

**Town of Rochester Local Law #\_\_\_\_ of 2016  
Amendment of Chapter 140, Zoning**

**A Local Law amending Chapter 140 of the Code of the Town of Rochester with regard to Solar Energy**

**Section 1**

This Local Law is adopted and enacted pursuant to the authority and power granted by the Constitution and Laws of the State of New York including without limitation the Municipal Home Rule Law of the State of New York, Articles 2 and 3, and Article 2 of the New York State Statute of Local Governments, and pursuant to the authority of Section 265 of the New York State Town Law.

**Section 2**      Subsection § 140-11 Height Restrictions shall be amended as follows

No building or structure shall exceed in building height or maximum stories the number of feet permitted as a maximum on the Schedule of District Regulations for the district where such building or structure is located. These standards shall not apply to agricultural structures, communications towers, elevator shafts, similar unoccupied mechanical spaces and energy generation equipment connected with another otherwise permitted use. Such height exceptions shall be subject to all specific regulations that may apply to such uses.

**Section 3**      Subsection § 140-13 Accessory Structures and Uses shall be amended as follows:

G. Solar Energy Structures. See § 140-37 Solar Energy

**Section 4**      A new subsection § 140-37 Solar Energy shall be added as follows:

**§ 140-37 Solar Energy**

A. Purpose. The Town of Rochester recognizes that solar energy is a clean, readily available, and renewable energy source. Development of solar energy systems provides an excellent opportunity for the reuse of land throughout the Town and offers an energy resource that can act to attract and promote green business development. The Town of Rochester has determined that comprehensive regulations regarding the development of solar energy systems is necessary to protect the interests of the Town, its residents, and its businesses. This article is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town. It is therefore the intent of this section to provide adequate safeguards for the location, siting and operation of solar energy facilities.

B. Definitions. The following definitions shall apply specifically to this subsection.

Alternative Energy Systems - Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

Area of Use - The area within the parcel measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.

Building-Integrated Photovoltaic (BIPV) Systems - A solar energy system that consists of integrating photovoltaic modules into the building structure, such as the roof or the façade and which does not alter the relief of the roof.

Collective Solar - Solar installations owned collectively through subdivision homeowner associations, college student groups, "adopt-a-solar-panel" programs, or other similar arrangements.

Flush-Mounted Solar Panel - Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised.

Freestanding or Ground-Mounted Solar Energy System - A solar energy system that is directly installed in the ground and is not attached or affixed to an existing structure.

Kilowatt (kW) - Equal to 1000 Watts; a measure of the use of electrical power.

Megawatt (MW) - Equal to 1000 Kilowatts; a measure of the use of electrical power.

Net-Metering - A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

Photovoltaic (PV) Systems - A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

Qualified Solar Installer - A person who has skills and knowledge related to the construction and operation of solar electrical equipment 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. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

Rooftop Or Building-Mounted Solar System - A solar power system in which solar panels are mounted on top of the structure of a either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

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 Easement - An easement recorded pursuant to NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

Solar Energy Facility/System - Solar collectors, controls, solar-related equipment and other accessory structures and buildings, energy storage devices, heat pumps, heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities, materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

Solar Energy Facility, Medium Scale - A utility-scale solar energy system producing greater than twelve kilowatts (12kW) per hour and occupying less than five (5) acres of land area of use consisting of ground-mounted solar arrays or roof panels, and associated control or conversion electronics and that will be used to produce utility power to either or both on-site uses and off-site customers.

Solar Energy Facility, Solar Farm – A utility-scale solar energy system occupying  $\geq$  five (5) acres and  $\leq$  twenty (20) acres of land area of use for a solar energy system to capture solar energy and convert it to electrical energy to transfer to the public electric grid in order to sell electricity to a public utility entity for off-site customers.

Solar Energy Facility, Utility Scale - A Solar Energy Facility, Medium Scale or Solar Energy Facility, Solar Farm, as defined herein.

Solar Energy System Designed for Subdivision Use – A collective solar energy system occupying  $\leq$  two (2) acres area of use consisting of ground-mounted solar arrays or roof panels, and associated control or conversion electronics and that will be used to produce utility power to provide energy only for the onsite use of the specific lots associated with a major or minor subdivision.

