

PROPOSED LOCAL LAW NO ___ OF THE YEAR 2022

BE IT ENACTED by the Town Board of the Town of Rhinebeck as follows:

Section 1: Title

This Local Law shall be entitled “A Local Law amending Town Code Chapter 125, Zoning, in the matter of revising Section 125-47 Solar Energy Systems, to add regulations specifically permitting and regulating Community Solar as a new solar use in the Town of Rhinebeck.”

Section 2: Amendment to Town Code Chapter 125, Section 125-47.B, by adding the following:

Community Solar – A solar installation specifically developed and installed for the purpose of selling panels to the public through a public-private partnership. Community Solar is a type of Solar Power Plant but is unique in that it utilizes an operational model aimed at providing ownership of the installation to residents including homeowners, renters, businesses and those who otherwise can’t, for any number of reasons, install solar on their own property. Community Solar is a single large installation that serves multiple offtakers, which may be residential or commercial. Per NYSERDA requirements, each project must provide remote bill savings to 10 or more offtakers, each of which must receive at least 1,000 kWh per year. Community Solar projects may have fewer than 10 offtakers if the project is located on a multifamily building and is serving its tenants. No more than 40% of the project output can be dedicated to large offtakers (those with a demand charge on their electric bill). Community Solar projects must demonstrate a benefit to the Town whereby members of the Community are given an opportunity to buy-in to the project. (Note: also referred to as Community solar installation, shared solar, solar farms, or Community distributed generation).

Section 3: Amendment to Town Code Chapter 125, Attachment 2

Add “Community Solar” as a use and add Special Use Permit requiring Site Plan Review notations (S*) to the new row in the Historic Preservation (HP20), Rural Agricultural (RA10), Rural Countryside (RC5), Residential Low Density (RL5), Business Park (BP), Gateway-North (Gw-N), Office Research Park (ORP), Utility Corridor (UC), Civic (CIV), Civic 2 (CIV2), Water Resource Overlay (WR-O) and Mi-O (Mining Overlay) Zoning Districts.

Section 4: Amendment to Town Code Chapter 125, Section 125-47

Amend Section 125-47.I to remove in entirety and replace with the following:

Solar power plants & Community Solar. Solar power plants and Community Solar shall be permitted as a principal or co-principal "electric generating" use in the Historic Preservation (HP20), Rural Agricultural (RA10), Rural Countryside (RC5), Residential Low Density (RL5), Business Park (BP), Gateway-North (Gw-N), Office Research Park (ORP), Utility Corridor (UC), Civic (CIV), Civic 2 (CIV2), Water Resource Overlay (WR-O) and Mi-O (Mining Overlay) Zoning Districts subject to both authorization of special use permit and grant of site plan approval by the Planning Board, and including but not limited to conformance with the following supplementary regulations:

(1) The maximum solar module surface area of a solar power plant shall be 36,000 square feet. The maximum solar module surface area of Community Solar shall be no greater than the maximum lot coverage requirement of the zoning district in which Community Solar is proposed to be located.

(2) If established as the principal use of a fee-owned parcel, the parcel on which a solar power plant is sited shall meet either the minimum lot area requirements as set forth for the zoning district within Article IV, § 125-21, District Schedule of Area and Bulk Regulations,[2] of this chapter or be a minimum of 10 acres, whichever acreage shall be greater. If a Community Solar installation is established as a co-principal use on a leased site within a parcel on which another use, or other uses, is located, the overall parcel shall not be less than 10 acres of developable land, defined as land that excludes natural features that can't be utilized for development of Community Solar, except in the HP20 District, where the minimum developable land area of the overall parcel shall be 20 acres.

[2]Editor's Note: The Schedule of Area and Bulk Regulations is included as an attachment to this chapter.

(3) If a solar power plant is established as a co-principal use on a leased site within a parcel on which another use, or other uses, is located, the leased site shall be not more than 2.5 acres and the overall parcel not less than 12.5 acres; except in the Historic Preservation (HP20) District, where the minimum area of the overall parcel shall be 22.5 acres.

