has been provided or where vertical ventilation methods will not be employed between the uppermost portion of the solar photovoltaic system and the roof ridge or peak.

[b] Detached garages and accessory structures.

b. Ground Mounted Systems.

1. All ground mounted solar panels shall be installed in the rear yard.
2. Setback(s). The setback from any property line shall be 75 feet. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the “property line” for purposes of determining setbacks.
3. Height. The maximum height of a ground-mounted solar energy system shall be 15 feet as measured from the finished grade. All height measurements are to be calculated when the solar energy system is oriented at maximum tilt.
4. Lot Coverage. The surface area of ground mounted solar panels shall be included in lot coverage and impervious surface calculations and shall not exceed thirty percent (30%) of the lot size.
5. Other:
 - (a) Any application for installation and placement of small-scale solar energy system under this section in a side yard location shall require an application containing a site plan showing the location of all solar energy system components, their location on the premises, their location on the premises in relation to the property line and any and all structures on the premises, and the nearest structure located on the premises adjacent thereto.

c. Notification to the Fire Service. Notification in writing to the Fire Department having operational authority at the location where the system will be installed shall be made no later than ten (10) days following installation:

1. Notification shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shut down operation of the unit so as to have the ability to cut power from the solar panels.
2. In addition, a proper written statement showing the method of shut down shall be posted inside the main electrical panel of the unit which can be readily accessible for and to firefighting personnel.

5. Solar as Principal Use.

a. Large-scale Solar Systems are permitted in the Agricultural-Residential (A-R) District by the issuance of a Special Permit by the Town Board, subject to the requirements set forth in this section.

1. Every application for a Large-scale System within the Town of Clymer shall be made to the Town Board and shall be approved by a majority vote thereof.
2. The Town Board shall hold a public hearing upon ten (10) days notice duly posted and published in the official newspaper of the Town and on the Town bulletin board, before granting the Special Permit.

b. Special Permit Application Requirements. Every application for a Special Permit under this section shall contain the following information:

1. Verification of utility notification. Foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.
2. Name, address, and contact information of the applicant, property owner(s) and agent submitting the proposed project application.
3. If the property of the proposed project is to be leased, legal consent among all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
4. Blueprints showing the layout of the proposed system signed by a Professional Engineer or Registered Architect.
5. Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and invertors that are to be installed.
6. A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.
7. Decommissioning Plan:
 - (a) To ensure the proper removal of large-scale systems, the decommissioning plan shall include details regarding the removal of all infrastructures, including the removal of concrete to a depth of four feet, and the remediation of soil and vegetation back to its original state prior to construction, unless otherwise permitted. 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 inflation into account. *In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner.*
 - (b) A form of surety, through escrow, bond or the equivalency of, shall be established prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required may not exceed 125 percent of the estimated cost to decommission.
8. Maintenance Plan: Applications shall include a maintenance plan for all leased lands (including required setbacks/buffers). Noxious weeds shall not be tolerated. Monthly mowing shall occur in the months of May, June, July, August, and September. Monthly debris removal from the fence line is required.)

c. Special Permit Standards

1. Setback(s): All large-scale solar energy systems shall be set back a minimum of 300 feet from any property line and a minimum of 500 feet from any residential building, school, place of public worship, or designated historic district or landmark, and a minimum of 1,000 from any property within the Residential (R) District. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the “property line” for purposes of determining setbacks.
2. All large-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs shall be placed on the entrance and perimeter of the fencing. The height and type of fencing shall be determined by the Special Permit process.
3. On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility.

4. Tree-cutting. Location of large-scale solar energy systems in wooded areas should be avoided. Removal of existing trees larger than 6 inches in diameter should be minimized. No more than 10% of a project or leased area shall be cleared of existing trees, excluding brush clearing.

5. Glare. All solar panels shall have anti-reflective coating(s) and proof of such submitted.

6. Roads. The applicant is responsible for remediation of dedicated roads damaged by the construction and maintenance of a large-scale solar energy system. A public improvement bond or other financial security, the amount thereof to be approved by the Town Board and the bond approved by the Town Attorney as to form, sufficiency, and manner of execution, shall be posted as a condition of permitting.

d. Ownership Changes.

If the owner 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. A new owner or operator of the solar energy system shall notify the Code Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Code Enforcement Officer in writing. The special use permit and all other local approvals for the solar energy system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications.

e. Solar Storage Batteries. If solar storage batteries are included as part of the Solar Energy Collection system, they must obtain a separate permit and comply with Section V(E) of the Town of Clymer Zoning Code, adopted concurrently herewith.

6. Waiver Relief. The Town Board recognizes that no regulation can anticipate every creative plan that may be devised, which, though not in strict compliance with the provisions of this article, nevertheless, is not objectionable. Accordingly, the Town Board is hereby empowered to grant relief to an applicant from the strict application of this Section where the applicant provides sufficient grounds for a finding that the proposal comports as much as feasible with the spirit and letter of this Section and, though not in strict compliance therewith, remains aesthetically pleasing, protects neighboring properties, and preserves property values within the Town of Clymer.

7. Reimbursement of Fees and Expenses.

a. An Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law or Article 94-c of the Executive Law complies with the substantive provision of this local law.

b. The applicable fees for any review or permit required by this local law shall be set from time to time by resolution of the Town Board.

c. An Applicant for either state or local siting approval shall deliver to the Town Board, along with its application, if local approval is sought, or one-hundred eighty (180) days prior to the filing of an Article 10 or Article 94-C application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"). This sum shall be held by the Town in a non-interest bearing account and shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in its review of and preparation for an Article 10 or Article 94-c application. Should the Town be awarded intervenor funds, it shall switch to and deplete those funds before making further use of the Initial Deposit. Following the approval or denial of the state or local application, the Town shall return to the Applicant any excess funds

remaining in escrow. If the escrow account has been depleted prior to approval or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding consulting fees.

8. Host Community Agreement. Prior to the issuance of a building permit for any Large-scale Solar Energy System, the Applicant for such system shall enter into a Host Community Agreement with the Town of Clymer, which shall:

a. Contractually obligate the Applicant to comply with any terms and conditions of any special use permit approval of the Town Board;

b. Provide for payment by the Applicant to the Town of an impact fee to be used and applied by the Town to pay for and/or offset the costs and impacts incurred by and/or arising due to the development and/or operation of the Large-scale Solar Energy System. The amount of such impact fee shall be established by the Town Board by resolution adopted from time to time, based upon the amount of energy produced by the project and such other factors as the Board shall determine;

c. Provide for such other contractual requirements as may be necessary given the specific elements of a particular project; and

d. If the Applicant and/or owner of the project shall enter into an agreement with the Chautauqua County Industrial Development Agency to provide for an abatement of real property taxes or other tax exemption or abatement, be cross-defaulted with the agreements between the Applicant and/or owner and the Chautauqua County Industrial Development Agency.

9. Enforcement.

a. Any violation of any provisions of this local law shall be punishable by penalty or a term of imprisonment as prescribed in Section 268 of the Town Law of the State of New York.

b. Notwithstanding the above, the Town Board of the Town of Clymer hereby reserves the right to proceed to enforce the provisions of this section by civil action, injunction, and any other remedy afforded to it by the laws of the State of New York or the United States.

SECTION 3. VALIDITY AND SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

SECTION 4. EFFECTIVE DATE.

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