Solar Energy System, Small Scale - Solar photovoltaic systems that produce up to twelve kilowatts (12kW) per hour of energy or solar-thermal systems which serve the building or lot to which they are attached, and do not provide energy for any other lots.

Solar Garden: - Groupings of solar photovoltaic solar panels connected to an electric circuit served by an electric utility company. Multiple users may subscribe to receive the output from one or more panels, receive the benefits of PV technology and the efficiencies associated with a larger-scale project without having to own, host or maintain the equipment on their own property.

Solar Panel - A device for the direct conversion of solar energy into electricity.

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

Solar-Thermal Systems - Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

Tilt - The angle of the solar panels and/or solar collector relative to their latitude. The optimal tilt to maximize solar production is perpendicular, or 90 degrees, to the sun's rays at true solar noon.

True Solar Noon - When the sun is at its highest during its daily east-west path across the sky.

#### C. Exceptions.

- (1) Applicability. To the extent practicable, and in accordance with Town of Rochester law, the accommodation of solar energy systems and equipment and the protection of access to sunlight for such equipment shall be encouraged in the application of the various review and approval provisions of the Town of Rochester Code.
- (2) A rooftop or building-mounted solar energy system, as defined herein, may extend a maximum five (5) feet above the roof surface even if this exceeds the maximum height limit for the principal structure for the district in which it is located, as illustrated in the Schedule of District regulations of this code, provided all other standards of this subsection are met. See also § 140-11 Height Restrictions.
- (3) The Planning Board, in conjunction with the review of a subdivision, site plan, or special use application may also appropriately modify other development standards, including but not limited to building height, to accommodate solar and other energy efficient systems.
- (4) No homeowner or property owner association shall prohibit solar energy systems, Covenants and restrictions connected with projects requiring special use permits, site plan review or subdivision approval shall be reviewed for purposes of ensuring there are no such prohibitions.

#### D. Safety

- (1) All solar energy system installations must be performed by a qualified solar installer.
- (2) Prior to operation, electrical connections must be inspected by an appropriate electrical inspection person or agency, as determined by the Town of Rochester.

- (3) Any connection to the public utility grid must be inspected by the appropriate public utility.
- (4) Solar energy systems shall be maintained in good working order.
- (5) Solar energy systems shall meet New York's Uniform Fire Prevention and Building Code standards.
- (6) If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of the Town of Rochester and other applicable laws and regulations.

E. Solar-thermal systems and Building-Integrated Photovoltaic (BIPV) Systems are permitted outright in all zoning districts, subject to building permits if determined required.

F. Small Scale Solar Energy System

(1) Applicability

- a) For purposes of this local law, the term Small Scale Solar refers to solar photovoltaic systems that produce up to twelve kilowatts (12kW) per hour of energy which serve the building or lot to which they are attached, and do not provide energy for any other lots.
- b) Solar energy collectors 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 collective solar installations or the sale of excess power through a net billing or net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.

(2) Permitting

- a) No Small Scale solar energy system or device shall be installed or operated in the Town of Rochester except in compliance with this article.
- b) Small Scale Rooftop and Building-Mounted Solar Collectors: Rooftop and building-mounted small scale solar collectors are permitted as an accessory use in all zoning districts in the Town of Rochester subject to building permits.
- c) Small Scale Ground-Mounted and Free Standing Solar Collectors: Ground-mounted and free standing small scale solar collectors are permitted as accessory structures in all zoning districts of the Town of Rochester, subject to the following conditions:
  - 1. Building permits are required for the installation of all ground-mounted solar collectors.
  - 2. The location of the solar collector meets all applicable setback requirements for accessory structures in the zoning district in which it is located.

