

RESOLUTION

Councilperson De Bonis, seconded by Councilperson Murphy, introduced the following proposed local law, to be known as Local Law No. ___ of 2018, entitled A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK, REGARDING SOLAR ENERGY SYSTEMS AND WIND ENERGY SYSTEMS.

BE IT ENACTED by the Town Board of the Town of Washington as follows:

Section 1 Legislation

The Zoning Code of the Town of Washington is hereby amended to add a new Section 249 as follows:

- I. The Table of Contents shall be amended to add "349: Solar Energy Systems and Wind Energy Systems" on a new line immediately following the words "348: Bed-and Breakfast". No page numbering notation shall be made for this new Section.

- II. A new Section 249 shall be added immediately following the end of all words included in Section 248 as follows:

"Section 349. SOLAR ENERGY SYSTEMS AND WIND ENERGY SYSTEMS

1. Authority

This Town of Washington Solar and Wind Zoning Code is adopted pursuant to Sections 261-263 of the Town Law of the State of New York, which authorize the Town of Washington to adopt zoning provisions that advance and protect the health, safety, and welfare

of the community, and "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

2. Statement of Purpose

The purpose of this Town of Washington Solar and Wind Zoning Code is to establish standards and limitations for the installation and operation of solar and wind systems within the Town of Washington. The Town of Washington intends to encourage the use of natural energy resources in accordance with its Comprehensive Master Plan.

3. Definitions

110% LIMITATION: shall have the meaning ascribed to it in Section 5(A) below.

ADJOINING PARCELS: shall have the meaning ascribed to it in Section 5(E) of this Solar and Wind Zoning Code.

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

CONSENT: shall have the meaning ascribed to it in Section 6(C)(3) of this Solar and Wind Zoning Code.

GLARE: The effect produced by reflections of light with an intensity sufficient to cause significant annoyance, discomfort or loss in visual performance and visibility.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure, and in which the anticipated annual total amount of electric energy generated from such system does not exceed 110% of the anticipated annual total amount of electric energy used by the applicant's parcel (this 110% limitation is hereinafter referred to as the "110% Limitation").

NYSERDA: The New York State Energy Research and Development Authority.

NON-RESIDENTIAL PROPERTY: Real property that is not considered Residential Property.

RESIDENTIAL PROPERTY: Real property that is primarily used for residential purposes and contains a one or two family residence.

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

SOLAR ENERGY SYSTEM: An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

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

4. Applicability

The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair.

5. General Provisions

A. Solar Energy Systems installed for the purpose of supplying power measured by the personal use of the property shall be permitted as an accessory use so long as the Solar Energy System satisfies the other provisions of this Town of Washington Solar and Wind Zoning Code. A Solar Energy System shall be limited to a power generating capacity not in excess of 110% of the anticipated annual total amount of electric energy used by the applicant's parcel (this 110% limitation is hereinafter referred to as the "110% Limitation").

B. All Solar Energy Systems shall be installed in accordance with applicable electrical and building codes (including the New York State Uniform Fire Prevention and Building Code) in effect at the time of installation, the manufacturer's installation, and industry standards, and prior to operation the electrical connections must be inspected by the Town Code Enforcement Officer or by an appropriate electrical inspection person or agency, as determined by the Town of Washington. In addition, any connection

to the public utility grid must be inspected by the appropriate public utility.

C. When solar storage batteries are included as part of the Solar Energy System, they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform Fire Prevention and Building Code when in use and when no longer used shall be disposed of in accordance with all applicable laws and regulations.

D. The installation of any Ground-Mounted Solar Energy System shall be outside any land area exhibiting sensitive environmental characteristics such as fresh water wetlands, one-hundred year flood hazard areas, severe topography (slopes more than 15%), stream corridors, wetland transition areas, historic and/or culturally significant areas or other areas regulated under the Town's Wetlands Law. No Solar Energy System shall be within any conservation easement or conservation deed restricted area unless within the approved building envelope.

E. It is acknowledged that an applicant may own one or more adjoining parcels which technically consist of more than one legal parcel. In such case, there may a Solar Energy System on one parcel which produces electricity primarily for the needs of that parcel and/or the needs of one or more of such other adjoining parcels (the "Adjoining Parcels"). In such case, for purposes of the definition of Ground-Mounted Solar Energy System, the term "applicant's parcel" shall include the Adjoining Parcels.

