

DRAFT AMENDMENTS

Local Law No. of 2019

Town of Marbletown

A LOCAL LAW AMENDING CHAPTER 200 OF THE TOWN CODE, ZONING, REGARDING SOLAR GENERATION

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SECTION I. SHORT TITLE AND PURPOSE

This law is to be known as the 2019 Solar Generation Law. Its purpose is to advance and protect the public health, safety and welfare of the Town of Marbletown by promoting a safe abundant, renewable and non-polluting energy resource; decreasing the cost of energy to residential and commercial energy users and increasing employment opportunities and business development.

SECTION 2. LEGISLATIVE FINDINGS AND AUTHORITY

This Solar Generation Law is adopted pursuant to sections 261-263 of New York State Town Law which authorizes the Town to adopt zoning provisions that, so far as conditions may permit, accommodate solar energy systems and equipment and access to sunlight necessary for generation of solar energy. The Town Board 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 amendment will 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 ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town.

SECTION 3. ZONING AMENDMENT

ARTICLE 200, ZONING, is hereby amended as follows:

§200-8, Schedule of Use Regulations, shall be amended by adding, under the heading **UTILITIES**, a new use category entitled **Large Scale Solar Generating Systems** which shall be permitted, subject to issuance of a special use permit (**SU**) in the A-4, A-3, A-2, I-1, I/B, **B-1**, B-2 and R-1 Districts. Under the heading **ACCESORY USES**, a new category, **Small Scale Solar Generating Systems**, shall be added under both residential and nonresidential uses as Permitted (**P**), in all zoning districts.

A new section, **§200-49.1, Solar Generating Systems**, shall be added which reads as follows:

No solar energy system or device shall be installed or operated in the Town of Marbletown except in compliance with this article. The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair. Solar-thermal systems and Building-Integrated Photovoltaic (BIPV) Systems are permitted outright in all zoning districts, subject to building permits if determined required.

A. Permit Requirements

- (1) All large-scale solar energy system installations shall be performed by a qualified solar installer. Small scale solar energy systems may be installed by any party capable of meeting code requirements for the completed installation in the judgement of the building inspector.
- (2) Solar energy systems shall meet New York’s Uniform Fire Prevention and Building Code and National Electrical Code standard as adopted by New York State.
- (3) A plan showing location of major components of solar system and other equipment on the proposed site. This plan should represent relative location of components at site, including, but not limited to, racking or structure, inverter(s), new electrical panels, switches and protective equipment, new private and utility meters, new wiring and the point of common coupling (PCC) to the Load Serving Entity (LSE), existing electrical service location, utility meter. A basic description of system orientation and tilt angle shall be provided. This plan shall show access and pathways that are compliant with New York State Fire Code, if applicable.
- (4) Specification Sheets for all solar-specific manufactured components.
- (5) All diagrams and plans must include the following: (a) Project address and section, block and lot (SBL) number of the property; (b) Owner’s name, address and phone number; (c) Name, address and phone number of the person preparing the plans; and (d) System capacity in kW-DC.
- (6) No less than 30 days prior to operation, a copy of a signed “Standard Interconnection Requirements” contract between the permit holder, installer or system owner and the Load Serving Entity must be provided to the Town Building Department.

B. Small Scale Solar Energy System as an Accessory Use

(1) Applicability

- a) For purposes of this local law, the term Small Scale Solar refers to solar photovoltaic systems which generate power exclusively for onsite use by the building or lot to which they are attached, and do not provide energy for any other lots. The use and/or structure shall be accessory to the main use and/or structure and shall be incidental, related, appropriate and

clearly subordinate and less than 25 kW (DC) in size. If in compliance with the standards for accessory uses, the only approval required shall be a building permit, if necessary.

b) Solar energy collectors, photovoltaic systems, shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the lot on which they are erected, but nothing contained in this provision shall be construed to prohibit “community distributed generation”, 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, as it may be amended, or similar state or federal statute.

