

Town of Gardiner

Local Law No. __ of the year 2017

A Local Law to Amend Chapter 220 of the Town Code to Provide for the Regulation Solar Energy Systems in the Town of Gardiner.

Be it enacted by the Town Board of the Town of Gardiner as Follows:

SECTION 1. TITLE

This local law shall be known as “A Local Law Amending Chapter 220 of the Town Code to Provide for the Regulation of Solar Energy Systems in the Town of Gardiner.”

SECTION 2. AUTHORITY

This Zoning for Solar Energy Law is adopted pursuant to sections 261-263 of the N.Y. Town Law and N.Y. Municipal Home Rule Law, which authorizes the Town of Gardiner to adopt regulations 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.

SECTION 3. AMENDMENT

Chapter 220 of the Town Code of the Town of Gardiner is hereby amended as follows:

Town Code §220-47 is hereby deleted in its entirety and replaced with the following provisions:

§220-47. Solar Energy Systems

A. Statement of Purpose, Applicability and Definitions

1. Purposes of this Section. This Zoning for Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of the Town of Gardiner, including:
 - (a) Taking advantage of a safe, abundant, renewable, and non-polluting energy resource for residents of the Town of Gardiner;
 - (b) Decreasing the cost of energy to the owners of commercial and residential properties within the Town of Gardiner;
 - (c) Increasing employment and business development in the region by furthering the installation of Solar Energy Systems;

- (d) Promoting energy efficiency and the use of renewable resources in new construction and renovations; and
- (e) Encouraging the development of local power generation capacity in a manner consistent with the Gardiner Open Space Plan, the Gardiner Master Plan and the town's rural character and quality of life.

2. Applicability.

- (a) The requirements of this local law shall apply to all solar energy systems and equipment installations modified or installed after the effective date of this local law.
- (b) Solar energy system installations for which a valid building permit has been issued and for which installation has commenced before the effective date of this local law shall not be required to meet the requirements of this local law.
- (c) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in applicable residential, building, electrical and fire codes, and the Town Code.
- (d) Solar collectors, unless part of a Large Scale Solar Energy System or Solar Energy System designed for a Subdivision Use, 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, but nothing contained in this provision shall be construed to prohibit "collective solar" installations or the sale of excess power through a "net billing" or net metering" arrangement in accordance with New York Public Service Law 66 or similar state or federal statute.

3. Definitions.

Applicant

Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests an approval or permit to construct a Solar Energy System.

Area of Use

The area within the parcel measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and access roadways.

Building-Integrated Photovoltaic (BIPV) Systems

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.

Building-Mounted Solar System

See Rooftop or Building-Mounted Solar System.

Collective Solar

Solar installations owned collectively through subdivision homeowner associations, college student groups, “adopt-a-solar-panel” programs, or other similar arrangements.

Community Net Metering

As provided for by the NY State Public Service Commission.

Flush-Mounted Solar Panel

Photovoltaic panels and tiles or other solar collectors that are installed flush to the surface of a building roof and which cannot be angled or raised.

Ground-Mounted, Freestanding, or Pole Mounted Solar Energy System

A Solar Energy System that is anchored to the ground and attached to a frame, pole or other mounting system, detached from any other structure for the purpose of producing electricity for onsite or offsite consumption.

Kilowatt (kW)

Equal to 1000 Watts; a measure of the use of electrical power.

Megawatt (MW)

Equal to 1000 Kilowatts; a measure of the use of electrical power.

Net-Metering

A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

Offsite Use

A solar energy system designed to be used primarily for export of solar energy to be used primarily by parcels other than the parcel it is located on.

Onsite Use

A solar energy system designed to be used primarily by the building and/or parcel on which it is located.

Owner

Any person, firm, partnership, association, corporation, company or organization of any kind who or which: 1) owns a Solar Energy System, or 2) owns real property upon which a Solar Energy System is constructed or proposed.

Photovoltaic (PV) Systems

A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

Qualified Solar Installer

A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

Remote Net Metering

As provided for by the NY State Public Service Commission.

Rooftop or Building-Mounted Solar System

A solar panel system located on the roof of any legally permitted and/or constructed building or structure for the purpose of producing electricity for onsite or offsite use.

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 systems on individual properties.

Solar Collector

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

Solar Easement

An easement recorded pursuant to NY Real Property Law § 335-b.