3. The height of the solar collector and any mounts shall not exceed fifteen (15) feet when oriented at maximum tilt.

#### G. Solar Energy System Designed for Subdivision Use

- (1) When an application for either a Minor or Major Subdivision is presented to the Planning Board, which plans include incorporation of a solar energy system as a community energy source, the following criteria for the review and use shall be considered.
  - a) Solar energy collectors shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the subdivision on which they are erected, but nothing contained in this provision shall be construed to prohibit collective solar installations or the sale of excess power through a net billing or net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.
  - b) The solar energy system shall be located on one or more lots of the subdivision.
  - c) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards.
  - d) A Homeowner's Association shall be established for the operation and maintenance of the solar energy system.
- (2) Permitted locations.
  - a) Shall be permitted under the Schedule of District Regulations when authorized by site plan approval from the Planning Board in conjunction with minor or major subdivision review subject to the following terms and conditions in the AR-3, R-1, R-2, R-5, and H zoning districts so long as the solar energy system meets the criteria set forth in this subsection and Chapter 140, subject to obtaining all other necessary approvals.
  - b) Shall not be permitted to be constructed in one-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps or within 100 feet of a NYS or NWI designated wetland.
- (3) Site Plan requirements. A solar energy system designed for a specific subdivision use shall comply with all the site plan requirements of Chapter 140. Additional requirements for the use shall include but not be limited to the following:
  - a) Maximum area. The maximum area of use for a solar energy system designed for a specific subdivision use shall occupy  $\leq$  two (2) acres of land area of use.
  - b) Height: The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed fifteen (15) feet in height above the ground.

- c) Setbacks: The minimum setback for a solar energy system designed for a specific subdivision use and equipment used in conjunction with the solar energy system shall be at least thirty-five (35) feet from all lot lines of parcels associated with the subdivision and fifty (50) feet from all perimeter lot lines of contiguous parcels not a part of the subdivision..
- d) A minimum twenty-five (25) foot perimeter buffer, which may be partially or totally within the subdivision perimeter lot line setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads.
- e) The solar energy system shall be preferably located on an interior lot of the subdivision and placed away from contiguous residential use. Where a solar energy system designed for a specific subdivision use will abut other residential uses outside of the boundaries of the subdivision, there shall be increased consideration for mitigating visual impact to the residential use. For example, increased setbacks, visual screening that does not impair solar access, or sound buffering may be required by the Planning Board.
- f) Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality. Site plans shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.
- g) A land grading and vegetation clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway and the area required for solar access.
- h) Landscape screening shall be provided in accordance with the landscaping provisions of this chapter. Non-invasive ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, and non-fertilizer-dependent.
- i) Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite.
- j) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.
- k) Conveyance of Energy to Subdivision Lots. The Site Plan shall show the pathways of utility service lines which will be put into place to convey energy to each lot of the subdivision. Necessary utilities to serve the site shall preferably be underground and in compliance with all local, State, and Federal laws, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

Overhead lines shall follow access roads and/or existing tree lines to minimize visual impact upon surrounding properties.

- l) All solar energy systems shall be designed and located in order to prevent reflective glare.
- m) Signs. A sign no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted. In addition, "No Trespassing" or other warning signs may be posted. All signage shall be maintained in legible condition and contain accurate information. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. No signage of any kind shall be allowed to be attached to solar panels or support structures, except any required safety warnings.
- n) A solar energy system connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy facility will be interconnected to the utility grid.
- o) A plan for the operation and maintenance of the solar energy facility shall be prepared including proposed covenants and restrictions and a management plan for the proposed Homeowners Association (HOA).
- p) A decommissioning plan, as detailed in 140-37 (K), shall be prepared

#### H. Medium Scale Solar Energy Facility

##### (1) Permitted locations.

- a) Shall be permitted under the Schedule of District Regulations when authorized by site plan approval from the Planning Board subject to the following terms and conditions in the AR-3, AB-3, R-5, H, I, NR, and B zoning districts so long as the solar energy facility meets the criteria set forth in this subsection and Chapter 140, subject to obtaining all other necessary approvals.
- b) Shall not be permitted to be constructed in one-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps or within 100 feet of a NYS or NWI designated wetland.

##### (2) Site Plan requirements. A Medium Scale Solar Energy Facility shall comply with all the site plan requirements of Chapter 140. Additional requirements for the use shall include but not be limited to the following:

- a) Maximum area. A Medium Scale Solar Energy Facility shall occupy less than five (5) acres of land area of use.
- b) Height: The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed fifteen (15) feet in height above the ground.
- c) Setbacks: The minimum setback for a Medium Scale Solar Energy Facility and equipment used in conjunction with the solar energy facility shall be at least fifty (50) feet from all lot lines.



