

Town of Columbia, Herkimer County, NY Local Law No. 1 of 2024

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Town of Columbia Local Law No. 1 of 2024

Columbia Solar Energy Facilities Local Law

Be it hereby enacted by the Town Board of the Town of Columbia, in the County of Herkimer, New York, as follows:

§ 1. TITLE

This Local Law shall be referred to as “Columbia Solar Energy Facilities Local Law” and shall repeal and replace Local Law No. 1 of 2020, an amendment to the Town of Columbia’s Zoning Law #2015-01.

§ 2. PURPOSE AND INTENT

The Purpose of the Columbia Solar Energy Facilities Law shall be to provide substantive and procedural standards for the siting, development, operation, and decommissioning of Solar Energy Facilities in the Town of Columbia. The Town Board of the Town of Columbia hereby amends the Town of Columbia’s Zoning Law with this Columbia Solar Energy Facilities Law to ensure any use of the Town’s solar energy resource is considered for approval in a manner compatible with the Town’s most current Comprehensive Plan, Zoning Law, and results from a 2023 Town of Columbia Survey to solicit resident’s and landowner’s opinions concerning Solar Energy Facilities.

Through this law, the Town of Columbia intends to minimize the potential adverse impacts of Solar Energy Facilities to public health, safety, ground water, water supply, the environment, and the Town’s community character and history.

The Town further finds that appropriate siting of Solar Energy Facilities, in a manner compatible with the Town’s Comprehensive Plan objectives and vision of preserving its natural, historical, and cultural assets, along with sustaining its valuable economic and natural resources, particularly agricultural land use, open spaces, natural habitats, wetlands, and watersheds, is effectuated through this law.

§ 3. AUTHORITY

The Town Board of the Town of Columbia enacts this Solar Energy Facilities Local Law under the authority granted by:

- a. Article IX of the New York State Constitution, §§ 1(a), 2 (c), and 3(c).
- b. The supersession authority granted by New York Municipal Home Rule Law, § 10, Subdivision (1)(ii)(d)(3).
- c. New York Statute of Local Governments, § 10 (1) , (5), (6) and (7).
- d. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) New York Town Law § 130.
- e. New York Real Property Tax Law § 487.

§ 4. DEFINITIONS

For the purpose of this amendment to Town Zoning, the following terms shall have the meanings indicated:

AGRICULTURAL OR FARM OPERATIONS – Agricultural or Farm Operations consist of the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including commercial horse boarding operations and “timber processing”. Such farm operations may consist of one or more parcels of owned or rented land. The land parcels may be contiguous or noncontiguous to each other.

AGRICULTURAL DISTRICT – Enacted in 1971, an agricultural district is defined within New York State’s Agriculture Districts Law (ADL) as a geographic area which consists predominantly of viable agricultural land. Agricultural operations within the district are the priority land use and afforded benefits and protections to promote the continuation of farming and the preservation of agricultural land. In practice, districts may include land that is actively farmed, idle, forested, as well as residential and commercial.

APPLICANT – An Applicant is the individual, landowner, project developer, facilities operator, facilities owner, business entity, organization, or New York State agency that seeks to secure a permit under this Local Law or seeks a permit from the Office of Renewable Energy Siting (ORES), New York State Board on Electric Generation Siting and the Environment, New York State Energy Research & Development (NYSERDA), or any other New York State agency or siting authority which may be established in the future.

BATTERY ENERGY STORAGE SYSTEM (BESS) – One or more devices, such as a battery, often being lithium-ion batteries, or series of batteries or battery cells, assembled together, capable of storing energy to supply electrical energy at a future time, not to include a stand-alone 12-volt vehicle battery or batteries, or an electric motor vehicle or an electric motor vehicle’s charging station.

A battery energy storage system is typically classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh.
- Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh.

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 that does not alter the relief of the roof.

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CEA – Critical Environmental Areas (CEAs) are areas in New York State which have been designated by a local or state agency to recognize a specific geographical area with one or more of the following characteristics:

- A feature that is a benefit or threat to human health;
- An exceptional or unique natural setting;
- An exceptional or unique social, historic, archaeological, recreational, or educational value; or
- An inherent ecological, geological, or hydrological sensitivity to change that may be adversely affected by any physical disturbance.

A CEA designation serves to alert project developers to the agency's concern for the resources or dangers contained within the CEA. Once a CEA has been designated, potential impacts on the characteristics of that CEA become relevant areas of concern that warrant specific, articulated consideration in determining the significance of any Type I or Unlisted actions that may affect the CEA.

CAPACITY – The total rated peak power output in kilowatts of all solar panels in a project as measured under Standard Test Conditions (STD).

CLEAR CUTTING – The removal of 75 percent, or greater, of trees more than three inches in diameter at breast height in a forest or forestland, as defined in this law.

FACILITY OR FACILITIES OPERATOR – The person, entity, or organization responsible for the installation, operation, maintenance, replacement and/or modification of the Solar Energy Facility.

FACILITY OR FACILITIES OWNER – The agency, business, entity, or organization that owns the Solar Energy Facility.

FOREST/FORESTLAND – Forestland is land that has at least 10% canopy cover of trees of any size, or that formerly has had such tree cover and is currently not developed or maintained for non-forest use (USDA), in a ten (10) acre area.

FREE-STANDING/GROUND-MOUNTED SOLAR ENERGY FACILITY – A Solar Energy Facility that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity.

GLARE – The effect produced by brightness or by reflections of light with intensity sufficient as determined in a reasonable manner to cause annoyance, discomfort or loss of visual performance and visibility.

GROUNDWATER – Groundwater is the water present beneath Earth's surface in rock and soil pore spaces and in the fractures of rock formations. Approximately 30 percent of all readily available freshwater in the world is groundwater. A unit of rock or an unconsolidated deposit is called an aquifer when it can yield a usable quantity of water.

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HEIGHT – The height of a Solar Energy Facility to its furthest vertical extension above ground level.

HISTORICALLY SIGNIFICANT STRUCTURES & PLACES – A structure, place or setting is presumed to be historically significant to the Town of Columbia if it is located within the Town limits and has been present for a minimum of 50 years. Structures, places or settings that are associated with important historical figures or events may also be historically significant regardless of age. In addition to Town designated historical significances, all structures listed on the New York State or Federal Registers of Historic Places are considered significant.

LANDOWNER – A person who owns land, property, or real property upon which a Solar Energy Facility is proposed to be constructed and/or operated, or upon which a Solar Energy Facility has already been constructed and/or operating.

LARGE SCALE SOLAR ENERGY FACILITY – The term “large scale solar” refers to Tier 2 and 3 Projects as defined under Solar Energy Facility.

MINERAL SOIL GROUPS 1-4 (MSG 1-4) – Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

NAMEPLATE CAPACITY – Nameplate capacity, also known as the rated capacity, nominal capacity, installed capacity, maximum effect or Gross Capacity, is the intended full-load sustained output of a facility such as a power station, electric generator, a chemical plant, fuel plant, mine, metal refinery, and many others. Nameplate capacity is the theoretical output registered with authorities for classifying the unit.

