

**TOWN OF BROOKFIELD  
TOWN BOARD RESOLUTION**

**April 11, 2022**

**TOWN OF BROOKFIELD LOCAL LAW NO. A OF 2022**  
(“A Local Law Regulating Solar Power and  
Energy Systems in the Town of Brookfield”)

The following resolution was offered by Abrams, who moved its adoption, seconded by Mayne, to wit:

**WHEREAS**, pursuant to the provisions of the New York State Constitution, the Municipal Home Rule Law and the Statute of Local Governments, proposed Local Law No. A-2022, titled “A Local Law Regulating Solar Power and Energy Systems in the Town of Brookfield,” was presented and introduced at a regular meeting of the Town Board of the Town of Brookfield held on March 14, 2022; and

**WHEREAS**, a public hearing was held on such proposed local law on the 11<sup>th</sup> day of April, 2022, by the Town Board of the Town of Brookfield and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Brookfield in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

**WHEREAS**, on March 14, 2022, the Town Board pursuant to Volume 6 N.Y.C.R.R., Section 617 of the Regulations relating to Article 8 of the New York State Environmental Conservation Law (SEQRA) declared that adoption of Local Law No. A-2022 was a Type I Action, that the Town Board would act as lead agency for purposes of SEQRA and made a

determination that the aforementioned law would not result in any adverse environmental impacts and therefore issued a Negative Declaration; and

**WHEREAS**, the proposed Local Law was duly referred to the Madison County Planning Department for review and comment pursuant to the New York State General Municipal Law; and

**WHEREAS**, the Madison County Planning Board has previously reviewed the application for county-wide or intermunicipal impacts and returned the application for local determination; and

**WHEREAS**, the Town Board of the Town of Brookfield has now determined that it is in the public interest to enact said Proposed Local Law No. A-2022.

**NOW, THEREFORE**, it is

**RESOLVED** that the Town Board of the Town of Brookfield, Madison County, New York, does hereby enact Proposed Local Law No. A-2022 as Local Law No. 3-2022 as follows:

**“TOWN OF BROOKFIELD  
LOCAL LAW NO. 3-2022**

**A LOCAL LAW REGULATING SOLAR POWER AND  
ENERGY SYSTEMS IN THE TOWN OF BROOKFIELD**

**SECTION 1. LEGISLATIVE PURPOSE AND INTENT.**

The purpose of this Local Law is to permit and regulate the construction of solar energy systems in the Town of Brookfield in a manner that preserve the health, safety and welfare of the Town while also facilitating the production of renewable energy.

**SECTION 2. AUTHORITY.**

This Local Law is enacted pursuant to the New York State Constitution and New York Municipal Home Rule Law Section 10.

**SECTION 3. DEFINITIONS.**

**Atterberg Limits and Field Tests**

A basic measure of the critical water contents of a fine-grained soil and its shrinkage limit, plastic limit, and liquid limit. Establishes the moisture contents at which fine-grained clay and silt soils transition between solid, semi-solid, plastic, and liquid states.

**Commercial Solar Project (Solar Farms)**

A solar energy system or collection of solar energy systems or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of supplying electricity to a utility grid for wholesale or retail sales of electricity to the general public or utility provider.

**Environmental Manager (EM)**

An individual possessing the skills and knowledge to effectively develop a site for use as a solar PV system and then reclaim the site restoring it, to the greatest extent practical, to its original use.

**Farmland of Statewide Importance**

Land, designated as "Farmland of Statewide Importance" in the U. S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, and/or pursuant to the New York State classification system for Madison County, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by New York State.

**Host Community Agreement**

A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

**Kilowatt (kW)**

A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used; 1,000 kW is equal to one megawatt (MW).

**Megawatt (MW)**

A unit of electrical power equal to 1,000 kilowatts, which constitutes a unit of electrical demand.

**Native Perennial Vegetation**

Native wildflowers 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.

**Net-Metering**

A billing arrangement that allows solar customers to receive credit for excess electricity which is generated from the customer's Solar Energy System and delivered back to the grid so that customers only pay for their net electricity usage for the applicable billing period.

**Pollinator**

Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

**Prime Farmland, Prime Soils and Prime Soil Lands**

Soils and land that are best suited for producing food, feed, forage, fiber, and oilseed crops, and must be available for this use. Such soils have the soil quality, growing season, and

moisture supply needed to economically produce a sustained high yield of crop when it is treated and managed according to acceptable farming methods. Prime Farmland may now be in crops, pasture, woodland, or other land, but not in urban and built-up land or water areas. (As referenced by the 2019 Madison County Agriculture and Farmland Protection Plan; lands designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service’s (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey; and Class I and Class II soil classifications found in the Madison County Planning Department Soil Classification Map of Madison County (September 2007)).”

**Qualified Solar Installer**

A person who has skills and knowledge related to the construction and operation of Solar Energy Systems (and the components thereof) and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition.

**Solar Access**

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

**Solar Collector**

A solar photovoltaic cell, panel, or array or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

**Solar Energy System**

A complete system of Solar Collectors, Panels, controls, energy devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected and converted into another form of energy including but not limited to thermal and electrical, stored and protected from dissipation and distributed. For purposes of this Local Law, a Solar Energy System does not include any Solar Energy System of four-square feet in size or less.

**Solar Energy System, Building-Integrated**

A Solar Energy System incorporated into and becoming part of the overall architecture, design and structure of a building in manner that the Solar Energy System is a permanent and integral part of the building structure.

**Solar Energy System, Flush-Mounted**

A Rooftop-Mounted Solar Energy System with Solar Panels which, unless otherwise provided, are installed flush to the surface of a roof.

**Solar Energy System, Ground-Mounted**

A Solar Energy System that is affixed to the ground either directly or by mounting devices and which is not attached or affixed to a building or structure.

**Solar Energy System, Rooftop-Mounted**

A Solar Energy System in which Solar Collectors/Panels are mounted on the roof of a building or structure either as a flush-mounted system or as panels fixed to frames which can be tilted to maximize solar collection. Rooftop-Mounted Solar Energy Systems shall be wholly contained within the limits of the building’s or structure’s roof surface.

**Solar Panel**

A device which converts solar energy into electricity.

**Solar Skyspace**

The space between a Solar Energy System and the sun through which solar radiation passes.

**Solar Storage Battery**

A device that stores energy from the sun and makes it available in an electrical form.

**SECTION 4. SOLAR ENERGY SYSTEM REGULATIONS.**

**Section 101. Purpose and Intent.**

The Town of Brookfield recognizes that solar energy is a clean, readily available and renewable energy source. Development of solar energy systems offers an energy source that can prevent fossil fuel emissions, reduce the Town’s energy demands and attract and promote green business development within the Town. The Town of Brookfield has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and businesses. This Local Law is intended to promote the effective and efficient use of solar energy systems; establish provisions for the placement, design, construction, operation and removal of such systems in order to uphold the public health, safety and welfare; to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and maintain the rural character of the Town. The Town, when appropriate, will promote the location of commercial solar projects (solar farms) in multiple locations to further mitigate impacts from such larger projects. Further, the Town of Brookfield wishes to enhance agricultural viability within the Town and preserve productive agricultural land resources, mitigate the impacts of solar energy systems on environmental resources such as prime farmlands, prime soils (including USDA Prime Soils), prime soil lands, Farmland of Statewide Importance, other important agricultural lands, forests, wildlife, and other protected resources. This Local Law promotes the dual use and colocation of solar energy systems to preserve and protect active farming and agricultural land in the Town of Brookfield. This Local Law also recognizes that such uses in the Town may, in some instances, represent large disturbances of lands, the hosting of complex equipment and the need to assure that such projects and property are removed or disposed of at the time of the discontinuance, while minimizing impacts to local roads and nearby property values and avoiding financial burdens on taxpayers.