Solar Electric Generating 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 Energy System, Large Scale** – A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite use, sale, or consumption.
- **Solar Energy System, Small Scale** - Solar photovoltaic systems which generate power exclusively for onsite use and consumption by the owners, lessees, tenants, residents, or other occupants of the premises of the building or lot to which they are attached and do not provide energy for any other lots, except as may be allowable under NY State or federal regulation.
- **Solar Energy System, Subdivision Use** – A collective solar energy system occupying less than or equal to two (2) acres area of use consisting of ground-mounted solar arrays or roof panels, and associated control or conversion electronics and that will be used to produce utility power to provide energy only for the onsite use and consumption of the specific lots associated with a particular major or minor subdivision.

Solar Inverter

Converts the variable direct current (DC) output of a photovoltaic (PV) solar panel into a utility frequency alternating current (AC) that can be fed into a commercial electrical grid or used by a local, off-grid electrical network

Solar Panel

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

Solar Storage Battery

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

Solar-Thermal Systems

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

Tilt

The angle of the solar panels and/or solar collector relative to their latitude.
True Solar Noon - When the sun is at its highest during its daily east-west path across the sky.

B. Solar as an Accessory Use or Structure – Permit Required.

1. No Solar Energy System or device shall be installed or operated in the Town except in compliance with this Section. All solar energy systems shall be performed by a qualified solar installer.
2. Any connection to the public utility grid must be inspected by the appropriate public utility.
3. All required diagrams and plans must include the following:
 - (a) Project address, section, block and lot number of the property;
 - (b) Owner's name, address and phone number;
 - (c) Name, address and phone number of the person preparing the plans;
 - (d) Name, address and phone number of any other entity with an interest in the property, including but not limited to any leaseholder and/or holder of any option to purchase, and
 - (d) System capacity in kW-DC.

4. Solar energy systems and equipment shall be permitted only if they are determined by the Town not to present any unreasonable safety risks, including, but not limited to, the following:
 - (a) Weight Load, inclusive of snow and ice loads
 - (b) Wind resistance
 - (c) Ingress and egress in the event of fire or other emergency.
5. The Building Inspector shall have authority to determine compliance with the requirements set forth in this section. Consideration shall be made regarding glare or other adverse effects on neighboring properties when determining compliance with this provision.

C. Rooftop and Building-Mounted Solar Collectors.

1. Rooftop and Building-Mounted Solar Collectors are permitted in all zoning districts in the Town subject to the following conditions:
 - i. Building permits shall be required for installation of all rooftop and building-mounted solar collectors.
 - ii. Rooftop and Building-Mounted Solar Collectors shall not exceed the maximum allowed height by more than four (4) feet of the principal use in any zoning district.
 - iii. There shall be adequate ventilation opportunities afforded by panel set back from other rooftop equipment (for example; shading or structural constraints may leave significant areas open for ventilation near HVAC equipment);
 - iv. In order to ensure firefighter and other first responder safety, in accordance with applicable residential, building, electrical and fire codes, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for walking around all Rooftop and Building-Mounted Solar Collectors. Additionally, installations shall provide for adequate access and spacing in order to:
 - (i) Ensure access to the roof;
 - (ii) Provide pathways to specific areas of the roof;
 - (iii) Provide for smoke ventilation opportunity areas; and
 - (iv) Provide emergency egress from the roof.
 - v. Exceptions to these requirements may be requested where access, pathway or ventilation requirements are reduced due to:

- (i) Alternative access opportunities (such as from adjoining roofs)
- (ii) Ground level access to the roof area in question;
- (iii) Adequate ventilation opportunities afforded by panel set back from other rooftop equipment;
- (iv) New technology, methods, or other innovations that ensure adequate emergency responder access, pathways and ventilation opportunities.

vi. Rooftop and Building-Mounted Solar Collectors must be properly engineered to support solar collectors. The applicant must provide a signed and sealed certification from a New York State licensed professional engineer containing the following information:

- (i) The roof structure is strong enough to support the additional weight of the solar units as per applicable residential, building, electrical and fire codes.
- (ii) All solar collectors are in compliance with applicable residential, building, electrical and fire codes.
- (iii) The solar energy system is constructed and installed in compliance with applicable residential, building, electrical and fire codes.

vii. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:

- (i) 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.

2. In the event any of the standards in this subsection §220-47(C)(1) are more stringent than applicable residential, building, electrical and/or fire codes, the standards in this subsection shall be deemed to be guidelines only and the standards of the residential, building, electrical and/or fire codes shall apply.

