

TOWN OF BATAVIA
Solar Energy Local Law
Final Draft 11/16/21

This law replaces Section 235-53.1. "Solar Energy Systems" of the Batavia Zoning Code.

1. Authority

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 therefore."

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 Batavia by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
 2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
 3. To increase employment and business development in the Town to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
 4. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and;
 5. To create synergy between solar and the Town's Comprehensive Plan.

3. Definitions

The following definitions shall apply to this Chapter:

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.

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.

FRONT YARD: The unoccupied, open space within and extending the full width of the lot from the front lot line to the front line of the principal building which is nearest to such front lot line.

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.

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.

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.

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

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.

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.

SETBACK –The distance from a front, side or rear lot line or structure to the fence that surrounds the solar installation, or any equipment not located within the fence line.

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.

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

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, Tier 3 or Tier 4 Solar Energy System as follows:

- A. Tier 1 Solar Energy Systems include the following:
 - a. Roof-Mounted Solar Energy Systems
 - b. Building-Integrated Solar Energy Systems

- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems (that are accessory uses/structures) with a total surface area of all solar panels on the lot of up to 4,000 square feet and that generate up to 110% of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems and do not exceed 30 acres in size (as defined by the fenced in area). They can be primary or accessory uses/structures.
- D. Tier 4 Solar Energy Systems are systems that are not included in the list of Tier 1, Tier 2 and Tier 3 systems.

SOLAR FARM: An area of land used primarily for the purpose of producing electricity by means of a solar energy system.

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

SOLAR SKYSPACE: See Solar Access

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

STRUCTURE: For this law, a structure is defined as a residential dwelling, commercial or industrial building (habitable buildings). It does not include such things as garages, sheds, barns, etc.

4. Applicability

- A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town of Batavia 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"), the NYS Property Maintenance Code and the Code of the Town of Batavia.

5. General Requirements

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

- B. It is the developer's responsibility to ensure solar skyspace.
- C. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act (SEQRA).
- D. This Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Batavia.

6. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

A. Roof-Mounted Solar Energy Systems

1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
 - a. 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.
 - b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. 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.
2. Glare: All Solar Panels shall have anti-reflective coating(s). These coatings shall not contain PFAS's or other hazardous substances.
3. Height: Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

- B. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

7. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall be exempt from site plan review under the local zoning code or other land use regulations, subject to the following conditions:

- A. Glare: All Solar Panels shall have anti-reflective coating(s). These coatings shall not contain PFAS's or other hazardous substances.
- B. Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district (but in no case should they be within 20 feet of a property line). All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.
- C. Height: Tier 2 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the underlying zoning district (but in no case should be greater than 15 feet in height).
- D. Screening and Visibility.
 - 1. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 - 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.
- E. Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

8. Permitting requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a Special Use Permit in accordance with this Section of the Zoning Code, within the Agricultural Residential zoning district (*as restricted below*), and subject to site plan application requirements set forth in this Section.

These Tier 3 units have the following restrictions. Within the area denoted as the Genesee County Smart Growth areas, the total amount (measured as the area leased) of solar arrays (Tier 3 and Tier 4) to be installed in this area shall be limited to 25% of the total land area of the Smart Growth area within the Town (The Town will monitor this amount and provide any applicant with the existing quantity of lands dedicated to solar with the Smart Growth boundary). If a solar energy system is proposed to be installed within the "Ag Production Zone" as illustrated in the Town's Comprehensive Plan (Map 5), the applicant must limit impacts to Prime or Statewide important farming soils as detailed in later sections of this law.

These systems may also be eligible for a Solar Energy System PILOT and may require a Host Community Agreement as determined by the Town Board.

- A. Applications for the installation of Tier 3 Solar Energy System shall be:
 - 1. Application. Applications for special use permits shall be made in writing on the appropriate form obtained from the Building Inspector. Four hard copies of each application and an electronic copy, including site plan, shall be submitted to the

Building Inspector, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. One copy shall be retained by the Building Inspector. Applicants will be advised of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

2. Notice and public hearing. The Planning Board shall hold a public hearing as part of the special use permit process. The public hearing shall be held at a time fixed within 62 days from the date the application for a special use permit is received by the Board, and public notice thereof shall be published in a newspaper of general circulation in the town at least five days prior to the date of the hearing. At least 10 days before such hearing, the Planning Board shall mail a notice of the hearing to the applicant and also send, by regular mail, a copy of the notice of hearing to all Town of Batavia property owners whose property(ies) is located within 250 feet of the property which is the subject of the application when the property involved is located in an R District, or within 500 feet when the involved property is located in any other district. When necessary, under § 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.
 3. Upon closing of the public hearing, the Planning 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 does not start to run until the SEQR process is completed and may be extended upon consent by both the Planning Board and applicant.
- B. Underground Requirements. All on-site utility lines shall be placed 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. The applicant shall provide copies of the written notification to the utility for proposed interconnection.
- C. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction. These access roads shall be designed as "limited use pervious access" roads accordance with NYSDEC standards and designed to handle appropriate loads (emergency equipment) and will meet requirements of the Town's Emergency Service Providers.
- D. Signage.
1. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
 2. 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.

