

**LOCAL LAW NO. __ OF 2018 TO AMEND THE ZONING
LAW OF THE TOWN OF RUSH, CHAPTER 120 OF THE
CODE OF THE TOWN OF RUSH, BY ADDING SECTION
120-74 OF THE ZONING LAW OF THE TOWN OF RUSH
REGARDING SOLAR ENERGY SYSTEMS.**

BE IT ENACTED, by the Town Board of the Town of Rush, Monroe County, State of New York, as follows:

Chapter 120, Article V, of the Zoning Law of the Town of Rush (the “Town Zoning Law”), shall be amended so as to add new Section 120-74 of the Town Zoning Law entitled “Solar Energy Systems” as follows:

§ 120-74. Solar Energy Systems

- A. Purpose. The purpose of this section is to provide for the location, regulation and processing of applications for solar energy systems within the Town of Rush. The intent is to both encourage the use of renewable energy systems based on sunlight while at the same time protecting the health, safety and general welfare of the residents of the Town of Rush. In doing so, these regulations provide standards for the safe provisions of solar energy systems in order to protect the natural and aesthetic character of the Town of Rush with special attention to open space, vistas, farmland, and neighboring property owners.
- B. Enabling Authority. The regulations contained in this section have been adopted pursuant to New York Town Law §§ 261-263 and are made in accordance with the comprehensive plan for the development of the Town of Rush. The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove site plans for solar energy systems pursuant to the criteria set forth herein.
- C. Definitions.

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 system, roofing materials and shading over windows.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity for onsite consumption.

LARGE SCALE SOLAR ENERGY SYSTEM: A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite sale and/or consumption.

ROOF MOUNTED SOLAR ENERGY SYSTEM: A series of Solar Panels located on the roof of any legally permitted building and/or structure for the purpose of producing electricity for onsite and/or offsite consumption.

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

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

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

D. Applicability. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after its effective date.

E. Solar as an Accessory Use.

1. Roof-Mounted Solar Energy Systems and Building Integrated Photovoltaic Systems.

a. Roof-Mounted Solar Energy Systems and Building Integrated Photovoltaic Systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.

b. Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located.

c. Aesthetics. 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.

ii. Roof-Mounted Solar Energy Systems shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties and roads.

d. Reviews and Permits. Roof-Mounted Solar Energy Systems and Building Integrated Photovoltaic Systems that use the energy onsite or offsite shall be exempt from special permit or site plan review under the Town Zoning Law or other land use regulations. Building permits shall be required for installation of a Roof-Mounted Solar Energy System or a Building Integrated Photovoltaic System.

2. Ground-Mounted Solar Energy Systems.

- a. Ground-Mounted Solar Energy Systems of less than 1,000 square feet that use the electricity primarily onsite are permitted as accessory structures in all districts.
- b. Height and Setback. Ground-Mounted Solar Energy Systems shall adhere to the setback requirements for accessory structures in the zoning district within which they are located and may have a maximum height of 15 feet.
- c. All Ground-Mounted Solar Energy Systems in residential districts shall be installed in the side or rear yards. Ground-Mounted Solar Energy Systems may not be located between the front lot line and principal structure.
- d. Reviews and Permits. Ground-Mounted Solar Energy Systems of less than 1,000 square feet that use the electricity primarily onsite shall be exempt from special permit or site plan review under the Town Zoning Law or other land use regulations. Building permits shall be required for installation of any Ground-Mounted Solar Energy System. Otherwise, all other Ground-Mounted Solar Energy Systems shall be subject to special permit and site plan review as described in Sections 120-69(B) and (D) of the Town Zoning Law, and Section F herein.

F. Large-Scale Solar Energy Systems.

1. Large Scale Solar Energy Systems are permitted through the issuance of a special permit and site plan approval, and subject to the requirements set forth in this Section, within all zoning districts in the Town, as well as any agricultural district as designated by Monroe County.
2. Escrow Agreement. The Town may require the applicant seeking to develop any Large Scale Solar Energy Systems to fund an escrow agreement or to sign a developer's agreement to cover the amount by which the Town's estimated costs and expenses of review, including reasonable legal and engineering fees, exceed (or will exceed) the application fees paid by the applicant.
3. The following requirements shall apply to all Large-Scale Solar Energy Systems in each district where they may be located:
 - a. Height and Minimum Yard/Setback. Large-Scale Solar Energy Systems shall be no more than 15 feet in height and shall adhere to the setback requirements of the underlying zoning districts within the Town.