**Section 102. Applicability.**

This Local Law shall apply to all solar energy systems in the Town of Brookfield which are installed or modified after the effective date of this Local Law. All solar energy systems which are installed or modified after the effective date of this Local Law shall be in

compliance with all of the provisions hereof. Any proposed solar energy system subject to review by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the New York State Executive Law or any subsequent law, shall be subject to all substantive provisions of this Local Law and any other applicable provisions of the Town of Brookfield local laws and regulations.

**Section 103. Building-Integrated Solar Energy Systems.**

- A. Building-Integrated Solar Energy Systems shall be permitted in all areas of the Town subject to the submission of, application for and review and issuance of an applicable building permit. A proposed Building Integrated Solar Energy System shall be shown on the plans submitted for the building permit.
- B. Building-Integrated Solar Energy Systems shall be subject to the general requirements set forth at Section 106.

**Section 104. Rooftop-Mounted Solar Energy Systems.**

- A. Rooftop-Mounted Solar Energy Systems shall be permitted in all areas of the Town subject to the following requirements:
  - (1) A solar/building permit shall be required for installation of all Rooftop-Mounted Solar Energy Systems. An applicant shall submit the following application materials to the Code Enforcement Officer:
    - (a) A Site survey and building roof plan showing location of major components of the Solar Energy System and other equipment on the roof or legal accessory structure. This plan should represent relative locations of components at the site, including, but not limited to, location of arrays, existing electrical service locations, utility meters, inverter locations, system orientation and tilt angles. This plan should show access and pathways that are compliant with New York State Uniform Fire Prevention and Building Code, as applicable.
    - (b) One-Line or 3-Line Electrical Diagram. The electrical diagram required by NYSERDA for an incentive application and/or utilities for an interconnection agreement may also be provided.
    - (c) Specification Sheets for all manufactured components. If these sheets are available electronically, a web address will be accepted in place of an attachment, at the discretion of the Town.
    - (d) All electrical diagrams are to be prepared by a professional engineer or an architectural firm and the diagrams and plans must contain the applicable professional's stamp, mark, and/or signature as required by New York State law and include the following:

- [1] Project address, section, block and lot number of the property;
  - [2] Owner's name, address and phone number;
  - [3] Name, address and phone number of the person preparing the plans; and
  - [4] System capacity in kW-DC.
- (2) Rooftop-Mounted Solar Energy Systems shall not exceed the maximum allowed height under any applicable Town law. If practicable, a Rooftop-Mounted Solar Energy system on a pitched roof shall be mounted with a maximum distance of 8 inches or as required by the New York State Uniform Fire Prevention and Building Code, between the roof surface and the highest edge of the system.
- (3) Rooftop-Mounted Solar Energy Systems shall be mounted parallel to the roof plane on which they are mounted. However, in the case of buildings which have a flat roof, a tilted mount may be permitted subject to review by the Code Enforcement Officer.
- (4) In order to ensure firefighter and other emergency responder safety, except in the case of accessory buildings under 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for walking around all Rooftop-Mounted Solar Energy Systems. Additionally, installations shall provide for adequate access and spacing in order to:
- (a) Ensure access to the roof.
  - (b) Provide pathways to specific areas of the roof. The specific pathway size per building will be determined and approved by the Fire Marshall. The Fire Marshall shall determine how close to the edge of the building that solar panels can go in order to provide sufficient area for fire fighters to work.
  - (c) Provide for smoke ventilation opportunity areas.
  - (d) Provide for emergency egress from the roof.
  - (e) Exceptions to these requirements may be requested where access, pathway or ventilation requirements are reduced due to:
    - [1] Unique site-specific limitations;
    - [2] Alternative access opportunities (such as from adjoining roofs);
    - [3] Ground level access to the roof area in question;

- [4] Other adequate ventilation opportunities when approved by the Codes Office or Fire Marshall;
  - [5] Adequate ventilation opportunities afforded by panels setback from other rooftop equipment (for example: shading or structural constraints may leave significant areas open for ventilation near HVAC equipment);
  - [6] Automatic ventilation devices; or
  - [7] New technology, methods or other innovations that ensure adequate emergency responder access, pathways and ventilation opportunities.
- B. Rooftop-Mounted Solar Energy Systems shall be subject to the general requirements set forth at Section 106.
- C. Rooftop-mounted solar energy systems which are not eligible for the unified solar permit process shall otherwise be subject to and comply with the requirements set forth therein in addition to the requirements specified in Section 106.
- D. Unified Solar Permit for eligible rooftop-mounted solar energy systems.<sup>1</sup> The Town of Brookfield has adopted the New York State Unified Solar Permit model process for streamlining the issuance of permits for the installation of certain rooftop-mounted solar energy systems of 25 kW or less. The following shall be observed:
- (1) Provided the rooftop-mounted solar energy system meets the requirements for a Unified Solar Permit, an applicant shall only be subject to and comply with the requirements specified in this Section 104(D). An applicant must submit the unified solar permit application to the Code Enforcement Officer as follows:
    - (a) Unified Solar Permit eligibility checklist.
    - (b) A site plan showing location of major components of the solar energy system and other equipment on the roof or legal accessory structure. This plan should represent relative locations of components at the site, including, but not limited to, location of arrays, existing electrical service locations, utility meters, inverter locations, system orientation and tilt angles. This plan should show access and pathways that are compliant with New York State Uniform Fire Prevention and Building Code, if applicable.
    - (c) One-line or three-line electrical diagram. The electrical diagram required by NYSERDA for an incentive application and/or utilities

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<sup>1</sup> The Unified Solar Permit Process was adopted by the Town of Brookfield Town Board in and around April 11, 2022.

for an interconnection agreement may also be provided here.

- (d) Specification sheets for all manufactured components. If these sheets are available electronically, a web address will be accepted in place of an attachment, at the discretion of the Town.
- (e) All diagrams and plans must be prepared by a professional engineer or registered architect as required by New York State law and include the following:
  - [1] Project address, section, block and lot number of the property;
  - [2] Owner's name, address and phone number;
  - [3] Name, address and phone number of the person preparing the plans; and
  - [4] System capacity in kW-DC.

- (2) Permit review and inspection timeline. Unified Solar Permit determinations will be issued within 14 days upon receipt of complete and accurate applications. The municipality will provide feedback within seven days of receiving incomplete or inaccurate applications. If an inspection is required, a single inspection should be sufficient and will be provided within seven days of inspection request.

### **Section 105. Ground-Mounted Solar Energy Systems.**

Ground-Mounted Solar Energy Systems are permitted in all areas of the Town, subject to the application for and issuance of a building permit by the Code Enforcement Officer, the granting of a request by the Code Enforcement Officer and further subject to the following requirements:

- A. A building permit and site plan approval shall be required for installation of all Ground-Mounted Solar Energy Systems.
- B. Ground-Mounted Solar Energy Systems are prohibited in front yards. For purposes of this Section, a corner lot shall be considered to have a front yard on each street frontage. In addition, Ground-Mounted Solar Energy Systems shall comply with the Town's most restrictive area, yard and total area/lot coverage restrictions adopted by the Town as applicable. Further setbacks, area and yard requirements and total area/lot coverage restrictions may be required by the Code Enforcement Officer in order to protect the public's safety, health and welfare.
- C. Ground-Mounted Solar Energy Systems shall only be permitted on lots which are 20,000 sq. ft. or larger.
- D. The height of the solar collector/panel and any mounts shall not exceed 12 feet in height when oriented at maximum tilt measured from the ground and including any base.