- d) A minimum twenty-five (25) foot perimeter buffer, which may be partially or totally within the setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads.
- e) Where a Medium Scale Solar Energy Facility will abut residential uses, there shall be increased consideration for mitigating visual impact to the residential use. For example, increased setbacks, visual screening that does not impair solar access, or sound buffering may be required by the Planning Board.
- f) A minimum thirty-five percent (35%) of lot coverage shall be preserved as natural and undisturbed open space. Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality. Site plans shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.
- g) A land grading and vegetation clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway and the area required for solar access.
- h) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.
- i) A solar energy system connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy facility will be interconnected to the utility grid in order to sell electricity to the public utility entity.
- j) A plan for the operation and maintenance of the solar energy facility shall be prepared.
- k) A decommissioning plan, as detailed in §140-37 (K), shall be prepared

#### I. Solar Energy Facility, Solar Farm

##### (1) Permitted locations.

- a) A solar energy farm facility shall be permitted under the Schedule of District Regulations when authorized by special use permit from the Planning Board subject to the following terms and conditions in the AR-3, R-5, I, and NR zoning districts so long as the solar energy production facility meets the criteria set forth in this subsection and Chapter 140, subject to obtaining all other necessary approvals.

- b) Solar energy farm facilities shall not be allowed to be constructed in one-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps or within 100 feet of a NYS or NWI designated wetland.
- (2) Special Use and Site Plan requirements. A solar energy farm facility shall comply with all the special permit and site plan requirements of Chapter 140. Additional requirements for the use shall include but not be limited to the following:
- a) Minimum area. A solar energy farm facility shall occupy  $\geq$  five (5) acres and  $\leq$  twenty (20) acres area of use.
  - b) Height: The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed fifteen (15) feet in height above the ground.
  - c) Setbacks: The minimum setback for a solar energy farm facility and equipment used in conjunction with the solar energy farm facility shall be at least one hundred (100) feet from all lot lines.
  - d) A minimum fifty (50) foot perimeter buffer, which may be partially or totally within the setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads.
  - e) Where a solar energy farm facility will abut residential uses, there shall be increased consideration for mitigating visual impact to the residential use. For example, increased setbacks, visual screening that does not impair solar access, or sound buffering may be required by the Planning Board.
  - f) A minimum thirty-five percent (35%) of lot coverage shall be preserved as natural and undisturbed open space. Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality. Site plans shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.
  - g) A land grading and vegetation clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway and the area required for solar access.
  - h) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The total area of the face of all solar panels shall be calculated and considered impervious surface. The applicant shall comply with the State Pollutant Discharge Elimination System

guidelines. A SWPPP (Stormwater Pollution Prevention Plan) shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.

- i) A solar energy farm facility connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy farm facility will be interconnected to the utility grid in order to sell electricity to the public utility entity.
- j) A visual assessment analysis of the impact of the facility on the community shall be prepared.
- k) A plan for the operation and maintenance of the solar energy farm facility shall be prepared.
- l) A decommissioning plan, as detailed in §140-37 (K), shall be prepared

J. Design standards for Medium Scale and Solar Farm Solar Energy Facilities (Utility Scale)

- (1) The solar energy system shall comply with § 140-20, General Commercial and Industrial Standards, of this code.
- (2) Roadways. An access road from the public road, parking area, and fire access surrounding the perimeter of the equipment compound area shall be provided to assure adequate emergency and service access and shall conform to the New York State Fire Code. Use of existing roads, public or private, shall be utilized to the maximum extent possible. Road construction shall be consistent with construction standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential but may exceed normal standards. Roadways shall be maintained in good and passable condition under all traffic and weather conditions and kept open so that firefighting equipment and other emergency vehicles may access any solar energy system structures. Equipment or vehicles may not be stored at the facility site, except during the construction phase.
- (3) Necessary utilities to serve the site shall preferably be underground and in compliance with all local, State, and Federal laws, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. Overhead lines shall follow access roads and/or existing tree lines to minimize visual impact upon surrounding properties, critical viewsheds and/or historic properties.
- (4) All solar energy systems shall be designed and located in order to prevent reflective glare.
- (5) All mechanical equipment of a principal solar energy system, including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight-foot-high anchored fence with a self-locking gate. This may be waived by the Planning Board in the case of medium scale solar energy systems upon written request by the applicant stating the justification for the request.
- (6) Landscape screening shall be provided in accordance with the landscaping provisions of this chapter. Non-invasive ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, and non-fertilizer-dependent.