(2) Roof-Mounted Solar Energy Systems.

a) Roof-Mounted Solar Energy Systems that generate electricity solely for on-site use are permitted as an accessory use in all zoning districts when attached to any lawfully permitted and constructed building or structure, subject to building permits. Such systems shall be exempt from site plan review under the Marbletown Zoning Law

b) **Height.** Solar Energy Systems shall not exceed maximum height restrictions within the zoning district it is located in, as illustrated in the Schedule of District regulations of this code and are provided the same height exemptions granted to building-mounted mechanical devices or equipment. See also § 200-23 Height Exceptions.

c) **Aesthetics.** Roof-Mounted Solar Energy System installations shall be erected, when feasible, so that panels facing the front yard are mounted at the same angle as the roof’s surface when the roof slope exceeds 11 degrees with a maximum distance of 18 inches between the roof and highest edge of the system.

(3) Ground Mounted Solar Energy Systems

(a) Ground mounted solar energy systems that generate electricity solely for on-site use are permitted as accessory structures in all zoning districts, subject to a building permit.

(b) **Height and Setback:** A ground mounted solar energy system shall not exceed a height of 15 feet when panels are at full tilt. Panels shall not be located within the required side or rear yard setback and shall be restricted to a 10-degree tilt angle or screened by vegetation if not set back at least 100 feet from the front property line.

C. Single Development Solar Energy Systems,

NOTE: *This category would apply to larger scale systems intended to serve such uses as a single subdivision, multi-family development, commercial or industrial facility, or other development under single ownership or lease. Additional standards for such systems can be added if desired. A Special Use Permit shall be required*

D. Large Scale Solar Energy Systems.

A Large-Scale Solar Energy System shall require a special use permit issued subject to the standards and procedures set forth in §200-46D. (17).

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

Solar Energy Systems – Structures, equipment, devices or construction techniques that capture and/or convert solar radiation into usable heat (Solar Thermal Systems) or electricity (Solar Photovoltaic Systems) and may be attached to or separate from the principal structure.

Building-Integrated Photovoltaic (BIPV) Systems – A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

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

FOSSIL FUEL and FOSSIL FUEL DERIVATIVES A fuel (such as coal, oil, or natural gas) formed in the earth from plant or animal remains., including by not limited to coal, natural gas, natural gas liquids, propane, petroleum, petroleum distillates, fuel oil, kerosene, gasoline.

Grid, Utility Grid, Public Utility Grid Commercial electric power distribution system that takes electricity from a generator (e.g. fossil fuel boiler and generator, diesel generator, wind turbines, water turbines, etc.), transmits it over a certain distance, then takes the electricity down to the consumer through a distribution system.

Ground-Mounted, Freestanding, or Pole Mounted Solar Energy System – A Solar Energy System that is anchored to the ground and attached to a frame, pole or other mounting system, detached from any other structure for the purpose of producing electricity for onsite or offsite consumption.

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.

Offsite Use – A solar energy system designed to be used primarily for export of solar energy to be used primarily by parcels other than the parcel it is located on.

Onsite Use – A solar energy system designed to be used primarily by the building and/or parcel on which it is located.

Photovoltaic (PV) Systems – A type of solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them. A PV system typically includes solar panels, inverters, transformers and similar

appurtenances and the mounting structures or attachments controlling panel orientation and resisting mechanical or natural forces (wind, snow, etc.)

Rooftop Or Building-Mounted Solar System – A solar panel system located on the roof of any legally permitted and/or constructed building or structure for the purpose of producing electricity for onsite or offsite use.

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 solar water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of heat.

Solar Easement – An easement recorded pursuant to NY Real Property Law § 335-b.

Solar Electric Generating Equipment – Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

Solar Energy System, Large Scale – A Solar Energy System that is intended to produce electricity primarily for distribution offsite (including those known as “community systems”) that uses photovoltaic systems and consists of one or more free-standing, ground mounted solar collection devices, solar related equipment and other accessory structures and buildings including substations, electrical infrastructure, battery storage containers, transmission lines and other appurtenant structures and facilities. Solar photovoltaic systems with greater than 25 k W (DC) capacity are deemed to be large scale.