F. All Solar Energy Systems shall require a building permit and a certificate of occupancy/compliance upon completion.

G. All Solar Energy Systems shall be maintained in good working order.

H. No Solar Energy System shall be permitted if such installation would require the installation of a new above-ground power line, power pole or an electrical substation; provided, however that (i) if a new building structure is being constructed in connection with the Solar Energy System, a new power pole shall be permitted or (ii) a new power pole shall be permitted if it is required by the local utility company to maintain the Solar Energy System's safe operation.

I. Prior to the installation of a Solar Energy System, the Town of Washington Building Inspector shall receive (i) a letter from a licensed engineer or other qualified professional or from the installer of the Solar Energy System stating in effect that the Solar Energy System will satisfy the 110% Limitation and (ii) any applicable Consent. The Town of Washington Building Inspector shall have the right to confirm the satisfaction of the 110% Limitation by reviewing prior utility statements.

J. If a Solar Energy System causes any Glare, the owner of such Solar Energy System shall use reasonable efforts to eliminate

such Glare within 60 days of notice of the existence of such Glare from the Town of Washington.

6. Solar as an Accessory Use or Structure

A. Building Integrated Photovoltaic System ("BIPS").

BIPS material shall be permitted in all zoning districts.

B. Roof-Mounted Solar Energy Systems.

- 1) Roof-Mounted Solar Energy Systems are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.
- 2) Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located.
- 3) Aesthetics. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:
 - a. Panels must be mounted at the same angle as the roof's surface up to a maximum distance of 18 inches between the roof and highest edge of the system.
 - b. The Solar Panels and all ancillary equipment for the Solar Energy System shall not extend beyond the edge of the roof.
 - c. Solar Energy Equipment forming a part of the Roof-Mounted Solar Energy System shall be installed inside walls and attic spaces to reduce their visual impact. If such Solar Energy Equipment is visible from a public road or adjacent property, it shall match the color scheme of the underlying structure.
- 4) Roof-Mounted Solar Energy Systems shall be exempt from site plan review under the local zoning code or other land use regulations.

C. Ground-Mounted Solar Energy Systems for a Residential Property:

- 1) Ground-Mounted Solar Energy Systems for a Residential Property are permitted as accessory structures in the Town of Washington.
- 2) In no event shall the height of the Ground-Mounted Solar Energy System for a Residential Property exceed 12 feet. This 12 foot requirement shall be calculated when the solar energy system is oriented at maximum tilt.
- 3) Subject to the terms set forth herein, a Ground-Mounted Solar Energy System for a Residential Property shall not be visible from any public road or from any other parcel. If a Ground-Mounted Solar Energy System for a Residential Property would be visible from any public road or other parcel, the Ground-Mounted Solar Energy System shall be screened from view at all times by existing vegetation or topography or through the use of architectural features, earth berms, landscaping, new plantings, fencing or a combination thereof. Plantings used for screening shall be of such a height and width, at the time of planting, so as to obscure the Ground-Mounted Solar Energy System from public roads and such other parcels. Notwithstanding anything herein to the contrary, a Ground Mounted Solar Energy System for a Residential Property may be visible from another parcel if:
 - a. the Ground-Mounted Solar Energy System is at least 300 feet from the affected parcel, or
 - b. The owner of the affected parcel consents in writing (the "Consent") to the Ground-Mounted Solar Energy System.
- 4) All Ground-Mounted Solar Energy Systems for a Residential Property shall have a minimum set-back of the greater of (i) 100 feet from the property line or (ii) the set-back required by the Zoning Code.
- 5) Ground-Mounted Solar Energy Systems for a Residential Property shall be exempt from site plan review under the Zoning Code or other land use regulations.

- 6) Ground-Mounted Solar Energy Systems for a Residential Property shall not be considered as a building for purposes of determining building coverage of the lot.
- 7) Solar Panels for a Residential Property shall not be included in any calculation of impervious surface or impervious cover, however the base or foundation of the Solar Panel shall be included in any calculation.

D. Ground-Mounted Solar Energy Systems for a Non-Residential Property:

- 1) Ground-Mounted Solar Energy Systems for a Non-Residential Property are permitted as accessory structures in the Town of Washington.
- 2) In no event shall the height of the Ground-Mounted Solar Energy System for a Non-Residential Property exceed 12 feet. This 12 foot requirement shall be calculated when the solar energy system is oriented at maximum tilt.
- 3) Subject to the terms set forth herein, a Ground-Mounted Solar Energy System for a Non-Residential Property shall not be visible from any public road or from any other parcel (unless the owner of such other parcel executes a Consent). If a Ground-Mounted Solar Energy System for a Non-Residential Property would be visible from any public road or other parcel (and a Consent is not executed by the affected owner), the Ground-Mounted Solar Energy System shall be screened from view at all times by existing vegetation or topography or through the use of architectural features, earth berms, landscaping, new plantings, fencing or a combination thereof. Plantings used for screening shall be of such a height and width, at the time of planting, so as to obscure the Ground-Mounted Solar Energy System from public roads and such other parcels.
- 4) All Ground-Mounted Solar Energy Systems for a Non-Residential Property shall have a minimum set-back of the greater of (i) 100 feet from the property line or (ii) the set-back required by the Zoning Code.
- 5) Ground-Mounted Solar Energy Systems for a Non-Residential Property shall require a special permit and

site plan review under the Zoning Code or other land use regulations.