- (7) Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite.
- (8) Signs. A sign no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signage shall be maintained in legible condition and contain accurate information. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. No signage of any kind shall be allowed to be attached to solar panels or support structures, except any required safety warnings.

K. Decommissioning Plan for Medium Scale and Solar Farm Solar Energy Systems (Utility Scale)

- (1) Decommissioning plans shall be approved by the Planning Board and shall include and describe the detailed methods for:
  - a) Removal of all non-utility owned equipment conduits, structures, fencing, roads and foundations; restoration of property to condition prior to development.
  - b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - c) Stabilization or re-vegetation of the site as necessary to minimize erosion.
  - d) Timeframe for completion of removal and decommissioning activities
- (2) Shall include a signed statement from the party responsible for completing the Decommissioning Plan acknowledging such responsibility.

L. Abandonment and Removal of Medium Scale and Solar Farm Solar Energy Systems (Utility Scale)

- (1) Any solar energy facility which ceases to operate shall be wholly removed from the site. Ceases to operate is defined as not performing all normal functions associated with operation of the solar energy facility and its equipment on a continuous basis for a period of one year.
- (2) In the event the solar energy facility is not so removed, the Town Board, upon notice from the Code Enforcement Officer shall give written notice to the owner of such facility (i) stating that the solar energy facility is considered abandoned, and (ii) setting a time, date and place for a public hearing. Such public hearing shall be on not less than thirty days notice to such owner. Upon a finding that the solar energy facility has been abandoned, the Town Board shall deliver written notice to the facility owner indicating the reasons for its finding, and directing that the solar energy facility be removed within one hundred twenty days. In the event that the solar energy facility is not so removed, the Town Board may commence an action in Supreme Court against the owner of such facility seeking an order requiring the removal.

- (3) Upon recommendation of the Building Inspector, the Town Board may waive or defer the requirement that a solar energy facility be removed if it determines that retention of such facility is in the best interest of the Town.
- (4) Should the town remove the solar energy facility pursuant to this subsection, the Town shall utilize the security provided for in §140-37(M) (6) to pay for same. In the event that the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/or applicant, and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the town for the correction of the violation.

M. Registration of Medium Scale and Solar Farm Solar Energy Systems (Utility Scale)

- (1) Purpose. The Town of Rochester desires to develop a registration system to ensure all utility scale solar energy facilities are properly maintained and to ensure all owners properly maintain and inspect their facilities.
- (2) All owners of utility scale solar energy facilities located in the Town of Rochester shall be required to register the facility upon granting of a Certificate of Occupancy. Facilities in existence as of the effective adoption date of this chapter shall have sixty (60) days from the filing of this chapter to register.
- (3) The local utility scale solar energy facility registration system shall be administered by the Code Enforcement Office. The Town Board shall establish the fees structure for the registration which may be amended by resolution from time to time.
- (4) Registration shall be effective for a three year period, with renewal required prior to expiration date. Recertification shall be required for year two and three as described in this chapter.
- (5) Registration Requirements. The owner shall provide and certify to the Town the following:
  - a). The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the solar energy facility.
  - b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
  - c) Written certification the solar energy facility is in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations
  - d) Written certification onsite vegetation has been maintained to ensure the desired screening effect.
- (6) Financial Security.
  - a) Prior to issuance of Planning Board final approval for any new solar energy facility, the applicant and the owner of record of any proposed solar energy facility site shall, at its cost and expense, be jointly required to execute and file with the Town Board a bond, or other form of