- E. A Ground-Mounted Solar Energy System shall be screened when possible and practicable from adjoining lots and street rights-of-way through the use of architectural features, earth berms, landscaping, fencing or other screening which will harmonize with the character of the property and the surrounding area. The proposed screening shall not interfere with the normal operation of the solar collectors/panels.
- F. The Ground-Mounted Solar Energy System shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for the Solar Energy System.
- G. Neither the Ground-Mounted Solar Energy System nor any component thereof shall be sited within any required buffer area, easement, right-of-way or setback.
- H. The total surface area of all Ground-Mounted Solar Energy System components shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, excluding patios, decks, balconies, screened and open porches, and attached garages.
- I. Ground-Mounted Solar Energy Systems shall be subject to the general requirements set forth at Section 106.

**Section 106. General requirements applicable to solar energy systems.**

- A. All Solar Energy System installations must be performed by a qualified solar installer.
- B. Solar Energy Systems, unless part of a commercial solar project (solar farm), shall be permitted only to provide power for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit the sale of excess power through a net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute. However, solar energy system applications in a residential setting and serving a residential use on a single parcel or lot shall be limited to 25 kW or 110% of energy consumed on the site in the prior 12 months. Solar energy system applications serving a commercial or industrial use shall be limited to no more than 110% of the energy consumed on the site in the prior 12 months.
- C. Prior to operation, electrical connections must be inspected by a Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town. An electrical inspector must supply written verification that all electrical connections pass inspection.
- D. Any connection to the public utility grid must be inspected by the appropriate public utility and proof of inspection shall be provided to the Town.
- E. Solar Energy Systems shall be maintained in good working order.

- F. Solar Energy Systems shall be permitted only if they are determined by the Town to be consistent in size and use with the character of surrounding neighborhood.
- G. Solar Energy Systems shall be permitted only if they are determined by the Town not to present any unreasonable safety risks, including but not limited to:
  - (1) Weight load;
  - (2) Wind resistance; and
  - (3) Ingress or egress in the event of fire or other emergency.
- H. All Solar Energy Systems described in this Local Law shall meet and comply with all relevant and applicable provisions of the New York State Uniform Fire Prevention and Building Code Standards. To the extent the provisions of the New York State Uniform Fire Prevention and Building Code are more restrictive than the provisions set forth in this Local Law, the provisions of the New York State Uniform Fire Prevention and Building Code shall control.
- I. The application for any Solar Energy System shall specifically recite the use or nonuse of solar storage batteries, their placement, capacity, and compliance with all existing New York State and Federal rules and regulations. If solar storage batteries are included as part of the Solar Energy System, they must be placed in a 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 the Town and other applicable laws and regulations.
- J. All utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit. Conduits or feeds which are laid on the roof shall be camouflaged to blend in with the roof and reduce aesthetically objectionable impacts. Where applicable, the Planning Board may, for example, instruct that the conduit matches the building color, to the extent practical.
- K. If a Solar Energy System ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall completely remove the System, mount and all other associated equipment and components by no later than 90 days after written notice from the Town. The Building Inspector, Code Enforcement Officer and/or the Town's Consulting Engineer shall have the right at any reasonable time to enter, in the company of the owner or his agent to ensure that the Solar Energy System remains operational.
- L. To the extent practicable, Solar Energy Systems shall have neutral paint colors, materials and textures to achieve visual harmony with the surrounding area. Solar Energy Systems shall be composed of panels which are the same or similar in composition and color.
- M. The design, construction, operation and maintenance of the Solar Energy System shall prevent the direction, misdirection and/or reflection of solar rays onto neighboring properties, public roads, public parks and public buildings.

- N. Prior to the time of the issuance of a solar/building permit, the applicant/owner shall demonstrate to the Code Enforcement Officer a reliable and safe method for de-energizing the Solar Energy System in the event of an emergency. The method and location to de-energize the Solar Energy System, once approved by the Code Enforcement Officer, shall be provided by the applicant to all applicable emergency services and first responders.
- O. Marking of equipment. Solar Energy Systems and components shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar electric system. Materials used for marking shall be weather-resistant. For residential applications, the marking may be placed within the main service disconnect. If the main service disconnect is operable with the service panel closed, then the marking should be placed on the outside cover.
- P. Fees. Fees for applications and permits under Sections 103, 104, 105 and 107 shall be established by resolution of the Town Board of the Town of Brookfield. It shall be the applicant's responsibility to reimburse the Town for any and all reasonable and necessary legal, engineering and other professional fees incurred by the Town in reviewing and administering an application and operation of a solar energy system under Sections 103, 104, 105 and 107.

**Section 107. Commercial Solar Projects (Solar Farms).**

- A. Commercial solar projects (solar farms) are permitted in the Town subject to the issuance of site plan approval and a special use permit by the Town Board (and only upon a prior written recommendation from the Planning Board) and the satisfaction of other requirements as set forth herein.
- B. Lot area and yard regulations. The following lot area and yard regulations shall apply to commercial solar projects (solar farms):
  - (1) Minimum street frontage: 200 feet.
  - (2) Minimum lot area: 50 contiguous acres.
  - (3) Minimum front yard setback to fence: 250 feet.
  - (4) Minimum rear yard setback to fence: 200 feet.
  - (5) Minimum side yard setback to fence: 200 feet.<sup>2</sup>
  - (6) With the exception of screening, landscaping and/or plantings, nothing shall be permitted within the setback area. Also, additional setbacks may be required by the Town Board in order to provide for the public's safety, health and welfare.

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<sup>2</sup> Relief from these setback and area regulations may be sought from the Board of Appeals utilizing the standards for an area variance pursuant to Town Law §267-b.

- (7) Each commercial solar project (solar farm) application shall demonstrate that the facility operator owns or controls sufficient land area to properly operate and maintain the facility.
  - (8) To prevent the oversaturation of commercial solar projects (solar farms) in one (1) area of the Town of Brookfield, no commercial solar project (solar farm) shall be approved if it is within one (1) mile of the property boundary in all directions of an already approved commercial solar project (solar farm) unless the Town Board makes specific findings that it will not have a significant impact on the community character of the area.
  - (9) Avoid areas that substantially contribute to and are important to the scenic quality of the landscape.
  - (10) Assess the availability and feasible use of alternative sites.
  - (11) The applicant shall demonstrate that the proposed location is appropriate for connection to the available electrical grid and shall supply correspondence from the local electrical utility demonstrating a connection will be allowed.
- C. Permits required. No person, firm or corporation, or other entity being the owner, occupant, or lessee of any land or premises within the Town of Brookfield shall use or permit the use of land or premises for the construction or installation of a commercial solar project (solar farm) without obtaining a building permit, a special use permit and a site plan approval issued by the Town Board (after recommendation by the Planning Board) as hereinafter provided.
- D. Special Use Permit Criteria.
- (1) No commercial solar project (solar farm) shall be granted a special use permit unless the Town Board make the following determinations:
    - (a) The proposed commercial solar project (solar farm) is in the best interest of the Town, the convenience of the community, the public welfare, and shall be an acceptable addition to the neighborhood.
    - (b) The proposed commercial solar project (solar farm) is suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing intended character of the general vicinity.
    - (c) The proposed commercial solar project (solar farm) is suitable in terms of effect on street or highway traffic safety with adequate access arrangements.
    - (d) The proposed commercial solar project (solar farm) will comply with all provisions and requirements of all other Town of Brookfield local laws and regulations and will be consistent with any applicable comprehensive plan or master plan documents.

