

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Mamakating _____

Local Law No. 3 of the year 2018

A local law Amendment of Regulation of Solar Energy Systems
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Mamakating _____ as follows:

Section 1. Section 199-21, titled "Solar energy systems," of Chapter 199, titled "Zoning," of the Code of the Town of Mamakating is amended as follows:

I. Subsection C, titled "Definitions," is amended by adding a new definition of "Site" and amending the definition "Solar Energy System", to read as follows:

Site – The area within which or upon which a Solar Energy System is constructed, used or operated.

Solar Energy System – Solar collectors, modules controls, energy storage devices, and other materials, hardware and equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation, and distributed, including the solar access necessary for the system to operate as designed, and any areas of land that are disturbed or cleared for construction, use or operation, to provide or maintain the solar access, access drives and any accessory or appurtenant structures. For the purpose of this law, a solar energy system does not include a solar energy system of four square feet or less in size.

SEE ATTACHED

(If additional space is needed, attach pages the same size as this sheet, and number each.)

I. Subsection H, titled "Large-scale solar energy systems," is amended by adding new subsections (2) and (3) to read as follows:

(2) A large-scale solar energy system shall not be permitted on a site unless at least fifty (50%) percent of the site has existing solar access for the proposed solar energy system prior to any land disturbance or tree clearing.

(3) A large-scale solar energy system shall not be permitted on a site where fifty (50%) percent or more of the site contains any or all of the following sensitive areas:

- (a) 100-year flood hazard zones;
- (b) Land within a federal or State regulated wetland or wetland adjacent buffer area;
- (c) Land containing slopes over 15% grade;;
- (d) Land containing significant or rare natural ecological communities as designated by the New York State Department of Environmental Conservation;
- (e) Mature forested land, which is defined as a forested area where the canopy layer is comprised of at least 50% of trees having an average diameter at breast height of 15 inches or greater.

II. Subsection H(2), titled "Special use permit requirements and conditions," is amended by re-numbering as subsection H(4) and is further amended to read as follows:

(4) Special use permit requirements and conditions. In addition to all other site plan and special use permit requirements, the following requirements and conditions shall apply:

- (a) The applicant shall submit a site map depicting any sensitive area listed in subsection H(3) above, depicting ecological communities based on Edinger's Second Edition *Ecological Communities of New York State*, and showing and identifying all trees of 8-inch diameter or greater at breast height by species, condition of health and diameter at breast height.

- (b) Large-scale solar energy systems shall not be constructed on any portion of a lot containing a sensitive area listed in subsection H(3) above, except that where no practical alternative exists, the Planning Board may allow limited disturbance of such areas to provide vehicular or utility access or the installation of security fencing.
- (c) Large-scale solar energy systems shall be sited to minimize disturbance of higher value ecological communities. For the purposes of defining ecological value, the Planning Board shall consider the quality of the community based on biodiversity and the absence or presence of invasive and non-native species. Established natural communities shall be given preference for preservation over areas of human disturbance or successional communities.
- (d) No more than five acres of forested land, defined as a forested area where the canopy layer is comprised of at least 50% of trees having an average diameter at breast height of eight (8) inches or greater, may be cleared in connection with the construction of a large-scale solar energy system.
- (e) Ground cover under and between the rows of solar panels shall be low-maintenance, drought resistant, native, non-fertilizer dependent flora.
- (f) Roadways within the site shall not be constructed of impervious materials and the site shall be designed to minimize the extent of roadways construction and soil compaction.
- (g) Stormwater improvements shall be designed, constructed and maintained such that there is no net increase in the rate or volume stormwater runoff from the site.

III. Subsection H(2), titled "Special use permit requirements and conditions," to be renumbered as subsection H(4), is amended by deleting paragraphs (j) and (s) and by re-lettering the following paragraphs of said subsection as follows:

- (h) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.

- (i) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
- (j) Property operation and maintenance plan. Such plan shall describe continuing solar energy system repair and maintenance and property upkeep, such as mowing and trimming. The use of herbicides is prohibited.
- (k) The following dimensional requirements shall apply to large scale solar energy systems:

Lot width:	250 feet
Front yard setback:	100 feet
Side yard setback (each)	75 feet
Rear yard setback:	75 feet
Building height:	35 feet
Maximum height of solar collectors:	12 feet
Maximum height of fencing	7 feet

- (l) The total area to be occupied by the solar energy system shall not exceed twenty (20) acres.
- (m) All on-site power lines shall be installed underground unless the applicant demonstrates to the satisfaction of the Planning Board that another type of installation will not be visible to any neighbor or the public and such installation is no less protective of the environment.
- (n) All large-scale solar energy systems shall be enclosed by seven (7)-foot high perimeter fencing to prevent unauthorized access. There shall be a six inch gap at the bottom of the fencing to allow small wildlife access to and from the site. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- (o) Appropriate screening shall be provided, as determined by the Planning Board in its sole direction, to screen the solar energy system and fencing from residential properties, public roads, private roads and private rights-of-way to the maximum extent practicable. The applicant shall provide a visual analysis to the Planning Board using line-of-sight profiles from public viewing locations determined by the Planning Board.

- (p) Buildings and structures associated with the solar energy system shall, to the maximum extent practicable, use materials, colors and textures that will blend the facility into the existing environment.
- (q) Solar panels and equipment shall be designed and sited so as to not reflect glare onto other properties, public roads or private roads or right-of-ways, and shall not interfere with traffic or create a safety hazard.
- (r) Driveways servicing the site shall have safe sight distance and lawful and appropriate access for emergency vehicles and equipment. Access to the site shall be reviewed by the relevant emergency service provider(s).
- (s) The identification of the manufacturer and installer, and appropriate warning signs, shall be posted at the site, be clearly visible and weather-resistant.
- (t) The solar energy system 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. The markings shall be placed adjacent to the main service disconnect in a location clearly visible from where the power lever is located. If any of the standards in this subsection are more stringent than applicable provisions of the New York State Uniform Fire Prevention and Building Code (the State Code), these standards shall be deemed to be guidelines only, and the standards of the State Code shall apply.
- (u) The Planning Board may impose conditions on its approval of any special use 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).