D. Building-Integrated Photovoltaic (BIPV) Systems. BIPV systems are permitted in all zoning districts and shall be shown on the plans submitted for the building permit application for the building containing the system.

E. Free Standing and ground mounted solar collectors.

1. Building permits are required for the installation of all ground-mounted and free standing solar collectors.
2. Free standing or ground mounted solar collectors designed for Onsite Use are permitted as accessory structures in all zoning districts of the Town of Gardiner, subject to the following conditions:

- (a) The solar collector meets all applicable setback requirements for accessory buildings in the zoning district in which it is located.
 - (b) The solar collector must be installed in a side or rear yard.
 - (c) No unit shall exceed 14 feet in height from the ground unless an area variance is obtained from the Zoning Board of Appeals.
 - (d) Freestanding and ground mounted solar energy collectors shall be screened as possible and practicable through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.
 - (e) The total surface area of all ground-mounted and freestanding solar collections on a lot shall not exceed the area of the ground covered by the building structure of the largest building on the lot. Notwithstanding the foregoing, non-residential placements exceeding this size may be approved by the Planning Board, subject to site plan review and approval pursuant to Article IX of this Chapter.
3. Any free-standing, ground mounted or pole mounted solar collectors to be installed in a non-residential zone shall require site plan review and approval by the Planning Board pursuant to Article IX of this Chapter prior to the issuance of any building permit.

F. Solar Thermal Systems.

- 1. Building permits are required for the installation of all solar thermal systems.
- 2. Solar Thermal Systems are permitted in all zoning districts subject to the same requirements set forth above as for Ground Mounted and Free Standing Solar Collectors.

G. Solar Energy System Designed for Subdivision Use.

- 1. When an application for either a Minor or Major Subdivision is presented to the Planning Board, which plans include incorporation of a Solar Energy System as a community energy source, the following criteria for the review and use shall be considered:
 - (a) Solar energy collectors shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the subdivision on which they are erected, but nothing contained in this provision shall be construed to prohibit collective solar installations or the sale of excess power through a net billing or net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.

- (b) The Solar Energy System shall be located on one or more lots of the subdivision.
 - (c) All Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards.
 - (d) A Homeowner's Association shall be established for the operation and maintenance of the solar energy system.
2. Permitted locations.
- (a) Solar Energy Systems designed for subdivision use shall be permitted in all zoning districts with site plan review and approval from the Planning Board pursuant to Article IX of this Chapter issued in conjunction with minor or major subdivision review, so long as the Solar Energy System meets the criteria set forth in this subsection and any other applicable provisions of this Zoning Law, and all other necessary approvals are obtained.
 - (b) Solar Energy Systems designed for subdivision use shall not be permitted in a one-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps or within 100 feet of a New York State or federally designated wetland.
3. Specific Site Plan requirements. A Solar Energy System designed for a subdivision use shall comply with all the site plan requirements of Article IX of this Chapter. Additional requirements for the use shall include but not be limited to the following:
- (a) Maximum area. The maximum area of use for a solar energy system designed for a specific subdivision use shall occupy \leq two (2) acres of land area of use.
 - (b) Height: The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed fourteen (14) feet in height above the ground.
 - (c) Setbacks: The minimum setback for a solar energy system designed for a specific subdivision use and equipment used in conjunction with the solar energy system shall be at least thirty-five (35) feet from all lot lines of parcels associated with the subdivision and fifty (50) feet from all perimeter lot lines of contiguous parcels not a part of the subdivision.
 - (d) A minimum twenty-five (25) foot perimeter buffer, which may be partially or totally within the subdivision perimeter lot line setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all

mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads.

- (e) The solar energy system shall be preferably located on an interior lot of the subdivision and placed away from contiguous residential use. Where a solar energy system designed for a specific subdivision use will abut other residential uses outside of the boundaries of the subdivision, there shall be increased consideration for mitigating visual impact to the residential use. For example, increased setbacks, visual screening that does not impair solar access, or sound buffering may be required by the Planning Board. Planting of invasive species shall be prohibited to mitigate visual and audio impact.
- (f) Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality. Site plans shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.
- (g) A land grading and vegetation-clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway and the area required for solar access.
- (h) Landscape screening shall be provided in accordance with the landscaping provisions of this chapter. Non-invasive ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, and non-fertilizer-dependent.
- (i) Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite.
- (j) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.
- (k) Conveyance of Energy to Subdivision Lots. The Site Plan shall show the pathways of utility service lines which will be put into place to convey energy to each lot of the subdivision. Necessary utilities to serve the site shall preferably be underground and in compliance with all local, State, and Federal laws, rules, and regulations, including specifically, but not limited to, the

National Electrical Safety Code and the National Electrical Code where appropriate.