- b. Lot Coverage. Large-Scale Solar Energy Systems shall not exceed 50% of the surface area of any lot. The surface area covered by Solar Panels shall be included in the total lot coverage.
- c. Location. Large-Scale Solar Energy Systems shall not be located within the following areas of potential sensitivity: (i) one hundred year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps; and (ii) properties included on the New York State or National Register of Historic Places, or otherwise identified as historic and/or culturally significant resources by the New York State Historic Preservation Office.
- d. Reviews and Permits. Large-Scale Solar Systems that are ground-mounted and produce energy primarily for the purpose of offsite sale and/or consumption shall be required to obtain: (i) a special permit as set forth below and in Section 120-69(D) of the Town Zoning Law; (ii) Site Plan Approval as set forth below and in Section 120-69(B) of the Town Zoning Law; and (iii) a building permit. As part of the Building Permit application, a Large-Scale Solar Energy System shall provide a proof of concept letter from the utility company acknowledging the Large-Scale Solar Energy System will be connected to the utility grid.
- e. All installations must be performed in accordance with the applicable electrical and building codes, the manufacturer's installation instructions and industry standards and prior to the operation of the electrical connections must be inspected by the Town Code Enforcement Officer or by an appropriate electrical inspection person or agency as determined by the Town.

4. Special Permit Required.

- a. A special permit shall be required for the construction of a Large-Scale Solar System in any district pursuant to the requirements of Section 120-69(D) of the Town Zoning Law; provided, however, that the review and approval of any special permit application shall be reviewed and authorized by the Town Board of the Town of Rush.
- b. The special permit application and its requirements for obtaining a special permit shall be supplemented by the following additional provision:
 - (i) The applicant shall enter into a Payment in Lieu of Taxes (PILOT) agreement with the Town of Rush prior to the issuance of a special permit for any Large-Scale Solar Energy System.
 - (ii) The Town Board may impose conditions on its approval of any special permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

c. Referral to Planning Board. The Town Board shall refer the special permit application to the Planning Board for review, which shall review the site development plan and render its recommendations to the Town Board. The Planning Board may recommend approval, disapproval or conditional approval subject to modification(s) being made to the special permit application. The Planning Board shall report its recommendation(s) to the Town Board within thirty (30) days of the referral by the Town Board. In reviewing the application and making its recommendations, the Planning Board shall consider the objectives contained in Section 120-69(D)(4)(a)[1]-[3] of the Town Zoning Law.

d. Decommissioning Plan.

- (i) To ensure the property removal of Large-Scale Solar Energy Systems, and to ensure the site will be restored to a useful, nonhazardous condition, without delay, a Decommissioning Plan shall be submitted as part of the special permit application. Compliance with this plan shall be made a condition of special permit and site plan approval, and the issuance of a building permit. The Decommissioning Plan must specify that after the Large-Scale Solar System is no longer in use, it shall be removed by the applicant or any subsequent owner and that this be in the form of a recorded instrument legally binding on the owner of the Large-Scale Solar Energy System and to the real property on which it is installed. The Decommissioning Plan shall also include the requirement that any subsequent transfers of the Large-Scale Solar Energy System and/or the real property from the date of the special permit approval shall be conditioned on the transferee agreeing to be held responsible and liable for the Decommissioning Plan.
- (ii) The Decommissioning Plan shall include the energy generating capacity of the Large-Scale Solar Energy System on an annual basis together with a provision that annually, on or before January 30th of each year, a report shall be furnished to the Town Code Enforcement Officer reporting the amount of energy generated by the Large-Scale Solar Energy System.
- (iii) The Decommissioning Plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the site to a useful and nonhazardous condition and shall include but not be limited to the following:
 - (1) Removal of aboveground and belowground equipment, structures and foundations;
 - (2) Restoration of the surface grade and soil after removal of equipment;

- (3) Re-vegetation of restored soil areas with native seed mixes, excluding any invasive species;
 - (4) A time frame for the completion of the site restoration work;
 - (5) A cost estimate detailing the projected cost prepared by a professional engineer or contractor, and cost estimates shall take into account inflation.
- (iv) If the Large-Scale Solar Energy System is not completed and functioning within 18 months of the issuance of the Site Plan Approval and/or issuance of a building permit, the Town may notify the permittee to complete construction within 180 days. If the permittee fails to perform, the Town may notify the permittee to implement the Decommissioning Plan and the Decommissioning Plan must be completed within 180 days of such notice. Removal of Large-Scale Solar Energy Systems must be completed in accordance with the Decommissioning Plan.
- (v) Upon cessation of activity of a constructed facility for a period of one year and or generation of less than 50% of the approved capacity, the Town may notify the permittee to implement the Decommissioning Plan. Within 180 days of notice being served, the permittee can either restore operation to 80% of approved capacity or implement the Decommissioning Plan.
- (vi) If the permittee fails to fully implement the Decommissioning Plan within the 180 day time period, the Town may at its discretion, provide for the restoration of the site in accordance with the Decommissioning Plan and may recover all costs and expenses incurred for such activities from the defaulted permittee. The costs incurred by the Town shall be assessed against the property, shall become a lien and tax upon the property, and enforced and collected with interest by the same officer and in the same manner as other taxes.

