

TOWN OF LIMA

LOCAL LAW NO. _____ OF THE YEAR 2019

A Local Law Entitled “Adding Solar Energy Systems article to the Code of the Town of Lima.”

Be it enacted by the Town Board of the Town of Lima as follows:

The code of the Town of Lima shall be amended by the addition of a new Chapter entitled “Solar Energy Systems” as follows:

Authority

This Solar Energy Law is adopted pursuant to Sections 261-263 of the New York State Town Law, which authorizes the Town of Lima to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and to provide for, so far as conditions may permit, the accommodation of Solar Energy Systems (as hereafter defined) and equipment which generate electricity primarily for on-site use.

Statement of Purpose

This Solar Energy Law is adopted to permit the construction of Solar Energy Systems in the Town of Lima in a manner that advances and protects the public health, safety and welfare of the Town of Lima while facilitating the production of renewable energy. In so doing, this Chapter seeks to:

1. Take advantage of a safe, abundant, renewable and non-polluting energy resource.
2. Preserve and protect the natural resources and Prime Farmland/Farmland of Statewide Importance within the Town of Lima in accordance with the Town’s Comprehensive Plan, inclusive of the Town’s Agricultural and Farmland Protection Plan, which requires consideration of uses that support and facilitate agriculture and prohibition of uses that do not.
3. Permit solar installations as hereinafter defined in all zoning districts for the production of renewable energy to be used principally on-site, subject to reasonable conditions to mitigate potential impacts to adjoining properties and preserve neighborhood aesthetics.

ARTICLE I. Findings of Town Board.

The Town Board of the Town of Lima makes the following findings:

- A. The Town Board of the Town of Lima has heretofore adopted a Temporary Moratorium concerning the siting and construction of large scale or commercial/industrial Solar Energy Systems within the Town of Lima. In connection with its review of this subject, the Town Board has recognized the desirability of promulgating regulations as to the siting and construction of Solar Energy Systems in other applications.

The Town Board of the Town of Lima has not prohibited the erection or creation of small-scale Solar Energy Systems intended to primarily benefit the property on which the Solar Energy System is located. To date, existing Solar Energy Systems in the Town of Lima have been built and used in residential applications.

- B. The Town Board of the Town of Lima recognizes that solar energy is a clean, readily available and renewable energy source. At this time, the Town of Lima intends to accommodate the use of Solar Energy Systems in the context of residential and agricultural applications, as well as single-user commercial applications in which the Solar Energy System provides energy for the commercial property, but is not intended to create sufficient excess solar energy to make its resale as a marketable commodity the purpose of the Solar Energy System, but rather an incidental or subordinate product thereof. The Town Board's determination not to allow Large-Scale Solar Energy Systems (as hereinafter defined) is based on the Town's farmland protection objectives, recognition of unique local conditions, i.e. the prevalence of highly productive soils throughout the entire Town, recognition that fragmentation of the land base is counter to local objectives and threatens the sustainability of agriculture.
- C. The Town Board acknowledges and finds a growing need to properly site Solar Energy Systems within the boundaries of the Town of Lima so as to protect the large abundance of Prime Farmland/Farmland of Statewide Importance within the Town, residential properties, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Lima, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Lima.
- D. Prior to the adoption of this Chapter, no specific procedures existed to address the siting of Solar Energy Systems or to mitigate their potential impact upon adjoining properties or the public view shed. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- E. Solar Energy Systems need to be regulated for removal when no longer utilized.

ARTICLE II. Definitions.

The following definitions shall apply to this Chapter:

APPLICANT: The person or entity filing an application and seeking approval under this Chapter.

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

BUILDING-MOUNTED SOLAR ENERGY SYSTEM - Any Solar Energy System that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM - Any Solar Energy System that is affixed directly or indirectly to the ground or land surface, rather than attached to the wall or roof of a structure. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

LARGE-SCALE SOLAR ENERGY SYSTEM: A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption. A Large-Scale Solar Energy System is not authorized or permitted, but is prohibited by this local law.

PRIME FARMLAND: Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM - Any Solar Energy System that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on the lot (upon which the structure containing the Solar Energy System is located), potentially for multiple tenants, through a distribution system that is not available to the general public.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the uses of active and/or passive Solar Energy Systems on individual properties.

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

SOLAR ENERGY SYSTEM: The components and subsystems 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. The area of a Solar Energy System includes all of the land inside the perimeter of the Solar Energy System which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2 or Tier 3 Solar Energy System as follows:

- A. Tier 1 Solar Energy Systems include the following:
- (1) Roof-Mounted Solar Energy Systems
 - (2) Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems that generate no more than 110% (except in the Industrial Use District as set-forth immediately below) of the electricity consumed on the site or more than one site or piece of property within the jurisdictional limits of the Town of Lima owned by the same person, entity, farm or business over the previous 12 months. Tier 2 Solar Energy Systems may include Solar Energy Systems that are developed, operated and maintained by a third-party by lease agreement or through a power purchase agreement, but in no event shall such systems produce power in excess of the 110% maximum yield as referenced immediately above.