- (l) Overhead lines shall follow access roads and/or existing tree lines to minimize visual impact upon surrounding properties.
- (m) All Solar Energy Systems shall be designed and located in order to prevent reflective glare to the maximum extent practicable.
- (n) Signs. A sign no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted. In addition, "No Trespassing" or other warning signs may be posted. All signage shall be maintained in legible condition and contain accurate information. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. No signage of any kind shall be allowed to be attached to solar panels or support structures, except any required safety warnings.
- (o) A Solar Energy System connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy facility will be interconnected to the utility grid.
- (p) A plan for the operation and maintenance of the solar energy facility shall be prepared including proposed covenants and restrictions and a management plan for the proposed Homeowners Association (HOA).
- (q) A Decommissioning Plan, as detailed in §220-47(J)(2)(c) shall be prepared.

H. Safety Standards Applicable to All Solar Energy Systems

1. All solar collector installations must be performed by a qualified solar installer.
2. All Solar energy systems shall be maintained in good working order.
3. All Solar Energy Systems shall be designed and located in order to prevent reflective glare from impacting roadways and contiguous properties to the maximum extent practicable.
4. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of applicable residential, building, fire and electric codes when in use, and when no longer used shall be disposed of in accordance with the laws and regulations of the Town of Gardiner and other applicable laws and regulations.
5. Prior to operation, electrical connections must be inspected by a Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town.

6. Any connection to the public utility grid must be inspected by the appropriate public utility.
 7. Solar Energy Systems 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.
 - (a) For residential applications, the marking may be placed within the main service disconnect. If the main service disconnect is operable with the service panel closed, then the marking should be placed on the outside cover.
 - (b) For non-residential application, the marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.
 - (c) In the event any of the standards in this §220-47(H)(7) for markings are more stringent than applicable provisions of applicable residential, building, fire, and electric codes, they shall be deemed to be guidelines only and the standards of the applicable residential, building, fire and electric codes shall apply.
- I. Decommissioning Requirements for Small Scale Solar Energy Systems and Solar Energy Systems Designed for Subdivision Use Using Free-Standing or Ground Mounted Solar Collectors. If a Free-Standing or Ground Mounted solar collector(s) ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than ninety (90) days after the end of the twelve-month period. In the event that the property owner fails to remove the aforesaid non-functioning system within the time prescribed herein, the Town may enter upon the land where such system has been installed and remove same. All expenses incurred by the Town in connection with the removal of the non-functioning system shall be assessed against the land on which such free-standing or Ground Mounted solar collector(s) is located and shall be levied and collected in the same manner as provided in Article 15 of the N.Y. Town Law for the levy and collection of a special ad valorem levy.
- J. Large Scale Solar Energy Systems
1. Approval Standards for Large Scale Solar Systems as a Special Use.
 - (a) Large Scale Solar Energy Systems are permitted in all zoning districts except the Shawngunk Ridge Protection District (SP-1, SP-2, and SP-3) upon issuance of a Special Use Permit by the Town Board and Site Plan approval by the Planning Board. Said review shall be made in accordance with Article IX of this Chapter and the additional requirements and specific standards set forth in Section J(1)(b).
 - (b) Specific Standards. The Town Board in reviewing a Special Use Permit Application for a Large Scale Solar Energy System and the Planning Board in

conducting the Site Plan review shall observe the following requirements and performance standards as part of its review:

(i) The maximum lot size for a Large Scale Solar Energy System is twenty (20) acres. No Large Scale Solar Energy System shall be permitted on a lot of more than twenty (20) acres.

(ii) The maximum allowable lot coverages shall not exceed fifty percent (50%).

(iii) A two-hundred and fifty (250) foot setback from town roads and existing structures, other than structures located on the same property as the Large Scale Solar Energy System, shall be required. A one-hundred and fifty (150) foot setback from all property lines shall also be required.

(iv) The Town Board shall have the discretion to deny an application for Special Use Permit for a Large Scale Solar Energy System that is proposed on land within 2,000 feet of an existing or approved Large Scale Solar Energy System.

