

**Town of Norfolk**  
**Local Law No. 2 of**  
**2020**  
**A Local Law to regulate Solar Energy Facilities in the Town**

Be it hereby enacted by the Town Board of the Town of Norfolk as follows:

**SECTION 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section:**

**Solar Energy Facilities**

**A: PURPOSE**

1. This Article aims to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefore, and 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 energy systems without excess regulation. In particular, this legislation is intended to apply to free standing; ground or pole mounted and roof mounted solar energy system installations based upon certain placement. This legislation is not intended to override agricultural exemptions that are currently in place.

**B: DEFINITIONS**

**BUILDING-INTERGRADED PHOTOVOLTAIC (BIPV):** The incorporation of photovoltaic (PV) material into a building's envelope. 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.

**COLLECTIVE SOLAR:** Installations of Solar Energy Systems that are owned collectively through a homeowner's association, community or municipal system, "adopt-a-solar-panel" programs, or other similar arrangements.

**GLARE:** A continuous source of excessive brightness, relative to diffused lighting. This is not a direct reflection of the sun, but rather a reflection of the bright sky around the sun. Glare is significantly less intense than glint.

**GLINT:** A momentary flash of light that may be produced as a direct reflection of the sun on a solar collection system.

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

**MAJOR SOLAR COLLECTION SYSTEM:** An area of land or other area used for a solar collection system principally used to capture solar energy and convert it to electrical energy to transfer to the public electric grid but also may be for on-site use and is intended to be used for any purpose, other than private, or residential, or agricultural use, including community based systems. Solar farm facilities consist of one or more freestanding **GROUND-MOUNTED** or **ROOF-MOUNTED** solar collector devices. Major solar systems are those systems which generate more than 110% of the energy demand for onsite use.

**MINOR OR ACCESSORY SOLAR COLLECTION SYSTEM:** A solar photovoltaic cell, panel, array, solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises for other lawful purposes, Minor solar collection systems may consist of **BUILDING-INTERGRATED PHOTOVOLTAICS**, **GROUND-MOUNTED** or **ROOF-MOUNTED** solar collector devices. Minor or accessory solar collection systems that do not generate more than 110% of the energy demand of a farm operation in an agricultural district shall be considered as farm equipment under New York State Agriculture and Markets Law §301.

**ROOF-MOUNTED SYSTEM:** A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption.

**SOLAR ACCESS:** Space that is open to the sun and clear of overhangs or shade. Structures constructed on private property will not infringe on the rights of adjacent properties.

**SOLAR ENERGY EQUIPMENT** and other solar accessory structures and buildings, assembled with the intent to facilitate the collection of solar energy, including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

**SOLAR ENERGY EQUIPMENT/SYSTEMS:** Material, hardware, or electrical equipment and conduit associated with the production of electrical energy.

**SOLAR ENERGY SYSTEMS:** Structures, equipment, devices or construction techniques used for the solar production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure, excluding Battery and Other Energy Storage Systems such as battery banks or compressed air. Any battery and other energy storage systems shall require separate review and approval under an emerging land use activity being reviewed by the county.

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

**C: APPLICABILITY**

1. The requirements of this section shall apply to all solar energy systems installed or modified after the effective date of this ordinance, excluding general maintenance and repair.
2. Solar energy system installations for which a valid building permit has been issued or, if no building permit is presently required, for which installation has commenced before the effective date of this local law shall not be required to meet the requirements herein.
3. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code Act and the Town Code.
4. Nothing contained in this provision shall be construed to prohibit “Collective Solar” installations or the sale of excess power through a “net billing” or “net metering” arrangement in accordance with New York State Public Service Law § 66-j or similar New York State or federal law or regulation.
5. All solar energy systems shall be designed, erected, and installed in a manner so as to prevent undue glare from failing on adjoining properties or creating traffic safety issues.
6. All solar collection systems shall require a building permit and site plan.

