

**TOWN OF LEXINGTON, GREENE COUNTY  
LOCAL LAW #3 OF 2019  
AMENDING ZONING LAW TO MODIFY SOLAR FACILITY REGULATIONS**

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

The Town of Lexington Zoning Law shall be and hereby is amended to include the following as a new §5.15 Commercial Solar Facilities

A. Purpose, Intent and Applicability

1. The purpose of these regulations is to provide for the development of commercial solar facilities through performance criteria that are consistent with the Town of Lexington's commitment to protect and enhance the quality of life of all residents, and to protect its natural resources, including but not limited to streams, wetlands, and woodlands; its historic resources; and its rural character. As such and in accordance with 6 NYCRR 617.4(a)(2) any application made hereunder shall be declared to be a Type-I action for the purposes of the New York State Environmental Review (SEQR) performed.
2. Commercial solar facilities are allowed by special use permit in all zoning districts except the Hamlet (H) and Conservation (C) zoning districts.
3. In any instance where specific uses, area, or height standards, development guidelines, and/or review procedures specifically set forth in this section conflict with any other general provisions or requirements of the Zoning Law, the particular provisions set forth herein shall take precedence and control.
4. All applications shall be subject to approval by all other state and local agencies requirements, including but not limited to New York State Department of Environmental Conservation (DEC) and the New York City Department of Environmental Protection (DEP).
5. The Town acknowledges that certain state laws may exempt facilities which generate greater than 25 MW of energy from local review. However, such exemption, pursuant to The Public Service Law §168 3. (e) requires that any such facility shall not be unreasonably burdensome to the ratepayers both in and out of the municipality. The Town hereby specifically finds that any such facility shall be unreasonably burdensome to both the ratepayers in and out of the Town since the Town and its residents rely almost exclusively on tourism for its revenue. The Town further finds that such tourism is based on the scenic views within the Town and that almost all parcels of land located where interconnection is available due to the existing infrastructure and technology are also located within the viewshed of designated Scenic Byways. Thus, the location of any facility that generates greater than 25 mw or is larger than 50 acres in size would unreasonably burden the residents and ratepayers in the Town and those who come to the Town to enjoy the

designated Scenic Byways since it would result in severe marring of those scenic viewsheds. These findings are specifically based upon and supported by the Town Comprehensive Plan.

## B. Definitions

**Commercial Solar Facility:** The components and subsystems required to convert solar energy into electric energy suitable for use which generates in excess of 15 kw of electricity. The term includes, but is not limited to, solar panels and solar energy equipment. The area of a Commercial Solar facility includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment.

**Facility Owner:** The person or entity which is proposed to own the commercial solar facility.

**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 any material respects.

**Impervious Surface:** Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas (paved or gravel), sidewalks, patios and paved recreation areas but shall not include solar panels.

**Land Owner:** The person or entity having fee title to land on which a commercial solar facility is proposed to be located.

**Site Plan Review:** Town of Lexington application process set forth in Article v., §5.02 of the Lexington Zoning Law.

**Solar Panel:** A photovoltaic device capable of collecting and converting solar energy into electricity.

**Special Use Permit:** Town of Lexington application process set forth in Article V., §5.01 of the Lexington Zoning Law.

## C. Bulk and area requirements. The following dimensional requirements shall apply to all commercial solar facilities:

### 1. Size

(a) No individual commercial solar facility shall exceed twenty-five (25) acres in size.

(b) The total commercial solar energy production in the Town of Lexington shall not exceed 75% of the existing total electric substation capacity. Total capacity shall be based upon the calculations of the local utility. At all times, 25% of total input capacity shall be reserved for private residential use. Each applicant must provide a

written statement from the utility that sufficient capacity exists which upon interconnection of the subject application will not exceed the limits set forth in this section.

2. Materials

- (a) All commercial solar facilities shall be constructed with glare-resistant solar panels.
- (b) All commercial solar panels should be constructed with a minimum of toxic and/or hazardous materials, free of heavy metals and utilizing halogen-free cables, if such cables are available.
- (c) All commercial solar panels shall be constructed in accordance with the requirements set forth hereinafter at Section E. 1. (a) (6).

3. Height

- (a) All commercial solar facility panels shall have a maximum height of 10 feet from ground elevation.
- (b) All buildings and accessory structures associated with the commercial solar facilities shall have a maximum height of 20 feet excluding the solar array.