- 6) Ground-Mounted Solar Energy Systems for a Non-Residential Property shall not be considered as a building for purposes of determining building coverage of the lot.
- 7) Solar Panels for a Non-Residential Property shall not be included in any calculation of impervious surface or impervious cover, however the base or foundation of the Solar Panel shall be included in any calculation.

7. Abandonment and Decommissioning

Solar Energy Systems are considered abandoned after one year without electrical energy generation and must be removed from the property. An applicant shall have the right to request a one year extension of that time upon notice to, and approval from, the Town of Washington Planning Board. If a property owner fails to remove a Solar Energy System as required by this section, then the Town of Washington may elect, at its sole and absolute discretion, to remove such Solar Energy System from the property in which case all of the costs and expenses incurred by the Town of Washington, together with interest at the annual rate of 16%, or such lower rate required by any applicable usury law or regulation, shall be immediately paid by the property owner. In addition, any violation of this section shall result in a fine of \$50 per day for each day such violation exists. The cost 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.

In the case of a Ground-Mounted Solar Energy System for a Non-Residential Property, the Town of Washington Planning Board may, at its discretion, require the adoption of an Abandonment, Restoration and Decommissioning Plan in connection with any approval of such project.

8. Enforcement

Any violation of this Town of Washington Solar and Wind Zoning Code shall be subject to the same civil and criminal penalties provided for in the Zoning Code (except that any violation of Section 8 hereof shall result in the fines and penalties set forth

therein).

9. Real Estate Tax Exemption

Owners of Solar Energy Systems shall be entitled to the real estate tax exemption set forth in RPTL § 487, as amended and supplemented through time.

10. SEQRA

Building Integrated Photovoltaic Systems, Ground-Mounted Solar Energy Systems for a Residential Property and Roof-Mounted Solar Energy Systems shall be considered Type II actions for SEQRA purposes. At the option of the Town of Washington Planning Board, Ground-Mounted Solar Energy Systems for a Non-Residential Property shall be considered for action for SEQRA purposes.

11. Wind Energy Systems:

Based on an assessment by NYSERDA, the geographical territory of the Town of Washington is not conducive to wind energy systems. Accordingly, no type of wind turbines, wind towers or similar systems shall be permitted in the Town of Washington. If in the future, circumstances change and NYSERDA notifies the Town of Washington that wind energy systems can be conducive to the economic production of wind technology, then the Town of Washington shall revisit this section.

12. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect."

Section 2. Authority

This local law is enacted by the Town Board of the Town of Washington pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law §10.

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

Councilperson _____ advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this law. He offered the following resolution which was seconded by Councilperson _____, who moved its adoption:

WHEREAS, on May 10, 2018, Councilperson _____ has introduced this local law for the Town of Washington, to be known as TOWN OF WASHINGTON LOCAL LAW NO. ____ OF THE YEAR 2018, A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK, REGARDING SOLAR ENERGY SYSTEMS AND WIND ENERGY SYSTEMS; be it

RESOLVED, that a public hearing be held in relation to the proposed local law as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 10 Reservoir Drive, Millbrook, New York, on June 14, 2018 at 7:00 o'clock, p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Washington, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Washington will hold a public hearing at the Town Hall, 10 Reservoir Drive, Millbrook, New York, on June 14, 2018 at 7:00 o'clock, p.m., on Local Law No. ___ of the Year 2018, regarding Solar Energy Systems and Wind Energy Systems.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Washington, at the Town Hall, 10 Reservoir Drive, Millbrook, New York, between the hours of 9:00 a.m. to 12:30 p.m. and then between 1:30 p.m. to 3:00 p.m. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all person interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: Millbrook, New York
May 10, 2018

MARY ALEX, Town Clerk

The foregoing resolution was duly put to a vote which resulted
as follows:

Supervisor Ciferri _____

Councilman Turletes _____

Councilman Audia _____

Councilwoman DeBonis _____

Councilman Murphy _____

DATED: Millbrook, New York
May 10, 2018

MARY ALEX, Town Clerk
Town of Washington