(4) A leased site created for the exclusive purpose of development of a solar power plant or Community Solar shall be exempt from the following requirements:

(a) The minimum lot width and frontage requirements otherwise set forth for the zoning district within Article IV, § 125-21, District Schedule of Area and Bulk Regulations, of this chapter.

(b) The requirement for subdivision plat approval under Town Code Chapter 101, Subdivision of Land, provided a copy of the land agreement is submitted to the Planning Board as part of the application for special use permit, an accurate survey-based description of the leased parcel is depicted on the site plan, and access to the solar power plant or Community Solar site is determined by the Planning Board as adequate for routine and emergency purposes provided either directly from a public roadway or established through easement agreement.

(5) If the proposed solar power plant or Community Solar installation is located on a parcel within a residential district and there is an existing dwelling on the parcel, the presence of two principal uses shall in this instance be exempt from the limitation of no more than one principal use on a parcel within a residential district otherwise set forth within § 125-19, Application of zoning district regulations, Subsection F, of this chapter.

(6) If the solar power plant or Community Solar installation is established as a co-principal use on the roof of an agricultural, commercial or institutional structure, the lot on which the solar power plant or Commercial Solar installation is sited shall meet either the minimum lot area requirements as set forth for the zoning district within Article IV, § 125-21, District Schedule of Area and Bulk Regulations for the other principal use, or be a minimum of 10 acres, whichever acreage shall be greater.

(7) The location of a solar power plant shall not encroach on any ecologically sensitive land or water resource nor remove prime agricultural land (Class I through IV agricultural soils) from potential agricultural production. The location of the Community Solar installation shall not encroach on

ecologically sensitive land or water resources, to the maximum extent practicable, nor remove prime agricultural land (Class I through IV agricultural soils) from potential agricultural production (See Section 125-47.10 below).

(8) The installation of a solar power plant shall cause neither the cutting, within or at the periphery of a forested or woodland area, of more than 50% of trees of six inches or more in diameter at breast height over any contiguous land area of one-fourth acre nor overall site disturbance caused by grading, tree removal or other work on the solar plant site and its access exceeding a total of one acre. A Community Solar installation shall cause neither the cutting, within or at the periphery of a forested or woodland area, of trees of six inches or more in diameter at breast height to the maximum extent practicable. Native trees, especially those of significant ecological value, should be preserved to the maximum extent practicable. This section is not intended to regulate dead, decaying or dangerous trees that are identified as needing to be removed nor does this section regulate a legitimate forestry operation on a parcel of land. Removal of trees over 6" in diameter at breast height will require an applicant to provide a tree replacement program proposal (See Section 125-47.21).

(9) Fencing.

(a) Fencing for Solar Power Plants shall be required as follows: Solar power plants including ground-mounted installations shall be enclosed by perimeter fencing, with locking access gate, a minimum of six feet and a maximum of eight feet in height and set back at a sufficient distance from all components of the solar installation to restrict unauthorized access or other safety hazard. Any fencing exceeding six feet in height shall, in accordance with § 125-38, Subsection A, of this chapter be subject to the requirement for issuance of an additional special use permit by the Planning Board.

The type, material and color of perimeter fencing shall be subject to approval by the Planning Board and shall neither envelope a land area in excess of 2.5 acres nor extend beyond the boundaries of the leased parcel. The perimeter fencing shall also be set back a minimum of 100 feet from the front property line and 50 feet from any other property line or such greater minimum distances as may be required for a principal building in the zoning district in which the proposed solar plant is located. In the case of a solar power plant located on a parcel with frontage on a scenic road or within a scenic district, a greater minimum front setback of 200 feet shall be provided. In the case of Solar Power Plants located on a landlocked lot or located behind other lots that front on a street, a setback may, at the discretion of the Planning Board, be reduced to 50' as the front yard of the Solar Power Plant lot is not located along a street.