- security acceptable to the Town Board as to type of security and the form and manner of execution, in an amount to be determined by the Town Board sufficient to cover the entire cost of removal of the solar energy production facility such as power lines, transformers, etc., and the reclamation of the affected landscape, including below ground components, to substantially the same condition as prior to the facilities construction. Said financial surety, bond or similar undertaking shall be in an amount acceptable to the Town Board and substantiated by a qualified and independent engineering expert as designated by the Town Board. The full amount of the bond or security shall remain in full force and effect throughout the term of the approval and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original approval.
- b) The financial security shall run coterminous with the facility registration and be reviewed by the Town Board at each registration renewal.
- c) Should there be any violation of this section, which remains uncorrected by the applicant and or owner, after proper notice in accordance with this chapter, the Town Board shall have the right to correct the violation, utilizing the security to pay for same. In the event that the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/or applicant, and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the town for the correction of the violation.
- (7) Inspection of Facilities. The owner and any and all lessees, renters, and/or licensees of solar energy facilities shall agree in writing to allow the Code Enforcement Officer access to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including, but not limited to, solar panels, support structures, and buildings or other structures constructed or located on the permitted site to verify accordance with any applicable technical, safety, fire, building, and zoning codes, laws, regulations, and other applicable requirements.
- (8) Notification of Termination of Use. The owner shall sign a letter of commitment, which shall commit the solar energy facility owner and its successors and assigns to notify the Building Inspector, in writing, within 30 days of the discontinuance of use of the facility. Failure to notify and thereafter remove the facility and all appurtenances shall be deemed a violation punishable under applicable provisions of the Town of Rochester Zoning Law. Notwithstanding this provision, the Building Inspector shall have the right to independently investigate any discontinuance of the facility and render a written determination setting forth the extent, duration and facts evidencing the violation and the discontinuance of the facility. Upon rendering said written determination, written notice of the determination shall be provided to the owner and the lessees of the facility and the owners of the real property upon which the facility is situate by certified mail, return receipt requested. Upon proven receipt of the notice of the determination by the facility owner, any lessee of the facility and the owners of the real property said facility is situate thereon, the Building Inspector and the Town of Rochester may commence legal proceedings to levy upon the financial surety, bond or similar undertaking and have the facility removed from the site in accordance with all applicable law.
- (9) Annual Certification. Recertification by the facility owner of the following information shall be required for year two and three of each registration period and be due on the anniversary date of registration.

- a) The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the solar energy facility.
- b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
- c) The solar energy facility is in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations

(10)Renewal of Registration. Registrations shall be required to be renewed beginning with a period of time ninety (90) days prior to expiration until the anniversary date of the registration.

- a) Application for renewal of registration of permitted facilities shall include a report prepared by a State of New York licensed professional engineer detailing physical inspection(s) conducted within the prior six (6) months to insure structural integrity and electrical safety.
- b) The Town Board shall review financial security deposits in conjunction with registration renewal to insure the amount of the financial security is adequate and may increase the amount of the financial security, if necessary.

(11)Changes in Registration Information. The owner shall provide notice to the Town of any changes in registration information within thirty (30) days of such change.

#### N. Penalties.

§ 268(1) of New York State Town Law is hereby superseded to allow the Town Board to set penalties higher than those specified in Town Law §268(1). A violation of this Section 140-37 Law is hereby declared to be an offense punishable by a fine not exceeding One Thousand dollars (\$1,000) for a conviction of a first offense; punishable by a fine of not less than One Thousand Dollars (\$1,000) and not more than One Thousand Five hundred (\$1,500) for conviction of a second offense; and no less than One Thousand Five Hundred Dollars (\$1,500) and no more than Two thousand Five Hundred Dollars (\$2,500) upon conviction for a third or subsequent offense. Each week's continued violation shall constitute a separate additional violation.

**Section 5** Appendix A, Schedule of District Regulations shall be amended as follows:

**Roof top or Building-Mounted Solar Energy System, Small Scale** shall be added as an Accessory Use in all zoning districts

**Solar Energy System Designed for Subdivision Use \*** shall be added as a Principal Permitted Use (where \*= with Site Plan review) in the AR-3, R-1, R-2, R-5, and H zoning districts

**Solar Energy Facility, Medium Scale\*** shall be added as a Principal Permitted Use (where \*= with Site Plan review) in the AR-3, AB-3, R-5, H, I, NR, and B zoning districts

**Solar Energy Facility, Solar Farm** shall be added as a Special Use in the AR-3, R-5, I, and NR zoning districts

**Section 6      Severability**

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision.

**Section 7      Effective Date**

This law shall become effective immediately upon filing in the office of the Secretary of State of the State of New York.