Solar Energy System, Small Scale – Solar photovoltaic systems which generate power exclusively for onsite use and consumption by the owners, lessees, tenants, residents, or other occupants of the premises of the building or lot to which they are attached and do not provide energy for any other lots, except as may be allowable under NY State or federal regulation. Solar photovoltaic systems with less than 25 k W (DC) capacity are deemed to be small scale.

Solar Panel – A photovoltaic device that converts solar light into electricity.

Electricity Storage – A device that stores electricity and makes it available in an electrical form at a later time.

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.

§200-46. Uses Allowed by Special Use Permit, shall be amended to add a new section D.(17) to read as follows: I.

D. (17) Standards for Large-Scale Solar Systems as a Special Use

(a) **Location and Siting.**

1) Large-Scale Solar Energy Systems may be permitted, upon the issuance of a special use permit by the Zoning Board of Appeals (ZBA), within the A-4, A-3, A-2, I-1, I/B, B-2 and R-1 Districts, subject to the requirements set forth in this Section, including site plan approval.

2) Large Scale Solar Energy Systems shall not be permitted to be constructed on areas of the first 4 prime farmland soil types as designated by the US Dept. of Agriculture. Ba, CnA, CnB, Te and Un.

3) In its review of the location and design of a large scale solar energy system, ~~the ZBA shall~~ the board shall review and consider its potential impacts on the visual environment of scenic and historic resources, particularly: designated historic structures and districts, scenic vistas which have been deemed significant to the community and the region, views from public roads and places of public assembly, and the extent and visual impact of extensive clear cutting of forested lands.

4) The distance from the proposed site of a large-scale solar generation facility larger than 200 k W (DC) to a three-phase distribution line shall not exceed one mile. The distance from the proposed site of a large-scale solar generation facility under 200 k W (DC) to a distribution line shall not exceed one-half mile. Distance from the proposed site shall be measured along a straight line from the nearest property boundary of the generation site to the distribution line.

5) No clear cutting shall be done prior to the issuance of a Special Use Permit. If clear cutting occurs that exceeds what is determined in the Special Use Permit review, the Applicant shall be required to supplement planting.

(b) **Special Use Permit Standards.**

1) **Height and Setback.** The height of the Large-Scale Energy System shall not exceed twenty (20) feet when oriented at maximum tilt, except when utility engineering standards require that utility poles or towers to connect the solar facility to the utility grid be of greater height. Setback requirements for all solar generating equipment and supporting facilities shall be a minimum of 50 feet from all street or property lines.

2) **Area of Use.** The area used for all facilities and appurtenances of a single Large-Scale Solar Energy System shall be a maximum of twenty-five (25) acres. Multiple solar energy systems may be clustered on the same or adjacent properties but the cumulative impact of all

such units must be evaluated at the time of the initial approval. The ZBA may exceed the 25-acre maximum **may be exceeded** if circumstances would not cause adverse impacts on the views and neighboring properties.

3) **Lot Coverage.** Notwithstanding the provisions of the Density Control Schedule, a Large-Scale Solar Energy System shall be allowed up to 50% coverage of the lot on which it is to be installed. The surface area covered by Solar Panels shall be included in total lot coverage.

4) No light, noise, vibration, glare or similar effect which exceeds that normally generated by other uses permitted in the district shall be discernable at or beyond the property boundary.

5) A minimum fifty (50) foot perimeter buffer, except for the area of roadway access, consisting of natural and undisturbed vegetation or landscaping, as may be required by the Zoning Board of Appeals, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads.

6) 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 as measured from 8am to 6pm on December 21st and shall not exceed 20% of new clear-cutting. Clear cutting shall be done in such a way that also prevents shading of panels.

7) Non-invasive ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, and non-fertilizer-dependent.

8) All local stormwater regulations shall be complied with. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. If determined to be necessary, a SWPPP (Stormwater Pollution Prevention Plan) shall be prepared and a stormwater, erosion, and slope analysis of the land shall be assessed by a New York State licensed professional engineer.

