

TOWN OF COPAKE
LOCAL LAW No. ____ OF 2016

A LOCAL LAW ENTITLED: "Town of Copake Commercial Solar Energy Installation Moratorium Law"

Be it enacted by the Town Board of the Town of Copake as follows:

Section 1 TITLE

This law shall be known as the "Town of Copake Commercial Solar Energy Installation Moratorium Law". It may be cited as "Town of Copake Local Law No. __ of 2016" or "L.L. __ of 2016".

Section 2 LEGISLATIVE INTENT

The Town Board of the Town of Copake is authorized by the State of New York to regulate and control land use within the Town of Copake and has the duty to protect the health, safety and welfare of Town residents. The Town of Copake has legitimate goals and aims to protect the community, cultural, historical, recreational, aesthetic and environmental resources within the Town and the Town Board believes that studying the issue of the placement and installation of commercial solar energy facilities is necessary so that appropriate zoning regulations with respect to solar energy facilities can be formulated to protect the town from potential negative impacts. Changes in the solar industry, and the proliferation of solar facilities and the solicitation of property owners for the placement of such facilities in the region have given the Town of Copake sufficient reason to believe that additional study and examination of necessary land use regulations relating to solar energy facilities is warranted. Therefore, the Town Board, through this local law, declares a twelve month moratorium on commercial solar energy installation in the Town of Copake.

Currently, the zoning laws in the Town of Copake, as may be applicable to solar energy systems, facilities, and installations, may not be adequate or sufficiently clear to address the changing and growing nature of solar energy development. For example, the Table of Use Regulations of the Copake Zoning Code provides for "solar energy equipment" (permitted in all districts), and "public utility structures and buildings" (special permit use in all districts) as general uses, and "power plant" (prohibited in all districts except I-1) as a business use, but no definition is provided within the Copake Zoning Code for "solar

energy equipment”, “utilities”, “public utilities”, or “power plant”, while section 232-3 of the Zoning Code does include the following definition: “Solar Energy System”—A solar energy system, designed to provide heating, cooling, hot water or electricity.

In addition, the extent of applicability of site plan review to the installation of solar equipment is not clear, so in addition to addressing the extent to which solar installation may appropriately be permitted in the Town of Copake and in what locations, clear parameters for site plan review should be also established and adopted.

It is the intent of the Town Board, then, that during this one-year moratorium, the Town of Copake will further examine whether and what additional local zoning regulation may be necessary in relation to solar energy systems and installations.

Section 3 DEFINITIONS

For the purposes of this Local Law, the following definitions shall be in effect:

“SOLAR ENERGY SYSTEM” means a device or system of devices or components that generates electricity from incidental sunlight by means of photovoltaic effect or other technological means.

“ON-SITE SOLAR ENERGY INSTALLATION” means the placement, construction, erection, installation or use of a solar energy system for the generation of electrical power to be used primarily for the electrical needs of the residential, agricultural, or commercial property, or farm operation, as defined by the New York State Agriculture and Markets Law section 301, on which such solar energy system is located. Provided that a solar energy system is installed and used primarily for such purposes, the incidental sale or distribution of excess electricity generated by such solar energy system shall not cause such system to be deemed a commercial solar energy installation.

“COMMERCIAL SOLAR ENERGY INSTALLATION” means the placement, construction, erection, installation or use of a solar energy system for the generation of electrical power to be used primarily for sale or distribution to, or consumption or use by, distributors or users located off the site of such solar energy system.

Section 4 SCOPE AND CONTROL

For a period of twelve months following the effective date of this local law, and notwithstanding any contrary provision of the Code of the Town of Copake and particularly Chapter 232 comprising the Copake Zoning Code (including all tables,

attachments, and appendices thereof), the following shall be in effect and controlling upon the use, construction, development, installation, or permitting of solar energy systems within the Town of Copake:

A. Commercial solar energy installation shall not be a permitted use in any zoning district within the Town of Copake.

B. No new commercial solar energy installation or expansions of any existing such installations or facilities shall be permitted in the Town of Copake, except in accordance with a valid and operative permit issued prior to April 1, 2016.

C. No person or entity shall commence or carry on any new commercial solar energy installation, enlarge or expand any existing such installation or facility, or commence the development or construction of any such installation or facility, unless such person is in possession of a valid permit issued by the Town of Copake therefor.

D. The Building Inspector or other town officer shall not issue any land use or building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new commercial solar energy installation within the Town of Copake, or the expansion of any existing solar energy system defined under this local law as a commercial solar energy installation, or that would, as a result of such proposed expansion, become defined under this local law as a commercial solar energy installation, except in accordance with a use variance granted therefor.

E. Neither the Town Board, Planning Board or Zoning Board of Appeals shall consider and/or approve any permit, special use permit, site plan, or other permit or application which would allow for the establishment, implementation, placement, construction or development of any new commercial solar energy installation within the Town of Copake, or the expansion of any existing solar energy system defined under this local law as a commercial solar energy installation, or that would, as a result of such proposed expansion, become defined under this local law as a commercial solar energy installation, except as specified in section five of this Local Law.