PHOTOVOLTAIC (PV) SYSTEMS – A Solar Energy Facility that produces electricity by the use of semiconductor devices, called photovoltaic (PV) cells that generate electricity whenever light strikes the PV cells. In this law, the term “Solar Collector” refers to a photovoltaic system for energy production.

PRIME FARMLAND, PRIME SOILS AND PRIME SOIL LANDS – Agricultural land meeting: (1) the national parameters for land designated “Prime Farmland” as described in the US Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey; and (2) “farmland of statewide importance”, pursuant to the State of New York classification system for Herkimer County.

PROJECT BOUNDARY – The external property boundaries of lands owned by or leased by the Solar Energy Facility developers. It is represented on a plot plan view by a continuous line encompassing all Solar Energy Facilities and any other equipment associated with the project.

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ROOF-MOUNTED SOLAR ENERGY FACILITY – A solar panel system installed on the roof of any legally permitted building or structure for the purpose of producing electricity for on and/or off premise use.

SEQRA – The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SETBACK – The distance from a front lot, side lot, or rear lot line of a tax map parcel within which a free standing or ground mounted Solar Energy Facilities, including any associated fencing, shall not be installed.

SMALL SCALE SOLAR ENERGY FACILITY – The term “small scale solar” refers to Tier 1 Projects as defined under Solar Energy Facility.

SOLAR ACCESS – Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of active and/or passive Solar Energy Facilities on individual properties.

SOLAR COLLECTOR – A solar photovoltaic cell, panel, or array, or solar hot air or water collector device that relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR ENERGY EQUIPMENT – Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected, and converted into another form of energy, stored, protected from unnecessary dissipation and distributed.

SOLAR ENERGY FACILITY OR FACILITIES – The components and sub-systems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment, and all related structures, accessory structures, and infrastructure, and equipment. A Solar Energy Facility may also be known as a Solar Energy System or Solar Farm. A Solar Energy Facility is classified as Tier 1, Tier 2, or Tier 3 as follows:

- Tier 1 Solar Energy Facilities include the following:
 - a. Roof-Mounted Solar Energy Facility.
 - b. Building-Integrated Solar Energy Facility.
 - c. On-Farm Solar Energy Facility.
 - d. Ground-Mounted Solar Energy Facility with a Nameplate Capacity of up to 25 kW, but not more than 3,000 square feet of total panel surface area.
 - e. Generate up to 110% of the electricity consumed on the site over the previous 12 months.

- Tier 2 Solar Energy Facility include the following:
 - a. Ground-Mounted Solar Energy Facilities not included under Tier 1 Solar Energy Facilities with a Nameplate Capacity of up to, but not greater than, 19.99 MW, and/or a Facility Area not more than 99.99 acres of land in size. Facility Area is defined by the footprint of the project – including perimeter

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fencing (includes space between solar panels and fencing) access roads, and other necessary equipment.

- Tier 3 Solar Energy Facility include the following:
 - a. Tier 3 Solar Energy Facilities are Solar Energy Facilities which are not included under Tier 1 or Tier 2 Solar Energy Facilities. These Solar Energy Facilities include, but are not limited to, Large Scale Energy Systems, Utility Scale, or Major Renewable Energy Facilities.

SOLAR ENERGY FACILITY PERMIT – A special use permit issued for a Solar Energy Facility pursuant to this Local Law and Article V of the Town of Columbia Zoning Law.

SOLAR PANEL – A photovoltaic or solar thermal device used for the direct conversion of solar energy into electricity or for the capture of solar energy as a heat source.

SOLAR-THERMAL SYSTEMS – Solar thermal systems directly heat water or other liquid using sunlight as the heat source. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

STRATEGIC VANTAGE POINT – The location or locations from which to assess the visual impact of a proposed Solar Energy Facility. A vantage point is considered strategic if the public can be expected to congregate there for educational or civic purposes; religious observance; enjoyment of historic or cultural resources; or for recreation whereby the enjoyment of the natural environment is a key aspect of the recreational activity. Strategic Vantage Points include both public and private venues. Some examples include: Schools, Golf Courses, Churches, Public Buildings, Historically Significant Structures, Parks, Trails, Roads, Highways, Hilltops, Museums and Cemeteries.

STREAMS & PROPECTED STREAMS – Streams and Small Waterbodies, Ponds, and Lakes with a surface of 10 acres or less, located in the course of a stream with a classification of AA, A, B, or with a Classification of C with a Standard of (T) or (TS) are collectively referred to as Protected Streams and are subject to the Stream Protection Provisions of the POW (Protection of waters) Regulations and Permit. See 6NYCRR Part 608, Article 15, Title 5 Environmental Conservation Law.

TOWN – The Town of Columbia, located in Herkimer County, New York.

TOWN BOARD – The Town Board of the Town of Columbia.

WATER COURSES – Any natural or artificial, intermittent, seasonal, or permanent, and public or private water body or water segment. A water body is intermittently, seasonally or permanently inundated with water and contains a discernible shoreline and includes ponds, lakes and reservoirs. A watercourse includes rivulets, brooks, creeks, streams, rivers and other waterways flowing in a definite channel with bed and banks and usually in a particular direction.

WETLANDS – A variety of landscape features that contain or convey water and support unique plants and wildlife. Areas saturated by surface or ground water sufficient to support

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distinctive vegetation adapted for life in saturated soil conditions. Wetlands serve as natural habitat for many species of plants and animals and absorb the forces of flood and tidal erosion to prevent loss of upland soil. Wetlands provide a multitude of ecological, economic, and social benefits. They provide habitat for fish, wildlife and plants – many of which have a commercial or recreational value – recharge groundwater, reduce flooding, provide clean drinking water, offer food and fiber, and support cultural and recreational activities. Regulated wetlands in the Town of Columbia include wetlands identified by Federal, New York State, and New York State Department of Environmental Conservation.

WILDLIFE – Wild game and all other animal life existing in a wild state, except fish, shellfish and crustacea, including wild birds. Protected wildlife means wild game, birds, protected insects, species of special concern and endangered and threatened species of wildlife designated by the department pursuant to § 11-0535 (Endangered and threatened species, species of special concern), species listed in § 11-0536 (Sale of certain wild animals or wild animal products prohibited) and species protected pursuant to § 11-0311, Environmental Conservation Law Section 11-6.a-c.

§ 5. PERMITS REQUIRED

- a. No Solar Energy Facility (as defined by this law) shall be constructed, reconstructed, modified, or operated in the Town of Columbia except pursuant to and in compliance with a Solar Energy Facility Permit, issued by the Town Board, pursuant to this Local Law and Article V of the Town of Columbia Zoning Law. Where this law and Article V of the Town of Columbia Zoning Law are inconsistent, the Columbia Solar Energy Facilities Local Law shall be controlling.
- b. Exemptions – No Solar Energy Facility Permit is required under this Local Law for the following (standard regulations requiring Building Permits for new construction or building alterations do, however, apply):
 1. A Solar Energy Facility that is portable and not connected to the electrical wiring of a building or to the electrical grid.
 2. A Solar Energy Facility that is utilized solely for Agricultural or Farm Operations in an Agricultural District certified pursuant to Article 25-AA of the Agricultural and Markets Law and not integrated to the electrical grid.
 3. A building integrated photovoltaic system that is integrated into a building at the time of construction, and for which a Building Permit is applied for and subsequently issued. In this case, no additional Solar Energy Facility Permit is required.

