

Town of Shelby
Local Law No. 1 of the Year 2021
A Local Law to Amend the Town Law Regulating Solar Energy Systems

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

Section 1. Authority

This Local Law is enacted pursuant to the provisions of the New York Town Law and the New York Municipal Home Rule Law.

Section 2. Purpose

The purpose of this local law (the “Local Law”) is to amend certain provisions within the Town of Shelby’s (the “Town”) existing law regulating solar energy systems (originally enacted by Local Law No. 2 of 2016, which was later repealed and superseded by Local Law No. 1 of 2019) under Section 787 of the Zoning Local Law of the Town of Shelby, Orleans County, New York (the “Town Zoning Law”). These amendments are intended to clarify certain requirements for solar energy systems in the Town.

Section 3. Amendments to Section 787 of the Town Zoning Law

Section 787(A) of the Town Zoning Law shall be amended to add the following paragraph:

5. In light of these considerations, the provisions contained in this Section 787 are intended to regulate solar energy systems to protect the environment, public health and safety, and to promote the general welfare of the Town and its citizens, as well as to further Town planning and zoning goals.

Section 787(D) of the Town Zoning Law shall be amended to add the following paragraph:

6. Any applicant or entity proposing to install and/or operate a utility-scale solar energy system in the Town must enter into a host community agreement with the Town to compensate the Town for any expenses and impacts on the community associated with that solar energy system, and to provide other benefits for the community as may be negotiated between the Town and the applicant. Nothing in this law shall prevent the Town from entering into such additional agreements with the applicant as may be necessary to protect the Town’s and its citizens’ interests (e.g., separate road use and maintenance agreements, or decommissioning agreements). In addition, except where such funding is provided for by other New York State laws or regulations, any applicant for approval of a utility-scale solar energy system must also enter into an escrow agreement with the Town to pay the Town’s technical, engineering, and legal costs and fees associated with the Town’s review of the project application, including the review required by SEQRA

and the Town's review and negotiation of agreements for community benefits, payments in lieu of taxes, or other agreements associated with the proposed system.

Section 787(E)(3) of the Town Zoning Law shall be amended to read as follows:

3. Small ground mounted solar energy systems shall be subject to the following requirements:
 - a. The location of said solar energy system shall be placed no closer in accordance with setback requirements for an accessory structure of the use district in which it is located; and
 - b. The location of said solar energy system shall be only located in the side or rear yard;
 - c. The total surface area of said solar energy system on a lot shall not exceed the allowed accessory structures where permitted in the District.

Section 787(E) of the Town Zoning Law shall be amended to add the following paragraphs:

9. Decommissioning and Site Restoration. Any applicant or entity proposing to install and/or operate a utility-scale solar energy system shall submit a decommissioning plan to the Town, which shall include: (i) the anticipated life of the solar energy system; (ii) the estimated decommissioning costs in current dollars; (iii) how said estimate was determined; (iv) the method of ensuring that funds will be available for decommissioning and site restoration; (v) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and (vi) the manner in which the solar energy system will be decommissioned and the site restored, which shall include removal of all structures, panels, equipment, transmission lines, wiring, and debris from the surface and to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The plan shall include a copy of the decommissioning bond or other financial mechanism or instrument providing the financial assurance required by this Section. The decommissioning plan shall be reduced to a decommissioning agreement between the Town and the system applicant or operator.
10. Financial Assurance for Decommissioning and Site Restoration. For the life of the utility-scale solar energy system, the applicant, or its successors or assigns, shall continuously maintain a bond or other appropriate form of financial security that is acceptable to the Town and payable to the Town in an amount—unless such amount is otherwise established or required by New York State laws or regulations—at least equal to 125% of the estimated costs of removing all components of the utility-scale solar energy

system (including any appurtenant equipment or facilities) and restoration of the system site(s) in accordance with the decommissioning plan. All expenses or costs of establishing or maintaining financial assurance shall be borne solely by the applicant, or its successors or assigns.

Section 787(G)(8) of the Town Zoning Law shall be amended to read as follows:

8. The design, construction, operation, and maintenance of a utility-scale 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. The applicant for a utility-scale solar energy system shall provide adequate considerations for its use of local roads during the construction, operation, and maintenance activities for the system, including any road repairs, maintenance, or restoration that may be required due to heavy equipment or increased frequency of use associated with construction or operation of the system.

Section 787(G)(14) of the Town Zoning Law shall be amended to read as follows:

14. The utility-scale solar energy system, as designed and constructed, shall provide adequate visual screening and site security measures. A berm and/or screening may be required along property lines abutting a residential lot.

Section 787(G)(17) of the Town Zoning Law shall be amended to read as follows:

17. A bond or other appropriate form of security acceptable to the Town Board shall be provided to cover the cost of the removal and site restoration in accordance with Section 787. Said bond or security shall be established and provided to the Town prior to construction. Said bond or security shall not be revocable without the Town's written consent and shall extend for a period of not less than the actual system removal and restoration without limit as duration; and shall transfer to cover any subsequent owner or operator of the system.

Section 787(H)(5) of the Town Zoning Law shall be amended to read as follows:

5. All solar energy systems shall be dismantled and removed by the applicant/owner immediately from a lot when the special permit or approval has been revoked by the Town Board or the solar energy system has been deemed to be non-operating or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) days, at the cost of the applicant or owner/operator. If the owner/operator or applicant does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner/operator or applicant shall be given an opportunity to be heard and present evidence, dismantle and

remove said facility and draw on the bond or other form of financial assurance provided to the Town for the solar energy system in accordance with this Section, or otherwise to place the cost of removal as a tax lien on said parcel. Such action shall be in addition to and not in lieu of any other enforcement remedies the Town may have.

Section 4. Severability.

If any section, subsection, phrase, sentence, or other portion of this Local Law or Section 787 of the Town Zoning Law 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.

Section 5. Effective Date

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