F. Any building or land use permit issued by any official or entity of the Town of Copake on or subsequent to April 1, 2016 for the installation of a solar energy system or solar energy equipment, which would result in the development, construction, installation or use of a commercial solar energy installation, shall be immediately revoked and rescinded by the Building Inspector or issuing official or entity, unless the holder of such permit demonstrates in accordance with the applicable standards of law that it has acquired a legally vested interest in the installation of such solar energy system. The

permit fees paid for any such revoked or rescinded permits shall be refunded to the applicant.

G. The use of any premises for a solar energy system that was a lawful use on the effective date of this local law may be continued, provided that such use, if prohibited under this Local Law, shall not be enlarged or extended beyond the existing location and scope of operation as of such date.

Section 5 VARIANCES AND SITE PLAN REVIEW.

A. The Zoning Board of Appeals retains the power and sole discretion to vary or adapt the strict application of the requirements of this local law and grant variances in accordance with Section 267-b of Article 16 of the New York State Town Law. An application for a variance shall be governed by and subject to the requirements and procedures generally applicable for a variance application in the Town of Copake.

B. Notwithstanding the thresholds for site plan review set out in subdivision (A) of section 232-23 of the Copake Code, every solar energy system project or proposal for which a use variance is sought or obtained shall, to the extent permitted by law and prior to the issuance of any permits by the Town of Copake, be subject to site plan review in accordance with the review provisions of section 232-23 of the Copake Code. In addition, any solar energy system with a capacity in excess of 25kw, whether classified as an on-site solar energy installation or commercial solar energy installation, shall be subject to such site plan review.

C. Any costs, including expert consulting fees, incurred by the Town in connection with a variance application or site plan review shall be paid by the Applicant immediately upon request. The applicant may be required to place into escrow funds sufficient to ensure the payment of any such costs, as the Zoning Board of Appeals or Planning Board shall direct. Failure to provide such escrow funds or to promptly pay any costs incurred by the Town in connection with the variance application or site plan review may result in denial or suspension of the application.

Section 6 ENFORCEMENT.

This local law shall be enforced by the Zoning Enforcement Officer of the Town of Copake, or such other zoning enforcement or law enforcement individual(s) or agency as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this local law and

to keep all records necessary and appropriate to the office and to file the same in the office of the Town Clerk.

Section 7 VIOLATIONS.

A. In addition or as an alternative to the criminal penalties and other remedies set forth in Town Law section 268, this local law, pursuant to authority of the Municipal Home Rule Law, imposes upon any person violating any of the provisions of this local law penalties in the same manner and to the same extent as set out in Town Law section 268, and any person violating any of the provisions of this local law shall be guilty of a violation. In addition, upon a conviction thereof, any person violating any of the provisions of this local law shall be subject to a civil penalty of no less than five hundred dollars (\$500.00) and no more than five thousand dollars (\$5,000.00) per day for this violation. Each day's violation shall constitute a separate and additional violation. An action may be commenced in a court of competent jurisdiction to recover such penalty. In addition thereto, violations of this local law shall be subject to being restrained by injunctive relief or any other lawful remedy.

B. The provisions of this section are expressly intended to supersede the penalty provisions of Town Law section 268, as authorized by section ten of the Municipal Home Rule Law. If a penalty provision of this section shall be adjudged by any court of competent jurisdiction to be invalid, then a person convicted of violating any provision of this local law shall be subject to the maximum penalties that may be imposed pursuant to this local law under authority of the Municipal Home Rule Law, section 268 of the New York Town Law, the Code of the Town of Copake, or any other applicable provision of law.

Section 8 SEQRA CLASSIFICATION.

This matter constitutes a Type II Action under the State Environmental Quality Review Act (SEQRA), inasmuch as it constitutes the adoption of a moratorium on land development or construction [6 NYCRR § 617.5(c)(30)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

Section 9 CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the New York State Town Law and section 10 of the Municipal Home Rule Law of the State of New York. During the period that this Law is in effect, it shall take precedence over and shall be considered

controlling over contrary laws, ordinances and provisions including, but not limited to, provisions in the Code of the Town of Copake and the New York State Town Law.

Section 10 SEVERABILITY.

If any clause, sentence, paragraph, section, article or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 11 TERM OF LAW.

A. This Local Law shall remain in effect until the day following the twelve month anniversary date of its filing with the Secretary of State, unless it be sooner repealed or expressly superseded by Local Law, whereupon it shall expire.

B. If, subsequent to and within twelve months from the effective date of this Local Law, the Town Board adopts a local law relating to solar energy systems or installations, the moratorium imposed by this local law and the provisions of this local law provided to be in effect during such moratorium shall expire immediately on the date such subsequent Town local law relating to solar energy systems or installations takes effect in accordance with Section 27 of the Municipal Home Rule Law, unless such subsequent local law adopted relating to solar energy systems or installations imposes or continues the moratorium imposed by this local law.

Section 12 EFFECTIVE DATE.

This Local Law shall become effective immediately upon filing with the Secretary of State.

BE IT ENACTED this ___ day of _____, 2016 by the Town Board of the Town of Copake of Columbia County, New York.