§ 6. APPLICABILITY AND GENERAL REQUIREMENTS

- a. This Local Law shall apply to all areas of the Town of Columbia.
- b. Solar Energy Facilities are not to be considered a Public Utility Use.

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- c. Solar Energy Facilities are not considered to be agricultural in nature.
- d. Prohibition of Tier 3 Solar Energy Facilities in all Zoning Districts: Tier 3 Solar Energy Facilities, as described by this law, designed and intended to be used for off-site consumption and having a nameplate capacity of twenty (20) megawatts (MW) or more, and/or that require 100 or more acres of land in its total footprint, and which generate energy for transfer, sale, storage or other transmission or consumption beyond the parcel or parcels upon which the Solar Energy Facility is located, are prohibited in all Zoning Districts in the Town of Columbia.
- e. Any Solar Energy Facility for which a building permit has been properly issued by the Town and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that:
 - 1. Any preexisting Solar Energy Facility that has not provided electrical energy to a building, or to the electrical grid for a continuous period of twelve (12) months must meet the requirements of this Local Law prior to recommencing the production of energy.
 - 2. No modification or alteration to an existing Solar Energy Facility shall be allowed except for repair or in-kind replacement of Solar Energy Equipment without full compliance with this local law.
 - 3. The requirements of this Solar Energy Facilities Local Law shall apply to all Solar Energy Facilities proposed, operated, modified, or constructed in the Town of Columbia after the effective date of this Local Law.
- f. Any proposed Solar Energy Facility subject to review by the New York Board on Electric Generation and Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Section 94-c of the New York State Executive Law, or any other New York State siting authority which may be established in the future shall be subject to all substantive provisions of this law and any other applicable laws, codes, ordinances and regulations of the Town of Columbia, and any other applicable state or federal laws.

§ 7. TIER 1 SOLAR ENERGY FACILITY REQUIREMENTS AND REGULATIONS

- a. Tier 1 Solar Energy Facilities shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises on which they are erected, although nothing contained in this provision shall be construed to prohibit the sale of excess power through a “net billing” or “net metering” arrangement in accordance with New York Public Service Law 66 or similar State or Federal statute.

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- b. A Solar Energy Facility meeting the requirements of this section may be installed on any parcel that complies this law, and all other applicable Zoning and/or other land use regulations. The area beneath ground mounted and freestanding solar collectors shall be included in calculating whether the lot meets maximum permitted lot building coverage and lot surface coverage requirements for the applicable district, notwithstanding that the collectors are not “buildings”.
- c. Solar Energy Facilities and Solar Energy Equipment shall be installed in accordance with the New York State Uniform Fire Prevention and Building Code.
- d. Standards for Roof-Mounted Solar Energy Facilities – Roof-Mounted Solar Energy Facilities for electricity use onsite or offsite are permitted in all areas of the Town of Columbia when attached to any lawfully permitted building or structure, regardless of the amount of kilowatts (KW) per hours of energy produced by the photovoltaic system. Roof-Mounted Solar Energy Facility installations shall incorporate aesthetically pleasing designs. 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.
- e. Ground-Mounted Tier 1 Solar Energy Facilities shall meet the following height and setback requirements:
 - 1. Maximum Height shall be ten (10) feet.
 - 2. Setback shall be at least seventy-five (75) feet from the center of the approved and accepted Town, county or state highway. If said lot is a corner lot, said requirements apply to each highway.
 - 3. Setback shall be at least fifty (50) feet from any lot line.
- f. Solar Energy Facilities Applications for Small Scale Solar Energy Facilities require a building permit be submitted to the Town Codes Enforcement Officer (CEO) as per Section 803 of the Columbia Zoning Law.
- g. Compliance inspection(s) shall be carried out using inspection methods the Codes Enforcement Officer (CEO) deems appropriate.

§ 8. TIER 2 SOLAR ENERGY FACILITY REQUIREMENTS AND REGULATIONS

- a. Tier 2 Solar Energy Facilities meeting the requirements of this law may be considered for installation and siting in the Agriculture and/or Commercial District (A–C) zone, as the (A–C) zone is designated by the Town of Columbia Zoning Law.
- b. Tier 2 Solar Energy Facilities are prohibited in the Residential and/or Agricultural (R–A) zone, as the (R–A) zone is designated by the Town of Columbia Zoning Law.
- c. Tier 2 Solar Energy Facility Land Acreage Limits – Solar Energy Facilities shall not collectively occupy more than a total of 99.99 acres in the Town of Columbia in its

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- entirety. There is a maximum allotment of 50 acres that may be utilized for a Solar Energy Facility by a single Solar Energy Facility Applicant or Landowner.
- d. Drilled or driven wells, along with the utilization of any open body of water, such as streams, ponds, etc., for the purpose of serving water to Solar Energy Facilities during the construction phase, or for the operation or maintenance of, are prohibited.
 - e. A Host Community Benefit Agreement between the Town of Columbia and a permit holder, with terms sufficient to mitigate or offset the adverse impacts of Solar Energy Facilities with a project nameplate greater than 1 MW AC, is required prior to commencement of construction of any such project.
 - f. In the event this Law's prohibition of Tier 3 Solar Energy Facilities is waived or not applied by the New York State Office of Renewable Energy Siting, or any other New York State siting authority which may be established in the future, all substantive provisions of this law applicable to Tier 2 Solar Energy Facilities shall apply to any such Tier 3 Facility.
 - g. Tier 2 Solar Energy Facilities shall meet the following requirements:
 - 1. Be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Protection and Building Code and National Electric Code and shall adhere to any additional applicable Town of Columbia building, plumbing, electrical, and fire codes. Except for conditions specified in this law, all systems shall comply with the provisions of the Town zoning ordinance for the zoning district in which they are located.
 - 2. Maximum Height of solar panels, equipment, etc. shall be ten (10) feet.
 - 3. Setback of project perimeter and its screening shall be a minimum of one hundred seventy-five (175) feet from the center of the approved and accepted Town county or state highway. If said lot is a corner lot, said requirements apply to each highway.
 - 4. Setback of project perimeter and its screening shall be at least two hundred fifty (250) feet from any property/lot line, and 500 feet from any residence or drilled well.
 - 5. Setback shall be 1,000 feet from Critical Environmental Areas (CEA) designated by the Town Board.
 - 6. Tier 2 Solar Energy Facilities shall not be located within 1,000 feet of, the following areas of sensitivity:
 - i. One-hundred-year flood hazard zones considered an AE Zone on the FEMA Flood Maps.