4. Setback and Separation

- (a) All commercial solar facilities and associated buildings, accessory structures and equipment shall have a minimum front yard setback from the centerline of the road of 200 feet and a side and rear yard setback of 100 feet, provided that all such structures are located at least 1,000 feet from any neighboring residence.
- (b) Where commercial solar facilities and associated buildings, accessory structures and equipment and shade buffer clearing, excluding access roads are within 200 feet of a property line of a neighboring occupied residential property, a 75-foot width of uncleared vegetation buffer shall be preserved or established outside of the development area (e.g. 75 feet width) and shall be at least as tall as the tallest structure in the developed area. In areas where cleared land already exists on a proposed commercial solar development property, a vegetation buffer area shall be planted or allowed to grow wild while the solar array exists. The Planning Board shall have the discretion to reduce or increase the required vegetation buffer width based upon the topographic and/or geographic conditions found on the proposed site.
- (c) A commercial solar facility shall not be located within 2,640 linear feet (1/2 mile) of another commercial solar array

5. Impervious Surface Lot coverage

- (a) All commercial solar facilities and associated structures and equipment, excluding panels, shall utilize a maximum of 20% impervious lot coverage.
- (b) The Planning Board shall have the discretion to reduce such percentage based upon the topographical and/or geographic conditions found on the proposed site.

#### D. Adverse Environmental Impacts

1. All commercial solar facilities shall be sited so as to have minimal adverse impact upon the natural, environmental, and historic resources of the town.
  - (a) No commercial solar facility shall be sited within 500 feet of a DEC Protected watercourse or wetland;
  - (b) No commercial solar facility shall be sited in locations comprised of erodible slopes and soils, as identified in section C.3.(a)(5) of the site plan review;
  - (c) No commercial solar facility shall be sited on property designated a historic landmark by any federal, state or local agency, unless it is sited in a manner that all panels, structures, fencing and access roads shall be unseen from any buildings and/or public areas on the property;
  - (d) Clear-cutting of trees by a commercial solar developer shall not involve a taking of more than 20% of the area of the parcel to be utilized for the facility (areas where trees larger than a 6-inch trunk caliper exist). Areas cleared by a land owner or owner entity may not be submitted for commercial solar facility use until after a period of 3 years from the date of the last completed tree clearing. To the extent possible as determined by the Planning Board and to be set as a condition of approval, the same number of trees cut with a 6-inch trunk caliper or greater shall be replaced either on the site, on neighboring properties or elsewhere in the Town with deciduous or conifer native species trees with a 2-inch trunk caliper.
  - (e) Neighboring properties with active homeowners shall be entitled to request trees (deciduous or conifer native species, 2-inch trunk caliper) planted at a commercial solar developer's expense. Trees shall be installed on the neighboring property (at owner's direction) or the solar development property. If installed on a neighboring property, tree care and replacement shall be the sole responsibility of the land owner.
  - (f) No commercial solar facility shall be sited on lands which will require excavation in excess of 10% of the total project acreage;
  - (g) No commercial solar facility shall be sited on lands which will require the destruction of any protected wildlife habitats or wetlands;

- (h) No commercial solar facility shall be sited on land containing known historical, cultural or archeological resources;
- (i) No commercial solar facility shall be sited within visual corridors or prominent scenic viewsheds upon the creation and definition thereof by the Town Board.

E. General Provisions.

1. Site Plan

- (a) All commercial solar facilities shall provide a site plan in accordance with Article V. §5.02 of this Zoning Law, to include the following specific information:
  - (1) The distance from each boundary line to all neighboring dwellings;
  - (2) Copy of letter notifying all neighboring parcel owners of the filing of the application for approval of a commercial solar facility with the Planning Board, by certified mail, return receipt requested;
  - (3) In the event that a potential negative impact to a neighboring resident is reported, when it is determined by the neighboring resident that such impact can be mitigated by means of landscaping, screening or earth berming on the solar property, or if necessary on the impacted property, a written statement shall be provided which clearly delineates the proposed plan for mitigation;
  - (4) A diagram which outlines all existing physical characteristics of the proposed site, including the identification and location of, and measures to preserve, all trees with a diameter of 18" or more;
  - (5) A detailed description of any proposed changes to the landscape of the site, to include grading, vegetation clearing and planting, exterior lighting and screening vegetation and/or structures.
  - (6) A Material Safety Data Sheets (MSDS) shall be submitted. Where components include toxic and/or hazardous materials, the commercial solar owner or applicant is required to submit a safety plan addressing the management and accident containment of these materials for Planning Board approval. If after approval and construction, solar array equipment be damaged in a way that allows hazardous material to be released, the solar developer shall address the condition within 10 days by means of equipment removal and/or replacement or be subject to a daily fine in the amount of \$500 per day, after failure to make such corrections within 5 days of written notification thereof, to be calculated cumulatively until the matter is resolved. At any time, the Town's Code Enforcement Officer shall be granted prompt access to inspect the commercial solar facility for compliance. Damaged and/or discontinued commercial solar array equipment may not be kept at a

