

TOWN OF PINE PLAINS

LOCAL LAW NO. __ OF THE YEAR 2022

A LOCAL LAW AMENDING CERTAIN PORTIONS OF CHAPTER 275 OF THE TOWN CODE WITH REGARD TO THE REGULATION OF SOLAR INSTALLATIONS

BE IT ENACTED by the Town Board of the Town of Pine Plains as follows:

SECTION 1: TITLE.

This Local Law shall be entitled: “A Local Law Amending Certain Portions of Chapter 275 of the Town Code with regard to the Regulation of Solar Installations”.

SECTION 2: LEGISLATIVE INTENT.

The Town of Pine Zoning Law was adopted by Local Law No. 2 of 2009 in October of 2009. This Local Law has been amended in certain respects pursuant to Local Laws adopted by the Town Board of the Town of Pine Plains since that date. The Zoning Law has now been codified as Chapter 275 of the Town Code. The Town Board has recently adopted an amendment to its Comprehensive Plan and appointed a Zoning Review Committee to work with BFJ Planning to adopt a series of amendments to the Zoning Law to address certain issues identified as having required amendment, correction or change since the Zoning Code was first adopted in 2009. The Town of Pine Plains has recognized that solar photovoltaic (PV) installations are now considered normal and customary accessory uses to residences, commercial buildings and farms and by adoption of Local Law No. 1 of the Year 2019, the Town Board amended its Zoning Code to provide for §275-24 entitled: “Accessory Solar Installations” to permit the installation of such facilities in all Town zoning districts as accessory uses pursuant to the Town of Pine Plains New York State Unified Solar Permit process by the Code Enforcement Officer. Since that date, the Town Board has requested the Town’s Zoning Review Committee to work with the Town’s Consultant Planner, BFJ Planning, to create a proposed Local Law amending the Town Code to regulate accessory solar installations and primary use solar installations. The Town’s Consultant Planner has provided to the Town Attorney a proposed text of a Local Law amending §275-24 of the Code to regulate solar installations in three tiers, *to wit*: Tier One, which regulates accessory solar installations that are mounted on the roof of a principal structure; Tier Two, which regulates ground mounted accessory solar installations; and Tier Three, which regulates larger solar facilities through a special use permit and site plan review process. Those amendments have been provided to the Attorney to the Town, who has drafted a proposed Local Law amending the Town Code to provide for the three tier system of regulation of solar facilities. This Local Law will supersede the current §275-24, which currently permits, as accessory uses to residents, commercial buildings and farms, solar installations pursuant to the New York State Unified Solar Permit process by the Code Enforcement Officer.

SECTION 3: STATEMENT OF AUTHORITY.

This Local Law is enacted pursuant to the authority of General Municipal Law §10; New York State Town Law and in accordance with Article XVII of the Town Code. To the extent the provisions of this Local Law are in conflict with §278 of the New York State Town Law, the Town Board asserts its intention to supersede §278 pursuant to the authority granted in Municipal Home Rule Law, §1(ii)(b)(3). In accordance with §22(1) of the MHRL, this Local Law supersedes §§267-a, 267-b, 274-a, 274-b, 276, 277 and 278 of the New York State Town Law.

SECTION 4: REVISIONS TO THE TOWN CODE.

- A. The current §275-24 of the Town Code is hereby rescinded in its entirety.
- B. A new §275-24 of the Town Code is hereby adopted, which shall read as follows:
 - (A) Purpose. The Town of Pine Plains hereby recognizes that solar photovoltaic (PV) installations are now considered normal and customary accessory uses to residences, commercial buildings and farms. Installation of such facilities in all Town zoning districts shall be permitted pursuant to a three-tiered system. Tier 1 is for accessory roof-mounted solar PV installations, Tier 2 is for accessory ground-mounted solar PV installations, and Tier 3 is for large-scale solar installations. Tier 3 is not considered a customary accessory use, as they generate power for off-property use.
 - (B) Tier 1: Roof mounted Solar PV installations.
 - (1) Tier 1 applies to roof-mounted and Solar PV installations that are accessories to principal uses. The installation of roof-mount Solar PV installations is permitted as an accessory use to residences, pursuant to the Town of Pine Plains NYS Unified Solar Permit Process by the Town Code Enforcement Officer.
 - (2) In order to qualify as an accessory use permitted pursuant to the Town of Pine Plains NYS Unified Solar Permit, the following criteria must be met by the applicant:
 - a. The facility must have a rated DEC capacity of 25kW or less;
 - b. The Solar PV installation may generate up to 110 percent of the existing or potential energy demand for on-site uses. The installation may not generate energy for off-site uses.
 - c. The facility must be mounted on a permitted roof structure or on a legal accessory structure such as garage or shed roof;

