TOWN OF WESTMORELAND ENERGY LAW

Local Law #2 of 2023

1. Authority

Be it enacted by the Town of Westmoreland Town Board as follows: pursuant to sections 261-265 of the Town Law and section 20 of Municipal Home Rule Law of the State of New York, which authorize the Town Board to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the law of New York State, "to make provisions for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore."

2. Statement of Purpose

A. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Westmoreland by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
   1) To take advantage of a safe, abundant, renewable and non-polluting energy resource;
   2) To balance the potential impact on neighboring properties with those of solar installations;
   3) To increase employment and business development in the Town to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
   4) To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife, wildlife habitats, and other protected resources;
   5) To create synergy between solar and economic revitalization, as well as the possibility of lowering utility bills for Town residents, and;
   6) To encourage land use in accordance with the Town's Comprehensive Plan.

3. Definitions

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

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.

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, which generates electricity for onsite or offsite consumption.

Native Perennial Vegetation: native wildflowers, forbs, and grasses that serve as habitat, forage and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

Pollinator: bees, birds, bats and other insects or wildlife that pollinates flowering plants, and includes both wild and managed insects.

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.

Solar Access: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

Solar Energy Equipment: Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

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. A Solar Energy System is classified as a Tier1, Tier 2, or Tier 3 Solar Energy System as follows:

A. Tier 1 Solar Energy Systems Include the following
    a. Roof-Mounted Solar Energy Systems
    b. Building-Integrated Solar Energy Systems
B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25kW AC and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.
C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

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

Storage Battery: A device that stores energy and makes it available in an electrical form.

4. Applicability

A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town of Westmoreland after the effective date of this Local Law, excluding general maintenance and repair.
B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
D. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”) and the Town of Westmoreland Code.
E. Modification, addition to or any retrofit of any existing Solar Storage System within Solar Energy System.

5. General Requirements

A. A Building Permit shall be required for installation of all Solar Energy Systems.
B. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.
C. Issuance of permits and approvals by the Planning/Zoning Board shall include review pursuant to the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (SEQRA))
D. The NYS Unified Solar Permit, which is attached, shall be required to be filled out before any zoning or building permit will be issued.
E. The permitting fee for Tier 1 and Tier 2 Solar Energy Systems shall be $300.00. The permitting fee for Tier 3 Solar Energy Systems shall be $2500.00. Additionally, applicants for all Solar Energy Systems shall be required to pay the reviewing Board's outside consultant fees including but not limited to legal, proposed site plan and SEQRA review, engineering, bond and survey costs as part of the application and review process as well as any expenses for Board costs related special meetings or public hearing(s).
F. Any application which contains multiple parcels/lots of land must show that all applicable parcels/lots are under one ownership entity – individual or corporate. Applications that contain multiple lots/parcels under multiple owners shall not be considered/approved.

6. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

A. Roof-Mounted Solar Energy Systems

1) Roof-mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
    a. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface and the highest edge of the system.
    b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
    c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
    d. 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.
    e. Building mounted systems shall be designed with aesthetics consistent with the building architecture in style, placement and color.
    f. All roof mounted systems shall take into consideration fire safety with design and installation in accordance with the Building Code(s).
2) Glare: All Solar Panels shall have anti-reflective coating(s).

3) Height: All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

B. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.
C. Notification shall be provided to the Fire Department including a site map or plot plan showing the location of the solar energy electrical panel, as well as proper operation of the disconnect switch in the event of a fire or other emergency. The method of shutdown shall also be posted inside or near the main electrical panel so that it can be readily accessible for and to fire department personnel in the event where the homeowner, tenant or other personnel is not available or familiar with the safe shutdown operation to cut power from the solar panels.

7. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures but may be required to undergo a site plan review by Planning/Zoning Board if referred to same by the Codes Department. Tier 2 Solar Energy Systems shall be subject to the following conditions:

A. Glare: All Solar Panels shall have anti-reflective coating(s).
B. Setbacks: Tier 2 Ground Mounted Solar Energy Systems shall be subject to the setback of 50 feet from any side or rear property line and adhere to any additional regulations specified for the accessory structures within the underlying zoning district.
C. All Tier 2 Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards with preference in the rear yard and it must be shown that installation in the rear yard cannot be accomplished.
D. Ground Mounted Solar Panels shall be located a minimum of 100 feet from any dwelling unit on an adjoining non-participating property and 150 feet setback from the center of the road.
E. Height: Tier 2 Solar Energy Systems shall be subject to the height limitations of 12 feet in residential district and 15 feet for all other remaining districts.
F. Screening and Visibility.
    1) All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
    2) Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.
G. Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.
H. All solar collector installations must be performed in accordance with applicable electrical and building codes, the manufacturer's installation instructions and industry standards. Prior to operation the electrical connections must be inspected by the Code Enforcement Officer or by an appropriate electrical inspection person or agency, as determined by the Town. In addition, any connection to the public utility grid must be inspected by the appropriate public utility.

I. When solar storage batteries are included as part of the solar collector system, they must be placed in secure container or enclosure meeting the requirements of the New York State Uniform Fire Prevention and Building code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of Oneida County or State of New York.

J. Decommissioning. Tier 1 and Tier 2 building or ground mounted accessory solar systems: If a building or ground mounted solar collector(s) ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than 90 days after the end of the twelve month period. In the event the property owner fails to remove the aforesaid non-functioning system with time allowed the town may enter upon the land where such system has been installed and remove same. All expenses incurred by the Town in connection with the removal of the non-functioning system shall be assessed against the land on which such free-standing or ground mounted solar collectors are located and shall be levied and collected in the same manner as provided in New York State Town Law.

8. Permitting Requirement for Tier 3 Solar Energy Systems

Tier 3 Solar Energy Systems are conditionally permitted through the issuance of a special use permit within the R-1, R-2, R-3 and R-4 residential districts, B-1, B-2 business districts and IN-1 light industrial districts, and are subject to site plan application requirements as set forth in this section.

A. Applications for the installation of Tier 3 Solar Energy System shall be reviewed by Joint Zoning/Planning Board:

1) Applications are to be submitted to the Town Code Enforcement Officer and they will be reviewed for completeness. Applicants shall be advised within 30 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2) Subject to a public hearing to hear all comments for and against the application, the Joint Zoning Board of Appeals/Planning Board of the Town of Westmoreland shall have a notice printed in a newspaper of general circulation in the Town at least 10 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 1,000 feet of the property at least 10 days prior to such hearing. Proof of mailing shall be presented to the Joint Zoning Board of Appeals/Planning Board at the public hearing.
3) Referred to the Oneida County Department of Planning pursuant to General Municipal Law 239-m if required and any other interested or involved agencies such as Fire Department.
4) Upon closing of the public hearing, the Zoning Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Zoning Board and applicant.

B. Underground Requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
C. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
D. Signage.
    1) No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
    2) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
E. Glare. All Solar Panels shall have anti-reflective coating(s).
F. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
G. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
H. Decommissioning.
    1) 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 as set forth in section 10(b) herein.
    2) A decommissioning plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
        a) The cost of removing the Solar Energy System.
        b) The time required to decommission and remove the Solar Energy System and any ancillary structures.
        c) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
    3) Security.
        a) 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 site must be returned to pre-construction condition. 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.
        b) 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, which shall be entitled to maintain an action thereon. 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.

c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in Section 10(b) and 10(c) herein.

I. Site Plan Application. For any Solar Energy System requiring a Special Use Permit, a site plan approval shall be required. A completed site plan application is required and shall include the following information:
   1) Property Lines and physical features, including roads, for the project site.
   2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
   3) A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
   4) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
   5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
   6) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
   7) Zoning district designation for the parcel(s) of land comprising the project site.
   8) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming for a minimum of twice per year unless otherwise stated in the conditions of Site Plan approval.
   9) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Zoning Board.
   10) Additional review as needed by third party engineering/consultant to confirm that information within site plan and/or SEQRA is correct.
   11) Prior to the issuance of the building permit or final approval by the Planning/Zoning Board, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