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- ii. Properties included on or considered a Town's Historically Significant Structure, Site or Area, New York State or National Register of Historic Places, or otherwise identified as, or eligible for inclusion as, historically and/or significant resources.
- iii. Significant archaeological resources. Such resources shall be protected and preserved, and any mitigation measures proposed as a part of the development of a Solar Energy Facility shall be undertaken in consultation with the NYS Historic Preservation Office and all other pertinent local and state historical preservation authorities.
- h. No solar panels shall be placed on slopes of 15 percent or greater, as averaged over 50 horizontal feet. Blasting, cutting and filling is prohibited to alter natural slopes for placement of panel arrays and roads.
- i. Forested sites shall not be deforested and sites deforested less than five years before application submittal shall not be used to construct Solar Energy Facilities, unless the Applicant offsets the adverse impact of deforestation through conservation of the same amount of existing similar habitat, or creation of the same amount of new sites to host similar habit ("Conserved Forest Habitat"). Conserved Forest Habitat created pursuant to this section shall be permanently conserved through creation of public parkland with covenants prohibiting deforestation and requiring the land to be kept in a natural, forested state, or by creation of a conservation easement held by an entity other than the Applicant, and with restrictions requiring the land to be kept in a natural, forested state, or by any other means of permanent conservation acceptable to the Town. The Town may, but is not required to, hold any real property interest created pursuant to this section. Conserved Forest Habitat shall be located within the Town of Columbia.

Brush, hedgerows and isolated trees or stands of trees in otherwise open fields or scrubland may be cut, however clear cutting of trees more than three inches in diameter at breast height (as defined herein) in an area exceeding 10,000 square feet is prohibited except as otherwise permissible under this section This clearing restriction shall not apply to trees cleared for the access road.

Any portion of a property that has been clear-cut in excess of the area described in the paragraph above, regardless of the reason for such clear cutting, shall not be included in an application for a solar project for a period of five years following such clear cutting.

- j. Site disturbance, including but not limited to, grading, soil removal, excavation and soil compaction in connection with installation of Solar Energy Facilities shall be minimized to the maximum extent practicable.
- k. Solar Energy Facilities shall limit the use of agricultural areas within their project limits to no more than 10 percent of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and prime farmland if drained All Solar Energy Facilities

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shall also adhere to the Department of Agriculture and Markets' Guidelines for Construction Mitigation for Agricultural Lands.

- l. To offset or mitigate the adverse impact of using high quality soils for a non-agricultural purpose, and/or as required by New York Public Service Law Section 138(4), any Solar Energy Facility sited on soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and/or prime farmland if drained, shall (1) prepare and carry out an agricultural co-utilization plan acceptable to the Town; and (2) permanently conserve an equal amount of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and/or prime farmland if drained, located in the Town of Columbia, in a manner acceptable to the Town.
- m. Construction working hours shall be limited to Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m., except as required for reasons of worker safety, and as approved by the Town Board. The Town Board shall have discretion on whether to allow work on Saturdays. Work shall not be done outside these hours or on Sundays and New York State and Federal holidays, to ensure the quiet rural characteristics of the Town. Construction lighting shall be limited consistent with the requirements above.
- n. The Solar Energy Facilities shall comply with New York state stormwater regulations as set forth in GP-0-20-001, as amended. The Stormwater Pollution Prevention Plan shall demonstrate that the Solar Energy Facility will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties in violation of New York state stormwater requirements.
- o. Solar Energy Facility structures and equipment are prohibited on or within 500 feet of cemeteries or burial grounds. The Applicant shall consult with the Town Historian and Town Planning Board to identify any such burial grounds within the project site.
- p. The Solar Energy Facilities, including any proposed off-site infrastructure, shall be located and visually screened in such a way as to avoid visual impacts to the maximum extent practicable as viewed from public locations, public roads and highways, residences on neighboring or view impacted parcels, or other locations identified by the Town Planning Board and/or Town Board. Acceptable screening would include a mixture of maintained live trees, bushes, shrubs or other like vegetation, and natural earthen barriers or berms. The Solar Energy Facility and its screening shall provide for the creation of a buffer that has an offset/staggered double row of densely growing evergreens with the addition of smaller trees and shrubs in front to create a naturalized hedgerow habitat. While the evergreens should be the dominant tree for screening, the addition and combination of smaller native trees, native fruit bearing shrubs, as well as native grasses and wildflowers (as identified as native in the NYS Flora Atlas) are to be provided to benefit wildlife and aesthetics.

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The screening and landscape plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The live landscaped screening shall be comprised of two staggered rows of trees planted every 12 to 15 linear feet from each other in each row (rows spaced 12 to 15 linear feet from each other) a minimum of 10 feet high at time of planting, plus supplemental shrubs to create a naturalized hedgerow habitat, planted a minimum of 25 feet outside of the Solar Energy Facility perimeter fence for firefighting purposes. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening, providing it meets the specifications in this document. Trees and shrubs to be included in screening shall be native and non-invasive, and deer resistant species. It shall be determined and documented by the Applicant that the plantings of any species are not threatened due to regional blight, disease, etc. Final decisions on appropriate planting shall be made by the Town Board.

Trees to be included in screening shall be native and non-invasive species of evergreen (e.g. Norway Spruce, White Spruce) and deciduous trees at a ratio of one deciduous tree to every five evergreen trees, a minimum of 10 feet tall.

The Applicant shall guarantee that all plantings that form part of the approved landscape and screening plan will be maintained and replaced if necessary, for life of the project. In no instance should the screening be exclusively landscape screening or fencing.

When the site contains or is surrounded by existing forest, a buffer of at least 50 feet of forest on the participating parcel where no trees shall be cut shall be established and maintained as a wild zone for the life of the facility. The exception to this shall be dead or diseased trees, which will be cut and removed to encourage healthy growth of existing trees.

- q. Any fencing built with man-made materials should leave an open space between the bottom of the fencing and top of the ground to create an open space large enough for wildlife (e.g. rabbits, possums, skunks, raccoons, woodchucks, fawns, small deer, coyotes, foxes, etc.) to freely pass through. This opening shall be between 18 – 24 inches in height from the ground surface and the bottom of the fence.
- r. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- s. Electrical Transmission Lines and collection lines shall be buried at a minimum 48 inches to the maximum extent practicable.
- t. A Solar Energy Facility Owner or Operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to painting, structural repairs, erosion control, and upholding the landscaping/screening plan and the integrity of security measures. Site access shall be maintained to a level acceptable to the local

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Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the facility and any access road(s), unless accepted as a public way.

- u. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for the initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation. Exempt from this requirement are access routes needed for maintenance and emergency access. Emergency access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services.
- v. Lighting is discouraged, but if used, shall be of the “full cut-off” variety so as to cast light down and not horizontally, and will be operated so as to be in the off state when personnel are not on site.
 - 1. Artificial lighting of Solar Energy Facilities shall be limited to lighting required for safety and operational purposes and shall be cast downward and shielded from all neighboring properties and public roads. Lighting shall be capable of manual or auto-shut off switch rather than motion detection.
- w. To regulate and protect the Town’s water resources by managing development in wetlands and water courses and their buffers, Solar Energy Facilities shall meet wetland requirements as provided in Title 6, Parts 663 and 664 of the New York Codes, Rules and Regulations and stream requirements as provided in Title 6, Part 608 of the NYCRR and shall meet all Clean Water Act requirements for placement of fill in Waters of the United States.

Solar Energy Facilities shall be sited consistent with all applicable New York State and NWI (National Wetlands Inventory) Federal wetlands laws and regulations, with an additional 300-foot buffer and setback, including a 150-foot non-disturbance area within the buffer and setback. A non-disturbance area is an area where natural vegetation must be maintained nearest the wetland and riparian margins.

