

TOWN OF MONTGOMERY

INTRODUCTORY LOCAL LAW NO. 3 OF 2019

A LOCAL LAW AMENDING LOCAL LAW NO. 2 OF THE YEAR 2017 ADDING SECTION 90-120 ENTITLED “SOLAR SITING” TO THE TOWN OF MONTGOMERY ZONING LAW

Be it enacted by the Town Board of The Town of Montgomery as follows:

Section 1. Purpose.

The purpose of enacting these amendments to the “Solar Siting” law of the Town of Montgomery is to help promote a steady growth of commercial solar farm activity within the Town while accounting for the health, safety and welfare of its citizens.

Section 2. The follow sections of Local Law No. 2 of 2017 are hereby amended and shall read as designated below:

Section 90-120-2 shall include the following:

SOLAR STORAGE BATTERIES – A battery attached to any type of solar energy system for the purpose of storing energy.

Section 90-120-6, Subsection B(1) shall hereby read as follows:

1. Utility-Scale Solar facilities are permitted specially in all zoning districts in the Town of Montgomery except for land areas in those districts that have been classified as having NRCS Class I or Class II soils, subject to compliance with the application, review, and approval process set forth in §90-120-6, and compliance with all other applicable Town, State and/or Federal requirements.
 - a. Utility-Scale Solar facilities shall be sited to avoid productive farmland, steep slopes, ridgelines, wetlands and may not be erected on lands that are permanently designated as open space. In connection with its analysis of productive farmland, the Planning Board shall require the soil types and classifications, such as “prime” and “lands of importance”, and current agricultural uses be provided. For the purpose of this local law, productive farmland shall be analyzed against the following uses provided in their order of importance to the Town:
 - i. Active rotational farmland.
 - ii. Permanent hayland.
 - iii. Improved pasture.
 - iv. Unimproved pasture.
 - v. Other support land.

- vi. Abandoned farmland.
- b. Utility-Scale Solar facilities shall not be permitted within ten (10) feet of any ridge lines or slopes exceeding 15%. Said slope shall be determined by a Slope Analysis Plan that shall be prepared for by the applicant and/or owner at the direction of the Planning Board Engineer. The Slope Analysis Plan shall identify all slopes on the project site and shall calculate the slope of the project site based on the average of all slopes on the project site. A ridge line shall be defined as an edge or shelf formed below a ridge top by the intersection of a hillside that has an average slope of at least fifteen percent (15%) over an increase in elevation of at least 20 feet with land with a slope of less than ten percent (10%) or by land that slopes in the opposite direction. Ridge Top shall be defined as the crest of a long hill that has at least one side with an average slope of at least fifteen percent (15%) over an increase in elevation of at least 20 feet.
- c. All applications for utility-scale solar energy systems shall be accompanied by an application for special use permit and site plan review, and all applicable fees as may be established by the Town Board. Both site plan and special use permit reviews and approvals are required. The Planning Board shall, however, concurrently review the site plan and special use permit applications.

Section 90-120-6, Subsection B(3) shall hereby read as follows:

- 3. In the event an owner or developer of a Utility-Scale Solar Facility provides written notification pursuant to New York Real Property Tax law Section 487(9)(a) to any taxing jurisdiction of its intent to construct such Utility-Scale Solar Facility, the Planning Board shall simultaneously be provided a copy of such notification by such owner or develop as part of any special use permit and site plan application hereunder, and in such event, the special use permit and site plan application shall not be complete until such written notification is provided to the Planning Board. The owner or developer must also provide a copy of such written notification under New York Real Property Tax Law Section 487(9)(a) to the Town Clerk and to the Town Board. Said written notification shall not be deemed submitted as required to effectuate notice pursuant to New York Real Property Tax Law Section 487 (9)(a) unless the written notice references the correct owner and associated address and Section Block and Lot parcel number. It is the intent of the Town of Montgomery to require a contract for payment in lieu of taxes for all Utility-Scale Solar facilities. The PILOT yearly payment amount may be set by Town Board resolution and shall be determined and approved by the Town Board for each project.

Section 90-120-6, Subsection B(4)(v) shall hereby read as follows:

- v. A Land Grading and Vegetation-Clearing Plan, and a Cut and Fill Analysis Plan shall be prepared. Existing on-site vegetation designated to be utilized as

screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality. Site plans shall be developed to provide, to the maximum extent possible, for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to established when adjacent parcels are developed.

Section 90-120-6, Subsection B(4)(vi) shall hereby read as follows:

- vi. A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared as per NYSEDEC requirements to detail stormwater runoff management and erosion control plans for the site, and all local stormwater regulations shall be complied with.

Section 90-120-6, Subsection C(2) shall hereby read as follows:

2. A utility-scale solar energy system shall not occupy greater than 25% of the total lot acreage of the parent parcel in all residential zones and no greater than 40% in all commercial, interchange, and industrial zones with a maximum of twenty (20) acres of solar panel systems on any parcel. Use of contiguous parcels shall not be used to extend beyond the allotted twenty (2) acres of solar panel systems. A parent parcel shall not be subdivided to create independent lots for the purpose of proposing more than one (1) utility-scale energy system. The percentage of lot coverage shall be measured at the perimeter of the total fenced in area that the solar energy equipment is situated, and not based upon each individual panel and/or equipment.

Section 90-120-6, Subsection C(5) shall hereby read as follows:

5. Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing at a height of seven (7) feet to restrict unauthorized access. Said fencing shall incorporate adequate wildlife openings for smaller mammals and rodents to pass.