- (e) The proposed commercial solar project (solar farm) will not result in the release of harmful substances or any other nuisances, nor cause excessive noise, dust, odors, solid waste or glare.
- (f) The proposed commercial solar project (solar farm) will not cause undue traffic congestion, unduly impair pedestrian safety or overload existing roads, considering their current width, surfacing and condition.
- (g) The proposed commercial solar project (solar farm) will have appropriate parking and be accessible to fire, police and other emergency vehicles.
- (h) The proposed commercial solar project (solar farm) will not overload any public water, drainage or sewer system or any other municipal facility or service, including schools.
- (i) The proposed commercial solar project (solar farm) will not degrade any natural resource, ecosystem or historic resource.
- (j) The proposed commercial solar project (solar farm) will be suitable to such conditions on operation, design and layout of structures and provision of screening, buffer areas and off-site improvements as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic and scenic resources of the Town.
- (k) Scenic viewsheds. A commercial solar project (solar farm) shall not be installed in any location that would substantially detract from or block the view(s) of all or a portion of a recognized scenic viewshed, as viewed from any public road, right-of-way or publicly owned land within the Town of Brookfield or that extends beyond the border of the Town of Brookfield. For purposes of this subsection, consideration shall be given to any relevant portions of the current, amended and/or future Town of Brookfield Comprehensive Plan and/or any other prior, current, amended and/or future officially recognized Town planning document or resource.
- (l) Emergency shutdown/safety. The applicant shall demonstrate the existence of adequate emergency/safety measures. The applicant shall post an emergency telephone number so that the appropriate entities may be contacted should any solar panel or other component of the commercial solar project (solar farm) need immediate repair or attention. This emergency telephone number should be clearly visible and in a location which is convenient and readily noticeable to someone likely to detect a problem.
- (m) No commercial solar project (solar farm) shall be installed on or within 1,000 feet of wetlands as identified/defined by the New York State Department of Environmental Conservation, the U.S. Army

Corps of Engineers or local governing body.

- (n) Security. All commercial solar projects (solar farms) shall be secured to the extent practicable to restrict unauthorized access.
- (o) Access road. To the greatest extent possible, existing roadways shall be used for access to the site and its improvements. In the case of constructing any roadways necessary to access the commercial solar project (solar farm), they shall be constructed in a way that allows for the passage of emergency vehicles in the event of an emergency. Each application shall be accompanied by correspondence from the responding fire department and emergency care provider as to the acceptability of the proposed ingress to and egress from the commercial solar project (solar farm) site. Access roads shall be at least 26 feet in width but upon good cause shown may be a minimum of 20 feet in width.
- (p) The development and operation of the commercial solar project (solar farm) shall not have a significant impact on fish, wildlife, animal or plant species or their critical habitats, or other significant habitats identified by the Town of Brookfield or federal or state regulatory agencies.
- (q) In the granting of a site plan approval, the Town Board will strive to permit the location of commercial solar projects (solar farms) in such a manner so that no one area or neighborhood in the Town shall be over-burdened by the placement of any proposed commercial solar project(s) (solar farms). Screening, including plantings, berms, and other screening methods may be required to mitigate any impacts. Such plantings and screening shall be continuously maintained and replaced if dead, dying, or falling into disrepair.
- (r) Equipment specification sheets shall be documented and submitted to the Town Board and Planning Board for all photovoltaic panels, significant components, mounting systems, batteries and inverters that are to be installed.
- (s) Non-invasive, native ground cover, under and between the rows of solar panels shall be low-maintenance, drought-resistant, non-fertilizer-dependent and shall be pollinator-friendly to provide a habitat for bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.
- (t) For community solar projects, the reviewing board has the authority to require that the applicant open subscription services to Town residents before offering subscriptions to others.

- (u) Acknowledgment of a written recommendation from the Planning Board.
  - (2) The Town Board is vested with the authority for any requested Special Use Permit to: (a) approve such Special Use Permit with reasonable and appropriate conditions; or to (b) deny such Special Use Permit upon written findings supporting such approval or denial.
  - (3) Waiver. The Town Board may, upon exercise of its reasonable discretion, waive one or more of the submission requirements imposed herein.
- E. Site plan submission requirements.
- (1) The following submission requirements must be observed regarding a site plan application for a commercial solar project (solar farm).
    - (a) A completed application form as supplied by the Town of Brookfield for site plan approval for a commercial solar project (solar farm).
    - (b) Proof of ownership of the premises involved or proof that the applicant has written permission of the owner to make such application.
    - (c) Plans and drawings of the proposed commercial solar project (solar farm) installation signed and stamped by a professional engineer registered in New York State showing the proposed layout of the entire commercial solar project (solar farm) along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, along with proposed screening and fencing. Clearing and/or grading activities are subject to review by the Town Board and shall not commence until the issuance of site plan approval and written authorization from the Town's Code Enforcement Officer. The plans and development plan shall be drawn in sufficient detail and shall further describe:
      - [1] Property lines and physical dimensions of the proposed site, including contours at five-foot intervals.
      - [2] Location, approximate dimensions and types of all existing structures and uses on the site.
      - [3] Location and elevation of the proposed commercial solar project (solar farm) and all components thereof.
      - [4] Location of all existing aboveground utility lines within 1,200 linear feet of the site.

- [5] Where applicable, the location of all transmission facilities proposed for installation. All transmission lines and wiring associated with a commercial solar project (solar farm) shall be buried underground and include necessary encasements in accordance with the National Electric Code and Town requirements. The Town Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant demonstrating that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead electric utility/transmission lines (if permitted) and underground electric utility/transmission lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the public utility company's requirements for interconnection. Any connection to the public utility grid must be inspected by the appropriate public utility. The Applicant shall provide as part of the application a letter or other written confirmation from the appropriate utility provider that the commercial solar project (solar farm) is capable of meeting the requirements for interconnection.
- [6] Location of all service structures proposed as part of the installation.
- [7] Landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material, and for screening purposes. The plan shall show any trees and/or vegetation which is proposed to be removed for purposes of providing greater solar access.
- [8] A berm, landscape screen, or any other combination acceptable to the Town capable of screening the site, shall be provided along any property line.
- [9] Soil type(s) at the proposed site
- [10] Submission of a written operation and maintenance plan for the proposed commercial solar project (solar farm) that include measures for maintaining safe access, operational maintenance of the commercial solar project (solar farm), and general property upkeep, such as mowing and trimming and an agricultural soils preservation plan if applicable. The operation and maintenance plan shall be filed and recorded by the applicant in the Madison County Clerk's Office

(indexed to the property) following approval of the site plan by the Town Board.