**D: SOLAR COLLECTORS AND INSTALLATIONS FOR MINOR SYSTEMS**

1. Solar PV Systems Permitted By-Right
  - a. By-Right solar PV Systems

In order to encourage use of solar PV systems in the Town of Norfolk, the following systems shall be permitted by right in any zoning district in the Town, provided the system (i) is generating electricity only for the land use(s) located on the same lot as the system; (ii) system capacity is less than or equal to 25 kW and shall not have kW’s of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located of for new construction, 110% of the estimated annual kW usage based on a calculation using data available from the U.S. Energy Information Administration, the U.S. Department of Energy or a usage calculator made available by a public utility (e.g., <https://www.cpi.coop/my-account/online-usage-calculator/>); and (iii) the system meets the standards for By-right systems identified in section (2) below.

- Building-integrated solar PV systems installed on the existing principal building.
- Building-mounted solar PV systems installed on the existing principal building.
- Small scale Ground-Mounted Solar PV Systems.

b. Standards for By-right systems.

- Accessory use. All By-right solar PV systems shall be considered an accessory use.
- Building Permit. All By-right PV systems require receipt of a building permit.
- In no event shall Lot Coverage for a by-right Solar Photovoltaic (PV) System exceed fifty percent (50%) of the Lot Area.
- Glare. All solar panels shall have anti-reflective coatings.
- For any building-mounted PV systems installed on a sloped roof:
  - The highest point of the systems shall not exceed the highest point of the roof to which it is attached.
  - Solar panels shall be parallel to the roof surface, or tilted with no more than an eighteen-inch gap between the module frame and the roof structure. This includes parapets which are considered part of a roof.
- For any building-mounted system installed a flat roof, the highest point of the system shall not exceed more than five feet above the height of the roof.
- Location in front yard. Notwithstanding the requirements regulating the location of accessory structures found elsewhere in the chapter, ground-mounted solar PV Systems shall be prohibited in a front yard, including location in any front yard of a corner lot.
- Every By-right solar PV system shall comply with all applicable Uniform Fire Prevention and Building Code provisions, the State of New York Energy Conservation Construction Code, and National Electric Code, NFPA 70.

2. Roof-mounted systems are permitted as accessory uses in all zoning districts, subject to the following requirements:

- a. The distance between the roof and highest edge or point of the system shall be in accordance with the New York State Uniform Fire Prevention and Building Code.

- b. Rooftop and building-mounted solar collectors shall not obstruct solar access to adjacent properties.
  - c. 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 the highest edge of the system.
  - d. For all building mounted or building integrated By-right solar PV systems, the building owner (s) and operator (s) shall affix a decal or sign notifying Emergency Response Personnel that the building is equipped with a photovoltaic power source.
- 3. Ground-mounted and freestanding solar collectors are permitted as accessory structures in all zoning districts, subject to the following requirements:
  - a. The location of the solar collectors meets all applicable setback requirements of the zone in which they are located.
  - b. The height of the solar collectors and any mounts shall not exceed the height restrictions of the zone when oriented at maximum tilt.
  - c. The solar collectors may not be located closer to a front lot line than the principal building on a property. If the side or rear yard is visible from adjacent properties and roads, a solid fence that conforms to local requirements may be installed along shared lot lines to minimize visual impact to neighboring properties.
  - d. Ground-mounted and freestanding solar collectors shall not obstruct solar access to adjacent properties.
- 4. All solar collector installations must be performed in accordance with applicable electrical and building codes, the manufacturer's installation instructions, and industry standards. Prior to operation the electrical connections must be inspected by the Code Enforcement Officer or by an appropriate electrical inspection person or agency, as determined by the Town. In addition, any connection to the public utility grid must be inspected by the appropriate public utility.
- 5. Decommissioning. Small Scale Solar. Decommissioning Requirements for Small Scale Solar Energy Systems and Solar Energy Systems Designed for Subdivision Use Using Free-Standing or Ground Mounted Solar Collectors. If a Free-Standing or Ground Mounted solar collector(s) ceases to perform its originally intended function or fails to transmit more than 10% of its rated capacity for more than twelve (12) consecutive

