

**TOWN OF NEW SCOTLAND  
TOWN BOARD WORKSHOP  
November 30, 2016 - 6:00 PM  
AGENDA**

1. **Call to Order** *Mr. LaGrange*
  
2. **Pledge of Allegiance**
  
3. **Discussion/Action re: Donation of pavilion at Feura Bush Town Park** *Mr. LaGrange*
  
4. **Discussion/Action re: Proposed Local Law E of 2016, regarding cargo/shipping containers used as storage** *Mr. Greenberg  
Attachment #1*
  
5. **Discussion/Action re: Proposed Local Law F of 2016, regarding notice to residents of pending applications for permits and approvals** *Mr. Greenberg  
Attachment #2*
  
6. **Discussion/Action re: Proposed Local Law G of 2016, amending Chapter 190 of the Code to establish regulations regarding solar photovoltaic systems** *Mr. LaGrange  
Attachment #3*
  
7. **Possible motion for executive session regarding contract Town Justice position**
  
8. **Discussion/Action re: Appointing Town Justice** *Mr. LaGrange*
  
9. **Adjourn**

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**Town of New Scotland  
Proposed Local Law E of the year 2016**

ATTACHMENT #1

A Local Law regarding cargo/shipping containers used as storage; temporary storage structures; construction trailers.

Be it enacted by the Town Board of the Town of New Scotland as follows:

**SECTION I. PURPOSE AND FINDINGS**

To preserve property values and aesthetic resources of the Town, the Town has determined that regulation of cargo containers, shipping containers, and other structures used for temporary or permanent storage is appropriate. It is the intention of the Town Board to maintain a clean, wholesome and attractive community and to guard against the creation of nuisances and conditions that may: (A) endanger the health, safety and welfare of the residents; (B) create fire hazards; (C) reduce the value of properties; (D) interfere with the use and enjoyment of adjoining properties; and (E) interfere with the well-being of the public. The Board finds that from time to time containers are needed by the citizens of the Town for various reasons, including but not limited to construction or storage of personal belongings. Nevertheless, the presence of containers can have a negative impact on health, safety, and welfare of the citizens of the Town. This Local Law is intended to minimize the adverse effects that containers may have by regulating the amount of time and location, which they may be parked or stored on property. The purpose of this law is to protect the public health, safety, and welfare of the residents and aesthetic resources, and the general welfare of the Town and its residents. The Town finds that regulation of cargo containers is in the best interest of the Town.

**SECTION II. AMENDMENT TO CHAPTER 190-31 OF THE TOWN ZONING LAW**

The Code of the Town of New Scotland, Albany County, New York, Chapter 190, entitled "Town of New Scotland Zoning Law" is hereby amended as follows:

1. Section 190-99, entitled "Definitions" is amended by adding the following definitions:

CARGO CONTAINER - a standardized reusable vessel, which is usually made of steel, that was: (i) originally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or (ii) originally designed

for or capable of being mounted or moved by rail, truck or ship by means of being mounted on a chassis or similar transport device. "Transport containers" and "portable site storage containers" having a similar appearance to and similar characteristics of cargo containers, shall be included, in the definition of "cargo containers."

PORTABLE SITE STORAGE CONTAINERS or "PODS" – a container, usually made of plastic, used for the temporary storage and/or transport of household or office furnishings and accessories.

ACCESSORY STORAGE CONTAINER – a storage container that is an accessory use for which a permit has been issued in accordance with Section 190-31.

2. Chapter 190 is hereby amended by deleting Section 190-31, and replacing it with the following:

Section 190-31 Cargo/shipping containers; temporary storage structures; construction trailers.

- A. Containers Prohibited In Residential and Commercial Zones Without A Permit. Except as expressly permitted by the provisions of Section 190-31, cargo containers, portable site storage containers and pods are not permitted to be used for storage, or any other use, on property zoned for residential or commercial uses, or on property the primary use of which is residential or commercial, including the following zoning districts: Residential Forestry (RF); Residential Agricultural (RA); Medium Density Residential (MDR); Residential Conservation (R2); Residential Hamlet (RH); Commercial Hamlet (CH); and Commercial (COM). In addition:
- (i) No containers shall be used for habitable purposes or as a temporary or permanent residence.
  - (ii) A container that is not removed at the appropriate time shall be deemed to be an illegal structure and may be removed by the Town of New Scotland, which shall assess such fines, costs, and expenses against the property on which the storage container is located to be collected and enforced in the same manner as real property taxes.
- B. Temporary Use of Containers Permitted With Permit (Residential Property). Notwithstanding the provisions set forth in subsection A of this section, the temporary placement of portable site storage containers, or "pods," on residentially zoned properties, or on properties the primary use of which are residential, for the limited purpose of loading and unloading household contents shall be permitted for a period of time not exceeding sixty (60) days per residence in any one calendar year, provided the owner of the property applies for, and obtains, a permit in accordance with the provisions of Subsection D of Section 190-31.