- i. For installations on prime farmland, projects shall comply with the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands. Where an agricultural soils preservation plan has been approved as part of a project, it shall be a condition of any such approval that such agricultural component will be maintained as approved. (*See also* Schedule A “Commercial Solar Project (Solar Farm) Guidelines” at the end of this Local Law).
  - ii. Herbicides are prohibited except where the Town Board finds it impractical to use mechanical means to control vegetation.
- (d) Photographic simulations shall be included showing the proposed commercial solar project (solar farm) along with elevation views and dimensions and manufacturer’s specifications and photos of the proposed solar energy systems, solar collectors, solar panels and all other components comprising the commercial solar project (solar farm) from all neighboring properties and from other vantage points selected by the Town Board and/or Planning Board.
- (e) When applicable, certification from a professional engineer or architect registered in New York State indicating that any building or structure to which a solar panel or solar energy system is affixed is capable of handling the loading requirements of the solar panel or solar energy system and various components.
- (f) 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.
- (g) Documentation of access to the project site(s), including location of all access roads, gates, parking area etc.
- (h) A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site. The SWPPP shall be filed and recorded in the Madison County Clerk’s Office (indexed against the property) by the applicant following Town Board approval (prior to commencement of construction) and shall provide for access to the Town of Brookfield in the event of a default of the operator’s obligations under the SWPPP. The SWPPP shall include a security amount approved by the Town’s Consulting

Engineer and shall remain in place until decommissioning is complete.

- (i) Documentation of utility notification, including an electric service order number.
- (j) Sunchart. Where deemed appropriate, the Town Board may require that the applicant submit a sunchart for the proposed site indicating the sun angle for the southern boundary of the site for a minimum four-hour continuous period during the time of the highest sun angle on December 21, along with the potential for existing buildings, structures, and/or vegetation on the site or on adjacent sites to obstruct the solar skyspace of the proposed commercial solar project (solar farm). The sunchart shall also indicate the potential for obstructions to the solar skyspace of the proposed commercial solar project (solar farm) under a scenario where an adjacent site is developed as otherwise permitted by the Town of Brookfield laws and regulations with a building/structure built to maximum bulk and height at the minimum setback. Where no standards for setback are established, this scenario shall assume a maximum setback of five feet from the property line. The sunchart shall be kept on file at the Town Code Enforcement Office and determine the minimum setback required for any solar collectors from the south property line as well as the solar skyspace that should be considered when development of neighboring properties occurs. This Section in no way places responsibility on the Town for guaranteeing the solar skyspace of a solar energy system in the event setbacks are waived at the applicant's request.
- (k) The manufacturer's or installer's identification and appropriate warning signage shall be posted at the site and be clearly visible.
- (l) Solar energy systems shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the electric systems. Materials used for marking shall be weather-resistant. The marking shall be placed adjacent to the main service disconnect location clearly visible from the location where the lever is operated.
- (m) The average height of the solar panel array shall not exceed 15 feet measured from the ground and including any base or supporting materials. Neutral paint colors, materials and textures may be required for commercial solar project (solar farm) components, buildings and structures to achieve visual harmony with the surrounding area as approved by the Town Board.
- (n) The design, construction, operation and maintenance of the solar energy system shall prevent the direction, misdirection and/or

reflection of solar rays onto neighboring properties, public roads, public parks and public buildings.

- (o) Artificial lighting of commercial solar projects (solar farms) shall be limited to lighting required for safety and operational purposes, shall be shielded from all neighboring properties and public roads, downcast and shall meet dark skies requirements.
- (p) Commercial solar projects (solar farms) shall be enclosed by perimeter fencing to restrict unauthorized access, with “HIGH VOLTAGE” placards affixed every 50 feet, and as otherwise approved by the Town Board. Style and type of fence shall be approved by the Town Board as part of the site plan.
- (q) Only signage used to identify the location of the commercial solar project (solar farm) shall be allowed and such signage shall otherwise comply with the Town’s sign regulations and requirements or as otherwise approved by the Town Board as part of the review under this Local Law.
- (r) All applications shall be accompanied by a full environmental assessment form for purposes of environmental review under the New York State Environmental Quality Review Act (SEQRA), including a visual impact analysis. The following additional material may be required by the Town Board:
  - [1] A digital-elevation-model-based project visibility map showing the impact of topography upon visibility of the project from other locations to a distance radius of three miles from the center of the project. Scaled use shall depict a three-mile radius as not smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features.
  - [2] No fewer than four color photos taken from locations within a three-mile radius from the proposed location, as selected by the Town Board and computer- enhanced to simulate the appearance of the as-built aboveground commercial solar project (solar farm) components as they would appear from these locations.
- (s) Applicant shall submit details of the proposed noise that may be generated by solar inverter fans or other commercial solar project (solar farm) components. The Town Board and/or Planning Board may require a noise analysis to determine potential adverse noise impacts.

(2) Site plan review criteria. In addition to the above, no site plan shall be approved unless the Town Board determines that the proposed commercial solar project (solar farm) complies with the following:

(a) The use is oriented in its location upon the site as to layout, coverage, screening, means of access and aesthetics so that:

[1] The flow control and safety of traffic and human beings shall not be adversely affected to an unreasonable degree;

[2] There is reasonable compatibility in all respects with any structure or use in the surrounding area, actual or permitted, which may be directly substantially affected;

[3] There shall not be any unreasonable detriment to any structure or use, actual or permitted, in the surrounding area;

[4] There is a reasonable provision for open space and yard areas as appropriate to the surrounding area.

[5] That the removal of existing trees larger than 6 inches in diameter has been minimized to the extent possible.

[6] That it has been demonstrated that the establishment of the proposed solar facility will not have negative impacts to surrounding property values as established by competent evidence.

(b) The Town Board is vested with the authority for any requested site plan approval to: (a) approve such site plan approval with reasonable and appropriate conditions; or to (b) deny such site plan approval upon written findings supporting such approval or denial.

F. Public hearing. No action shall be taken by the Town Board to issue a site plan approval or special use permit in relation to an application for a commercial solar project (solar farm) until after public notice and a public hearing. Proper notice of a hearing before a board shall be given by legal notice published in the official newspaper of the Town of Brookfield at least five days before the date set for such public hearing(s) and written notice mailed to the applicant or his agent at the address given in the application to be considered. The applicant shall be responsible for notifying, by certified mail, all property owners of record within 500 feet of the outside perimeter of the boundary line of the property involved in the application of the time, date and place of such public hearing at least 10 days prior to such hearing. Notice shall be deemed to have been given if mailed to the property owner at the tax billing address listed on the property tax records of the assessing unit or at the property address. At least seven days prior to such hearing, the applicant shall file with the Board his/her affidavit verifying the mailing of such notices. Failure of the property owners to receive such notice shall not be deemed a jurisdictional defect.