- d. The facility must be installed by a solar installation contractor in compliance with all licensing and other requirements of the Town of Pine Plains and the state;
 - e. Glare: All Solar Panels shall have anti-reflective coating(s).
 - f. If the structure on which the facility is installed is a sloped roof, the solar panels must be mounted parallel to the roof's surface.
 - i. The Zoning Enforcement Officer may permit solar installations that vary slightly from being parallel to the roof's surface if there is a significant reason to do so.
 - ii. Solar Panels on pitched roofs shall be mounted with a maximum distance of [8] inches between the roof surface the highest edge of the system.
 - iii. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - g. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than [24] inches above the flat surface of the roof, whichever is higher.
- (3) The applicant must utilize the Town of Pine Plains NYS Unified Solar Permit which may be obtained from the Town Clerk or the Town Code Enforcement Officer during regular business hours. The application process shall be a unified permit streamlined process approved by the Town Code Enforcement Officer with the submission of the permit and all required application material as identified in the Town of Pine Plains NYS Unified Solar Permit. Permits will be issued within 21 calendar days upon receipt of complete and accurate applications. The Code Enforcement Officer will provide feedback within 14 calendar days of receiving incomplete or inaccurate applications.
- (C) Tier 2. Ground-mounted Solar PV installations
- (1) Tier 2 applies to any ground-mounted Solar PV installations that are an accessory to the primary use on a parcel. The Solar PV installation may generate up to 110 percent of the existing or potential energy demand for on-site uses. The installation may not generate energy for off-site uses.
 - (2) For installalions within the Hamlet Zoning Districts (H-BUS, H-MS, H-CR, H-R, H-PC, H-B, and LI) Zoning Districts.
 - a. Site Plan Review is required for Tier 2 Solar PV installations in the Hamlet and LI zoning districts.
 - b. Within the Hamlet and LI zoning districts, the Planning Board shall consider opportunities to minimize visual impact to neighbors and public

space and right-of-way. In reviewing an application, the Planning Board may impose conditions to minimize visual impacts including, but not limited to, screening and additional setbacks.

- c. Glare: All Solar Panels shall have anti-reflective coating(s).
 - d. Required Setbacks
 - i. Installations are prohibited in front yards.
 - ii. Rear yard and side yard setbacks shall be the same as for accessory structures in each zoning district.
 - e. Height: The maximum height for Tier 2 solar installations shall not exceed 12 feet in height above the ground measured from the ground under the solar panel to the highest point of the solar panel or racking system, whichever is greater.
- (3) For installations within the R & WP Zoning Districts. The Planning Board shall consider opportunities to minimize visual impact to neighbors and public space and right-of-way. In reviewing an application, the Planning Board may require conditions to minimize visual impacts, including, but not limited to, screening of solar installations, and additional setbacks from parcel boundaries.
- a. Site Plan Review is required for Tier 2 Solar PV installations in R and WP zoning districts.
 - b. Lots less than or equal to two acres.
 - i. Installations are prohibited in front yards.
 - ii. Rear yard and side yard setbacks shall be the same as for accessory structures in each zoning district.
 - c. Glare: All Solar Panels shall have anti-reflective coating(s).
 - d. Height: The maximum height for Tier 2 solar installations on lots that are less than or equal to 2 acres shall not exceed 12 feet in height above the ground measured from the ground under the solar panel to the highest point of the solar panel or racking system, whichever is greater.
 - e. Lots greater than two acres.
 - i. Solar PV installations may be in the front, side, and rear yards.
 - ii. A setback of 10 feet is required from the parcel boundary. A larger setback may be required by the planning board for safety and to minimize visual impacts.
 - iii. A setback of 25 feet is required from any public roadway.
 - iv. A preapplication conference with the Building Inspector is recommended.
 - v. Glare: All Solar Panels shall have anti-reflective coating(s).
 - vi. Height: The maximum height for Tier 2 solar installations on lots greater than two acres but less than five acres shall not exceed 12 feet in height. The maximum height for Tier 2 solar installations on lots with an area of five acres or more shall not exceed 15 feet

in height. Tier 2 solar installation height shall be measured from the ground under the solar panel to the highest point of the solar panel or racking system, whichever is greater.

- (D) Tier 3. Large-Scale Solar Installations, Solar Farms, and Solar Installations that produce greater than 110% of on-site energy demand.
 - (1) A special use permit, public hearing, and site plan review is required. The general requirements of special use permits in Section 275-55 of this code need to be met as well as the specific requirements listed in subsection (5) below.
 - (2) Tier 3 applies to any solar installation for off-property use or for a Solar PV installation that generates in excess of 110 percent of existing or potential demand.
 - (3) Purpose. Tier 3 regulations seek to preserve large parcels of land in Pine Plains and carefully regulate large-scale solar farms that generate energy for areas outside of the Town.
 - (4) Pre-Application Meeting Required.
 - a. A pre-application conference with the Planning Board is required for all Tier 3 installations. The applicant shall discuss the project with the Planning Board and should present a visual impact study and a sketch plan of the installation.
 - (5) Special Permit and Site Plan Approval is required for all Tier 3 installations.
 - a. During Site Plan Approval, the Planning Board shall review the application and visual impact study for proposed lighting, site security, grading and clearing of vegetation, and for impacts to rural character, farms, farm structures, and ridgelines. The Planning Board may require the installation to be screened when viewed from roads, parks, or public spaces, and may require that utilities be buried underground or otherwise hidden from view.
 - b. Applicants must submit a property operation and maintenance plan during site plan approval. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
 - c. Preservation of agricultural lands and natural vegetation and habitat. The Applicant must show how agricultural lands, prime agricultural soils, natural vegetation and habitat are preserved to the greatest extent possible. Solar installation impacts to these resources should be minimized.
 - d. Pine Plains recognizes that solar energy systems can be designed and installed in a manner that allows the land underneath solar panels and near the solar installations to be used for agricultural purposes. The Planning Board may grant greater flexibility to

