SOLAR ENERGY LOCAL LAW
TOWN OF BURKE

1. **Authority**

   a. This Solar Energy Local Law is adopted pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

2. **Statement of Purpose**

   a. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Burke by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
      i. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
      ii. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
      iii. To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of Solar Energy Systems; and
      iv. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and;
      v. To decrease the use of fossil fuels, thereby reducing the carbon footprint of the Town;
      vi. To invest in a locally generated source of energy and to increase local economic value, rather than importing non-local fossil fuels;
      vii. To align the laws and regulations of the community with several policies of the State of New York, particularly those that encourage distributed energy systems;
      viii. To become more competitive for state and federal grants and tax benefits;
      ix. To make the community more resilient during storm events;
      x. To aid in the energy independence of the community as well as the country;
      xi. To diversify energy resources to decrease dependence on the grid;
      xii. To improve public health;
      xiii. To encourage a sense of pride in the community;

xiv. To encourage investment in public infrastructure supportive of solar, such as generation facilities, grid-scale transmission infrastructure, and energy storage sites.

3. **Definitions**

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

b. FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

c. GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

d. GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.

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

f. POLLINATOR: bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

g. PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

h. 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 NYSERDA'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.

i. ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

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

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

l. SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

    i. Tier 1 Solar Energy Systems are for on site solar energy consumption or net metering only and includes the following:
        (1) Roof-Mounted Solar Energy Systems **on residential or farm structures**.
        (2) Building-Integrated Solar Energy Systems

    ii. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to 25]kW AC and that generate no more

than 110 % of the electricity consumed on the site over the previous 12 months for on-site or net metering use only.

iii. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

m. SOLAR INVERTER: Converts the variable direct current (DC) output of a photovoltaic (PV) solar panel into a utility frequency alternating current (AC) that can be fed into a commercial electrical grid or used by a local, off-grid electrical network

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

o. STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

4. **Applicability**

a. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.

b. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

c. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.

d. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

5. **General Requirements**

a. A Building permit shall be required for installation of all Solar Energy Systems.

b. Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review ~~Act [ECL Article~~ 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

6. **Permitting Requirements for Tier 1 and Tier 2 Solar Energy Systems**

a. All Tier 1 and Tier 2 Solar Energy Systems shall be permitted in the entire town and in any zoning district which may hereafter be adopted.

b. Permits shall be handled as regular Building Permits.

c. Permit fees shall be governed by any applicable law, rule or resolution setting building permit fees. All applications shall be accompanied by the appropriate fee.

d. All such applications shall be subject to the following conditions:

i. All such applications shall be accompanied by engineer stamped plans.
ii. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.
iii. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
iv. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
v. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
vi. All Solar Panels shall have anti-reflective characteristics.
vii. Setbacks: Tier 2 Solar Energy Systems shall be subject to a **set-back requirement of 35 feet from any lot line.**
viii. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
ix. Tier 2 Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.
x. **Solar Energy Systems and Equipment 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. 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.**

7. **Permitting requirements for Tier 3 Solar Energy Systems**

a. References to the Town Board shall be deemed to refer to the Zoning Board of

Appeals or the Site Plan Review Board (as the context may indicate) in the event that such boards are hereafter created by the Town.

b. All Tier 3 Solar Energy Systems are permitted through the issuance of a permit by the Town Board anywhere within the Town, subject to the requirements of this local law, limitations by zone in any zoning law hereinafter adopted by the Town Board and subject to site plan application requirements set forth in this local law.

c. **Applications**:

i. **Contents.** Applications must contain, at a minimum, the following:

(1) Appropriate fee as established by resolution of the Town Board from time to time.

(2) Engineered stamped plans.

(3) Site Plan as hereinafter described.

(4) Proposed Decommissioning plan, as hereinafter described, with confirmation of appropriate security and calculation of amount of security required.

(5) Proof of interconnectability with local electric service provider.

(6) Proposed notice of public hearing. List of all property owners within 200 feet of the property borders of the proposed site.

(7) SEQRA documentation reasonably acceptable to the Town's attorney and Town's engineer.

ii. **Initial Review**

(1) The Town Code Enforcement Officer shall conduct the initial review of the application for completeness.

(2) Applicants shall be advised within 15 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

iii. **Referral to County Planning Board**

(1) The application shall be referred to the County Planning Department pursuant to General Municipal Law § 239-m if required by that statute.

iv. **Public Hearing**

(1) subject to a public hearing to hear all comments for and against the application. The Town Board of the Town shall have a notice printed in a newspaper of general circulation in the Town at least 5 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.

(2) upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing,

which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and applicant.

v. **Decision**

(1) Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

vi. **Life of Permit**

(1) The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board, within 18 months after approval, the applicant may request that the Town extend the time to complete construction for an additional time period up to an additional 18 months (36 months total). If the owner/operator fails to substantially complete the project within the time period granted, then the permit shall expire.

vii. **General Requirements**

(1) Underground Requirements. All on-site utility lines shall be placed 48 inches underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

(2) Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

(3) Advertising Signage.