The Town of Columbia may set additional buffer sizes on a case by case basis when a larger buffer is necessary to protect wetlands and water courses with particular enumerated characteristics: steep slopes, floodplains, a wetland of large size, a wetland of a particular Class, groundwater protection, wildlife and/or flora habitats, existing natural areas that connect to other natural areas to preserve the connections between, intensity of land use nearby, proximity or connection to any lake, pond, river, stream or wetlands identified by the Town, classification of waters [C(TS)], unique and/or sensitive geology, presence of springs, etc.

The Town of Columbia not only enjoys an abundant water supply, but it shares it with neighboring communities. Locally, it contributes to the water supply for the village of Ilion. Regionally, Columbia’s waters are part of two major watersheds. The majority of the Town is in the Susquehanna River Watershed; making up 21.56 square miles of the Town’s 35.15 square miles. The remaining

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13.59 square miles is in the Mohawk River Watershed. Of the 21.56 square miles that make up the Town's portion of the Susquehanna River Watershed, 7 square miles is also part of the Canadarago Lake Basin. The watershed's environmental integrity is beneficial for local economies, homeowners, and wildlife.

- x. Solar Energy Facility buildings and accessory structures shall, to the extent possible, use materials, earth tone colors, and be textured so to blend the facility into the existing environment. Solar panels and equipment shall be surfaced, designed and sited so as not to reflect glare onto adjacent properties and roadways.
- y. Solar Energy Facilities and equipment shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar electric system. Materials used for marking shall be weather resistant and visibly obvious and replaced as necessary to maintain legibility.
- z. All solar panels shall have anti-reflective coating(s) not identified as a hazardous material by the U.S. Environmental Protection Agency, unless an Applicant demonstrates the hazardous material is unlikely to cause harm to people, plants or animals when released into the environment. The Applicant shall adhere to all federal and state laws, regulations and guidelines regarding per- and polyfluoroalkyl substances (PFAS) and polytetrafluoroethylene (PTFE) films.
- aa. Material Safety Data Sheets (MSDS) must be provided to all area emergency responders for all chemicals or compounds found on site, to include chemicals used for vegetation and pest control. Ag and Markets law pertaining to the use of such chemicals, such as requirements to notify neighboring property owners, must be adhered to.
- bb. Solar panels and equipment shall be placed so as to:
 - 1. Not restrict solar access on an adjoining property.
 - 2. Be in harmony with the rural and agricultural character, along with the history of the Town of Columbia as emphasized in the Town Comprehensive Plan.
 - 3. Not imperil the public health and safety.
 - 4. Not discourage the development and use of adjacent land and buildings or impair their value.
 - 5. Not be sited or visible in a way that solar equipment lowers neighboring property values, due to the degradation of a property's viewshed, as determined by the Town Board.
- cc. To boost American manufacturing, including in iron and steel, and to further federal government policy concerning the same, any steel, iron, or manufactured product which is a component of a Solar Energy Facility in the Town of Columbia

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shall be produced in the United States. Applicant shall provide proof of the country where materials were produced.

§ 9. BATTERY ENERGY STORAGE SYSTEMS

Any provisions of Town of Columbia Law No. 1 of 2022 (Previous # Local Law No. 2 of 2021) – Battery Energy Storage Systems notwithstanding, pursuant to this law, in the Town’s effort to protect public health and promote public safety, given the health and safety concerns associated with lithium-ion batteries and large-scale battery devices in general, Tier 2 Battery Energy Storage Systems are prohibited in the Town of Columbia.

In the event the prohibition on Tier 2 BESS is waived or not applied by any New York State agency or official, then Tier 2 BESS shall be subject to the substantive standards of Local Law No. 1 of 2022 (Previous # Local Law No. 2 of 2021) – Battery Energy Storage Systems, and the following additional substantive standards:

- a. Tier 2 BESS are only a permitted use in the Agricultural and/or Commercial District (A-C), as designated by the Town of Columbia Zoning Law.
- b. Tier 2 BESS shall not be installed within 2,500 feet of any occupied structure.
- c. Tier 2 BESS shall be setback at least 1,000 feet from any property boundary.

§ 10. APPLICATION AND SOLAR ENERGY FACILITY PERMIT REQUIREMENTS AND FEES

A Solar Energy Facility Permit application for proposed non-Tier 1 Solar Energy Facilities, meeting the criteria as defined in this law and Article V of the Town of Columbia Zoning Law, is to be submitted to the Town Board, and will require a Site Plan Review pursuant to Article VI of the Town of Columbia Zoning Law, and environmental impact review pursuant to SEQRA. Where the requirements of the Columbia Solar Energy Facilities Local Law are inconsistent with the requirements of Articles V (Special Use Permits) and VI (Site Plan Review) of the Town of Columbia Zoning Law, the Columbia Solar Energy Facilities Law shall be controlling. The overall size of the project shall be calculated by determining the outermost dimensions of the Solar Energy Facility footprint, with no deduction taken for spaces between solar panels or between rows of solar panels.

The Applicant for a Solar Energy Facility Permit for a Non-Tier 1 Solar Energy Facilities shall be responsible for reimbursing the Town for the cost of any legal services or engineering review by the Town Designated Engineer required in processing the application, and monitoring construction of the facility (collectively the “professional services fees”). Applications for Non-Tier 1 Solar Energy Facilities shall be accompanied by a payment of thirty-five-thousand-dollars (\$35,000.00) to the Town, to be held in an escrow controlled by the Town (the “professional services escrow”), for the purposes of paying any professional services fees incurred for review of the application, or construction and compliance monitoring. Whenever the amount of funds in the professional services escrow falls below \$10,000, the Applicant shall contribute an additional \$10,000.00 to the escrow. Any funds remaining in the professional services escrow upon commencement of commercial operation of the Non-Tier 1 Solar Energy Facilities shall be returned to the Applicant, or its successor or assign.

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Town Board may use the Town Designated Engineer (TDE) and retain consultants, lawyers, and/or other experts necessary to assist the Town in reviewing and evaluating the Application.

Additional Application Requirements:

- a. A non-refundable Town of Columbia Solar Energy Facility Permit fee payable to the Town of Columbia is required for all Solar Energy Facilities in accordance with the Schedule of Fees of the Town of Columbia. A separate building permit fee is also required prior to construction. Civil penalties and fees may be assessed to the property owner for any building permit fees not paid, or if installation has commenced without an approved and paid building permit issued by the Town of Columbia.
- b. Applications for proposed projects that are intended primarily for Agricultural and Farm Operations in an Agricultural District certified pursuant to Article 25-AA of the Agricultural and Markets Law, and which are to be integrated to the electrical grid, shall be deemed Type II actions not requiring coordinated review under SEQRA, provided that the total amount of electrical energy generated does not exceed one hundred and ten percent (110%) of the anticipated annual electrical needs of a farm.
- c. No Segmentation – The Applicant shall disclose the full scope of planned size of the Solar Energy Facilities and shall not segment the application for purposes of reducing the apparent significance of proposed plans. Where the lead agency has reason to believe that the ultimate scope of the project might exceed that which is proposed by an Applicant at one time, it shall conduct its review and base its findings on the larger potential scope.
- d. Application contents for a Solar Energy Facility Permit shall consist of:
 1. Name, address, telephone number and email address of the Applicant, being the property owner and, if the project site is leased, the Lessee. If the Applicant is to be represented by a Lessee or an Agent, the name, address, telephone number and email address of the Lessee or Agent, as well as an original signature of the Applicant authorizing the Agent to represent the Applicant is required.
 2. If the property of the proposed project is to be leased, a copy of the lease and/or legal agreement between all involved parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
 3. A timeline of the proposed project, including, but not limited to the estimated construction timeline, date of operation, projected length of the Solar Energy Facilities' lifespan, and its estimated average production as a percentage of the nameplate capacity (in kilowatts) over a continuous period of one year.

