



MEMORANDUM

P: 845.562.9100
F: 845.562.9126

655 Little Britain Road
New Windsor, NY 12553

P.O. Box 2280
Newburgh, NY 12550

ATTORNEYS

- David L. Rider
- Charles E. Frankel
- Michael J. Matsler
- Mark C. Taylor
- Deborah Weisman-Estis
- M. Justin Rider
- Donna M. Badura

M. J. Rider
(1906-1968)
Elliott M. Weiner
(1915-1990)

COUNSEL

- Stephen P. Duggan, III
- John K. McGuirk
(1942-2018)

OF COUNSEL

- Craig F. Simon
- Irene V. Villacci

TO: HON. GILBERT J. PIAQUADIO, SUPERVISOR
TOWN BOARD MEMBERS

FROM: MARK C. TAYLOR, ATTORNEY FOR THE TOWN

RE: PROPOSED SOLAR PILOT LOCAL LAW OF THE TOWN
OF NEWBURGH
OUR FILE NO. 800.1(B)() (2020)

DATED: NOVEMBER 6, 2020

Enclosed please find for the Town Board's consideration the above referenced Introductory Local Law.

Also enclosed is a draft resolution introducing and scheduling a public hearing on the Local Law.

Should you have any questions or concerns in this regard, please feel free to contact me.

MCT/sel
Enc.

- cc:
- Town Clerk Joseph P. Pedi (via e-mail)
 - Receiver of Taxes Deborah Smith (via e-mail)
 - Lori Coady, Assessor. (via e-mail)
 - Town Accountant Ronald Clum (via e-mail)
 - Cathy Drobny, Esq. (via e-mail)

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300 or by videoconference pursuant to the Governor's Executive Orders, in the Town of Newburgh, Orange County, New York on the ___th day of November, 2020 at 7:00 o'clock p.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor

Elizabeth J. Greene, Councilwoman

Paul I. Ruggiero, Councilman

James M. Manley, Councilman

Anthony R. LoBiondo, Councilman

RESOLUTION OF TOWN BOARD
INTRODUCING SOLAR
PILOT LOCAL LAW
OF THE
TOWN OF NEWBURGH
AND PROVIDING FOR PUBLIC NOTICE
AND PUBLIC HEARING

Councilman/woman _____ presented the following resolution which was seconded by Councilman/woman _____.

BE IT RESOLVED that Introductory Local Law No. ___ of the Year 2020 entitled "Solar Energy Pilot Law of the Town of Newburgh" be and it hereby is introduced before the Town Board of the Town of Newburgh in the County of Orange and State of New York, and

BE IT FURTHER RESOLVED that a copy of the aforesaid proposed local law in final form be laid upon the desk of each member of the Town Board at least seven (7) days prior to a public hearing on said proposed local law, and

BE IT FURTHER RESOLVED that the Town Board shall hold a public hearing in the matter of the adoption of the aforesaid local law to be held at the Town Hall at 1496 Route 300 in the Town of Newburgh, New York on the ___th day of December, 2020 at 7:___ o'clock, p.m., and

BE IT FURTHER RESOLVED that the Town Clerk give notice of such public hearing by the publication of a notice in the official newspapers of the Town, specifying the time when and the place where such public hearing will be held at least three (3) days prior to the public hearing, and posting of such notice together with a copy of such local law in accordance with the requirements of the Municipal Home Rule Law and Chapter 25 of the Code of the Town of Newburgh.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

<u>Elizabeth J. Greene, Councilwoman</u>	<u>voting</u>
<u>Paul I. Ruggiero, Councilman</u>	<u>voting</u>
<u>Scott M. Manley, Councilman</u>	<u>voting</u>
<u>Anthony R. LoBiondo, Councilman</u>	<u>voting</u>
<u>Gilbert J. Piaquadio, Supervisor</u>	<u>voting</u>

The resolution was thereupon declared duly adopted.

TOWN OF NEWBURGH
INTRIODOCTORY LOCAL LAW NO. ___ OF THE YEAR 2020
SOLAR ENERGY SYSTEM PILOT LAW

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

§1. Title

This Local Law may be cited as the “Solar Energy System PILOT Law of the Town of Newburgh.”

§2. Purpose

This Local Law is adopted to ensure that the benefits of the community’s solar energy resource are available to the entire community, by promoting the installation of solar energy generating equipment through a payment-in-lieu-taxes (PILOT), granting reduced costs to system developers and energy consumers, and providing a revenue stream to the entire community.

§3. Authority

This Local Law is adopted under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(8),
2. New York Statute of Local Governments, § 10 (5),
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(8), and
4. New York Real Property Tax Law § 487(9).

§4. Definitions

AC - alternating current

ANNUAL PAYMENT - the payment due under a PILOT Agreement entered into pursuant to Real Property Tax Law § 487(9). as the same may be amended, superseded or replaced.

ANNUAL PAYMENT DATE” - January 1st of each year.