- E. Glare. All Solar Panels shall have anti-reflective coating(s) and proof of such must be submitted with the application and at the time of the building permit.
- F. 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.
- G. Tree-cutting. Removal of existing trees larger than six (6) inches in diameter should be minimized to the extent possible.
- H. Screening and Landscaping – In general, a Tier 3 Solar Energy System shall be screened from adjoining uses and any roadway – see section N. for specific requirements.
- I. Decommissioning.
 - 1. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of one year shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this Code.
 - 2. A Decommissioning Plan is required to ensure the proper removal of a large scale or utility-scale solar energy systems. The Decommissioning Plan is to be submitted as part of the special use permit application to the Building Inspector for approval and must specify that after the large scale or utility-scale solar energy system is no longer in use (as determined by the owner/operator or the Building Inspector per this law), it shall be removed by the applicant or any subsequent owner. The Decommissioning Plan shall identify the anticipated life of the project. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction (for projects located on Agricultural properties, the site shall be restored in accordance with NYS Department of Agriculture and Markets – NYSDAM). The plan shall also include an expected timeline for execution and a cost estimate for decommissioning prepared by a Professional Engineer or qualified Contractor. Cost estimates shall take inflation into consideration and be revised every three (3) to five (5) years (as determined by the Town Attorney's office) during operation of the system (recycle and salvage value shall be excluded in these estimates as they are unpredictable in nature). Removal of the large-scale or utility-scale solar energy system must be completed in accordance with the approved Decommissioning Plan and the standards provided as follows:
 - (1) All structures and foundations associated with the large-scale or utility scale solar energy systems shall be removed.
 - (2) All disturbed ground surfaces shall be restored to original conditions including topsoil and seeding as necessary.
 - (3) All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.

3. Security.

- a. 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 (except when the estimate is updated in each third to fifth year). The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.
 - b. 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.
 - c. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.
- J. Noise: The Tier 3 or 4 project shall not result in any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise). Specifically, the project must be shown to not generate noise at 45 dBA or above at any non-participating property line. A frequency study may be required to analyze any “interference” effects.
- K. Hazardous Materials: The Tier 3 or 4 project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous substances, such as PFAS). Specific material data information/specifications (SDS/MSDS sheets) shall be submitted on all components of the project. The applicant must ensure that no harmful chemicals will be leaked into the soils over the life of the project. For certain components of the project, information on spill containment systems will need to be provided. This required information shall be reviewed by the Planning Board, their consultants and the Fire Department.
- L. Airport Impacts (Encroachment issues): All Tier 3 or 4 Solar energy projects must complete a study to be submitted to the local Airport that discusses the following:
- 1. Distance from installation
 - 2. Location relative to approach/departure and flight patterns associated with the airport.
 - 3. Glare Impact on airport sensitive receptors. Analysis should include a knowledge of sun position, observer location, and the solar module/array characteristics (e.g.

tilt, azimuth or orientation, location, extent and if tracking those parameters for the entire path of the moving panels) Note: Though not required by the FAA it is strongly encouraged to utilize the Solar Glare Hazard Analysis Tool (SGHAT) to predict potential glare with assessed results relative to the FAA's Policy and Ocular hazard standard (also adopted by the U.S. Department of Defense DoD) under Instruction (DODI) 4165.57 and implemented by US Air Force AFI 32-7063.

4. Any additional lighting of the field to include anti-collision.
5. Storm water runoff which may affect the base or the tributaries transitioning through the base or the creation of storm ponds which would attract wildlife and waterfowl.
6. Possible changes to wildlife habitat or migratory patterns that will affect the aircraft flight path.

M. Site plan application. For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

1. Property lines and physical features, including roads (Ingress and Egress), for the project site
2. Size and location of panels (setbacks to property lines and adjoining residential structures).
3. Nature of land use on the existing property, adjacent properties, nearby properties (as directed by the Town) and any solar energy systems in or proposed in the surrounding area.
4. Existing conditions including topography, vegetation, structures, etc.
5. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
6. Proposed fencing (required) and type (fitting nature of the area and NEC requirements).
7. 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.
8. 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.
9. Glare and reflectivity information.