months, the property owner shall remove the collector, mount and associated equipment by no later than ninety (180) days after the end of the twelve-month period. In the event that the property owner fails to remove the aforesaid non-functioning system within the time prescribed herein, the Town may enter upon the land where such system has been installed and remove same. All expenses incurred by the Town in connection with the removal of the non-functioning system shall be assessed against the land on which such free-standing or Ground Mounted solar collector(s) is located and shall be levied and collected in the same manner as provided in Article 15 of the N.Y. Town Law for the levy and collection of a special ad valorem levy.

**E: MAJOR SOLAR SYSTEMS**

1. **Major Solar Systems** are permitted through the issuance of a special use permit in (R-A), (C-H) and (C-I) zoning districts and site plan review in accordance with this chapter. In addition, Major Solar Systems must meet the criteria set forth below. This section intentionally supersedes those Major Solar Collection System provisions subject to regulation under the Solar Law.
  
2. A **Major Solar System** may be permitted when authorized by site plan review and special use permit from the Town Planning Board subject to the following terms and conditions.
  - a. Height and Setback Restrictions:
    - i. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 15 feet in height above the ground.
  
    - ii. The minimum setback from property lines shall be 25 feet, unless adjacent to residential neighbor. The setback for residential neighbors shall be 100 feet.
  
    - iii. Setbacks. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.
  
    - iv. Setbacks in a residential district and a residential-agricultural district. The location of solar collectors shall meet all applicable setbacks for accessory structures in the residential or residential agriculture zoning district where the project is to be located, but not less than twenty-five (25) feet from any public highway right-of-way or utility easement, and

natural vegetation shall be preserved within this buffer zone and, where possible, augmented with additional plantings.

v. The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings or uses. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the Permitted System from residential uses. The species type, location and planned height of such landscaping shall be subject to the approval of the Planning Board and to the extent possible shall consist of native plantings.

vi. Placement on nonconforming buildings.

Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed on nonconforming building as follows:

- (1) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the system does not extend above the peak or highest point of the roof to which it is mounted.
- (2) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (3) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

vii. Fencing may be provided around all equipment and solar collectors to provide screening from adjacent residential properties and roads. Fencing shall not be topped with barbed wire. When fencing will enclose the perimeter of the site or facility, wildlife friendly fencing that allows the passage of small mammals and reptiles and is designed to minimize wildlife injury and death due to entanglement or strangulation shall be used on sites having a solar facility footprint greater than 5 acres. Exceptions can be made by the Planning Board for sites that have limited surrounding wildlife habitat as indicated in the applicant's Environmental Assessment Form (EAF).

b. Design Standards:

i. Removal of trees and other existing vegetation should be minimized or offset with planting elsewhere on the property.

ii. Removal of any prime agricultural soil from the subject parcel is prohibited.

iii. Proposed major solar collection systems shall minimize the displacement of prime soils that are in active agricultural production. The site plan shall depict the location and extent of prime soils, prime soils if drained, soils of statewide importance, and indicate whether the parcel(s) is/are receiving an agricultural valuation. The site plan shall also depict the location and extent of current agricultural uses on the land (e. g rotational crops, hay land, unimproved pasture, support lands, and fallow lands) the location of diversions and ditches, and areas where tile drainage has been installed. Prime soils, prime if drained, and soils of statewide importance that are in agricultural production are a valuable and finite resource. The site plan should include a cross section of any subsurface foundations that will be used for the solar array. In the event the array utilizes at-grade ballast footers, the underlayment should include a bed of crushed stone atop monofilament woven geotextile fabric so that the stone can be readily removed from the site when the facility is decommissioned. A plan for clearing and/or grading the site and Storm water Pollution Prevention Plan (SWPPP) for the site must be included.

