
Town of Shelby
Local Law __ of the Year 2018
A Local Law Regulating Solar Energy Systems

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

Section 1. Title

This Local Law shall be referred to as the “Solar Energy Systems Law of 2018”.

Section 2. Repeal of Prior Solar Energy Systems Law

The Town previously enacted Local Law No. 2 of 2016 regulating Solar Energy Systems and amend the Zoning Local Law to add sections Section 699-A and Section 787. Local Law No. 2 of 2016 is hereby repealed. This local law supersedes any requirement of Local Law No 2 of 2016 and Zoning Local Law Sections 699-A and 787.

Section 3. Amendment to Section 787.

Zoning Local Law Section 787 shall be amended as follows:

A. Findings.

The Town Board of the Town of Shelby (the “Town Board”) makes the following findings:

1. The Town Board finds that solar energy, as properly regulated, is clean, readily available and renewable energy source beneficial to the Town of Shelby, its residents and general public.
2. The Town Board, nevertheless, finds a growing need to properly site and regulate solar energy systems within the boundaries of the Town of Shelby to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Shelby, 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 Shelby.
3. Solar energy systems deplete land available for other uses, introduce industrial usage into other non-industrial areas, and can pose environmental challenges and compete with other activities.

4. Solar energy systems need to be regulated for removal when no longer utilized, to prevent environmental problems and the creation of abandoned industrial sites.

B. Definitions.

The following definitions shall apply to this Section:

APPLICANT - The person or entity filing an application and seeking an approval under this Section; the owner of a solar energy, system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant" or "owner" or "operator" are used in this Section, said term shall include any person acting as an applicant, owner or operator.

SMALL BUILDING MOUNTED SOLAR ENERGY SYSTEMS - A solar energy system that is affixed to the side(s) of a building 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 and designed and intended to generate electricity solely for use primarily on said building or other buildings on the same premises, through a distribution system that is not available to the general public.

SMALL GROUND MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot, through a distribution system that is not available to the general public.

SMALL 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, designed and intended to generate electricity primarily for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

SOLAR ENERGY SYSTEM - Any system or group of components designed to produce power from the sun and affixed to real property, except self-contained, single purpose components, such as signage lighting panels.

UTILITY-SCALE SOLAR ENERGY SYSTEM - Any solar energy system that is designed and intended to supply energy primarily into a utility grid for sale to the general public, whether or not it also supplies energy for use on the parcel of land on which it is located.

C. Use districts where allowed.

No solar energy systems shall be permitted in the Town of Shelby except in the Zoning Districts specified in this Section:

1. Rooftop mounted and building-mounted solar energy systems are permitted in all zoning districts in the Town, subject to setback and height restrictions.

2. Ground mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town subject to all setback, height and area coverage restrictions.
3. Utility-scale solar energy systems permitted only in an Agricultural/Residential District, General Business, Hamlet, Industrial, Light Industrial, and Rural Residential District.

D. General Regulations.

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Shelby shall be permitted only as follows:

1. Utility-scale solar energy systems shall be permitted only by Special Permit by the Town Board in use districts where allowed in accordance with the criteria established in this Section, after SEQRA review, upon concurrent site plan approval issued by the Town of Shelby Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Section.
2. Small rooftop mounted and small building mounted solar energy systems shall follow normal building permit procedures.
3. Small ground mounted solar energy systems shall follow normal building permit procedures, and must be accompanied by a scale map showing location, setbacks and lot coverage.
4. This Section shall supersede over any inconsistent provisions of the Zoning Law of the Town of Shelby.
5. This Section shall not apply to any premises owned or controlled by the Town of Shelby.

E. General Criteria.

1. Rooftop mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three (3) feet before the edge of the roof. Maintenance access shall be incorporated into the system as determined by the Building Inspector.
2. Building-mounted solar energy systems shall not be more than three (3) feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.
3. 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 or combinations of accessory structures where permitted in the District.
4. 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.
 5. Any solar energy system shall be accessible by all emergency service vehicles and personnel.
 6. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
 7. 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.
 8. Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

If the use of a solar energy system is discontinued or not maintained the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance and shall remove the system and properly dispose of all materials. 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 non-operating or abandoned.

F. Special Permit Requirements for Utility-Scale Solar Energy Systems.

Applications under this Section shall be made as follows: Applicants for a special permit to place, construct, and make a major modification to a utility-scale solar energy system within the boundaries of the Town of Shelby shall submit twelve (12) sets of the following information to the Building Inspector, who shall first present it to the Town Board and the Town designated professional engineer or consultant for an initial review. The Town Board shall refer the matter to the Planning Board and may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. After considering such application in accordance with this Section, the Town Board may grant the application, deny the application or grant the Special Use Permit, deny the Special Use Permit or grant the Special Use Permit and impose reasonable conditions and restrictions as authorized by Town Law §274(b)(4). The following information shall be contained in or accompany the application:

1. A completed State Environmental Quality Review Act (SEQRA) form.

2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
3. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
4. Documentation of the clearing, grading, storm water and erosion control plans.
5. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
6. One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
7. A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a utility-scale solar energy system, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:
 - a. The restrictions placed upon buildings, structures, vegetation and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system; and
 - b. A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions; and
 - c. The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day; and
 - d. Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses; and

- e. Provisions for compensation of the owner/operator benefitting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and
 - f. The terms or conditions, if any, under which the easement may be revised or terminated.
8. A site plan in accordance with the Town of Shelby's site plan requirements and drawn in sufficient detail as follows:
- a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - b. Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
 - c. Proposed fencing and/or screening for said project.
9. Any such additional information as may be required by the Town Board, Town's professional engineer or consultant, Planning Board, Town Attorney, Building Inspector.
- G. Special Permit Criteria; Restrictions.