- C. Containers Permitted During Construction Upon Issuance of Temporary Permit. Notwithstanding the provisions set forth in subsection A and B of this section, construction contractors may, upon issuance of: (i) a building permit and, (ii) a temporary permit by the Building Inspector, use cargo containers and/or portable site storage containers for the temporary location of equipment and/or materials during the period the contractor is engaged in construction on the property where the cargo container and/or portable site storage containers are located. If construction ceases or is abandoned, the cargo container, and/or portable site storage containers, must be removed from the property. In no event shall the cargo container or portable site storage container remain on the premises for a period longer than 180 days. Prior to the expiration of the 180 day period, the owner or contractor may apply to the Zoning Board of Appeals ("ZBA") for an extension of the permit, and the ZBA shall have the authority to extend the permit for not longer than 180 days.
- D. Short Term Use of Pod Permitted With Permit (Non-Residential Property). Where an Accessory Storage Container is permitted under Section 190-31, a permit shall be required prior to the placement of a cargo container or portable site storage container, or pod, on a lot that is not zoned for residential use (i.e. commercial or industrial zoning districts). If temporary storage in a cargo container or portable site container, or pod, is needed for a period in excess of thirty (30) days, an application for a temporary permit shall be made to the Building Inspector. The application shall be accompanied by the following:
1. Five (5) copies of a detailed plan (handwritten sketch plans are acceptable) showing the proposed location of the accessory cargo storage container, including but not limited to setbacks from the property lines and other structures on the property.
  2. Details regarding the cargo container including but not limited to height, width, length, floor area and color.
  3. Method of screening, if any.
  4. Such other information as the Building Inspector may require to adequately review an application. The Building Inspector has the authority to issue the permit under this subsection.
  5. Payment of the permit fee, which fee shall be established by resolution of the Town Board.
  6. The permit shall be valid for a period not in excess of 360 days. The permit may not be extended or renewed.
- E. Long Term Use of Containers In Industrial Zoning District. Upon application for site plan approval, the Planning Board may issue a permit for a permitted

accessory cargo storage container in the Industrial (IND) zoning district, provided that:

1. The container shall not exceed 10 feet in height, and shall be located in the side or rear yard.
2. The container shall be set back at least 20 feet from any side or rear lot line or 50 feet from a side or rear lot line adjacent to a residence district or lot in residential use and at least 10 feet from the main building.
3. The container shall not occupy more than 10% of the required yard area in which it is proposed to be situated.
4. A maximum of one (1) cargo storage container shall be permitted on each lot, unless the Planning Board waives this requirement.
5. The container shall have a maximum of 320 square feet of floor area.
6. If visible from any adjoining lot or any bounding street right of way at any time during the year, an accessory cargo storage container shall be appropriately screened with either landscaping so as to provide an opaque sight barrier at least equal to the height of the container or by an opaque fence or similar barrier of equal height.
7. A solid, firm base surface shall be provided for the cargo storage container capable of sustaining the load of the cargo storage container and its contents.
8. The siting of the cargo storage container shall not be placed so as to negatively impact drainage on any adjacent lot by diversion or impoundment of storm water flows.
9. The cargo storage container may not occupy any required off-street parking spaces or fire lanes in any district.
10. Containers used in a manner that constitute a principal use, such as a storage yard, mini-warehousing establishment, or a motor freight terminal shall be subject to the regulations of the Town's Zoning requirements. In such a case, all containers shall be subject to the minimum set back requirements of the zoning district in which they are located. The placement of containers on a property shall not negatively impact the use/enjoyment of the adjoining property.
11. A container shall be permitted only for purposes as an accessory use to the principal use of the lot on which such container may be located.