iv. Roadways within the site shall be built along field edges and along elevation contours where practical, constructed at grade and have a maximum width of 16 feet. Roadways shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.

v. All on-site utility and transmission lines shall, to the extent feasible, be placed underground. Any above ground transmission lines that are used to accommodate the facility shall require utility poles that are tall enough and installed at widths able to accommodate farm machinery and equipment. The installation of guy wires to utility poles is discouraged.

vi. Solar collectors and other facilities shall be designed and located in order to minimize reflective glare and/or glint toward any inhabited buildings on adjacent properties and roads.

vii. All mechanical equipment, including any structure for batteries or storage cells, shall be enclosed by a minimum six-foot-high fence with a self-locking gate.

viii. Major systems or solar farms shall be constructed in a fashion so as to not obstruct solar access to adjacent properties.



ix. Any exterior lighting installed within the facility shall be downcast and dark sky compliant with recessed bulbs and full cut off shields.

Agricultural Lands. Permitted Systems shall be allowed on lands currently used or otherwise suitable for agricultural operations.

Excluding building-mounted and building-integrated solar PV systems, the following standards are to be implemented by the Planning Board as part of site plan approval for any land currently used or suitable to be used for agricultural purposes:

[1] If the size of the project is at least 20 acres, the project owner shall hire an Environmental Monitor (EM) to oversee the construction, restoration and follow-up monitoring in agricultural fields. The EM is to be on-site whenever construction or restoration work is occurring.

[2] Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland are to be assessed and mitigated in the design of the array to the greatest extent possible, including to the greatest extent possible by using native, pollinator friendly plantings for ground cover instead of gravel, impervious surfaces or turf grass; and all such plantings shall be maintained without the use of pesticides.

[3] Structures for overhead collection lines are to be located upon the non-agricultural areas and along field edges where possible.

[4] Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries and in the non-agricultural portions of the site.

[5] There shall be no cut and fill of current drainage as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extend possible.

[6] The width of access roads along agricultural fields is to be no wider than sixteen (16) feet so as to minimize the loss of agricultural lands and comply with the state of New York fire access code. Access roads on agricultural fields shall be constructed at grade with the use of geotextile

fabric so that it does not interfere with the continued use of farm equipment on any surrounding farmland.

[7] Maintain all existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of these structures. Repair any structure disturbed during construction to as close to original condition as possible, unless such structures are to be eliminated based upon a new site plan.

[8] The surface of solar farm access roads constructed through agricultural fields should be level with the adjacent field surface where possible.

[9] Culverts and water bars are to be installed to maintain natural drainage patterns.

[10] All top soil areas to be used for vehicle and equipment traffic, parking, and equipment laydown and storage areas, are to be stripped.

[11] All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.

[12] No vehicles or equipment are to be allowed outside the area without prior approval from the landowner and the EM.

[13] Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required as part of site plan approval.

[14] All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) is to be stockpiled separate from other excavated materials (rock and/or subsoil)

[15] A maximum of 50 feet of temporary workspace is to be provided along “open cut” electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.

[16] Electrical interconnect cables and transmission lines are to be buried in agricultural fields to a minimum depth of 2' (feet) below finished grade where ever practical.

[17] Interconnect cables and transmission lines installed above ground shall be located outside agricultural field boundaries. When above ground cables and transmission lines must cross agricultural fields, taller structures that provide longer spanning distances and locate poles on field edges shall be used to the greatest extent practicable. All utility poles shall be tall enough to provide 20' of clearance as measured from the shortest distance between the lowest electrical and/or utility line mounted on the pole and final grade.

[18] All buried electric cables in cropland, hay land and improved pasture shall have a minimum depth of forty-eight (48) inches of cover. At a depth between 12-18 inches a warning ribbon will be installed.

[19] The St. Lawrence County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines to be used whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.