Section 90-120-6, Subsection C(7) shall hereby read as follows:

7. Vegetation shall be maintained below the arrays. All solar facilities must follow herbicide protocol as determined and set by the Town Planning Board. Such Herbicide Policy shall be applied on a fact-specific basis as determined by the Town Planning Board.

Section 90-120-6, Subsection C(8) shall hereby read as follows:

8. The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid to the maximum extent possible visual impacts as viewed from: (i) publicly dedicated roads and highways; and/or (ii) existing residential dwellings located on nearby parcels, including, but not limited to, contiguous parcels, adjacent parcels and/or parcels located across a street, road, or public right-of-way from the solar facility. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town that is fully capable of fully screening the site from the aforementioned view sites, shall be provided. Such screening shall not be included within the calculation of percentage of lot coverage under §90-120-6(C)(2). All solar facilities shall be situated on the parent parcel such that it allows for maximum screening possibilities. All landscaping for screening purposes shall be installed after a rough grading of the project site has been completed and shall be maintained at all times during and after the construction phase.

Section 90-120-6, Subsection C(11) shall hereby read as follows:

11. All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. Financial or economic hardship shall not be considered in determining feasibility or practicality of placing lines or wiring underground. The applicant is required to show the located of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

Section 90-120-6, Subsection D shall hereby read as follows:

1. Utility-scale solar energy systems which have not been in active and continuous service for a period of 12 months shall be deemed abandoned and shall be removed at the owner's or operator's expense. The site shall be restored to as natural as a condition possible within six (6) months of removal.
2. Decommissioning of a site shall occur when a site has been deemed abandoned, ceases to be used for its intended purpose for 12 months, or is deemed to be in a non-operating state as determined by the Town Engineer or other Town Official. Decommissioning shall include removal of all energy facilities, structures and equipment including any subsurface wires and footings from the parcel. Any access

roads created for building or maintaining the systems shall also be removed and replanted with vegetation.

- a. The Planning Board shall require as a condition to and prior to granting special use permit and site plan approval the filing of acceptable security by the owner or operator with the Town in an amount and form acceptable to the Town Board for the purposes of removal and restoration. The applicant for any type of solar panel system and/or array as provided herein shall be required to agree in writing to remove the system in accordance with Section 90-120-6 (1) and (2) above.
- b. The amount of any decommissioning security shall be no less than 150% of the estimate of total cost of removal of the solar energy system and related facilities and restoration of the site. The amount of such security shall be reviewed every three (3) years by the Planning Board to determine whether the current security amount is adequate. The costs of said review shall be borne entirely by the owner and/or operator.
- c. Acceptable forms of security shall include cash or letter of credit that must be maintained in full force and effect, or a combination thereof. A bond shall only be allowed if deemed appropriate by the Town Board.
- d. In the event that the facility is not removed within three (3) months of abandonment and/or not restored to a natural condition within six (6) months of abandonment, the Town may proceed with the following:
 - i. the Town may provide the owner and/or operator with a seven (7) day notice to comply with this section;
 - ii. the Town may cause the subject solar site to be removed and the site be restored to the natural state using any funds in the decommissioning security funds;
 - iii. any and all actions necessary to complete the removal and restoration, and all incurred costs of the Town are the responsibility of the owner and/or operator, and, as such, any costs that exceed the amount of the decommissioning security funds, or in the event that the decommissioning security funds are inaccessible or are otherwise unattainable to be used by the Town, the entire cost of removal and restoration of the subject site shall be paid to the Town by the owner and/or operator of the site within thirty (30) days of the works competition. In the event payment is not made by the applicant within

(30) days, the Town shall include shall charges on the next scheduled billing for property tax on the property on which the system is located.

The following provisions shall be added to Local Law No. 2 of 2017:

§90-120-10. Solar Storage Batteries.

1. If solar storage batteries are included as part of the solar power system, it must be placed in a secure, water-proof container or enclosure suitable for prolonged exposure to the elements that meets the requirements of the New York State 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 State of New York, the Town of Montgomery and other applicable laws and regulations.

§90-120-11. Repair of Damage to Town Property.

1. If in the course of delivery, installation, maintenance, dismantling, removal or transport of the solar energy system or any components thereof, the property of the Town of Montgomery, including but not limited to roadways, shoulders, drainage structures, signage, guardrails, etc., is damaged by the efforts of the applicant or any agents thereof, the applicant shall within thirty (30) days of the damages completely replace and/or repair the damage to Town property to the satisfaction of the Town.

§90-120-12. Ownership Changes.

1. If the ownership of a solar power system operating under a special use permit changes, the special use permit shall remain in full force and effect. All conditions of the special use permit, including cash escrows, letters of credit, bonding and/or continuing certification requirements of the original owner and/or operator shall continue to be obligations of each and every succeeding owner(s) and/or operator(s). However, any change in ownership shall be registered and documented in writing with the Code Enforcement Officer.

Section 90-120-6, Section C is hereby amended to include the following subsections to read as follows:

21. Landscaping.
 - a. Landscape screening shall be provided in accordance with the landscaping provisions of this chapter and as required by the approved final site plan and special use permit. Non-invasive ground cover under and between the rows of

solar panels shall be low maintenance, drought resistant, and non-fertilizer dependent.

b. The Planning Board shall require as a condition to special use permit and site plan approval the filing of acceptable security for a Landscaping Bond by the owner or operator with the Town in an amount and form acceptable to the Town Board for the purposes of ensuring adequate and appropriate screening and landscaping is completed by the applicant.

22. Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite.

Section 3. Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Montgomery hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 4. Repeal.

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 5. Effective Date.

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.