10. Name, address, and contact information of proposed or potential system 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.
11. 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.
12. Zoning district designation for the parcel(s) of land comprising the project site.
13. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies), maintenance of access drives, maintenance of ditches or other waterways through the site (potential emergency access easement provided to the Town), and maintenance of the plantings for the required screening. This Operation and Maintenance Plan shall reflect all lands that are being leased or owned by the applicant.
14. Fire Safety Plan (to be reviewed by the Building Department and Fire Advisory Board).
15. 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 Planning Board and Town Engineering office.
16. Other information requested by the Planning Board.
17. All engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

N. Special Use Permit Standards.

1. Lot size

- a. The property on which the Tier 3 Solar Energy System is placed shall be on a lot of a size that allows for the project to meet all setback and other requirements of this law.

2. Setbacks

The Tier 3 Solar Energy Systems shall meet the following setback requirements:

- a. Be setback from any non- participating property line by 200 feet.
- b. Be setback from any participating property line by 20 feet.
- c. Be setback from any adjoining, participating property existing structure by 30 feet.
- d. Be setback from any adjoining, non-participating structure by 500 feet.

3. Height

- a. The Tier 3 Solar Energy Systems shall be limited in height to 20 feet.
4. Lot coverage
 - a. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:
 - i. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
 - ii. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
 - iii. Paved access roads servicing the Solar Energy System.
 - b. Lot coverage of the Solar Energy System, as defined above, shall not exceed 50%.
 5. Fencing Requirements. All mechanical equipment, panels, and structures shall be enclosed by a seven-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access. *Design of the Fencing shall fit into the area in which the project is proposed. In some cases, accommodations for animal movement will be necessary.*
 6. Screening and Visibility.
 1. Solar Energy Systems shall have views minimized from adjacent properties using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 2. Solar Energy Systems shall be required to:
 - a) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties and as directed by the Planning Board. As required previously, this analysis must consider conditions at day one of operation and when the landscaping has matured. At a minimum, a line-of-sight profile analysis shall be provided, but photo-simulations are required for all areas that will have a view of the project site. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital viewshed report, may be required to be submitted by the applicant. The Town may hire an independent consultant, at the cost of the applicant, to review and/or conduct their own visual assessment.
 - b) Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably

practical from public roadways and adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.

- c) The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall, at a minimum, be comprised of evergreen/coniferous trees (planted at recommended spacing for the type of tree), at least 8-10 feet high at the time of planting (depending on site conditions and the result of the visualizations) and may need to be installed in a “zig-zag pattern to maximize screening), plus supplemental shrubs (deer resistant) placed in between the evergreen trees at the reasonable discretion of the Town Planning Board. These plantings are to be planted, typically, within 10 linear feet of the Solar Energy System fencing or as directed by the Planning Board to achieve maximum screening. In some cases, existing vegetation located on participating properties, may be used to satisfy all or a portion of the required landscaped screening. Suitable evergreen tree and shrub species are to be determined by a professional arborist and approved by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties. All plantings shall come with a 10-year guarantee and must be replaced if dead or diseased (include this in Operation and Maintenance Plan). This will be enforced by the Town through the required yearly inspections. Berms can also be utilized to reduce heights of proposed plantings, but the berms must not interfere with site drainage and must be properly designed to maintain vegetation.

Landscape plans must be completed by a NYS registered Landscape Architect.

- d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures such as barns.

7. Agricultural Resources. For projects located on agricultural lands:

- a. Any Tier 3 Solar Energy System located in the Town’s Ag Protection Zone (as illustrated in the Town’s Comprehensive Plan), on lands that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed (construct facilities on) 50% of the area of Prime Farmlands or Farmland soils of Statewide Importance on that parcel.

- b. Any Tier 3 Solar Energy System located on farmland outside of the Ag Production zone that consist of Prime Farmland or Farmland of Statewide Importance shall minimize the impact to these important soils by avoiding those areas to the maximum extent practicable.
- c. Tier 3 Solar Energy Systems on Prime Farmland or Farmland of Statewide Importance shall be required to seed a minimum of 20% of the total surface area of all solar panels on the lot with native perennial vegetation designed to attract pollinators.
- d. To the maximum extent practicable, Tier 3 Solar Energy Systems located on Prime Farmland or Farmland of Statewide Importance shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.
- e. 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.