[20] In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.

[21] Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas Concrete trucks will be washed outside of active agricultural areas.

[22] All permits necessary for disposal under local, state and/or federal laws and regulation must be obtained by the contractor, with the cooperation of the landowner when required.

Restoration requirements for agricultural land temporarily disturbed by construction. As necessary, all agricultural land shall be restored as follows:

[1] De-compact soil to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil de-compaction should be conducted prior to topsoil replacement. Following de-compaction, remove all rocks 4 inches in size or greater from the surface of the subsoil. Prior to replacement of topsoil. Replace

the topsoil to original depth and re-establish original contours where possible. Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil de-compaction and topsoil replacement shall be avoided after October 1<sup>st</sup> of each year.

[2] Re-grade all access roads to allow for farm equipment crossing.

[3] Restore original surface drainage patterns, or other drainage patterns incorporated into the approved site design by the Planning Board.

[4] Seed all restored agricultural areas with the seed mix specified by the landowner, and/or in consultation with a small livestock grazer who may be hired to maintain the fenced area of the solar array in order to maintain consistency with the surrounding areas.

[5] All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions unless said structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project shall be addressed with the appropriate mitigation as determined by the EM, Soil and Water Conservation District, and the Landowner.

[6] Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded, and subsoil should not be de-compacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities are to occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.

[7] Following site restoration, remove all construction debris from the site.

[8] Following site restoration, the project owner is to provide a monitoring and remediation period of no less than 365 days. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences etc.

[9] Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.

c. Signs:

- i. Solar equipment and any system-related fencing shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except: (a) the manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal, state or local agency or any potential first responders; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.
- ii. A sign not to exceed twelve square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number.
- iii. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations not to exceed four square feet.

d. Safety:

- i. The owner/operator shall provide evidence that a copy of the site plan application has been submitted to the Fire Chief of the Norfolk Fire Department. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.
3. A piece of equipment meets the definition of oil-filled operational equipment at 40 CFR part 112.2 (e.g. transformers, capacitors and electrical switches) shall comply with the secondary containment procedures of that regulation.
4. Decommissioning. Prior to removal of a Major Solar Collection System, a demolition permit for removal activities shall be obtained from the Town of Norfolk.

a. Decommissioning Bond:

- i. Prior to issuance of a building permit for a Major Solar Collection System, the owner or operator of the Solar Energy System shall post a surety in an amount and form acceptable to the Town for the purposes of removal in the event the Major Solar Collection System is abandoned. The amount of the surety required under this section shall be 125% of the

projected cost of removal of the Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee removal of the Major Solar Collection System should the system be abandoned. In such case, the Town Building Inspector/Code Enforcement Officer shall then provide written notice to the owner or operator to remove the Major Solar Collection System, and the owner or operator shall have one (1) year from written notice to remove the Solar Energy System including any associated accessory structures and/or equipment, and restore the site to a condition approved by the Planning Board. If the owner, operator applicant or lessee fails to remove any associated structures or restore the site to the condition approved by the Board, all costs of the Town incurred to enforce or comply with this condition shall be paid using the surety provided by the applicant.

b. Decommissioning Plan. An application for a Major Solar Collection System shall include a Decommissioning Plan. Removal of a Major Solar Collection System must be completed in accordance with the Decommissioning Plan. The Decommissioning Plan shall:

- i. Specify that after the Major Solar Collection System will no longer used, it shall be removed.
  - a. At the time of the Plan submission the following should be included:
    - (1) A licensed engineer's estimate of the anticipated operation life of the system.
    - (2) The lease start date, length of the original lease, and the number of options and timeframes if the lease is renewed.
    - (3) Identification of the party responsible for decommissioning. Including a signed statement from the applicant acknowledging such responsibility.
    - (4) Description of any agreement regarding decommissioning between the responsible party and the landowner (e.g., an escrow account, a decommissioning trust, removal or surety bonds or a letter of credit, etc.).
    - (5) Excluding building integrated systems, a schedule showing the time frame over which

decommissioning of the system will occur and the site restoration work completed.