CAPACITY - the manufacturer’s nameplate capacity of the Solar Energy System as measured in kilowatts (kW) or megawatts (MW) AC.

OWNER - the owner of the property on which a Solar Energy System is located or installed, or their lessee, licensee or other person authorized to install and operate a Solar Energy System on the property.

RESIDENTIAL SOLAR ENERGY SYSTEM - a Solar Energy System with a nameplate generating capacity less than 50 kW AC in size, installed on the roof or the property of a residential dwelling, including multi-family dwellings, and designed to serve that dwelling or dwellings.

SBL NUMBER - Section-Block-Lot number on the County of Orange's Real Property Tax Maps.

SOLAR ENERGY EQUIPMENT - collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by New York law.

SOLAR ENERGY SYSTEM - an arrangement or combination of Solar Energy Equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar energy and its conversion, storage, protection and distribution.

§5. PILOT Required

A. The owner of a property on which a Solar Energy System is located or installed (including any improvement, reconstruction, or replacement thereof), shall enter into a PILOT Agreement with the Town consistent with the terms of this Local Law, except for

- (1) Residential Solar Energy Systems;
- (2) Solar Energy Systems with a capacity of 0.5 MW or less; and
- (3) Solar Energy Systems that do not seek or qualify for an exemption from real property taxes pursuant to Real Property Tax Law § 487(4).

B. The Lessee or licensee of any owner of a property required to enter into a PILOT Agreement by this section, which owns or controls the Solar Energy System, may enter into the PILOT Agreement on behalf of the owner of the property.

C. Any owner or developer of a solar energy system that meets the requirements under RPTL §498(4) must notify the Town Supervisor via certified mail [or personal hand-delivery] of its intent to construct a solar energy system. Such notice must be sent to Town Supervisor, Town of Newburgh, 1496 Route 300, Newburgh, NY 12550.

D. Upon receipt of any notification from an owner or other person of intent to install a Solar Energy System, the Town Supervisor shall immediately, but in no case more than sixty days after receipt of the notification, the Town Supervisor or his designee shall notify the owner or other person by

certified mail or hand delivery of the mandatory requirement for a PILOT Agreement pursuant to the terms of this Local Law.

D. Nothing in this Local Law shall exempt any requirement for compliance with state and local codes for the installation of any solar energy equipment or a solar energy system, or authorize the installation of any solar energy equipment or a solar energy system. All solar energy systems must file a Real Property Tax Exemption application pursuant to Real Property Tax Law § 487 to receive a tax exemption.

E. The Annual Payments under the PILOT Agreement shall not exceed the amounts that would be otherwise payable but for the exemption under Real Property Tax §487 as the same may be amended, superseded or replaced.

§6. Contents of PILOT Agreements

A. Each PILOT Agreement entered into shall include

(1) Name and contact information of the Owner or other party authorized to act upon behalf of the Owner of the Solar Energy System.

(2) The SBL number for each parcel or portion of a parcel on which the Solar Energy System will be located.

(3) A requirement for fifteen successive annual payments, to be paid commencing on the first Annual Payment Date after the effective date of the Real Property Tax Exemption granted pursuant to Real Property Tax Law § 487.

(4) The Capacity of the Solar Energy System, and provision that if the Capacity is increased or increased as a result of a system upgrade, replacement, partial removal or retirement of Solar Energy Equipment, the annual payments shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

(5) That the parties agree that under the authority of Real Property Tax Law § 487 the Solar Energy System shall be considered exempt from real property taxes for the fifteen-year life of the PILOT Agreement.

(6) That the PILOT Agreement may not be assigned without the prior written consent of the Town, which consent may not be unreasonably withheld if the Assignee has agreed in writing to accept all obligations of the Owner, except that the Owner may, with advance written notice to the Town but without prior consent, assign its payment obligations under the PILOT Agreement to an affiliate of the Owner or to any party who has provided or is providing financing to the Owner for or related to the Solar Energy System, and has agreed in writing to accept all payment obligations of the Owner.

(7) That a Notice of this Agreement may be recorded by the Owner at its expense, and that the Town shall cooperate in the execution of any Notices or Assignments with the Owner and its successors.

(8) That the Annual Payment shall be

i) For Solar Energy Systems with a Capacity greater than 0.5 MW, \$3,600.00 per MW of Capacity above 0.5 MW, pro-rated for fractional MW's.

ii) That the Annual Payment shall escalate three percent (3%) per year, starting with the second Annual Payment.

(9) That if the Annual Payment is not paid when due, that upon failure to cure within thirty days, the Town may cancel the PILOT Agreement without notice to the Owner, and the Solar Energy System shall thereafter be subject to taxation at its full assessed value.

(10) That in addition, if the Annual Payment is not paid when due, a late fee equal to five percent (5%) of the amount due shall be assessed on an annual basis.

§7. Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§8. Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law, and shall apply to all solar energy systems constructed.