(a) No advertising signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, Said information shall be depicted within an area no more than [8] square feet.

(4) Safety Signage.

(a) Safety signage shall include equipment specification information, safety information, and 24-hour emergency contact information including a toll free telephone number.

(b) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base

of all pad-mounted transformers and substations.

(c) The marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.

(5) Glare. All Solar Panels shall have anti-reflective characteristics.

(6) Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(7) Set Back. There is a set back requirement of 500 feet from any residential structure and 50 feet from the right of way of any public road or private right of way. An affected home owner may irrevocably waive the residential setback requirement, in writing, which must be signed and notarized and filed with the application.

(8) Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

(9) All Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction guidelines of the New York State Department of Agriculture and Markets.

(10) Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

(11) Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

(12) Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

(13) If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the the Town and any applicable federal, state, or county laws or regulations.

(14) Inverters shall be located or installed in such a manner as to

minimize or eliminate any possible noise as measured at the nearest lot line.

d. **Site plan.** A site plan approval shall be required. Any site plan application shall include the following information:

i. Property lines and physical features, including roads, for the project site

ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures

iii. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

iv. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

v. Name, address, and contact information of proposed Qualified Solar Installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

vi. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.

vii. Zoning district designation for the parcel(s) of land comprising the project site.

viii. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

ix. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town Board.

x. A visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, shall be required to submitted by the applicant. The Board may impose requirements to ameliorate any issues if it is determined that the Solar Energy System adversely affects a significant viewshed.

e. **Decommissioning Plan** .

i. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the Owner and

Operators expense. The Owner and Operator shall be jointly and severally liable for this expense. The cost of decommissioning may come from any security held by the Town, in the Town's sole discretion.

ii. A decommissioning plan signed by the Owner and the Operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

(1) The cost of removing the Solar Energy System.

(2) The time required to decommission and remove the Solar Energy System any ancillary structures including all underground wires.

(3) The time required to repair and return caused the property to its original condition prior to the installation of the Solar Energy System.

iii. Security.

(1) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System. A deposit equal to two years premium for the surety bond shall be deposited in a special Town escrow account to be set up by and maintained by the Town for the term of the Solar Energy System.

(2) Any surety bond must be provided by a surety bond company licensed and authorized to do business in the State of New York with an A.M. Best rating of A or better (or equivalent). In any event, the bond and the surety bond company must be acceptable to the Town Attorney, in his or her sole discretion.

(3) The Surety Bond shall continue to secure the decommissioning plan despite any subsequent changes in ownership or management of the project.

(4) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

(5) Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and

instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.

(6) If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

f. **Ownership Changes.**

i. The Owner and the Operator of the project shall give written notice to the Town Board of any proposed change in ownership or change in operation of the project as soon as possible but not later than 90 days prior to the change in ownership or operation. Such notice shall contain:

(1) A statement signed by the successor owner or operator that such person/entity assumes all of the obligations of the permit including the site plan approval, and the decommissioning plan.

(2) Acknowledgment by the Surety Bond Company, (if the decommissioning security is a bond) that the obligations of the bond company shall continue despite the proposed change in ownership or operation. In the alternative the notice may contain a new Surety Bond in full compliance with all requirements of this local law.

ii. In the event of failure to give notice the permit shall be deemed terminated and the project shall be deemed abandoned. The Town may immediately give notice to commence decommissioning pursuant to the Decommissioning Plan.

iii. In the event that such notice is given, then the permit shall remain in effect.

8. **Enforcement**

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

9. **Host Community Agreements.**

a. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community Agreements with any Applicant to compensate the Town for expenses or impacts on the community. The Town shall require any Applicant to enter into an escrow agreement to pay the engineering and legal costs of any

application review, including the review required by SEQRA. Notwithstanding anything to the contrary provided herein, any and all Town agreements or permit conditions pertaining to a Tier 3 Solar Energy System shall be filed with the Town and in place prior to the issuance of the Solar Permit, unless the approval for such Tier Three Solar System permit expressly provides otherwise, including Host Community Agreement, Decommission Plan and proof of funds or escrow accounts, if required.

10. **Fees**

a. The Town Board may set such application fees and review fees as it deems reasonable by resolution from time to time. In the alternative, the Town Board may determine to make the applicant pay the Town's actual costs with respect to review, including but not limited to attorney and engineering fees.

11. **Severability**

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

STATE OF NEW YORK
DEPARTMENT OF STATE
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ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

January 18, 2019

Brian S Stewart
Attorney and Counselor at Law
367 W Main Street, Suite 3
Malone NY 12953

RE: Town of Burke, Local Law 1 2019, filed on July 11 2019

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492