- (6) Excluding building integrated systems, a cost estimate prepared by a licensed professional engineer estimating the full cost of decommissioning and removal of the solar PV system.
- (7) Annual report. Excluding building integrated systems, the solar PV system owner shall annually provide the Town Code Enforcement Officer a written report stating the rated capacity of the system and a sworn statement indicating whether the system did or did not generate and transmit electricity at a rate equal to or greater than 10% of its rated capacity over each twelve month period of operation. The report shall also identify any change of ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The first annual report shall be submitted no later than 45 days after the first twelve month of operation, and thereafter, annually within 45 days of each successive twelve month period.

b. At the time of abandonment and removal:

- (1) All above ground solar array structures are to be removed and all areas previously used for agricultural production, are to be restored to the fullest extent possible to the condition that existed prior to the installation of any solar array structures.
- (2) All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface.
- (3) Underground electric lines are to be abandoned in place.
- (4) Access roads in agricultural areas are to be removed, unless otherwise specified by the landowner.

- (5) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.
- (6) Restoration of the ground surface and soil.
- (7) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

ii. Demonstrate how the removal of all infrastructures (including but not limited to aboveground and below ground equipment, structures and foundations) and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. In areas where agricultural production will resume, re-vegetation shall include native plants and seed mixes and exclude any invasive species. The reclamation of land when the solar facility is decommissioned shall include the removal of rock, construction materials and debris to a depth of 4 feet, the decompaction of soils to a depth of 18 to 24 inches, regrading and reseeded the site to its original condition prior to the project construction.

iii. Include photographs or archival color images of the proposed site plan area for Major Solar Collection System. Such information must, in aggregate, adequately portray the entire property for the purpose of future reference when soil and vegetation remediation of the property occurs.

iv. State that disposal of all solid and hazardous waste shall be in accordance with local, state and federal waste disposal regulations.

v. Provide an expected timeline for decommissioning within the three-hundred-sixty-five-day (365) period set forth below.

vi. Provide a cost estimate detailing the projected cost of executing the Decommissioning Plan, subject to verification by a qualified, independent engineer who is licensed to practice in New York State, at the developer's expense, if required by the town.

## 5. Abandonment and Removal:

- a. A Major Solar Collection System shall be deemed to be abandoned after it has ceased operating for a continuous one (1) year period or production less than 10% of capacity.



b. Upon cessation of operations of a Major Solar Collection System for a period of one (1) year, the Town may notify the owner and/or operator of the facility to implement the Decommissioning Plan. Within one-hundred and eighty (180) days of notice being served, the owner and/or operator can either restore operation equal to 80% of approved capacity or implement the Decommissioning Plan.

c. In the event that construction of the Major Solar Collection System has been started but is not completed and functioning within eighteen (18) months of the issuance of the final Site Plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within three-hundred and sixty-five (365) days. If the owner and/or operator fail to perform, the Town may require the owner and/or operator to implement the Decommissioning Plan. The decommissioning plan must be completed within one-hundred and eighty (180) days of notification by the Town to implement the Decommissioning Plan.

d. Applications for extensions of the time periods set forth in this subsection of no greater than one-hundred and eighty (180) days shall be reviewed by the Town Board.

e. Upon recommendation of the Building Inspector/Code Enforcement Officer, the Town Board may waive or defer the requirement that a Major Solar Collection System be removed if it determines that retention of such facility is in the best interest of the Town.

f. If the owner and/or operator fails to fully implement the Decommissioning Plan within the prescribed time period and restore the site as required, the Town may use the financial surety posted by the owner and/or operator to decommission the site, or it may proceed with decommissioning at its own expense and recover all expenses incurred for such activities from the defaulted owner and/or operator. Any costs incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

