

LOCAL LAW NO. 1 of the year 2023

A LOCAL LAW TO PLACE A MORATORIUM ON CERTAIN SOLAR ENERGY INSTALLATIONS IN THE TOWN OF WESTMORELAND

Section 1. TITLE

This local law shall be known as the “Third Moratorium on Certain Solar Energy Installations in the Town of Westmoreland”, having been passed by vote of the Town Board on July 25, 2023 immediately following a public hearing regarding same.

Section II. LEGISLATIVE FINDINGS

The Town Board has previously passed Local Law #4 in 2019 and Local Law #2 in 2021 as to regulations for the installation and use of solar energy generating systems and equipment within the Town of Westmoreland. Whereas the Town finds that solar energy can provide an environmentally friendly source of sustainable energy to and for the benefit of the residents of the Town of Westmoreland, it has encountered additional questions and complications having do with this issue and finds that it needs time to research and clarify existing provisions under the Town’s Zoning Law having do with the review and permitting of solar energy system installations in the Town, and that it is necessary for the protection of the health, safety, and general welfare of the residents of the Town to develop and enact additional regulatory provisions under the Town’s Zoning Law for the installation and use of solar energy installations. It has done extensive work in drafting/revising its’ solar legislation and needs some additional time to refine same. Therefore, the Board finds it necessary to adopt a final and last ninety day moratorium on solar energy system installations in the Town pending the development and enactment of further regulations with respect to the same.

Section III. Definitions

The following definitions are applicable to the provisions of this Local Law:

BUILDING INTEGRATED PHOTVOLTAIC SYSTEM: A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other façade material, semitransparent skylight systems, roofing materials, and shading over windows.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity for onsite residential consumption.

LARGE-SCALE SOLAR ENERGY SYSTEM: A Solar Energy System that produces energy primarily for the purpose of offsite sale or consumption.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite residential consumption.

SOLAR ENERGY EQUIPMENT: Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM: An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electrical energy.

Section IV. Moratorium

For a period of ninety days immediately following the effective date of this Local Law, there is hereby imposed a moratorium on the installation of solar energy systems in the Town of Westmoreland, with the exception of: a. Ground mounted solar energy systems installed for the primary purpose of producing electricity for onsite personal residential consumption. b. Roof mounted solar energy systems installed for the primary purpose of producing electricity for onsite personal residential consumption. During the term of this moratorium, no approvals, processing, permits, actions or decisions shall be made, undertaken, or issued by any Board, body, administrative agency, or official of the Town of Westmoreland with respect to solar energy installations, except as exempted above. This moratorium shall apply to all such applications, whether pending or received prior to the effective date of this Local Law.

Section V. Enforcement

A. This Local Law shall be enforced by the Codes Enforcement/Zoning Officer of the Town of Westmoreland.

B. Violations & Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct a solar energy installation including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

1. A civil penalty of no less than \$750, but no more than \$1500 per day of the violation. Each day of the violation shall constitute a separate and additional violation. An action to recover any such penalty may be filed in a court of competent jurisdiction; and

2. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or reconstruction that may have taken place in violation of this Local Law.

C. Hardship

1. Hardship Defined:

Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board in writing for a variance from strict compliance with this Local Law upon submission of proof of such hardship. For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan, or other permit during the period of the moratorium imposed by this Local Law.

2. Procedure:

Upon submission of a written application to the Codes Officer by the property owner seeking a variance, along with two (2) copies of same and the requisite filing fee of \$150.00, which application shall specifically identify the land involved, the nature of the proposed use and the circumstances pursuant to which a variance is deemed warranted, the Town Board shall within ninety (90) days from receipt of said application, investigate, analyze and make an initial determination on the permissibility of such variance applied for. The Town Board may consult with the Joint Zoning Board of Appeals/Planning Board, Codes Enforcement Office or any other relevant expert/consultant, in making its determination. If deemed permissible, then the Board shall within forty-five (45) days of receipt of the original application, schedule a Public Hearing on said application upon five (5) days written notice to be posted at the Town Hall and in at least one local newspaper in accordance with Town Law. At the Public Hearing, the property owner and any other parties wishing to present evidence for or against the application shall have an opportunity to be heard. The Town Board shall thereafter have forty-five (45) days from the date of said hearing to render a decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship in this Local Law is strictly applied to the applicant's particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law. The Applicant shall be responsible for all costs incurred by the Town in investigating and evaluating the application, including expert and/or consultant fees. Failure of Applicant to immediately pay Town for same upon request shall result in immediate dismissal of the Application.

Section VI. Severability & Conflict of Laws

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York. Throughout the duration of this Local Law, it shall take precedence over and shall be controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law related to zoning.

Section VII. Effective Date

This Local Law shall take effect immediately upon it being 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 July 25, 2023 at 5:30 p.m. immediately followed by a special meeting of the Westmoreland Town Board, wherein it was motioned by Councilperson Hebbard and seconded by Councilperson Seymour, with Councilperson Rundle absent, to approve this moratorium, after which it was a unanimous vote in favor of said motion, with four out of five board members being present.

This local law is hereby sworn to and certified by Town Clerk Jody Burdick.

Jody Burdick, Town Clerk