- Applicants who propose installations where agricultural operations would occur jointly with the production of solar energy.
- e. The Planning Board may retain one or more consultant to assist with the review of the application, consistent with Section 275-105 of the Zoning Code.
- (6) Maximum Lot Coverage.
 - i. Parcels with an area less than 70 acres have a maximum lot coverage of 20 percent.
 - ii. Parcels with an area 70 acres or greater have a maximum lot coverage of 30 percent.
 - (7) Glare: All Solar Panels shall have anti-reflective coating(s).
 - (8) Catastrophic Weather Events
 - a. In the event of a catastrophic weather event, the Planning Board may review an in-kind reconstruction of the solar energy system in an expedited manner.
 - (9) Decommissioning.
 - a. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the Owner and/or Operators expense, which at the Owner's option may come from any security made with the Town of Pine Plains as set forth in Section 8(c) herein.
 - b. A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
 - i. The cost of removing the Solar Energy System.
 - ii. The time required to decommission and remove the Solar Energy System any ancillary structures.
 - iii. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - c. Security.
 - i. The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount 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. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by

the amount of the estimated salvage value of the Solar Energy System.

- ii. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town of Pine Plains, which shall be entitled to utilize the cash deposit, or bond or other security. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
- iii. In lieu of a removal bond, the Town Board, in its discretion, may permit the owner and/or operator to enter into a decommissioning agreement with the Town which provides, in relevant part, that if the decommissioning of the site is not completed within six months of the time period specified in Section 275-24 D.8.a. above, the Town may, at its own expense, enter the property and remove or provide for the removal of the structures and equipment and/or the restoration of the site, as the case may be, in accordance with the decommissioning plan. Such agreement shall provide, in relevant part, that the Town may recover all expenses incurred for such activities from the defaulting property owner and/or operator. The cost incurred by the Town shall be assessed against the property and shall become a lien and tax upon said property and shall be added to and assessed as part of the taxes to be levied and assessed thereon and enforced and collected with interest in the same manner as other taxes. If such decommissioning agreement is made, it shall be recorded by the landowner with the land records of Dutchess County and shall be an agreement which binds subsequent owners of the site. A copy showing the stamp of the recorder of deeds shall be given by the landowner to the Town Clerk. This provision shall not preclude the Town from collecting such costs and expenses by any other manner by action in law or in equity. In the event of any such legal proceedings, the owner and/or operator, as the case may be, shall be liable for all legal expenses, costs and disbursements in connection with said litigation, as awarded by a court of competent jurisdiction.

(E) Section 275-116 “Terms Defined” of the Town Code is hereby amended to add the following conditions in proper alphabetical order.

- “a. 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.
- b. GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.
- c. ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.
- i. SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment.
- ii. SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.”

(F) Section 271, Attachment 1, Table A, “Schedule of User Regulations is hereby amended in the following respects:

- (a) The following “symbol” is added to the Schedule, which shall read as follows:

“USP denotes a use that is permitted pursuant to the Town of Pine Plains NYS Unified Solar Permit Process by the Town Code Enforcement Officer.”

- (b) The following is added to the Schedule under “Uses Accessory to Residential Uses”:

	H-BUS	H-MS	H-CR	H-R	H-B	H-PC	R	WP	LI
Tier 1 Roof Mounted Solar PV Installations [275-24(B)]	USP	USP	USP	USP	USP	USP	USP	USP	USP

- (b) The following is added to the Schedule under “Non-Residential Uses”:

	H-BUS	H-MS	H-CR	H-R	H-B	H-PC	R	WP	LI
Tier 2 Ground Mounted Installations accessory to the primary use on a parcel [§275-24(C)]	SP	SP	SP	SP	SP	SP	X	X	SP
Tier 3 Large Scale Solar Installations [§275-24(D)]	X	X	X	X	X	X	SU	SU	X

(G) 275 Attachment 2, Table B, Schedule of Bulk Regulations is hereby amended to add the following Note 6 which shall read as follows:

“Note 6: For Tier 1, 2, and 3 Solar Installations established pursuant to §275-24 of the Town Code, the Bulk Regulations as set forth in that section of the Code, as established and/or modified by the Planning Board during the site plan and/or special use permit process shall apply.”

SECTION 5. SEVERABILITY.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law, which shall be given effect without such part or parts.

SECTION 6: EFFECTIVE DATE.

This local law shall take effect immediately after its filing with the State Secretary of State as provided in §27 of the Municipal Home Rule Law.