12. The stacking of materials on top of any container shall be prohibited.

F. Exceptions. Nothing herein shall be construed to restrict the use of cargo containers or portable site storage containers for:

- (i) Agricultural uses in an Agricultural District, provided the cargo container is being used in support of an agricultural use on the property in question;
- (ii) Temporary placement of portable site storage containers or pods for less than thirty (30) days (in any one calendar year) and for the limited purpose of loading and unloading household furnishings, office furnishings or commercial inventory, fixtures or equipment;
- (iii) By the Town of New Scotland transfer station;
- (iv) For a natural disaster or emergency, including a fire, flood, sewer storm; Notwithstanding this exception, any cargo container used for more than sixty (60) days for such natural disaster or emergency shall require a permit or waiver by the Zoning Board of Appeals;
- (v) Active military operations; and
- (vi) Containers used in a manner that constitute a principal use, such as a storage yard, mini-warehousing establishment, or a motor freight terminal shall be subject to the regulations of the Town's Zoning requirements. In such a case, all containers shall be subject to the minimum set back requirements of the zoning district in which they are located.

G. Current Violations – Time to Comply. All owners of property within the Town shall have 180 days from the effective date of this Local Law to bring properties which currently contain accessory cargo storage containers that are in violation of this Local Law and Chapter 190 into full compliance with the provisions of this law.

H. Presumptions. The placement of a cargo container or portable site storage container without compliance with this section of the Zoning Law shall be prima facie evidence of the violation of this law by the owner, tenant or other occupant of the premises upon which such item(s) are located.

I. Penalties. A person who shall knowingly violate any of the applicable provisions of this Local Law or any lawful order, notice, directive, of the Town of New Scotland Code Enforcement Officer shall be subject to a fine of Two Hundred Fifty Dollars (\$250.00). Each day during which there is a failure to comply with the provisions of this law or any order issued by the Code Enforcement Officer shall constitute a separate offense. The property owner shall be given written notice, and 10 days to correct the violation, of the provisions of this law and

notice that the container must be removed. The cost of enforcement and removal may be assessed to the property owner as a special ad valorem tax levy.

- J. Appeals. Appeals of any enforcement action or determination of the Building Inspector shall be determined by the Zoning Board of Appeals of the Town of New Scotland.

### **SECTION III. SEVERABILITY**

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

### **SECTION IV. REPEAL OF OTHER LAWS**

All local laws in conflict with provisions of this Local Law are hereby superseded. This Local Law supersedes any inconsistent provisions in Chapter 110 and Chapter 190 of the Town of New Scotland Code, relating to highway specifications, zoning and permitted and special uses.

### **SECTION V. EFFECTIVE DATE**

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.

#### **1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board on \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

#### **2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board on 20 \_\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

\* **Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the Town of New Scotland was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_.

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20 \_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20 \_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_, above.

\_\_\_\_\_  
New Scotland Town Clerk

(Seal)

Date: \_\_\_\_\_

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature \_\_\_\_\_  
New Scotland Town Attorney

Date: \_\_\_\_\_

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**Town of New Scotland  
Proposed Local Law F of the year 2016**

A Local Law regarding notice to residents of pending applications for permits and approvals issued by Planning Board, Zoning Board of Appeals, and Town Board.

Be it enacted by the Town Board of the Town of New Scotland as follows:

**SECTION I. PURPOSE AND FINDINGS**

The Town has received comments from residents that the minimum notice requirements set forth in New York State law and the Town of New Scotland Code for applications for permits and approvals for real estate development projects is inadequate to provide notice to many residents and landowners that may be effected or interested in commenting on a proposal. In an effort to provide a supplemental means of notifying residents of pending applications for approvals, this Local Law is intended to increase the distribution of notices of public hearings that are mailed to landowners, and post a sign on the property so that residents who do not live nearby have another means of being notified that an application is pending regarding the subject property. The Town finds that additional notice to residents and landowners of pending applications will protect the public health, safety and welfare of residents of the Town, and will promote the convenience and general welfare of the Town and its residents.

**SECTION II. AMENDMENT TO CHAPTER 190 OF THE TOWN CODE**

Chapter 190 of the Town of New Scotland Code is hereby amended by adding the following:

§ 190-110 Supplemental Notice Requirements For Applications For Certain Permits and Approvals from the Planning Board, Zoning Board of Appeals, and Town Board.