Tier 2 Solar Energy Systems located on properties that are currently developed (as of the date of adoption of these regulations) and operating as industrial use properties and are located in the Industrial Use District located on the north and south sides of New York State Routes 5 & 20 and being easterly of the easterly line of the Village of Lima, shall be permitted to site and develop on such properties, Tier 2 Solar Energy Systems that generate up to 175% of the electricity consumed on such site over the 12 months prior to development, so long as such lands are already part of a parcel that has been developed for industrial use and is not in agricultural production. This unique and “area specific” provision is deemed appropriate because several of the developed industrial use parcels already have significant electrical infrastructure that provides capacity to easily and efficiently accept a greater amount of electrical energy input from a Solar Energy System. It is the specific intent of this provision that no land within the Industrial Use District that is in agricultural production be removed from such production in order to develop Tier 2 Solar Energy Systems. It is also the intent of this allowance to permit Tier 2 Solar Energy Systems at a higher level than would otherwise be permitted, only as a secondary or accessory use that is subordinate to the principal industrial use of such properties.

- C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

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

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

UNIFIED SOLAR PERMIT: An expedited solar permitting process has been developed by the NY-Sun public-private partnership, which process utilizes a standard, unified permit across municipalities in New York State.

ARTICLE III. Applicability. The placement, construction and major modification of all Solar Energy Systems within the boundaries of the Town of Lima shall be permitted only as follows:

- A. A building permit issued by the Town of Lima Building Department shall be required for the installation of any Solar Energy System.
- B. All Solar Energy Systems existing on the effective date of this local law shall be allowed to continue in usage as such presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this chapter.
- C. No Solar Energy System shall hereafter be erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- D. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code), the NYS Energy Conservation Code (“Energy Code”) and the Town of Lima Code.
- E. Any applications pending for Solar Energy Systems on the effective date of this local law shall be subject to the provisions of this law.
- F. This local law shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Lima.

ARTICLE IV. Use Districts Where Allowed. Subject to the provisions of this Chapter, certain Solar Energy Systems shall be allowed as follows:

- A. Tier 1 Solar Energy Systems are permitted outright in all zoning districts in the town.
- B. Tier 2 Solar Energy Systems are permitted as accessory structures in all zoning districts in the town, except for Land Conservation Districts (L-C). Tier 2 Solar Energy Systems located in the Industrial Use District on the north and south sides of New York State Routes 5 & 20 east of the Village of Lima have special allowances as set-forth in Article II. B. above.
- C. Tier 3 Solar Energy Systems are prohibited in all zoning districts in the town.
- D. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to regulate or to allow Solar Energy Systems other than as set forth in this Chapter are hereby superseded.

ARTICLE V. Permitting Requirements for Solar Energy Systems.

- A. Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following requirements for each type of Solar Energy System:

- (1) Roof-Mounted solar energy Systems may be attached to any lawfully permitted building or structure and shall incorporate the following design requirements:
 - a. Roof-Mounted solar energy systems shall not exceed the maximum height restrictions of the zoning district within which are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
 - b. Solar panels on pitched roofs shall be mounted with a maximum distance of 12 inches between the roof surface and the highest edge of the system.
 - c. Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. Glare: All Solar Panels shall have anti-reflective coating(s).
- (2) Building-integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for any building containing such system and shall meet the following requirements:
 - a. Building-mounted solar energy systems shall not be located or extend more than 7 feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.

- B. Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures, except for Land Conservation Districts.

Site plan approval is required for Tier 2 Solar Energy Systems to be built or modified for the production of electricity principally for on-site use for a commercial or industrial business within the Town of Lima.

All other Tier 2 Solar Energy Systems, including systems for farm operations, are exempt from site plan approval.

- (1) Tier 2 Solar Energy Systems within Residence Use Districts (R), General Business Use Districts (B), Industrial Use Districts (M), Planned Development Districts (P-D), Planned Senior Residential Districts (PD-SR) and Mining, Quarrying and Land Excavations Districts (Q) shall be subject to the following requirements:
 - a. Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations for a building or accessory structure within the underlying zoning district, whichever setback is greater.
 - b. Location: Tier 2 Solar Energy Systems shall be located in the side or rear yard of a property. No placement in a front yard shall be permitted unless the location is a minimum distance of (200) feet

from the road and entirely concealed from view from the road due to topography or landscape conditions that must be maintained for the duration of the installation of said system.