- G. Compliance with New York State Uniform Fire Prevention and Building Code. Building permit applications shall be accompanied by standard drawings of structural components of the commercial solar project (solar farm) and all its components (including but not limited to solar panel, solar collector, solar energy system, etc.). Drawings and any necessary calculations shall be certified, in writing, by a New York State-registered professional engineer that the system complies with the New York State Uniform Fire Prevention and Building Code. This certification would normally be supplied by the manufacturer. Where the structure, components or installation vary from the standard design or specification, the proposed modification shall be certified by a New York State-registered professional engineer for compliance with the structural design provisions of the New York State Uniform Fire Prevention and Building Code.
- H. Compliance with state, local and national electric codes.
- (1) Building permit applications shall be accompanied by a line drawing identifying the electrical components of the commercial solar project (solar farm) to be installed in sufficient detail to allow for a determination that the manner of installation conforms with the National Electric Code. The application shall include a statement from a New York State-registered professional engineer indicating that the electrical system conforms with good engineering practices and complies with the National Electric Code, as well as applicable state and local electrical codes. This certification would normally be supplied by the manufacturer. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.
  - (2) Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State-registered professional engineer for compliance with the requirements of the National Electric Code and good engineering practices.
- I. Following construction/installation of the commercial solar project (solar farm), all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust and demonstrating established growth. Every Operations and Maintenance Plan shall include provisions for reseeded and established growth.
- J. Post-construction/installation certification. Following the construction/installation of the commercial solar project (solar farm), the applicant shall provide a post-construction/installation certification from a professional engineer registered in New York State that the project complies with any and all applicable codes and industry practices and has been constructed and operating according to the drawings and development plan(s) submitted to the Town.
- K. Insurance. The applicant, owner, lessee or assignee shall at all times during construction and operation maintain a current insurance policy which will cover installation and operation of the commercial solar project (solar farm) and shall be

increased annually per industry standards. Said policy shall provide a minimum of \$5,000,000 property and personal liability coverage. Proof of such policy shall be provided to the Town on an annual basis. Notwithstanding any terms, conditions, or provisions in any other writing between the parties, the applicant shall agree to effectuate the naming of the Town as an additional insured on the applicant's insurance policies, with the exception of workers' compensation and NYS disability insurance. The policy naming the Town as an additional insured shall:

- (1) Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York State licensed insurer is preferred.
- (2) State that the applicant's insurance coverage shall be primary and noncontributory coverage for the Town, its Board, employees, agents, and volunteers.
- (3) Additional insured status shall be provided by standard or other endorsements that extend coverage to the Town for both on-going and completed operations. A completed copy of the endorsements shall be attached to the certificate of insurance.
- (4) The applicant shall provide a copy of the declaration page of the liability policies with a list of endorsements and forms. If so requested, the applicant will provide a copy of the policy endorsements and forms.
- (5) The certificate of insurance shall contain a provision that coverage afforded under the applicable policy shall not be cancelled or terminated until at least 30 days' prior notice has been provided to the Town. In the event of a termination, cancellation, or lapse of the required insurance coverage, the site plan approval to operate the solar energy system shall be immediately suspended and operation of the system shall cease. Upon restoration of the required insurance coverage, to the satisfaction of the Town, permission to operate the commercial solar project (solar farm) may be restored.

L. Inspections. The Building Inspector, Code Enforcement Officer and/or the Town's Consulting Engineer shall have the right at any reasonable time to enter, in the company of the owner or his agent, the premises on which a commercial solar project (solar farm) is being or is constructed, to inspect all parts of said commercial solar project (solar farm) installation and require that repairs or alterations be made if, in his judgment, there exists a deficiency in the operation or the structural stability of the commercial solar project (solar farm) or any component thereof. If necessary, the Building Inspector or the Town's Consulting Engineer may order the system secured or to otherwise cease operation. It shall not be required that the owner or agent be present in the event of an emergency situation involving danger to life, limb or property.

M. Power to impose conditions. In granting any site plan approval or special use permit for a commercial solar project (solar farm), the Town Board may impose reasonable conditions to the extent that such Board finds that such conditions are necessary to

minimize any adverse effect or impacts of the proposed use on neighboring properties and to protect the general health, safety and welfare of the Town.

N. Decommissioning and removal of commercial solar project (solar farm) facilities. The following shall be the minimum requirements to be addressed for the decommissioning of every commercial solar project (solar farm):

- (1) The submission of an acceptable Decommissioning Plan and Decommissioning Bond/Security (or cash) subject to review by the Town's Consulting Attorneys and Engineers and approved by the Town of Brookfield. For purposes of the Decommissioning Plan and Decommissioning Bond/Security, the following shall constitute "Decommissioning Events" triggering the decommissioning of the site and/or a call on the Decommissioning Bond/Security: (a) if construction and installation of the project improvements are not completed within 18 months of commencement of construction (such time period may be reasonably extended upon notification to the Town and with good cause shown for any delays in completion)<sup>3</sup>; (b) if the solar energy facility ceases to be used for its intended purpose for twelve (12) consecutive months (such time period may be reasonably extended upon notification to the Town with good cause shown); (c) at the time of decommissioning, complete removal of the project within ninety (90) days thereafter, except for any portions of the project access roads otherwise requested by the owner to remain to facilitate agricultural access to the property or conduit buried more than 4 feet below ground; (d) upon the end of the project's operation; (e) if the applicant, or its successors or assigns, seeks dissolution or files for bankruptcy or (f) failure to have in place or timely replace adequate decommissioning securities. Renewal securities shall be in place no less than ninety (90) days prior to the expiration of any existing securities.
- (2) All decommissioning activities shall be completed to the reasonable satisfaction of the Town, and consistent with the Decommissioning Plan.
- (3) Such plan shall also include a commitment by the applicant to impose a similar obligation to remove any unused and/or obsolete solar panels upon any person subsequently securing rights to relocate the solar panels.
- (4) At a minimum, the applicant shall include the following binding terms in the Decommissioning Plan:
  - (a) Complete removal of above-ground and below-ground equipment, fencing, structures, and foundations and any other installed infrastructure including plantings, landscaping and screening.

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<sup>3</sup> Such reasonable extensions as noted above may be granted upon a demonstration that said delay or default is caused by forces outside of the Applicant's control.

- (b) Restoration of the surface grade and soil after removal of equipment to the condition (or better), which existed prior to the installation. This includes adding an adequate layer of topsoil where existing topsoil has been removed or eroded, and reseeded and/or reforestation of areas that were cleared of mature trees (with established growth demonstrated).
  - (c) Replanting/replacement of trees destroyed or lost in the decommissioning process with a species that will be capable of re-establishment after 25 years from planting (for those trees installed by the developer).
  - (d) Herbaceous revegetation of restored soil areas with native seed mixes, excluding any invasive species.
  - (e) Specifically address: the useful lifespan of proposed solar facility and any storage batteries; the current New York State and Federal rules and regulations regarding placement thereof and disposal thereof at the end of their useful lifespan; together with plans for replacement of solar storage batteries. The financial surety required by the Town shall take into account maintenance, replacement, and disposal of solar storage batteries if included in the application for a commercial solar project (solar farm).
  - (f) When required by the Town or Planning Board, removal of screening vegetation and/or plantings at the end of the useful life of the project.
  - (g) Such Decommissioning Plan shall be executed by the applicant and the property owner and shall be recorded against the property in the Madison County Clerk's Office.
- (5) Bond/Security. The applicant shall be required to execute and file with the Town Clerk and file and record with the Madison County Clerk's Office, a bond, cash or other form of security acceptable to the Town Attorney and Engineer in favor of the Town, in an amount sufficient for the faithful performance of the terms and conditions of the permit issued under this chapter, and to provide for expenses associated with the decommissioning removal and restoration (including soil restoration to the Town's satisfaction) of the site subsequent to the removal of the commercial solar project. The bond must be issued by a company which has a "AAA" Standard & Poor's (S&P) and Fitch Ratings bond rating, a Moody's Investors Service's rating of "AAA," and can demonstrate sufficient assets to cover the bond. The amount of the bond or security shall be no less than 150% of the cost of the removal of the solar panels and restoration of the site (as measured from the end of its projected useful life), shall be in writing for an initial minimum non-cancellable term of the projected life of the system plus two years. (In the event the applicant demonstrates that there exists no commercially available bond or other security product in the

market for the projected life of the project, the reviewing board may consider a bond or security product with an initial minimum term of five-years with automatic renewal in five-year increments, and shall further be reviewed and adjusted at said five-year increments). Such amounts shall account for inflation and prevailing wage costs for decommissioning. In the event of a default upon performance of any such conditions of an approval or a violation of this Chapter or any of them, the bond or security shall be forfeited to the Town, upon demand. The bond or security shall remain in full force and effect until the complete removal of the solar panels and site restoration is finished. The bond security must be renewed a minimum of six (6) months prior to expiration with proof of renewal in the form of the original security instrument filed with the Town. In addition to the above, the submitted security (cash or bond) shall include monies sufficient to guarantee replacement of all screening plantings and/or other screening elements incorporated into the approved project.

