

**TOWN OF PORTLAND  
LOCAL LAW NO. 2 OF 2019  
A LOCAL LAW AMENDING THE SOLAR ENERGY SYSTEMS LAW**

Be it enacted by the Town of Board of the Town of Portland, County of Chautauqua and State of New York, as follows:

**SECTION 1. AUTHORITY.**

This local law is promulgated pursuant to the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(10);
2. New York Statute of Local Governments, §10(1) and (7);
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);
4. New York Town Law §130 (11)(peace, good order and safety), (15)(promotion of public welfare);  
and
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(general powers).

**SECTION 2. NEW DEFINITION**

Section 821(B) of the Town of Portland Zoning Code is hereby amended to add the following definition in the appropriate alphabetical position:

**SOLAR ENERGY SYSTEM OVERLAY DISTRICT:** A zoning overlay district which encompasses part of parts of one or more underlying districts and establishes requirements applicable to Large-scale Solar Energy Systems.

**SECTION 3. OVERLAY DISTRICT REGULATIONS**

Section 821(E) of the Town of Portland Zoning Code is hereby replaced in its entirety with the following:

**E. Solar as Principal Use.**

1. Solar Energy System Overlay District. The purpose of the Solar Energy System Overlay District is to permit the Town Board of the Town of Portland to consider the use of the Town's solar energy resources by Large-scale Solar Energy Systems, while preserving important farmland and protecting the health, safety, and welfare of our residents. No Large-scale System shall be built unless it has obtained the appropriate re-zoning from the Town Board.
  - a. Solar Energy System Overlay Districts are permitted in only the Agriculture (A) and Conservation Residential (CR) zoning districts.

- b. The only permitted use within a Solar Energy System Overlay District is a Large-scale Solar Energy System, subject to Special Use Permit issued by the Town of Portland Town Board.
  - c. In considering applications for projects of more than 5 acres on land that is classified as Farmland of Statewide Importance or Prime Farmland or, if not so classified, has been actively farmed in five or more of the past ten years, the Town Board shall carefully consider the potential loss of farmland.
  - d. No Solar Energy System Overlay District may be created without a specific Large-scale Solar Energy System proposed to be located therein.
2. Re-zoning conditions. Prior to being placed on the Town of Portland Zoning Map, all Solar Energy System Overlay Districts shall be conditioned upon the applicant obtaining:
- a. Site plan approval from the Planning Board, the review of which shall include a public hearing in accordance with Section 276 of the New York State Town Law.
  - b. The approval of the Town Board creating the Solar Energy Systems Overlay District on the property, the review process for which shall include a public hearing in accordance with Section 264 of the New York State Town Law.
  - c. Special Use Permit approval from the Town Board, the review of which shall include a public hearing for conditional use permit approval in accordance with Section 274-b of the New York State Town Law.
3. Procedure. The process for approving Large-scale Solar Energy Systems shall be as follows:
- a. Concept site plan. Prior to the submission of any application for re-zoning by the Town Board, the applicant shall submit a concept site plan, as described below, to the Town Planning Board for its review and recommendation on the re-zoning.
  - b. Re-zoning application and Special Use Permit. An application for re-zoning and an application for a special use permit shall be submitted to the Town Board and shall contain the following information:
    - (1) The report of the Town Planning Board resulting from the aforesaid concept site plan and re-zoning review.
    - (2) Name, address, and contact information of the applicant, property owner(s), and agent submitting the proposed project application.
    - (3) The concept site plan. For purposes of this section, a "concept site plan" is a map, drawn to scale, prepared by a licensed engineer or architect, which graphically depicts proposed improvements to the property, including: topographical features, system footprints, travelways, access locations, drainage facilities, lighting, landscaping, buffering, fencing, and signs. The concept site plan shall also depict existing improvements and shall be in accordance with this law and the design and construction standards of the Town of Portland.
    - (4) Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and invertors that are to be installed.

- (5) Verification of utility notification. Foreseeable infrastructure upgrades shall be documented and submitted.
- (6) Proof of ownership of the land proposed for re-zoning. If the property of the proposed project is to be leased, legal consent among all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
- (7) A description of the property, including a metes and bounds description of the parcel.
- (8) A letter of intent which states the land's present use and the type of solar energy system proposed for the land.
- (9) A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.
- (10) A completed long form of the environmental assessment form (EAF).
- (11) A statement as to the present underlying zoning district and proposed zoning as a Solar Energy Systems Overlay District.
- (12) Two copies of an application to re-zone the land. Submit the original application to the Town Clerk and give a copy to the Town Supervisor.
- (13) The procedure for re-zoning to be used shall be that set forth in Section 264 of the New York State Town Law.

4. Development Standards. The following minimum standards shall apply to Large-scale Solar Energy Systems proposed to be located in a Solar Energy Systems Overlay District:

- a. Solar energy systems shall not be constructed in the following areas of potential sensitivity:
  - (1) One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps.
  - (2) Historic and/or culturally significant resources in an historic district.
  - (3) Within 100 feet landward of a freshwater wetland.
  - (4) On Chenango gravelly loam soil (CnA, CnB, and CnC) as shown in the Soil Survey of Chautauqua County, New York, prepared by the U.S.D.A. Soil Conservation Service.
- b. Height and Setback: Large-scale solar energy systems shall adhere to the height and setback requirements of the underlying zoning district. Additional restrictions may be imposed during the special use permit process.

- c. Lot Size. Large scale systems shall be located on lots with a minimum lot size that is large enough to accommodate the proposed system and still meet the required setback requirements for the underlying zoning district.
- d. Fencing and Signage. All large-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs shall be placed on the entrance and perimeter of the fencing. The height and type of fencing shall be determined by the special use permit process.
- e. On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility.
- f. The removal of existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar installation.
- g. Glare: The system shall be designed and located so as to prevent reflective glare toward any inhabited building on adjacent properties and toward nearby roads.
- h. Decommissioning Plan:
  - (1) All applications shall include a decommissioning plan, which shall include details regarding the removal of all infrastructures and the remediation of soil and vegetation back to its original state prior to construction, unless otherwise permitted. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a Professional Engineer or contractor. Cost estimates shall take inflation into account. *In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner.*
  - (2). A form of surety, through escrow, bond or the equivalency of, shall be established prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required may not exceed 125 percent of the estimated cost to decommission.

**SECTION 4. BATTERY STORAGE**

Section 821(F) of the Town of Portland Zoning Code is hereby replaced in its entirety with the following:

**F. Solar Storage Batteries.**

- 1. If solar storage batteries are included as part of the Solar Energy Collection system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code and any local regulation hereinafter adopted by the Town of Portland. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by New York State Building Code and the National Electric Code.
- 2. When batteries are no longer in use, they shall be disposed of in accordance with the laws of the State of New York and any applicable Federal or Local disposal rules or regulations.

**SECTION 4. VALIDITY AND SEVERABILITY.**

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

**SECTION 5. EFFECTIVE DATE.**

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.