- c. Height: Tier 2 Solar Energy Systems shall comply with the height limitations specified for accessory structures within the underlying zoning district.
- d. Glare: All Solar Panels shall have anti-reflective coating(s).
- e. Screening and Visibility: All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable. Evergreen tree plantings may be required to screen portions of the site from nearby residential property, public roads, and from public sites known to contain important views or vistas, such as gateway entrances to the Town. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

(2) Tier 2 Solar Energy Systems within Agricultural Use Districts (A) and which are a part of a farm operation as defined by Article 25 AA of the New York State Agriculture and Markets Law shall not be subject to site plan review and shall be subject to the following requirements:

- a. Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations for a building or accessory structure within the underlying zoning district, whichever setback is greater.
- b. Height: Tier 2 Solar Energy Systems shall comply with the height limitations specified for accessory structures within the underlying zoning district.
- c. Glare: All Solar Panels shall have anti-reflective coating(s).

- C. Solar storage batteries. When solar storage batteries are included as part of any Solar Energy System, they shall be placed in secure container or enclosure meeting the requirements of the New York State Building Code.
- D. All Solar Energy Systems shall adhere to all applicable federal, state, county and Town of Lima codes, laws, regulations and building, plumbing, electrical and fire codes.
- E. Any Solar Energy System shall be situated in a location which shall be readily accessible for all emergency service vehicles and personnel.
- F. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- G. The design, construction, operation and maintenance of any Solar Energy System

shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists.

- H. The development and operation of a Solar Energy System shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Lima or other federal or state regulatory agencies.
- I. Artificial lighting of any Solar Energy Systems shall be limited to lighting required for safety and operational purposes only, and shall be shielded from all neighboring properties and public roads so as to prevent the illumination of adjoining properties or excessive lighting.
- J. If the use of an approved Solar Energy System is discontinued, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a Solar Energy System is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned.

ARTICLE VI. Maintenance, procedures and fees.

- A. Time limit on completion. After the granting of site plan approval of a Ground-Mounted Solar Energy System by the Planning Board, the building permit shall be obtained within six (6) months and the project shall be completed within twelve (12) months. If not constructed, the permit and/or site plan approval shall automatically lapse twelve (12) months after the date of approval by the Town of Lima Planning Board. A new application will be subject to ordinary review and approval to obtain a new building permit.
- B. Inspections. Upon reasonable notice, the Town of Lima Building Inspector or his or her designee may enter a lot on which a Solar Energy System has been constructed for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Any fee or expense associated with this inspection shall be borne entirely by the permit holder. Consent to such inspection shall be deemed given by the applicant upon submission and granting of A Unified Solar Permit.
- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a site plan or building permit.
- D. Continued operation. A Solar Energy System shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a Solar Energy System regarding the system's usage at any time.

- E. Removal and Soil Remediation. All non-integrated Ground-Mounted Solar Energy Systems shall be dismantled and removed immediately from a lot where the permit or approval has been revoked by the Town of Lima Planning Board or the Solar Energy System has been deemed inoperative or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) days, which said dismantling and removal shall be at the cost of the owner. Removal of all equipment and infrastructure and remediation of soil and vegetation in the entire area which supported the installation shall be required to be completed to return the area to its original state prior to construction. This work shall be inspected and approved for satisfactory compliance by the town building inspector. If the owner does not dismantle and remove from the premises said Solar Energy System as required, and does not restore and remediate the soil so as to support vegetation and plant life of the type that would have been supported on said site prior to the installation of the Solar Energy System, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and/or remediate the site and place the cost of removal and/or remediation as a tax lien on said parcel, regardless of whether the owner of the parcel owned or leased the Solar Energy System. The Town Board shall also be authorized to maintain an action at law to compel the owner to accomplish such removal and remediation, but the Board cannot be required to exercise this remedy, which shall be available to it in its reasonable discretion.
- F. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Town Building Inspector, who shall provide the property owner with written notice by personal service or certified mail. Any appeal by the property owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Lima Zoning Board of Appeals within thirty (30) days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the Solar Energy System shall automatically expire.
- G. Application and annual fees.
- (1) Site plan application for Ground-Mounted Solar Energy Systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - (2) Fee for issuance of a building permit. In addition to any site plan application fee, an applicant shall pay a building permit fee for a:
 - (a) Building-Mounted, Ground-Mounted or Rooftop-Mounted Solar Energy System: one-half of one percent of the project cost, or such other amount as the Town Board may, from time to time, determine by resolution.

- H. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county and local permits have been obtained.
- I. In the context of the requirement of site plan approval, the Town of Lima Planning Board may:
 - (a) For Ground-Mounted Solar Energy Systems when review is required by the Board pursuant to this article, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the Ground-Mounted Solar Energy System.
- J. Any changes or alterations after construction to a Ground-Mounted Solar Energy System shall be done only by amendment to any previously issued building permit and/or site plan (if required) subject to all requirements of this Code.

ARTICLE VII. Revocation. If the applicant violates any of the conditions of its building permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the building permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Lima Planning Board holds a hearing on same.

ARTICLE VIII. Applicability; Interpretation; conflict with other law. In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards shall govern. The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair.

ARTICLE IX. Severability. If any section, subsection, phrase, sentence or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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