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4. Blueprints showing the layout of the Solar Energy Facility signed by a Professional Engineer or Registered Architect shall be required. A Landscape Architect or Land Surveyor may sign supplemental landscape plans or surveys.
5. A projection of the proposed photovoltaic system's maximum, total generating capacity, for years 1-25, inclusive of the degradation rate.
6. Design drawings providing an overview of the main system's components, to include the numbers of, dimensions and layout of photovoltaic panels and tilt, numbers and locations of inverters, battery storage facilities, and any other site-specific information that will aid in making an overall evaluation of the system.
7. Property Operation and Maintenance Plan – Such plan shall describe anticipated requirements for photovoltaic maintenance and property upkeep, such as mowing and trimming, both for appearance sakes and for grass fire prevention, rodent control, snow removal and emergency alert system and access.
8. A written, legally binding commitment to provide mandatory annual training for all active, local emergency responders participating in fire-ground operations must be made by the Facilities Operator. Appropriate training must be taught by a State certified instructor, and include training covering all aspects of potential hazards including those unique to solar panels, such as their resistance to and reaction under heat exposure, inverters, batteries, etc. Said training shall be offered by and paid for by the Facility Operator and shall be a required of any fire department located within a 15-mile radius of the facility's perimeters. Annual training shall be offered until all equipment has been removed from the site. All appropriate equipment and materials necessary to properly control, suppress and put out fire and smoke output shall be provided by the operator, at their own expense.
9. Decommissioning Agreement Proposal. To ensure the proper removal of Solar Energy Facilities, a proposed Decommissioning Agreement and Decommissioning Security, consistent with Section 12(c) law, shall be submitted as part of the application.
10. A visual analysis of the Solar Energy Facilities as installed, which shall include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. Applicants are encouraged to consult with the Town Supervisor and Code Enforcement Officer prior to completing an visual impact analysis, and to obtain specific guidance on the level of visual impact analysis required given the specific location of any proposed facility.
11. A physical flag mock-up meeting outlining the footprint of the fenced in area of each parcel, within the Solar Energy Facilities, shall be coordinated and conducted with each parcel included within the project, to include, but not limited

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to the Applicant, Landowner, adjacent Landowners, and Town Board and Town Planning Board.

12. Written and notarized evidence that the electric utility service provider that serves the proposed Site has been informed of and agreed to the Applicant's intent to install an interconnected electricity generator.
13. A completed Full Environmental Assessment Form (FEAF) as defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations, and if required, a proposed Draft Environmental Impact Statement (DEIS).
14. General Municipal Law regarding Conflicts of Interest of Municipal Officers and Employees, Section 809, disclosure form.
15. A Storm water pollution prevention plan as per New York State DEC requirements to detail storm water runoff management and erosion control plans for the site(s) is required, as well as making adjustments to the storm water pollution prevention plan as needed to during and after the construction phase, should the performance of the plan be deficient in practice.
16. A sound study providing details of the proposed noise that may be generated by inverter fans, or other noise-generating equipment that may be included in the project, including actual readings of existing daytime and nighttime ambient noise at the boundary of the participating properties; the sound study shall predict the potential increase in noise from the project over the existing ambient noise levels at neighboring non-participating property lines and residences.
17. The results of on-site bird and bat migration, nesting and habitat surveys. Surveys must be conducted during the appropriate seasonal windows during the year prior to submittal of an application. Applicants shall use the most recent New York State Department of Environmental Conservation survey protocols for grassland birds and winter raptors. For other wildlife, Applicants shall follow NYSDEC guidance on appropriate survey methods.
18. All engineering documents, including site plan, Stormwater Pollution Prevention Plan and Decommissioning Plan, shall be signed and sealed by a New York State-licensed professional engineer or New York State-registered architect and provided to the Town Board as part of the application process.
19. Any other information required to be submitted with a special use permit application pursuant to Article V of the Town of Columbia Zoning Law.
20. Such other requested information as the Code Enforcement Officer, Planning Board or Town Board may reasonably require.
21. Application submittal – In addition to e-mailing the Town Board, six hard copies of the application shall be submitted to the Town Board.

§ 11. APPLICATION REVIEW PROCESS

Applicants shall conduct a pre-application meeting with the Town Supervisor and with any consultants retained by the Town to discuss an impending application.

- a. Application Sufficiency Review – The Town Board, Code Enforcement Officer, or Town Board designated consultants shall, within 60 days of receipt of an application, or longer if agreed to by the Applicant:
 1. Determine if all Solar Energy Facility Permit application requirements under this law are included in the application.
 2. No application shall be considered until deemed sufficiently complete by the Code Enforcement Officer.
 3. If the application is deemed incomplete, the Code Enforcement Officer or designated reviewer, after consultation with the Town Board, shall provide the Applicant with a written statement listing the missing information. No refund of application fees or escrow payments shall be made, but no additional fees shall be required upon submittal of the additional information, unless the project size is increased.
- b. Application Review – Upon determination that the Application is complete, the Town Board and any designated consultants will review the application for compliance with all applicable laws and regulations, and conduct any required environmental impact review pursuant to SEQRA. For the purposes of SEQRA, the Town Board shall be designated as lead agency, and shall coordinate the environmental impact review.
- c. Public Hearing – At any time after the Application is deemed complete, but not earlier than 60 days after the Application is deemed complete, the Town Board shall hold a minimum of one (1) Public Hearings on the application.
 1. The Applicant shall provide notice of the Public Hearing by registered mail and provide return receipts to owners of property parcels located wholly or partially within a one thousand (1,000) foot radius of the proposed site and return receipts to the Town, and shall publish a notice in the Town’s official newspaper, no less than ten nor more than twenty days before any hearing. Should the hearing be adjourned by the Board to hear additional comments, no further publication or mailing shall be required. The assessment roll of the Town shall be used to determine mailing addresses.
 2. The public hearing may be combined with public hearings on any Environmental Impact Statement or any other associated requests for action by the Town.
- d. County Planning Board Notice – A full statement of the proposed action for the project shall also be given to the Herkimer County Planning Board if applicable per General Municipal law § 239-l and § 239-m.

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- e. Application Decision – Upon receipt of the recommendation of the Herkimer County Planning Board (if applicable), and after holding a public hearing, and after the completion of the SEQRA review, the Town Board shall, within 60 days after closure of the public hearing approve, approve with conditions, or deny the application.
- f. In rendering a decision on the application, the Town Board shall consider all substantive and procedural requirements set forth in this law, as well as the standards for review of a special use permit application set forth in Article V of the Columbia Zoning Law, or any other applicable laws or regulations. Wherever this law and the Town of Columbia Zoning Law are in conflict, the more stringent or restrictive provision is intended to apply.