commercial solar development property and shall be promptly disposed of off-site in accordance with local, state and federal law.

## 2. Signage

- (a) One sign of 8.5 square feet or less shall be allowed at the primary point of entrance to the solar facility.
- (b) Commercial solar facilities shall not display advertising, except for the purpose of identifying the facility owner/operator and their contact information, which shall be required.

## 3. Visual

- (a) Commercial solar facilities shall be sited in a manner to have minimal visual effect on the environment and neighboring properties.
- (b) A visual environmental assessment form (Visual EAF), landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key viewpoints, including all neighboring dwellings identified in the Visual EAF, existing tree lines, surrounding topography, and proposed elevations shall be required.
- (c) Landscaping, screening and/or earth berming shall be provided to minimize the potential visual impacts associated with any commercial solar facility.
- (d) Additional landscaping, screening, and/or earth berming may be required by the Planning Board to mitigate visual and aesthetic impacts.
- (e) Any associated structures shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility.

## 4. Lighting

- (a) A Lighting plan shall be required.
- (b) No commercial solar facility shall be artificially lighted unless explicitly required by a federal, state or local authority for safety and security purposes only.
- (c) Lighting, if required, shall be downward focused and the light source not visible to neighboring residences.
- (d) Motion activated lighting shall be prohibited.

## 5. Utilities

- (a) The applicant shall provide written confirmation that the proposed facility will result in the occupation of no more than 75% of the utility capacity, aggregated with other existing facilities in the Town in accordance with Section C.1. above.
- (b) All electrical and land-based telephone utilities installed and extended to serve the site, including those between banks of solar panels, interconnections with buildings, and to electric substations, shall be buried underground.

## 6. Access

- (a) The applicant shall indicate on a site plan all existing and proposed access to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities existing and proposed within the property boundaries of the proposed location.
- (b) Existing roadways shall be used for access to the site whenever possible and determined acceptable by the Planning Board through the site plan review.
- (c) The applicant shall provide safe entrance to, and exit from, the site during construction and operation.

## 7. Glare and Heat

- (a) No glare or heat shall be produced that is perceptible beyond the boundaries of the lot on which the solar facility is situated.
- (b) Any impact to neighboring properties shall be evaluated and addressed both prior to and after the array is sited.

## 8. Ownership

- (a) In the case of an application for a commercial solar array to be located on private lands owned by a party other than the applicant or the Town, a copy of the lease agreement with the property owner shall be filed with the Building Department.
- (b) Both the property owner and the facility owner are required to notify the Town Board in writing of any change in ownership of the property or the facility within 10 days of such change.
- (c) In the event of any change in ownership, lease, assignment, or any other change in interest, all conditions of approval of the Town and any other requirements

established for the solar facility, including also any contract or requirements with adjacent landowners shall be binding upon such successors in interest.

9. Proof of Insurance

The applicant or the owner of the property where the commercial solar facility is to be located shall file with the Building Department proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

10. Security Provisions

Each site shall have an eight-foot security fence to prevent unauthorized access and vandalism to the commercial solar facility. The Planning Board shall have discretion to impose the type, design and look of the fence in order to mitigate any possible visual impacts based upon the topography and other relevant conditions of the site and surrounding parcels.

11. Noise

- (a) Construction noise impacts shall be mitigated, and no excessive noise shall be generated outside the hours of 8:00 a.m. and 5:00 p.m.
- (b) A sound level assessment both before and after array construction shall be conducted to determine that the routine operational noise impact is below the background property line sound levels.
- (c) Noise-producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties as approved by the Planning Board during site plan review.
- (d) In the event that a neighboring property owner submit a complaint regarding equipment noise level involved with commercial solar facility operation, the Town Code Enforcement Officer shall have the right to require that the commercial solar developer address noise concerns with abatement to the satisfaction of the Town Board.