8. Permitting requirements for Tier 4 Solar Energy Systems

All Tier 4 Solar Energy Systems are permitted through the issuance of a Special Use Permit in accordance with this Section of the Zoning Code, and subject to site plan application requirements set forth in this Section.

These systems may also be eligible for a Solar Energy System PILOT and will require a Host Community Agreement as determined by the Town Board.

Tier 4 Solar Energy Systems have all the same restrictions and requirements as Tier 3 systems, but with the following additional or modified restrictions and requirements. These additional restrictions and requirements are due to the potential significant impacts that occur for these large-scale projects.

These Tier 4 systems are also restricted (not allowed) in the Wellhead Protection Overlay area.

A. Additional Application and Permitting Requirements for Tier 4 Solar Energy Systems:

- (1) All the information/requirements listed for a Tier 3 system plus the following additional information/requirements.
- (2) Submittal of an Agricultural Impact Statement to determine the impact to Agriculture in the Town and community. The Planning Board, on a project-by-

project basis, will work with the applicant on finalizing the requirements of this Agricultural Impact Statement, but at a minimum will include whether the farmland is active (how long it has been farmed or not farmed) and if it is farmed by the property owner or leased. If leased, how the removal of this leased land will affect the farmer who leases this site and other farmlands and other leases that the farmer has in the Town. Include information on the improvements that have been made to the lands (tiling, irrigation, etc.), history of the farm and its products, number of workers, products purchased and used for farming operations, etc.

- (3) Submittal of an Economic Impact Analysis to determine the impact of the project on the economy of the Town. This includes the agricultural impacts in the Ag Impact statement and information as noted by the Town Planning Board (Town to work with the applicant on the scoping of this study, but will include, at a minimum, the estimated PILOT and HCA payments to the Town).
- (4) Proposal for a Host Community Agreement (to be reviewed and approved by the Town Board prior to any approvals granted by other boards or agencies) that reflects the large-scale impacts of the project.

9. Maintenance, procedures, and fees.

- A. Time limit on completion. After the granting of a special permit of a Tier 3 or Tier 4 solar energy system with concurrent site plan approval or site plan approval of a freestanding or ground-mounted solar energy system by the Planning Board, the building permit shall be obtained within six months and the project shall be completed within twelve months. A six-month extension to obtain a building permit or the completion time can be issued by the Planning Board upon application by the applicant. If not constructed, the special permit and/or site plan approval shall automatically lapse within twelve months after the date of approval by the Planning Board (unless an extension is granted).
- B. Inspections. Upon reasonable notice, the Town of Batavia Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Tier 3 (and Tier 4) energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit after construction is complete, the permit holder of a Tier 3 or Tier 4 solar energy

system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.

- D. Continued Operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- E. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector in accordance with the Decommissioning and Security sections of this law. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility in accordance with the Decommissioning Plan. If the Owner fails to act, the Town will act in accordance with the Security requirements of this law.
- F. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- G. Application and annual fees.
 - 1. Tier 3 and Tier 4 solar energy system. An applicant shall pay an initial application fee in the amount as set by the Town Board, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. Per sections of this law, if the Planning Board needs to hire specialists/consultants to review reports/materials submitted by the applicant, the Town will charge the costs of these reviews to the applicant and may require escrow monies to be deposited to cover such costs. If the project is approved, the Owner shall pay an annual fee in the amount as set by the Town Board, to cover the cost of processing and reviewing the annual inspection reports and for administration, inspections, and enforcement.

2. Applications for Tier 2 ground-mounted solar energy systems. An applicant shall pay a review fee as determined from time to time by the Town Board, by resolution.
 3. The Town of Batavia reserves the right to, by local law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
- H. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- I. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect so long as they are in full compliance with this article and all the conditions and provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

10. Safety

- A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- B. 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.
- C. 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 Town of Batavia and any applicable federal, state, or county laws or regulations. See the Town's Battery Energy Storage Law.

11. Permit Time Frame and Abandonment

- A. 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.
- B. 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.

12. Enforcement/ Penalties

Any person, firm, corporation or entity which may violate any provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be subject to the penalties set forth in § 235-65 of the Code of the Town of Batavia Zoning Ordinance. Any person, firm, corporation or entity which may violate any provisions of this chapter shall become liable to the Town for any actual expense or loss or damage occasioned by the Town by reason of such violation; in addition to any actual losses or damages sustained by the Town, such expense shall also include, but not be limited to, statutory costs, disbursements and reasonable attorney's fees in the event that an action is commenced to enforce this chapter. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this chapter or to restrain or enjoin the use or occupancy of premises or any part thereof in violation of this chapter.

13. Severability

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.