(v) The average height of the solar panel arrays shall not exceed a height of fourteen (14) feet from the ground.

(vi) All on-site utility and transmissions lines shall, to the extent feasible, to be placed underground.

(vii) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of the roadways constructed and soil compaction.

2. Additional Requirements.

(a) Wildlife Management Plan. The applicant shall provide a site-specific wildlife management plan as part of its application for Special Use Permit for a Large Scale Solar Energy System. The following is a suggested format for organizing a management plan into a three-ring binder. At a minimum, the plan should contain the 6 sections below. These sections can be marked in the binder with colored index tabs for easy access:

(i) General Description of the Entire Property: Includes a brief description of the entire property such as location in the county, number of acres, past and current land uses, general forest and vegetation conditions, and number of compartments.

- (ii) Land Use and Management Objectives: Includes a priority listing of wildlife and other land use and management objectives. This section should also include a brief index of each compartment's management objectives.
 - (iii) Sketch Map: Provides a visual description (sketch) of the property. May include several maps such as: 1) a base map that shows boundaries, roads, and other man-made features; 2) a type map that differentiates cover types (timber stands, agricultural fields, and open fields); 3) a soils map that shows the location of different soil types; and 4) a compartment map that indicates where habitat improvement practices have or will take place.
 - (iv) Compartment Record Sheets: Contains descriptive information and wildlife habitat improvement recommendations for each compartment. Also includes a schedule of recommended management activities for the compartment for a 10-year period.
 - (v) Field Notes Section: Provides a commentary of impacts of management activities and wildlife observations taken directly from log books and archived in the three-ringed binder. The most appropriate method for storing field notes is by compartment.
 - (vi) Resource Materials Section: Contains copies of aerial photographs, topographic and soil maps used to draw the base map. This section should also include reference materials such as bulletins, leaflets, and articles on wildlife habitat management. The names, addresses, and telephone numbers of resource professionals who helped prepare the management plan and who will be conducting management practices should be included here.
- (b) Fencing and Screening. Large Scale Solar Energy Systems shall be enclosed by perimeter fencing with a minimum height of at least six (6) feet to restrict unauthorized access. Fencing shall comply with the minimum setback requirements set forth in Section I(2)(c) above. Additional architectural features, earth berms, landscaping or other screening may also be required. All fencing and any additional architectural features, earth berms, landscaping or other screening that is required shall be in harmony with the neighborhood character and consistent with the findings and requirements of the site-specific wildlife management plan included as part of the application for Special Use Permit for a Large Scale Solar Energy System.
3. Contract in Lieu of Taxes. In the event an owner or developer of a Large Scale Solar Energy System provides written notification pursuant to New York Real Property Tax Law Section 487(9)(a) to any taxing jurisdiction of its intent to construct a Large Scale Solar Energy System in the Town, the owner or developer shall also

simultaneously provide a copy of such notification to the Town Clerk, Town Board and Town Planning Board. It is the intent of the Town of Gardiner to require a contract in lieu of taxes for all Large Scale Solar Energy Systems.

4. Construction and maintenance. Prior to the issuance of a building permit for a Large Scale Solar Energy System and any associated accessory structures, the owner and/or operator shall post a surety in an amount and form acceptable to the Town for the purposes of construction and maintenance. The amount shall be up to 20% of the construction value. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee compliance with the conditions of the approval for the Large Scale Solar Energy System. If the owner of the site fails to comply with any conditions of the approval during construction or as part of the long-term maintenance of the site, all costs of the Town incurred to ensure compliance with conditions of the approval shall be paid using the surety provided by the owner and/or operator. Failure to comply with the conditions of the approval or to maintain an acceptable level of surety will result in revocation of the certificate of occupancy.
5. Decommissioning.
 - (a) Prior to removal of a Large Scale Solar Energy System, a demolition permit for removal activities shall be obtained from the Town of Gardiner.
 - (b) Decommissioning Bond.
 - i. Prior to issuance of a building permit for a Large Scale Solar Energy System, the owner or operator of the Solar Energy System shall post a surety in an amount and form acceptable to the Town for the purposes of removal in the event the Large Scale Solar Energy System is abandoned during construction. The amount of the surety required under this section shall be up to 20% of the total construction cost. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee removal of the Large Scale Solar Energy System should the system be abandoned during construction. In such case, the Town Building Inspector shall then provide written notice to the owner or operator to remove the Large Scale Solar Energy System, and the owner or operator shall have one (1) year from written notice to remove the Solar Energy System including any associated accessory structures and/or equipment, and restore the site to a condition approved by the Planning Board. If the owner, operator applicant or lessee fails to remove any associated structures or restore the site to the condition approved by the Board, all costs of the Town incurred to enforce or comply with this condition shall be paid using the surety provided by the applicant.