- A. Approvals Requiring Supplemental Notice. An applicant for any permit or approval from the Planning Board, Zoning Board of Appeals, or Town Board which requires a public hearing shall comply with the provisions of this Section 190-110 regarding supplemental notice. This notice provision applies to applications seeking permits or approvals for:
1. Subdivision of land (minor or major subdivision);

ATTACHMENT #2

2. Special use permit;
3. Site plan approval;
4. Variance (use and area variances);
5. Cluster development;
6. Rezoning and/or amending of Zoning Law for project;
7. Planned Unit Development.

The foregoing permits and approvals shall be referred to as an "Approval" or "Approvals" under this section of the Zoning Law.

- B. Notice To Neighboring Property Owners. Notwithstanding the provisions of Chapter 164, entitled "Subdivision of Land," and Chapter 190, entitled "Zoning," an applicant for an Approval requiring a public hearing shall: (i) post a sign in accordance with subsection D, and (ii) provide prior written notice of a hearing to all property owners within 1,000 feet of the lot subject to the application for an Approval. The written notice shall be mailed (post-marked) by regular mail and certified mail, return receipt requested not less than ten (10) days prior to the date of the scheduled hearing, and not more than forty-five (45) days prior to the hearing. The applicant shall be responsible for the cost of postage and mailing the notice, and shall provide proof of mailing (in a form approved by the Building Inspector ("Inspector"), or his duly authorized assistant) on or before the hearing date.
- C. Deposit. At the time the application is filed, the Inspector shall approximate the cost of mailing ("mailing deposit"), and the applicant shall pay: (i) the cost of mailing notices; plus (ii) a \$100.00 deposit for the sign deposit (the "Sign Deposit"). The Sign Deposit shall be refunded when the sign is returned.
- D. Sign. Within twenty (20) days of filing an application for an Approval, the applicant shall post a sign on the lot that is the subject of the application, which sign is intended to provide the public with notice that an application for an Approval is pending. The sign shall satisfy the following criteria and standards:
- (i) The sign shall be installed (by the applicant) in a location that is visible to the public; and not less than fifteen (15) feet, and not more than thirty (30) feet, from the edge of pavement of the nearest road providing access to the property that is the subject of the application. In the event the subject parcel does not have frontage on a public road, or is located in a densely populated area, the Inspector shall determine, after consultation with the applicant and landowner, a safe and appropriate location for the sign.

- (ii) The sign shall be in a standard format, color, font and style to be determined by the Inspector, which shall be provided to all applicants at the time the application is accepted for filing.
  - (iii) The sign shall state, in words or substance, that: (a) an application for a zoning approval has been filed with the Town of New Scotland; (b) the telephone number of the Building Department; and (c) the Town website for further information regarding the application/project.
  - (iv) The sign shall remain installed on the property until after the public hearing.
  - (v) The Building Department shall purchase and maintain a sufficient number of sign frames and signs.
- E. Sign Deposit/Consent/Authorization. At the time the application is filed for the Approval, the applicant (and the property owner, if the applicant is not the owner of the property) shall sign a Consent and Authorization (in a form approved by the Inspector) consenting to the posting of a sign on the private property, and authorizing the Building Department to install and/or remove the sign.
- F. Return of Sign/Deposit. When the Approval has been granted, or the application for the Approval is denied or withdrawn, the applicant shall remove the sign and sign frame and return it to the Town Building Department in good order and condition. When the sign frame is returned in good order and condition, the Sign Deposit shall be returned to the applicant within thirty (30) days of the return. If a sign frame has been materially damaged, the applicant can repair or replace the frame at the applicant's sole cost and expenses, or forfeit the sign deposit. If the application does not proceed to a hearing, or the application is withdrawn prior to hearing, the applicant may apply for a refund of the mailing deposit, and the deposit shall be refunded within thirty days of the application for a refund. If no application for a refund is made within 30 days, the mailing deposit shall be deemed forfeited.
- G. Compliance Required Prior to Hearing. No public hearing regarding an application for an Approval shall proceed unless the Inspector determines that the applicant has complied with the notice and sign posting requirements of this section; the application shall be deemed incomplete until compliance has been achieved. The Inspector shall have the discretion to waive any minor defect in compliance.
- H. Exemptions. The notice provisions do not apply to the following:
- (i) A zoning amendment introduced by the Town Board, which does not apply to a specific project;

(ii) Applications for building permits not requiring an Approval.