Special Permits issued for utility-scale solar energy systems shall meet the following conditions:

- 1. Minimum lot area: The minimum lot upon which the system is to be constructed shall be fifteen (15) acres.
- 2. Maximum coverage area: The maximum coverage area of the system shall be fifty (50) acres.
- 3. Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:
 - a. From any zoning district boundary.
 - b. From any property lot lines: A minimum of one hundred (100) feet from any property lot line.
 - c. From buildings or structures not on the lot proposed for the solar energy system:
 - i. A minimum of two hundred and fifty (250) feet.
 - ii. A minimum of five hundred (500) feet from any dwelling.

- d. From buildings or structures on the lot proposed for the solar system: A minimum of one hundred (100) feet from any building, structure or dwelling.
 - e. From public roads:
 - i. A minimum of two hundred (200) feet from any public road (measured from the road right-of-way line); and,
 - f. From schools, public parks: A minimum of five hundred (500) feet from all property lot lines bordering a school or public park.
4. Maximum overall height. The height of a utility-scale solar energy system shall not exceed twenty (20) feet when oriented at maximum tilt.
 5. Number of utility-scale solar energy systems allowed per lot. There shall only be allowed one utility-scale solar energy systems per lot.
 6. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Shelby laws, regulations, building, plumbing, electrical, and fire codes; and the applicant shall provide any requested documentation of such correspondence.
 7. Development and operation of a utility-scale 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 Shelby or other federal or state regulatory agencies.
 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.
 9. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
 10. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
 11. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
 12. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

13. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations and shall not be illuminated.
14. A berm and/or screening may be required along property line abutting a residential lot.
15. Prior to issuance of a Certificate of Occupancy, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
16. Compliance with regulatory agencies: The applicant is required to obtain and maintain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
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. Said bond or security shall be filed prior to construction. Said bond shall not be revocable and shall extend for a period of not less than:
 - a. The actual removal and restoration without limit as duration.
 - b. Shall transfer to cover any subsequent owner or operator of the system.
18. Clearing, grading, storm water and erosion control:
 - a. Before the Town of Shelby shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a storm water and Erosion Control Plan to the Engineering Department for its review and approval; and
 - b. The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

H. Maintenance, Procedures, and Fees.

1. Time limit on completion. Upon the granting of a special permit of a utility-scale solar energy system by the Town Board, the building permit shall be obtained within six months and the project shall be completed within twelve months of the granting of the Special Use Permit. If not constructed, the special permit and site plan approval and building permit shall automatically lapse without notice.
2. Inspections. Upon reasonable notice, the Town of Shelby Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved 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. The applicant/operator shall authorize and cooperate in such inspection. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report

shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

3. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special use or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
4. 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.
5. Removal. All solar energy systems shall be dismantled and removed by the applicant/owner operator 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 owner. 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 shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and 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.
6. Determination of Abandonment or Non-operation. A determination of the abandonment or non-operation of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner/operator or applicant with written notice by personal service or certified mail at the address shown in the records of the Town or the application. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Shelby Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail of 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 approved or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
7. Application and annual fees.
 - a. Utility-scale solar energy system. An applicant shall pay an initial application fee of Two Thousand Five (\$2500) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the Owner shall pay an annual fee of One Thousand (\$1000) Dollars, or such other amount as the Town Board may,

from time to time, determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.

- b. Said fees are in addition to fees for Building Permits. Fees are as follows:
 - i. 0.025 per square foot of the project area, or such other amount as the Town Board may, from time to time, determine by resolution.

- 8. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- 9. Special permits for a. utility-scale solar energy system granted under this Section shall be issued only following a public hearing held as required for special permits under the New York State Town Law.
- 10. The Town Board may:
 - a. For utility-scale solar energy systems, grant a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. Upon issuance of a Special Permit, the applicant shall obtain a building permit for the utility-scale solar energy system.
- 11. Any changes or alterations post construction to a utility-scale solar energy system shall be allowed only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.
- 12. Special permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this Section and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto.
- 13. In addition to the requirements of this Section, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

I. Violation/Revocation.

- 1. Any violation of this Section or of the terms of a Special Use Permit constitutes a violation pursuant to the Zoning Code.
- 2. The Town may enforce this Section by obtaining an injunction, temporary restraining order, temporary injunction or any other remedy available in law or equity.
- 3. If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant owner/operator is notified in writing of the violations and the Town Board holds a hearing on same.

Section 4. Solar Exemption Opt-Out

A. The Purpose of this Section is to opt-out of the real property tax exemption for solar and wind projects pursuant to § 487 of the Real Property Tax Law (“RPTL”) of the State of New York.

B. Opt-Out. The Town hereby provides that no exemption under RPTL § 487 shall be applicable with its jurisdiction with respect to any solar or wind energy system or farm waste energy system which begins construction subsequent to the effective date of this local law.

Section 5. Severability.

If any section, subsection, phrase, sentence, or other portion of this Section 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 6. Effective Date

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