- O. Fees. Fees for applications and permits under this Section shall be established by resolution of the Town Board of the Town of Brookfield. It shall be the applicant's responsibility to reimburse the Town for any and all reasonable and necessary legal, engineering and other professional fees incurred by the Town in reviewing and administering an application and operation of a commercial solar project (solar farm) under this Local Law. The applicant shall be advised of the deposits for engineering and legal review fees, which deposits shall be provided prior to any action on any application.
- P. Road remediation. The applicant shall be responsible for remediation of any public roads or other public property damaged during the construction of and/or completion of the installation (or removal) and throughout the life of any commercial solar projects (solar farms) approved pursuant to this Local Law. The Highway Superintendent or other official designated by the Town Board is hereby authorized and directed to ensure a public improvement (road repairs) bond/security (subject to the same bond ratings and financial surety requirements as the decommissioning bond described in §107(N)(5)) be posted prior to the issuance of any building permit in an amount sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant. The Highway Superintendent, Town Engineer or other official designated by the Town Board is authorized to consult with any necessary professional to determine or confirm the bond/security amount, all at the sole cost and expense of the applicant. Applicant shall, upon authorization by the Town Code Enforcement Officer, file and record the original performance bond in the Town Clerk's Office. Such bond/security shall be in addition to other securities required in this Local Law.
- Q. Agricultural resources. For projects located on agricultural lands:
  - (1) The Town Board shall in all instances give special consideration to areas that consist of Prime Farmland, Prime Soils, Prime Soil Lands, and/or Farmland of Statewide Importance and the removal of such lands when

reviewing applications and granting site plan approvals to commercial solar project (solar farm) applicants under this Local Law.

- (2) To the maximum extent practicable, commercial solar projects (solar farms) approved to be located on Prime Farmland, Prime Soils, Prime Soil Lands, and/or Farmland of Statewide Importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.
- (3) Commercial solar project (solar farm) applicants 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 applicants shall use native plant species and seed mixes.
- (4) Where a commercial solar project (solar farm) is to be located on Prime Farmland, Prime Soils, Prime Soil Lands, and/or Farmland of Statewide Importance, the applicant shall hire an environmental monitor (EM) to oversee the construction, restoration, and subsequent monitoring of the agricultural lands. The environmental monitor (EM) is to be on site whenever construction is occurring on the agricultural land(s) and any construction shall be coordinated with the Town's Code Enforcement Officer and the New York State Department of Agriculture and Markets to develop an appropriate schedule for inspections to assure these lands are being preserved and protected to the greatest extent possible.
- (5) Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland shall be assessed and mitigated to the greatest extent possible.
- (6) Structures for overhead collection lines, interconnect cables and transmission lines installed aboveground (when unavoidable) shall be located outside agricultural field boundaries. When above-ground cables and transmission lines must cross agricultural fields, applicant shall use taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.
  - (a) All buried electric cables in cropland, hay land and improved pastures shall have a minimum depth of 48 inches of cover. At no time is the depth of cover to be less than 24 inches below the soil surface.
  - (b) The Madison County Planning Department is to be consulted concerning the type of intercept drain lines whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.

- (7) Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries, and in the nonagricultural portions of the site.
- (8) There shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extent possible.
- (9) The width of access roads across or along agricultural fields is to be no wider than 20 feet so as to minimize the loss of agricultural lands and comply with the New York State Fire Code.
- (10) The surface of commercial solar project (solar farm) access roads to be constructed through agricultural fields should be level with the adjacent field surface where possible.
- (11) All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be preserved, and applicants shall take appropriate measures to maintain the design and effectiveness of these structures. Applicants shall repair any structure disturbed during construction to as close to original condition as possible unless such structures are to be eliminated based upon an approved site plan for the commercial solar project (solar farm).
- (12) Culverts and water bars are to be installed to maintain natural drainage patterns.
- (13) All topsoil areas to be used for vehicle and equipment traffic, parking, equipment laydown, and as storage areas are to be stripped.
- (14) All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) is to be stockpiled separate from other excavated materials (rock and/or subsoil).
- (15) Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional workspace may be required as part of site plan approval.
- (16) A maximum of 50 feet of temporary workspace is to be provided along open-cut electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.
- (17) All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.

- (18) No vehicles or equipment are to be allowed outside the work area without prior approval from the environmental monitor (EM).
- (19) In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with any applicable landowner agreements.
- (20) Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
- (21) Restoration requirements. Applicants shall restore all agricultural lands temporarily disturbed by construction as follows:
  - (a) Be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, removal of all rocks four inches in size or greater from the surface of the subsoil shall occur prior to replacement of topsoil. Topsoil shall be replaced to original depth and original contours reestablished where possible. All rocks shall be removed that are four inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October 1 of each year.
  - (b) Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Town Board, as applicable.
  - (c) Seed all restored agricultural areas with the seed mix specified by the environmental monitor (EM) and this Local Law, in order to maintain consistency with the surrounding areas.
  - (d) All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions, unless said structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project shall be remedied with the appropriate mitigation measures as determined by the environmental monitor (EM).
  - (e) Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded, and subsoil should not be decompacted until plasticity, as determined by the Atterberg Limits

and Field Test, is adequately reduced. No project restoration activities are to occur in agricultural fields between the months of October and May unless favorable soil moisture conditions exist.

- (f) Following site restoration, remove all construction debris from the site.
- (g) Following site restoration, the project sponsor is to provide a monitoring and remediation period of no less than two years. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.
- (h) Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.
- (i) All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface.”

R. Payment in Lieu of Tax (“PILOT”) Agreement and Host Community Benefit Program.

- (1) In every instance of a commercial solar project (solar farm) application, the Town of Brookfield hereby requires the applicant to enter into a Payment in Lieu of Tax (“PILOT”) Agreement. Notwithstanding this PILOT requirement, the applicant shall still be required to observe the requirements of Real Property Tax Law Section 487 relative to notification of a proposed solar facility. Such notification shall be sent to the Town of Brookfield Supervisor, with a copy to the Town Clerk, by Registered and U.S. First Class Mail and shall specifically state in bold lettering on the envelope and on the first page of the notice that the notice is being provided pursuant to NYS Real Property Tax Law Section 487(2). Upon receipt of said notice, the Town of Brookfield will advise the applicant of the Town’s desire for a Payment in Lieu of Tax (“PILOT”) Agreement. Said notice will direct the applicant to contact the Town’s legal counsel to negotiate the terms of said Agreement.
- (2) In addition to a PILOT Agreement, the applicant shall propose to the Town, on projects involving 2 megawatts and above, a Host Community Benefit package for consideration by the Town Board as part of the approval process. This Agreement shall be in addition to a PILOT Agreement.

S. Reference to Article 94-c. Any proposed solar energy system subject to review by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the New York State Executive

Law, shall be subject to all substantive provisions of this Local Law and any other applicable provisions of the Town of Brookfield Regulations and/or local laws.