9) All Large-Scale Solar Energy Systems shall be enclosed by a continuous “wildlife friendly fence” at least six (6) feet high equipped with a self-closing mechanism to prevent unauthorized access. Such fence shall be set back at least 25 feet from all property lines and shall have 5”x 12” openings at ground level, spaced no more than 100 feet apart, to allow unencumbered travel by small animals. The type of fencing and the need for further landscaping to mitigate visual impacts shall be considered by the ZBA during its **during** review.

10) **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. 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.

11) A decommissioning plan, as detailed below, shall be prepared and compliance made a condition of the issuance of a special use permit under this Section.

(c) Registration of Large-Scale Solar Energy Production Facilities.

(1) Purpose. In order to ensure that all large-scale solar energy production facilities are properly maintained all owners of large-scale solar energy production facilities located in the Town of Marbletown shall be required to register the facility upon granting of a Certificate of Occupancy. The Town Board shall establish the fee structure for the registration which may be amended by resolution from time to time. Registration shall be effective for a three-year period, with renewal required prior to the expiration date.

(2) 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 production facility and any lessees.

b) Inspection of Facilities. The owner and any and all lessees, renters, and/or licensees of large-scale solar energy production 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.

(3) Notification of Termination of Use. The owner shall sign a letter of commitment, which shall commit the large-scale solar energy production 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 Marbletown 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. Sixty (60) days after 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 Marbletown may commence legal proceedings and have the facility removed from the site in accordance with all applicable law.

(4) 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.

(5) 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.

(6) A decommissioning plan shall be prepared. Compliance with this plan shall be made a condition of the issuance of a Special Use Permit under this Section. As part of the decommissioning plan, a decommissioning cost estimate will be developed. Based on the decommissioning and reclamation costs and the proposed salvage value, the ~~ZBA~~-value shall be determined with advice from a Town Engineer and Attorney, if a bond needs to be submitted. If a bond is determined to be required, the amount and type shall become conditions of approval.

(d) Safety

(1) Solar energy systems shall be maintained in good working order.

(2) 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 Marbletown and other applicable laws and regulations.

(3) Information required in Sections B (4) and B (6) above must be provided to the fire department that is obligated to respond to a call from that location.

e. Decommissioning Plan for Solar Energy Systems

(1) The Decommissioning Plan shall specify that after the Solar Energy System will no longer be used or if operation is discontinued, it shall be removed by the applicant or any subsequent owner and shall include a signed statement from the party responsible for completing the Decommissioning Plan acknowledging such responsibility.

(2) The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction.

(3) The plan shall demonstrate that disposal of all solid and hazardous waste will be in accordance with local, state, and federal waste disposal regulations.

(4) The plan shall include an expected timeline for execution.

(5) The plan shall include a cost estimate detailing the projected cost of executing the Decommissioning Plan prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. Said plan shall provide that owner and/or facility operator shall provide financial security in a form and amount acceptable to the Town Attorney to secure the expense of dismantling said facility in its entirety and restoring the site.

(6) Removal of Solar Energy Systems must be completed in accordance with the Decommissioning Plan. If the Solar Energy System is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.

(7) 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. A-4, A-3, A-2, I-1, I/B, B-1, B-2 and R-1

SECTION 4 USE TABLE SHALL BE AMENDED AS FOLLOWS:

USE	A-2 A-3 A-4	R1	R-3	SR-E	SR-N	B1-E	B1-N	B-2	I-1	IB		
UTILITIES												
Large Scale Solar Generating Systems and Energy Storage	SU	SU	SU	SU	SU	SU	SU	SU	SU	SU		
Fossil Fuel Electric power generation; power plants	X	X	X	X	X	X	X	X	X	X		
Non-Fossil Fuel Electric power generation; power plants	X	X	X	X	X	X	X	X	SP	SP		
Gas metering or compression stations,	X	X	X	X	X	X	X	X	X	X		
Electric substations, sewer or water pumping stations, water supply well house, or wastewater treatment plant	SP	SU	SU	X	SU	X	SU	SU	SU	SU		§200-46D(7)

SECTION 5 SEVERABILITY If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgement shall not affect impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered, and such invalidity shall not be deemed to affect the remaining portions thereof.

SECTION 6 EFFECTIVE DATE This law shall become effective upon the filing with the Secretary of the State of New York.