(b) Fencing for Community Solar shall be required as follows: Fencing shall meet the requirements of Section 125-38 or the following, whichever is the less restrictive: Community Solar installations shall be enclosed by perimeter fencing, with locking access gate, a minimum of six feet and a maximum of eight feet in height and set back at a sufficient distance from all components of the solar installation to restrict unauthorized access or other safety hazard. Any fencing exceeding six feet in height shall, in accordance with § 125-38, Subsection A, of this chapter be subject to the requirement for issuance of an additional special use permit by the Planning Board.

The type, material and color of perimeter fencing shall be subject to approval by the Planning Board and shall not envelope a land area more than the minimum required from the edge of a Community Solar installation to provide the necessary access to the installation or to meet building code requirements, or the boundaries of the leased parcel, whichever is the stricter application. The perimeter fencing shall also be set back a minimum of 100 feet from the front property line and 50 feet from any other property line or such greater minimum distances as may be required for a principal building in the zoning district in which the proposed Community Solar installation is located. In the case of Community Solar located on a parcel with frontage on a scenic road or within a scenic district, a greater minimum front setback of 200 feet shall be provided. In the case of Community Solar located on a landlocked lot or located behind other lots that front on a street, a setback may, at the discretion of the Planning Board, be reduced to 50' as the front yard of the Solar Power Plant lot is not located along a street..

(10) Agricultural uses, including the raising of organic crops and small animals such as sheep, rabbits and chickens, are encouraged to be undertaken within the fenced perimeter of a solar power plant or Community Solar installation. Inclusion of these uses in a project proposal should be considered when assessing flexibility in other requirements of this section, such as fencing or lighting.

(11) The ground within the fenced perimeter of a solar power plant or Community Solar installation shall not be tamped, compressed, or otherwise specially conditioned with herbicides, pesticides or similar other treatments to inhibit the growth of natural vegetation.

(12) Manufacturer and/or installer's identification and appropriate warning signage and emergency contact information shall be posted at the site and clearly visible.

(13) Solar power plant or Community Solar buildings and accessory structures shall, to the maximum extent practicable, use materials, colors and textures that will blend the facility into the existing environment.

(14) Obscuring and screening of ground-mounted and rooftop solar power plants and Community Solar installations.

[Amended 1-2-2020 by L.L. No. 1-2020]

(a) Appropriate landscaping and/or site design features, including both the maintenance of existing natural vegetation and the introduction of new plantings consisting of a naturally appearing blend of deciduous and coniferous species, shall be required to screen ground-mounted solar power plants and Community Solar and all accessory structures from scenic roadways, parklands, historic properties and neighboring residences.

(b) No obscuring or screening shall be required of rooftop solar installations, except in the following circumstances where the Planning Board shall be required to review installations and may require reasonable obscuring of the solar installation:

[1] Solar installations on flat roofs that extend beyond the top of the surrounding parapet, or that are more than 24 inches above the flat surface of a roof, whichever is higher;

[2] Solar installations that do not substantially conform to the plane of the roof or that extend beyond the edge(s) of a roof;

[3] An installation on a building that is on the National Register of Historic Places, the New York State Register of Historic Places, and/or the Rhinebeck Inventory of Historic Sites, in any such case where the proposed installation would substantially impair public enjoyment of a view that is a contributing element to the historic importance of the building.

(15) The maximum height of the top edge of any solar panel shall be 15 feet above ground level when the panel is oriented at a maximum vertical tilt.

(16) All panels and equipment shall be surfaced, designed and sited so as not to reflect glare onto adjacent private properties and public roadways. A study or assessment by a professional trained to assess glare, viewsheds and related items may be required.

(17) There shall be no outdoor lighting associated with the solar power plant or Community Solar except as considered desirable for activation in the case of an emergency or necessary for security and approved by the Planning Board.

(18) Any on-site power lines shall, to the maximum extent practicable, be underground installations.

(19) Decommissioning plan.

(a) All applications for solar power plants and Community Solar including ground-mounted installations shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with the removal of the facility, which shall be reviewed and approved by the Planning Board and its consultants.