§ 12. ADDITIONAL REQUIREMENTS

Prior to obtaining a building permit and commencing construction, the Applicant for a Solar Energy Facility shall provide the following to the Town of the Columbia:

- a. Indemnification – The Applicant for a Solar Energy Facility shall indemnify the Town. The agreement shall require the Applicant, Landowner, and Facilities Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of or be caused by the placement, construction, erection, modification, location, equipment’s performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said Solar Energy Facilities, excepting however any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages or changes referenced herein, reasonable attorneys’ fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.
- b. Road Use Assurances – Prior to the issuance of the building permit and commencement of construction, an existing condition survey of the approved hauling routes using town roads shall be undertaken by the Applicant at the Applicant’s expense. Any road, road shoulder areas, ditches, culverts, and its adjacent right of ways damaged during construction caused by the operator or its subcontractors on town roads shall be repaired or reconstructed to the satisfaction of the Town of Columbia Superintendent of Highways and the Town Board at the Facility Operator’s expense. Road Use Assurances may be demonstrated through execution by the Town and the Applicant of a mutually agreeable Road Use Agreement.
- c. Decommissioning Agreement and Decommissioning Security.

Execution of, and compliance with, a Decommissioning Agreement shall be made a condition for the issuance of a Solar Energy Facility Permit under this Section, and commencement of construction of the Solar Energy Facility. The Decommissioning

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Agreement must specify that after the Solar Energy Facility can no longer be used, is deemed abandoned, or obsolete, the Applicant and/or any subsequent owner shall remove it. The Decommissioning Agreement shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted in order to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A Professional Engineer acceptable to the Town shall prepare a cost estimate detailing the projected cost of executing the Decommissioning Agreement. Cost estimations shall not be reduced by any expected salvage value. The plan shall allow for periodic recalculation of the cost of decommissioning, and the cost shall serve as the basis for Decommissioning Security for the benefit of the town, and in the form of an escrow, letter of credit, or bond. Removal of Solar Energy Facility must be completed in accordance with the Decommissioning Agreement. Note that if the Solar Energy Facility is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and take recourse to the decommissioning security, or otherwise impose a lien on the property to cover these costs to the municipality.

To protect the Town in the event of abandonment, prior to commencement of construction, the following provisions shall apply to all non-Tier 1 Solar Energy Facilities:

1. If requested by the Code Enforcement Officer or Town Board, the Facilities Operator and/or Landowner of the Solar Energy Facility shall provide the requesting body, within forty-five (45) days of a written request, a report certified by a qualified consultant demonstrating that the Solar Energy Facility is operating at a capacity factor of at least twenty percent (20%) of its rated nameplate capacity over the one (1) year period ending the day of the request. Failure to provide a report within 45 days of a written request shall create a presumption that the Solar Energy Facility is not operating at a capacity factor of at least 20% of its rated nameplate capacity. A Solar Energy Facility shall be deemed “abandoned” if the system fails to generate and transmit electricity with a capacity factor of 20% of its rated nameplate capacity over a continuous period of one year.
2. A Solar Energy Facility also shall be deemed abandoned and required to be decommissioned if, construction of the system has not commenced within twelve (12) months of issuance of the first Solar Energy Facility Permit for the project, or been completed within eighteen (18) months after the commencement of construction. The time at which a Solar Energy Facility shall be deemed abandoned may be extended by the Town Board, at its sole discretion, for one additional period of one year, provided the Facilities Operator presents to the Town Board a viable plan outlining the steps and schedules for placing the system in service or back in service, at no less than twenty percent (20%) of its rated nameplate capacity (in kilowatts), within the time period of the extension. The Applicant prior to abandonment shall make an application for an extension period to the Town Board. The Town Board in determining whether to grant an extension may consider extenuating circumstances as to why the Solar Energy Facility has not been operating, or why construction has not been completed.

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3. Decommissioning and Removal – Decommissioning and removal of all ground-mounted Solar Energy Facility shall consist of:
 - a. Physical removal of all above and below ground equipment, structures and foundations, steel I-beams or other similar pilings, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the Site.
 - b. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations. Remediation of the ground surface and soil to permit resumption of farming.
 - c. Stabilization and re-vegetation of the site with native seed mixes or plant species (excluding invasive species), or common agricultural plantings to minimize erosion.
4. Decommissioning and Removal by Town – If a Solar Energy Facility Owner, Facility Operator, or Landowner fail to decommission and remove an abandoned facility in accordance with the requirements of this Section, the Town may enter upon the property to decommission and remove the system at the expense of the Applicant and Landowner.
5. Removal by Town and Reimbursement of Town Expenses – All costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a Solar Energy Facility, including legal costs and expenses, shall be reimbursed by the Facility Owner, Facility Operator, or Landowner. Any costs incurred by the Town for decommissioning and removal that are not paid, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected with interest by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.
6. Prior to commencement of construction of any non-Tier 1 Solar Energy Facility, the Applicant shall enter into a decommissioning agreement with the Town. The decommissioning agreement shall contain a requirement for decommissioning security, for the benefit of the town, in the form of an escrow, letter of credit, or a surety bond in an amount sufficient to cover the full cost of the removal and disposal of the Solar Energy Facility and any associated accessory structures. The Facilities Owner and Facilities Operator shall provide an updated Decommissioning Cost Estimate, accounting for anticipated rates of inflation, prepared by a Town designated New York State Licensed Engineer every two (2) years, and the surety bond shall be adjusted, if necessary, to reflect the then current decommissioning cost. And such surety bond must be provided pursuant to a Decommissioning Agreement with the Town, approved by the Town Board and Town Attorney as to form, sufficiency, and manner of execution. All

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surety bonds must not lapse before decommissioning is complete and must be provided by an A rated, or better, institution.

- d. Payment-in-Lieu of Taxes – In addition to any Host Community Benefit Agreement that may be entered into, the Applicant for a Solar Energy Facility shall enter into an agreement for a payment in lieu of taxes (PILOT) with the Town Board pursuant to Real Property Tax Law Section 487. This PILOT agreement shall be reviewed and approved by the Town Board. A PILOT agreement executed with the County Industrial Development Agency (IDA), acceptable to the Town Board, in its sole discretion, for the Solar Energy Facility may serve to meet the requirements of this section, at the Town of Columbia’s discretion.
1. No building permit shall be issued or construction commenced for a Solar Energy Facility until such time as the PILOT agreement has been executed by all parties recorded at the Office of the County Clerk.
 2. The PILOT shall run to the benefit of the Town and be executed by the operator and the owners of the real property upon which the Solar Energy Facility is to be located and such signatures be notarized in such a way that allows the PILOT agreement to be recorded at the Office of the County Clerk.
 3. Prior to commencement of construction, the PILOT agreement shall be recorded at the Office of the County Clerk as a lien on the property and indexed against the property/properties upon which the Solar Energy Facility is to be constructed. The intent of this provision is so that should the Facilities Operator of the Solar Energy Facility default with regard to the PILOT agreement, such obligation will become the responsibility of the then Landowner of the property upon which the Solar Energy Facility is sited and failure to satisfy the terms of such agreement will permit the Town to enforce such agreement against the Landowner.