J. Special Use Permit Standards:
   In addition to the Special Use Permit requirements of the Town Code, the following requirements apply.
   1) Lot Size
      a) The property on which the Tier 3 Solar Energy System is placed shall be more than 5 acres.
   2) Setbacks
      a) The Tier 3 Solar Energy Systems shall be set back 600 feet from the center of the roadway, and 300 feet from the rear and side property lines.
   3) Height
      a) The Tier 3 Solar Energy Systems shall not exceed 15 feet in height.
   4) Lot Coverage

a) The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:
   I. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
   II. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
   III. Paves access roads for servicing the Solar Energy System.
b) Lot coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirement of the underlying zoning district, and in no event greater than 25%.

5) Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot high fence, as required by NEC, with a self-locking gate to prevent unauthorized access. The reviewing Board may require the fence to be a "no-sight" fence.
   a. Fencing setback shall be minimum of 50 feet from side and rear property lines.
6) Screening and Visibility.
   a) Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, coniferous trees or other screening materials that will harmonize with the character of the property and surrounding area.
   b) Solar Energy Systems larger than 5 acres shall be required to:
      I. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example, a digital view shed report, shall be required to be submitted by the applicant.
      II. Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.
7) Agricultural Resources. For Projects on Agricultural lands:
   a) Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.
8) 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.
9) If the Tier 3 Solar Energy System will be sited on farmland located within an Agricultural District, an Agricultural Data Statement should be completed.
10) Surrounding property values will be reasonably safeguarded.
11) Not incur an excessive loss of productive agricultural land in Town of Westmoreland that would threaten the future of small or mid-size farms and limit opportunities for new and beginning farmers.

12) Construction and delivery vehicles for construction of Tier 3 Solar Energy System shall use traffic routes established as part of the application review process. Factors for establishing such corridors shall include a) minimizing traffic impacts from construction and delivery vehicles, b) minimizing activity during times of school bus activity c) minimizing wear and tear on local roads.
13) Applicant shall be responsible for remediation of damaged roads upon completion of the installation of Solar Energy System. Applicant shall submit an estimate of costs for restoration to the preconstruction quality and character of local roads for the Town's approval prior to construction. Failure to execute remediation of roads will result in revocation of special permit.

9. Safety

A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.
C. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town of Westmoreland and any applicable federal, state, or county laws or regulations.

10. Permit Time Frame and Abandonment

A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning/Zoning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fail to perform substantial construction after 24 months the approvals shall expire.
B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
C. If the owner and/or operator fail to comply with the decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan. Further, the Town may perform the decommissioning itself, and recover all costs of such decommissioning, including reasonable attorney's fees. If necessary the Towns costs will be recoverable against the owner of the land (including as a tax lien) and the operator of the solar array, on a joint and separate liability basis.
D. If the owner or operator of the Solar Energy System changes or the owner of the real property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site

plan approval, and the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the Codes Enforcement Officer of such changes in ownership or operator within 30 days of the ownership change.

E. Nothing in this law shall be read as limiting the ability of the Town to enter into host community Agreements with any applicant or impose mitigation fees to compensate the Town for expenses or impacts on the community.

11. Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Westmoreland and the State of New York.

12. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

13. Effective Date

This local law will become effective when filed with the New York Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

A public hearing regarding this local law was held on October 9, 2023 at 5:30 pm, immediately followed by a regularly scheduled meeting of the Westmoreland Town Board, wherein it was motioned by Councilperson Hebbard and seconded by Councilperson Seymour to approve the legislation, after which it was a unanimous vote in favor of said motion, with all board members being present.

Sworn to and certified by the Town Clerk, this __th day of _____ 2023.

_____

Jody Burdick, Town Clerk

APPENDIX 1: LOT SIZE REQUIREMENTS

The following table displays the size requirements of the lot for Ground Mounted Solar Energy Systems to be permitted.

Table 1: Lot Size Requirements

Zoning District	Tier 3 Solar Energy Systems
R-1	>5 acres
R-2	>5 acres
R-3	>5 acres
R-4	>5 acres
B-1	>5 acres
B-2	>5 acres
IN-1	>5 acres

Key:
N-A: Not Allowed