12. The owner of the commercial solar facility shall attend a Town Board meeting in January of each year and provide written evidence that the facility is continuing to be operational and generating electricity.

13. Construction and Maintenance

- (a) Required Sureties for Construction and Maintenance



- (1) Prior to the issuance of a building permit for a commercial solar facility and any associated accessory structures, the applicant shall post a surety in an amount and form acceptable to the Town for the purposes of ensuring permit compliance and shall be in the amount recommended by the engineer retained by the Town to review the project.
  - (2) Acceptable forms shall include, in order of preference: cash, irrevocable letter of credit, a bond that cannot expire, or a combination thereof.
  - (3) Such surety will be used to guarantee compliance with the conditions of the approval for the commercial solar facility.
  - (4) 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 comply with the conditions of the approval shall be paid using the surety provided by the applicant.
  - (5) 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 compliance.
- (b) Time Limit on Completion
- (1) After the granting of a special permit and site plan approval for a commercial solar facility, the building permit shall be obtained within six weeks and the project shall be completed within the following twelve months.
  - (2) If construction is not substantially completed within the allowed time frame, the special permit and/or site plan approval shall automatically lapse and the owner shall be required to submit a new application.
- (c) The commercial solar facility owner or operator shall maintain the facility in good condition.
- (1) A maintenance plan shall be submitted which addresses the maintenance needs of the facility, the frequency of specified tasks, and the entity responsible for completing said tasks.
  - (2) Maintenance shall include, but not be limited to: painting, landscaping, snow removal and structural repairs.
  - (3) Every effort shall be made and documented to employ companies based in the Town of Lexington for the purpose of meeting the maintenance needs of the facility.

- (4) Site access, including the provision of keys to any locks or gates to the facility, shall be maintained at a level acceptable to the Fire Chief.
- (5) The owner or operator shall be responsible for the cost of maintaining the solar installation and any access roads, unless accepted as a public way.
- (6) The site shall be inspected at periodic intervals at least four times per year by the Town Code Enforcement Officer to ensure maintenance plan compliance.

#### 14. Abandonment, Decommissioning and Removal

- (a) The solar facility owner/operator shall provide a Decommissioning Plan, which shall be recorded with the registrar of deeds.
- (b) Notification shall be provided to the town by the utility company in any case wherein power ceases to be produced by the facility for a period of thirty days. In such event, the Town Code Enforcement Officer shall investigate the circumstances and report the matter to the Town Board.
- (c) In the event that the facility fails to provide power for a consecutive period of twelve months (as evidenced by twelve non-production notices), the facility shall be considered abandoned. Once determined abandoned, the facility owner shall be notified in writing and instructed to remove all aspects of the solar facility within six months.
- (d) Removal and Decommissioning shall include
  - (1) Physical removal of all solar electric systems, panels, buildings, cabling, electrical components, roads, fencing, foundations, pilings, and any other associated equipment;
  - (2) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
  - (3) Disturbed earth shall be graded, stabilized, re-vegetated and seeded as necessary to return the property to its optimal original condition.
  - (4) Upon consultation with the property owner and approval by the Town Code Enforcement Officer, the Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations and cables in order to minimize erosion and disruption to vegetation. The operator or owner shall provide a map delineating the location of any below grade materials which are intended to remain on the property.
- (e) Required Surety for Removal and Decommissioning

- (1) As a condition of the certificate of compliance, applicants shall post a surety in an amount and form acceptable to the Town for the purposes of removal or abandonment.
- (2) The amount of such surety shall be sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal, in a form acceptable to the attorney for the Town or the Town Engineer. The amount of the bond or security shall be 150 % of the cost of removal of the commercial solar facility and restoration of the property with an escalator of 2% annually for the life of the commercial solar facility.
- (3) Acceptable forms shall include, in order of preference: cash, irrevocable letter of credit, a bond that cannot expire, or a combination thereof.
- (4) Such surety will be used to guarantee removal of the commercial solar array should the system be abandoned.
- (5) The Town Code Enforcement Officer shall provide written notice to the owner to remove the commercial solar array, and the owner shall have six months from written notice to remove the commercial solar array, in the manner described above.
- (6) If the owner, applicant or lessee fails to remove any associated structures or restore the site to the condition approved by the Planning Board, all costs of the Town incurred to comply with this condition shall be paid using the surety provided by the applicant.