IV. Subsection H(2), titled "Special use permit requirements and conditions," to be renumbered as subsection H(4), is further amended by re-designating paragraphs (d) and (e), which relate to decommissioning, removal and security, as new subsection H(5) and amended to read as follows:

- (5) Decommissioning, removal and security.

(a) Decommissioning and removal plan. To ensure the proper removal of the solar energy system, a decommissioning plan shall be submitted as part of the application. Compliance with the approved decommissioning plan shall be a condition of a special permit authorized by the Planning Board. The decommissioning plan shall specify that after the solar energy system ceases operation for its intended purpose, the system shall be removed by the applicant, owner/operator of the system or property owner, and by any subsequent owner/operator of the system or property owner. The plan shall demonstrate how the removal of the solar energy system and all related equipment and structures shall be conducted and how the remediation and restoration of soil and vegetation shall be conducted to return the property to substantially its condition prior to construction. The plan shall include a time line for execution. 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. The decommissioning plan shall state the time period within which the solar energy system shall be removed and the property restored. Such time period shall be no greater than ninety (90) days after the solar energy system has ceased to be used for its intended purpose for twelve (12) consecutive months.

(b) Decommissioning and removal security; removal by Town.

[1] The applicant shall execute and file with the Town Clerk security in a form acceptable to the Town and in an amount sufficient to pay for the costs and expenses of removal and lawful disposal of the solar energy system and related equipment and structures and of remediation and restoration of the site. The amount is subject to approval by the Planning Board's professional engineer and the Planning Board. The security may be in the form of cash, letter of credit, another instrument acceptable to the Town's attorney and the Town Board, or a combination thereof. The security shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and lawfully disposed and site remediation and restoration is complete.

- [2] The amount of the security shall be sufficient, during the first five (5) years of operation, to cover: the costs to remove and lawfully dispose of all equipment, structures and materials related to the solar energy system; costs to remediate and restore the site; and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process. Such amount shall be re-evaluated every five (5) years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.
- [3] If a solar energy system is not removed from the property as required and within the 90-day time frame set forth in paragraph (a) above, then the Town, its employees, contractors and agents shall have the right, and shall be permitted by the property owner and the owner of the solar energy system, to enter upon the property and remove and dispose the solar energy system and related equipment and structures and remediate and restore the site, all to the extent deemed necessary or desirable by the Town Board. The Town may utilize the proceeds of the security filed with the Town to pay for all such costs and related fees and expenses.
- [4] If the amount of the security does not fully cover such costs, fees and expenses (“costs”) or if the Town cannot recover adequate proceeds of the security without resorting to litigation, then the owner and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered.
- [5] In addition to and not in lieu of any other remedies, all unpaid costs shall be assessed and levied against and constitute a lien on the real property until paid or otherwise satisfied and discharged, and shall be collected in the same manner and at the same time as other Town real property taxes.
- [6] Equipment and parts maintenance. Any damaged or unused equipment and parts shall be removed from the premises within 30 calendar days or kept in a secured, designated storage area. Maintenance equipment, spare parts and petroleum products shall be kept in a secured, designated storage area.

V. Subsection H(2), to be renumbered as subsection H(4), is further amended by re-designating paragraphs (f) and (g), titled, respectively, “Ownership changes” and “Modifications” as new subsections H(6) and H(7) to read as follows:

- (6) Ownership changes. If the owner or operator of the solar energy system changes or the owner of the property changes, the special permit shall remain in effect, and all requirements of this §199-21 and all conditions and requirements of the special permit shall be binding upon each succeeding owner and operator. However, a change in owner or operator shall not affect the decommissioning security, although a new owner may substitute other security in accordance with this section. A new owner or operator of the solar energy system shall immediately notify the Town code enforcement officer of such change in ownership or operator.
- (7) Modifications. Any and all modifications, additions or deletions to the solar energy system, whether structural or not, shall be subject to prior site plan review and approval by the Planning Board, except routine repairs and maintenance shall not be subject to Planning Board review.

Section 2. The Town Board is hereby authorized to exempt a proposed large-scale solar energy system from the amendments of the current zoning law set forth in subsections H(2), H(3) and H(4) in this local law, provided that such exemption may be granted only to a proposed solar energy system that has submitted an application to the Town Planning Board prior to adoption of this local law. The Town Board is hereby authorized to grant such exemption by resolution. Such resolution shall state the Board's reason for granting the exemption.

Section 3. If any clause, sentence, paragraph, section or other part of this local law shall be adjudged by any court of competent jurisdiction to be null, invalid, void or unconstitutional, such judgment shall not affect nor impair or invalidate the remainder thereof, and shall be confined in its operation to the clause, sentence, paragraph, section or other part of this law that is directly involved in the controversy in which such judgment was rendered and all other parts of the law shall remain valid and in full effect.

Section 4. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2018 of the ~~(County)(City)~~(Town)(Village) of Mamakating was duly passed by the Town Board on April 3, 2018, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

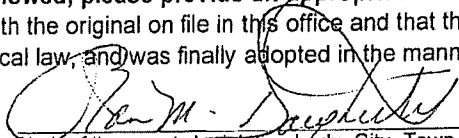
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ¹ _____ above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 4/3/18

(Seal)