(b) The following requirements shall be met for decommissioning:

[1] Solar power plants or solar farms and Community Solar, including ground-mounted installations which have not been in active and continuous service for a period of one year, shall be removed at the owners' or operators' expense within six months of the date of expiration of the one-year period.

[2] All above ground and belowground equipment, structures, fencing and foundations shall be removed from the site to a depth of at least three feet below grade.

[3] The site shall be restored to as natural a condition as possible within six months of the removal of all equipment, structures and foundations. Such restoration shall include, where appropriate, restoration of the surface grade and soil after removal of all equipment and revegetation of restored soil areas with native seed mixes.

[4] The Planning Board shall, as a condition of approval, require the posting of a removal bond in an amount adequate to provide for the removal of the solar power plant, solar farm or Community Solar installation, structures and equipment and for restoration of the site. In lieu of a removal bond, the Town Board, in its discretion, may permit the owner and/or operator to enter into a decommissioning agreement with the Town which provides, in relevant part, that if the decommissioning of the site is not

completed within six months of the time period specified in Subsection I(19)(b)[1] above, and/or the restoration is not completed within the time period specified in Subsection I(19)(b)[3] above, the Town may, at its own expense, enter the property and remove or provide for the removal of the structures and equipment and/or the restoration of the site, as the case may be, in accordance with the decommissioning plan. Such agreement shall provide, in relevant part, that the Town may recover all expenses incurred for such activities from the defaulting property owner and/or operator. The cost incurred by the Town shall be assessed against the property and shall become a lien and tax upon said property and shall be added to and assessed as part of the taxes to be levied and assessed thereon and enforced and collected with interest in the same manner as other taxes. If such decommissioning agreement is made, it shall be recorded by the landowner with the land records of Dutchess County and shall be an agreement which binds subsequent owners of the site. A copy showing the stamp of the recorder of deeds shall be given by the landowner to the Town Clerk. This provision shall not preclude the Town from collecting such costs and expenses by any other manner by action in law or in equity. In the event of any such legal proceedings, the owner and/or operator, as the case may be, shall be liable for all legal expenses, costs and disbursements in connection with said litigation, as awarded by a court of competent jurisdiction.

[5] The provisions specified in Subsection I(19)(b)[4] above shall not be interpreted to limit in any manner the authority of the Town and its Code Enforcement Officer and Zoning Enforcement Officer as set forth in Article X, § 125-119, Enforcement; penalties for offenses, of this chapter.

(20) Subject to the discretion of the Planning Board, a tree replacement program may be required. For the purposes of establishing a baseline calculation for such a program, for every tree over 6" dba removed from a site for the installation of Community Solar, a tree may be required to be planted either on-site or in an off-site location approved by the Town Planning Board. Species, size and planting details shall be determined through discussions with the Town of Rhinebeck Planning Board and detailed in replacement program documentation.

(21) Consideration of on-site generated battery backup power as part of a Solar Power Plant or Community Solar installation is encouraged. Should such a benefit be proposed, the Planning Board has the discretion to weigh the benefits provided by such a system against any requests for relief from identified detrimental impact, as long as said relief does not require a variance. Such discretion provides the Planning Board with the authority to reduce the requirements, at their discretion, of any other section of this code.

(22) Consideration of microgrid development as part of a Solar Power Plant or Community Solar installation is encouraged. Should such a benefit be proposed, the Planning Board has the discretion to weigh the benefits provided by such a system against any requests for relief from identified detrimental impact, as long as said relief does not require a variance. Such discretion provides the Planning Board with the authority to reduce the requirements, at their discretion, of any other section of this code.

Section 3: Supersession

This Local Law is hereby adopted pursuant to the provisions of Section 10 of the New York State Municipal Home Rule Law and Section 10 of the New York State Statute of Local Governments. It is the intent of the Town Board to supersede any provisions of the New York State Town Law to the extent they may be inconsistent with the provisions of this Local Law.

Section 4: Severability

If any section or part of this Local Law is declared invalid or unconstitutional by a court or competent jurisdiction, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this local law.

Section 5: Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.