**F: SPECIAL USE PERMIT REQUIREMENTS**

1. In addition to the special use permit requirements of the Town Code, the following shall be provided to the Town:
  - a. Verification of utility notification. Any foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.

b. Name, address, and contact information of the applicant, property owner(s), and agent submitting the project. In the event ownership of the facility changes hands, or if the lease is terminated, notification shall be sent to the Town within thirty days of the transfer or termination date. The notice shall include the name and contact information of the new owner(s). The new owner shall then be bound by the terms of the original agreement.

c. Agricultural Data Statement. If a project will utilize farmland in an Agricultural District, the application shall include a completed St. Lawrence County Agricultural Data Statement.

2. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
3. Site plan approval is required.
  - a. Site plan must include a completed hosting capacity assessment of the relative feasibility of the project to insure that it can be connected into the distribution system without adversely impacting power quality or reliability under current configurations and without requiring expensive infrastructure upgrades.
  - b. For all proposed solar energy systems on farmland (both in and out of an Agricultural District) the site plan shall identify current agricultural production activities, any farmland improvements, and indicate the type and extent of prime soils that may be present. Large scale solar energy systems should be concentrated away from, and minimize the displacement of, active agricultural land and prime soils, prime if drained soils, and soils of statewide importance.
4. Blueprints signed by a Professional Engineer or Registered Architect of the solar installation showing the layout of the system.
5. Property Operation and Maintenance Plan: A property operation and maintenance plan is required, describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc. Any such plan shall propose that the property maintain a neat and orderly appearance consistent with surrounding properties. The property shall always be maintained in a manner consistent with all properties within the Town of Norfolk.

6. Cybersecurity. To minimize cybersecurity threats to the electrical grid, the applicant shall submit evidence that malware prevention, detection and mitigation software or programming has been installed and will be maintained where electronic information exchanges take place between the solar array and the utility's distribution control system.
7. The Town of Norfolk has established that there shall be a Community Benefit to maximize the benefits of a solar project to the Town of Norfolk and its residents. The benefit shall be determined via an agreement negotiated between the Town and the developer/owner.
8. Notification, failure to perform.

If either the system owner, landowner and/or permittee fails to complete the required decommissioning plan or restore operations as directed by the Code Enforcement Officer within the applicable 180-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the subject Solar PV System has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

- a. Said appeal and request for hearing must be made and received by the Town Board within 30 days of the mailing of the notice. Failure by the permittee to submit an appeal and request for hearing within the 30-day period will result in the special use permit being deemed revoked as stated herein.
- b. In the event the permittee appeals the determination of the Code Enforcement Officer and requests a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.
- c. If the Town Board determines that subject Large-Scale or Net Metering System has been abandoned, the system owner, landowner and/or permittee shall commence implementation of the decommissioning plan within 45 days. IF the system owner, landowner and/or permittee fail to commence the implementation of the decommissioning plan within 45 days, the Town may, at its discretion, provide for the restoration of the site in accordance with the decommissioning plan and may recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon the property, and shall be

enforced and collected with interest by the same officer and in the same manner as other taxes.

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been ordered.

## **G. FEES**

1. The fees for a Special Use Permit, Site Plan Review, and Zoning Permit for a Solar Energy System shall be set from time to time by Town Board resolution.
2. The Applicant for either state or local siting approval shall deliver to the Town Board, along with its application if local approval is sought, and concurrent with the filing of an Article 10 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 these funds shall be available to the Town to pay consultants and attorneys engaged the Town to assist in application review if a local permit is sought, and to pay consultants and attorneys engaged by the Town to assist in review of an Article 10 Application should awarded intervenor funds be insufficient to fully participate in the Article 10 Process or should intervenor funds be otherwise exhausted. Following the grant or denial of the state or local application, the Town shall return to the Applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants.

## **SECTION 2: 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 Norfolk hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**SECTION 3: REPEAL**

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

**SECTION 4: 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.