- T. Adhere to “Commercial Solar Project (Solar Farm) Guidelines”. In addition to the above regulations, all commercial solar project (solar farm) applicant shall demonstrate to the Town Board compliance with the attached “Commercial Solar Project (Solar Farm) Guidelines”.”

**SECTION 5. SEVERABILITY.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Local Law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law.

**SECTION 6. EFFECTIVE DATE.**

This Local Law shall be effective upon filing with the office of the Secretary of State.

**SCHEDULE “A”  
COMMERCIAL SOLAR PROJECT (SOLAR FARM) GUIDELINES**

Commercial solar projects (solar farms) are long term temporary, non-agricultural land developments in a community. They generally occur on leased farmlands that are proposed to be returned to the original condition at the end of the lease. Commercial solar projects (solar farms) often propose to use active or fallow agricultural lands as their construction sites. The following presents guidelines as to what lands are considered best suited for commercial solar project (solar farm) use in the Town of Brookfield and are deemed consistent with the Town’s long term goals to balance renewable energy benefits and the potential impacts with agricultural resources.

**Prime Farmlands**

Where possible commercial solar projects (solar farms) should be located using a site design that limits the potential for negative impacts to the long term use of productive farmland. “NYS Department of Agriculture and Markets (NYSDAM) recommends that project sponsors avoid installing solar arrays on the most valuable or productive farmland. The following is the order of importance recommended by NYSDAM for solar array avoidance:

Active rotational farmland (most important)

Permanent hay land

Improved pasture

Unimproved pasture

Other support lands

Fallow/inactive farmland (least important)”

Active rotational farmlands are generally considered to be prime farmland

“Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.” (NRCS)

**Based upon this definition the Town of Brookfield considers soils designated by the NRCS as well drained soils with 0 to 8 percent slopes to be prime community farmland and that commercial solar project (solar farm) development on lands with these soils should be avoided.**

### **Submittals**

Prior to submitting engineering drawings for a commercial solar project (solar farm) development the applicant for a commercial solar project (solar farm) shall submit three drawings/maps that will give provide information for the Town of Brookfield Town Board to better under the features of the site when engineered drawings are submitted.

Site Specific Soil Survey: This document shall field identify the borders of existing site soils in accordance with NRCS standards and shall be performed by an accredited Soil Scientist whose name shall be noted on the drawing. Existing published soil maps and data shall only be used as guideline information by the Soil Scientist. In addition to field identifying site soils the Soil Scientist shall document the depth of the plow layer on the site.

Topographic Map: This document shall be a map of the property (commercial solar project (solar farm) area) showing topographic features and shall be drawn displaying existing contours at two foot intervals.

Visibility Map: This document shall be a map depicting existing natural (vegetation, topography) and manmade landscape features along roadways bordering the commercial solar project (solar farm) and within a 1/2 mile radius of the site that provide potential visual screening for the proposed commercial solar project (solar farm) location. The map may use published data as its base. This document should include a graphic representation of the potential natural screening of a proposed commercial solar project (solar farm) site with a rating of high, medium, or low. The regulations include an option for the Town Board to request of a “digital-elevation-model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project.” However, this map may be more appropriate to use in areas of documented vistas and viewsheds established by the Town Board.

## **Commercial Solar Project (Solar Farm) Features**

When engineering drawings are submitted for review, the following important features of the commercial solar project (solar farm) should be considered:

Avoiding the use of concrete footings and driving the support posts into the ground to reduce or minimize disturbance of the existing farmland soil profile.

Designing the structural system that the panels will sit upon so that a single post can be used to support the individual solar panels.

Spacing of solar panels and panel rows with sufficient distances between them that will allow adequate sunlight penetration for viable plant growth on the farmland surfaces under the panels.

Enabling the potential for dual use of the commercial solar project (solar farm) land by setting panels approximately 2 meters above grade so that grazing (cattle, cows, sheep) and planting of some farm crops may occur.

Stringing electrical connections/wires on the panel structures or burying wires in shallow laid conduits setting them in the plow layer so the original soil profile is not disrupted.

Designing the site plan and its management of stormwater runoff to work with existing topography to minimize site grading and disruption of existing farm soils.

Restoration of the solar ground surfaces after construction. If not proposed for dual use the site should use pollinator plant species (grasses, wildflowers) to create habitat features for small animals, birds, butterflies, and insects. Mowing of these areas should be limited to no more than twice a year, once before May first and once near the end of October.

If the commercial solar project (solar farm) surfaces are restored to habitat landscape small openings in the bottom of the fence should be made to allow movement of small animals in and out of the farm.

## **Visual Mitigation**

The commercial solar project (solar farm) applicants should provide a system for screening views of the commercial solar project (solar farm) from surrounding areas. This commonly entails a monoculture planting of smaller growth evergreen trees set in a line along the borders of the commercial solar project (solar farm), but in a naturalistic way. Plant species often include arborvitae or red cedar. In suburban and rural areas the arborvitae is deer food and the red cedar is a host for cedar apple rust (apple grower's problem). The monoculture evergreen planting when installed with 6 foot high plants will take a significant portion of the lease to provide a meaningful screen for the commercial solar project (solar farm). Other visual mitigation solutions may exist.

On a relatively landscape area with a bordering local road a commercial solar project (solar farm) may be screened with a constructed low (6 foot +/-) mowable earthen berm following the roadway alignment that is planted to pollinator species of grasses and wildflowers.

Rather than installing a monoculture line of plants a commercial solar project (solar farm) plan may propose a hedgerow character planting using a mix of evergreen (60%) and deciduous (40%) species. The plantings should be clustered and staggered in much the same manner of natural

hedgerow growth. Plants should be installed on a low mound thereby giving better height at time of planting and maintaining the original farm soil profile.

Planting of larger growth evergreen trees (white pine, white spruce) at locations in or bordering the commercial solar project (solar farm) that would be out of the sun angle and thereby not impact the electrical system. The mature growth would help to mitigate the overall visual impact of the commercial solar project (solar farm).

**Woodland Commercial Solar Project (Solar Farm) Sites**

Woodland sites that may be proposed for commercial solar project (solar farm) use generally do not have prime agricultural soils. Use of a wooded area for a commercial solar project (solar farm) would require land clearing, stumping the land surface, and modifying of the soil profile.

Should a wooded site be proposed for commercial solar project (solar farm) use it should not be dominated by the growth of native plant species. These would include sugar maple, red maple, black birch, beech, hickory, red oak, white oak, shadblow, and white pine.

A commercial solar project (solar farm) site proposed in a woodland dominated by the alien buckthorn and Norway maple or an old declining plantation of spruce or pine could be an ideal woodland location for a commercial solar project (solar farm).”

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

<b>Joseph Walker</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Dewitt Head</b>	<b>Councilor</b>	<b>Voted</b>	<b>ABSENT</b>
<b>Jefferson Mayne</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Clinton Abrams</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Loren Corbin</b>	<b>Supervisor</b>	<b>Voted</b>	<b>Yes</b>

The foregoing resolution was thereupon declared duly adopted.

**DATED: April 11, 2022**

**CERTIFICATION**

**STATE OF NEW YORK )**  
**COUNTY OF MADISON )**

I, the undersigned Clerk of the Town of Brookfield, Madison County, New York, **DO**  
**HEREBY CERTIFY:**

That I have compared the foregoing Resolution with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Town on April 11, 2022.

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**SHERRY PERRETTA**  
**Town Clerk**

**(SEAL)**