- ii. As a condition of the Certificate of Occupancy, the owner or operator of the Large Scale Solar Energy System shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated decommissioning cost to ensure removal of the facility in accordance with the Decommissioning Plan as described below. Such surety will be used to guarantee removal of the Large Scale Solar Energy System should the system be abandoned after construction is complete. The form and amount of the guarantee must be reviewed and approved by the Town Attorney and Town Engineer, and the guarantee must remain in effect until the system is removed.

(c) Decommissioning Plan. An application for a Large Scale Solar Energy System shall include a Decommissioning Plan. Removal of a Large Scale Solar Energy System must be completed in accordance with the Decommissioning Plan. The Decommissioning Plan shall:

- i. Specify that after the Large Scale Solar Energy System will no longer be used, it shall be removed by the owner or any subsequent owner and shall include a signed statement from the applicant acknowledging such responsibility.
- ii. Demonstrate how the removal of all infrastructures (including but not limited to aboveground and below ground equipment, structures and foundations) and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. Re-vegetation shall include native plants and seed mixes and exclude any invasive species.
- iii. Include photographs or archival color images of the property proposed for the Large Scale Solar Energy System. Such images must, in aggregate, adequately portray the entire property for the purpose of future reference when soil and vegetation remediation of the property occurs.
- iv. State that disposal of all solid and hazardous waste shall be in accordance with local, state and federal waste disposal regulations.
- v. Provide an expected timeline for decommissioning within the one-hundred day (180) period set forth below in subsection 220-47(J)(5)(b).
- vi. Provide a cost estimate detailing the projected cost of executing the Decommissioning Plan.

6. Abandonment and Removal.

- (a) A Large Scale Solar Energy System is considered abandoned after one (1) year of not performing all normal functions associated with electrical energy generation on a continuous basis.
- (b) Upon cessation of activity of a fully constructed Large Scale Solar Energy System for a period of one (1) year, the Town may notify the owner and/or operator of the facility to implement the Decommissioning Plan. Within one-hundred and eighty (180) days of notice being served, the owner and/or operator can either restore operation equal to 80% of approved capacity, or implement the Decommissioning Plan.
- (c) In the event that construction of the Large Scale Solar Energy System has been started but is not completed and functioning within eighteen (18) months of the issuance of the final Site Plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within one-hundred and eighty (180) days. If the owner and/or operator fail to perform, the Town may require the owner and/or operator to implement the Decommissioning Plan. The decommissioning plan must be completed within one-hundred and eighty (180) days of notification by the Town to implement the Decommissioning Plan.
- (d) Applications for extensions of the time periods set forth in this subsection of no greater than one-hundred and eighty (180) days shall be reviewed by the Town Board.
- (e) Upon recommendation of the Building Inspector, the Town Board may waive or defer the requirement that a Large Scale Solar Energy System be removed if it determines that retention of such facility is in the best interest of the Town.
- (f) If the owner and/or operator fails to fully implement the Decommissioning Plan within the prescribed time period and restore the site as required, the Town may use the financial surety posted by the owner and/or operator to decommission the site, or it may proceed with decommissioning at its own expense and recover all expenses incurred for such activities from the defaulted owner and/or operator. Any costs incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

K. Escrow Deposits for Review and Inspection Costs. An applicant may be required to deposit an initial sum of money into an escrow account in advance of the review of an application for a permit or approval to construct a Solar Energy System. The sums deposited in said escrow account shall be used and administered in accordance with Section 220-58 (A) – (I) of this Chapter.

L. Enforcement. Any violation of this Solar Energy Law shall be subject to the same civil and criminal penalties provided for in the zoning regulations of Town of Gardiner, including but not limited to the issuance of appearance tickets and imposition of civil penalties by the Town Code Enforcement Officer.

SECTION 4. 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 or invalid 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 5. EFFECTIVE DATE

This Local Law shall be effective immediately upon enactment by the Town Board and upon filing a certified copy with the Secretary of State of the State of New York.