§ 13. SYSTEM OPERATIONS

- a. Safety/Emergency Response – Before any Solar Energy Facility becomes active, the owner/operator of the system shall make arrangements for an on-site meeting(s) and safety training session(s) and invite fire departments within 15 miles of any property that hosts the Solar Energy Facility (e.g., Columbia-Litchfield Fire District, German Flatts Ilion Central Fire Station, Mohawk Fire Department, Richfield Springs Fire Department, West Winfield Fire Department) to review the components of the system, safety issues and procedures for emergency response. This shall include details on the location of labeled warnings, access to the site, and emergency disconnection of the system, along with providing a training video. In addition, the Town may require the installation of placards that provide mutual aid responders with sufficient information to protect them when responding to calls on site.
- b. Ownership Changes – If the owner or operator of the Solar Energy Facility changes or the owner of the property changes, all requirements of this law shall remain in effect. Approval to operate the system shall continue, provided that the successor owner or

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operator assumes in writing all of the obligations of this law, site plan approval, decommissioning plan, security and any agreements. A new Facilities Owner or Facilities Operator of the Solar Energy Facility shall notify the Town Board of such a change in ownership or operator at least 30 days prior to the ownership change.

- c. Annual Report – On a yearly basis, the Facilities Owner shall provide the Town Board a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid. The report should also include annual water testing results described in this law, along with other potential requests from the Town Board. The report shall be submitted no later than 30 days after the end of the calendar year.
- d. Vegetation – During and following construction of a Solar Energy Facility, all disturbed areas where soil has been exposed shall be reseeded with native grasses and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- e. Project Changes – Any post-approval changes to the Solar Energy Facility, except for immaterial modifications as defined herein, shall be done by amendment to the special use permit only and shall be subject to the requirements of this law.
- f. Unless expressly limited by a condition imposed in the permit, the Town Board may, during project construction, allow immaterial modifications to the design of the project as represented in the final set of site plans reviewed by the Town Board. Such immaterial modifications shall only be allowed in response to a written request by the Applicant or permittee. All such requests shall be addressed to the authorized Town designee, with copies to the Town Board.
- g. Certification – After completion of a Solar Energy Facility, the Applicant shall provide a post-construction certification from a professional engineer, designated by the Town, registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The Applicant shall further provide certification from the utility that the facility has been inspected and connected.
- h. Insurance – The holder of a Solar Energy Facility Permit for a Solar Energy Facility shall agree to secure and maintain for the duration of the permit, public liability insurance as follows (unless waived by the Town Board for smaller systems):
 - 1. Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence, \$10,000,000 aggregate, which shall specifically include the Town and its officers, councils, employees, attorneys, agents and consultants as additional named insured;
 - 2. Umbrella coverage: \$10,000,000
 - 3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

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4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of cancellation.
 5. Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.
 6. No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.
 7. A certificate of insurance that states it is for information purposes only and does not confer sufficient rights upon the Town shall not be deemed to comply with this law.
- i. Construction Inspection – The escrow account required herein shall, in part, be used to provide inspection by a Town engineering consultant to assist the Code Enforcement Officer during construction of the Solar Energy Facility. Work shall remain accessible and exposed until inspected and accepted by the CEO, in consultation with the engineering consultant and legal counsel. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to how the work fails to comply with the Uniform Code or conditions of the special use permit, or any other applicable laws. Work not in compliance shall remain exposed until brought into compliance, reinspected, and found satisfactory as completed. During construction, the Town Building Inspector/Code Enforcement Officer can issue a stop order at any time for violations of the special use permit.
 - j. Groundwater Testing – The Facilities Operator shall provide, at Facility Operator’s expense, water testing of private wells on and adjoining the property or parcels, which have solar panels installed, and within 1,000 feet of the Solar Energy Facility boundary prior to construction of the system to establish baseline testing results, and at one-year intervals during system operation for the first 5 years of operation, then every 5th year thereafter. If the private property owner refuses to grant access to the property and well for collection of the data or if the well cannot be accessed for the collection of data for practical purposes, the operator will not be required to do any pre-construction or post-construction testing of the well. Testing will be done for lead, PFAS and other substances that may be determined by the Town Board, depending on the composition of panels in particular projects. In the event groundwater contamination occurs as a result of the Solar Energy Facility, the Facility Operator, at its sole expense, shall either provide a reliable alternative water source or address the contamination in accordance with all legal requirements. Water testing must also include a water flow measurement, measured by gallons per minute (GPM).
 - k. Maintenance – System equipment, grounds, fencing and buffer areas shall be maintained in good condition, as determined by the Town Building Inspector/Code Enforcement Officer, by the operator. Plant growth shall be controlled by mowing or grazing. The use of herbicides shall be reviewed and approved by the Town Board. Broken panels and any other damaged or malfunctioning equipment shall be removed from the site within 30 days of discovery or notification of problem.

FOR REINTRODUCTION 6/6/24

1. Operational Inspection – Upon 24 hours advance notice to the owner/operator or designated contact person, the Town Code Enforcement Officer/Building Inspector or his or her designee may enter the Solar Energy Facility to verify compliance with any requirements or conditions. The Solar Energy Facility shall be inspected annually by a New York State licensed professional engineer, under contract with the town and paid for by the operator to ensure that it is operating according to the conditions of the special use permit. Such inspections shall be done annually, and at any other time, upon a determination by the Town’s Building Inspector that damage may have occurred. The engineer shall file an inspection report with the Town Code Enforcement Officer/ Building Inspector. All recommendations for maintenance and repair contained in said report shall be completed by the operator within a written schedule agreed on by the Code Enforcement Officer/Building Inspector.

§ 14. CERTIFICATE OF OCCUPANCY

No Solar Energy Facility erected subject to the Uniform Code and this Local Law shall be used until a Certificate of Occupancy has been issued by the Code Enforcement Officer/Building Inspector after approval of the Town Board.

§ 15. ENFORCEMENT, PENALTIES AND REMEDIES FOR VIOLATIONS

- a. The Town Board shall appoint such Town staff or employ outside consultants as necessary to enforce this Local Law.
- b. Any person owning, leasing, controlling or managing any building, structure or real property who shall construct or operate a Solar Energy Facility in violation of this Local Law, or is in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the Code Enforcement Officer/Building Inspector or Town Board, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine or imprisonment as assessed through legal proceedings, pursuant to New York Town Law § 135, or other appropriate law. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.
- c. The Town may place a lien on the property and institute a civil proceeding to collect civil penalties of an amount to be determined for each violation. Each week said violation continues shall be deemed a separate violation.
- d. In case of any violation or threatened violation of any of the provisions of this Local Law, including the terms and conditions imposed by any permit issued pursuant to this Local Law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

§ 16. SEVERABILITY

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgement of any court of competent jurisdiction to be impaired, illegal, invalid, unenforceable, or 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, and shall be fully severed from this Code, and there shall be automatically added in lieu thereof a provision as similar in terms and intent to such severed provision as may legal, valuable, and enforceable.

§ 17. EFFECTIVE DATE

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

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