5. Site Plan Approval Required.

- a. Large-Scale Solar Energy Systems shall be required to obtain Site Plan Approval from the Town Planning Board.
- b. The site plan application and its requirements for obtaining site plan approval (Section 120-69(B) of the Town Zoning Law) shall be supplemented by the following additional provisions:
 - (i) If the property of the proposed project is to be leased, legal consent between all parties, specifying the uses(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.

- (ii) Blueprints showing the layout of the Large-Scale Solar Energy System signed by a Professional Engineer or Registered Architect and the generating capacity of the Large-Scale Solar Energy System on a monthly and annual basis shall be required.
 - (iii) The equipment specification sheets shall be documented and submitted for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.
 - (iv) Property Operation and Maintenance Plan. Such a plan shall describe continuing photovoltaic maintenance and property upkeep and maintenance, such as mowing and trimming.
 - (v) Erosion and Storm Water Management Plan. Such a plan shall provide for erosion control measures and storm water management subject to the requirements of Chapter A125-8, A125-9, and A125-10.
 - (vi) Detailed plans and specifications for any proposed fencing to be installed, including but not limited to the location(s), height and type of fencing material(s) to be installed. Such plans shall ensure perimeter security and safety for any and all beings.
6. Additional Design Standards. In addition to the standards described in this Section, the following additional principals and standards shall be applied to applications for Large-Scale Solar Energy Systems:
- a. Large-Scale Solar Energy Systems shall, to the extent practicable, be designed in such a way as to allow agricultural use of the soil after the System is decommissioned.
 - b. A landscape buffer shall be provided around the Large-Scale Solar Energy System and Solar Panels to provide screening from adjacent properties and roads and to minimize glare to adjacent properties and roadways and traffic thereon.
 - c. Removal of trees and other existing vegetation shall be minimized or offset with planting elsewhere on the property. Large-Scale Solar Energy Systems shall require the preparation of a vegetation management plan that includes the planting and/or protection of pollinators and perennial vegetation.
 - d. Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.

- e. All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
 - f. Large-Scale Solar Energy Systems shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties and roads.
 - g. All mechanical equipment, including any structure for batteries or storage cells, shall be enclosed by a minimum six-foot-high fence with a self-locking gate and provided with landscape screening.
 - h. Signs.
 - i. Notwithstanding anything to the contrary contained in this Chapter, a sign not to exceed 8 square feet shall be displayed on or near the main access point and shall list the facility name, owner, phone number and address.
 - ii. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
7. Bond. The applicant and the owner of record of the property upon which the Large-Scale Solar System is located shall be required to execute and file with the Town of Rush a bond or other form of security acceptable to the attorney for the Town and Town Financial Officer as to form and manner of execution, in an amount sufficient for the faithful performance of the terms and conditions of this chapter, the conditions of the permit or approval issued hereunder, for the observation of all Town local laws or ordinances, to cover the maintenance of the Large-Scale Solar System during its lifetime, provide for its removal and the restoration of the site, and for the Town's consultant as hereafter provided. The amount required shall be determined by the Town Board. In the event of default upon the performance of such conditions or any of them, the bond or security shall be forfeited to the Town of Rush, which shall be entitled to maintain an action thereon. The bond or security shall remain in full force and effect until the removal of the Large-Scale Solar System and site restoration. The failure to keep such bond or security in such full force and effect shall entitle the Town of Rush, acting by and through its Town Board, to revoke any permit and approval granted pursuant to the terms and conditions hereof, if the same is not fully cured or corrected within 15 days following the giving of notice by the Town of Rush to the applicant and to the owner of record of such failure.
- G. Effect on Other Laws. To the extent that any law, ordinance, rule or regulation, or parts thereof, are in conflict with the provisions of this Section (including all provisions of the Code concerning subdivision or site plan applications, and applications to the Zoning Board of Appeals), this Section shall control.

- H. Enforcement. Any violation of this Section shall be subject to the same civil and criminal penalties as provided for in the zoning regulations of the Town of Rush.
- I. Severability. If any provision of this Section shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provision directly involved in the controversy in which such judgment shall have been rendered.