J. Non-Compliance (No Private Enforcement). An applicant's failure to comply with the notice provisions set forth in Section 190-110 may be grounds for denial of an application or rescheduling of a hearing, but failure to comply with the notice provision of this Section shall not be grounds for an Article 78 proceeding or other challenge by a private citizen seeking to annul or vacate an Approval.

K. Appeals. If an applicant or landowner objects to the sign posting provisions of this section, the applicant/landowner may appeal to the Zoning Board of Appeals and request a waiver/variance from the provisions of this section, and the Zoning Board of Appeals is hereby granted authority to grant a waiver or variance in the event of hardship or special circumstances.

### **SECTION III. SEVERABILITY**

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

### **SECTION IV. REPEAL OF OTHER LAWS**

All local laws in conflict with provisions of this Local Law are hereby superseded. This Local Law supersedes any inconsistent provisions in Chapter 164 and Chapter 190 of the Town of New Scotland Code, relating to subdivisions and zoning approval notifications.

### **SECTION V. EFFECTIVE DATE**

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.

#### **1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board on \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

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**3. (Final adoption by referendum.)**

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**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20 \_\_\_ of the Town of New Scotland was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_.

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20 \_\_\_\_, in accordance with the applicable provisions of law.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20 \_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20 \_\_\_\_, became operative.

\* **Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20 \_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

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\_\_\_\_\_  
New Scotland Town Clerk

(Seal)

Date: \_\_\_\_\_

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature \_\_\_\_\_  
New Scotland Town Attorney

Date: \_\_\_\_\_

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**Town of New Scotland  
Proposed Local Law \_\_\_ of the year 2016**

ATTACHMENT #3

A Local Law amending Chapter 190 of the Code of the Town of New Scotland to establish special regulations regarding solar photovoltaic (PV) systems and solar farms.

Be it enacted by the Town Board of the Town of New Scotland as follows:

**SECTION I. PURPOSE AND FINDINGS**

Solar energy is an abundant and renewable energy resource and its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease the greenhouse gas emissions that result from the use of conventional energy sources. It is the purpose of this Local Law to encourage and to promote the safe, effective and efficient use of installed solar photovoltaic (PV) systems that reduce consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties. It is the intent of this law: a) to promote energy efficiency and conservation, and the use of renewable energy in the Town; b) to support “green” energy generating systems; and c) to support New York State in meeting its renewable energy goals.

**SECTION II. AMENDMENTS TO CHAPTER 190 OF ZONING LAW**

The Code of the Town of New Scotland, Albany County, New York, Chapter 190, entitled “Town of New Scotland Zoning Law,” is hereby amended as follows:

1. Amend Article V, Special Regulations by adding a new §190-57-A, “Solar Photovoltaic (PV) Systems and Solar Farms,” to read as follows:

A. Applicability.

(1) This Section applies to building-mounted, building-integrated and ground-mounted solar photovoltaic systems installed and constructed after the effective date of this Section.

(2) This Section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.

(3) Nonconforming solar PV systems. Nonconforming solar PV systems existing on the effective date of this Section may be altered or expanded provided such alteration or expansion does not increase the extent or degree of nonconformity.

(4) Properties with approved Site Plan. Notwithstanding the requirements of §128-68.C.(2)(e) of this Chapter, for any lot that has an Approved Site Plan, the installation of a "by-right" solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an Approved Site Plan from other requirements of this Section.

(5) Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building integrated system.

B. Definitions. For the purpose of this Section the following terms shall have the meanings indicated.

**BUILDING-INTEGRATED SOLAR PV SYSTEM:** A solar PV system that is designed and constructed as an integral part of a principal or accessory building. Components of a building-integrated system are designed to replace or substitute for architectural or structural elements of a building and generally complement, blend with or form part of a building's architectural appearance. Such components will generally maintain a uniform plane with, and/or form a part of, the walls, window openings, roofing and/or other building elements into which they are integrated. Such a system is used in lieu of a separate solar PV system where components of the system are designed and attached to a building independent of building architecture. A building-integrated system may occur within vertical facades, replacing view glass, spandrel glass or other façade material; within semitransparent skylight systems; within roofing systems, replacing traditional roofing materials; or within other building envelope systems.

**BUILDING-MOUNTED SOLAR PV SYSTEM:** A solar PV system that is attached to the roof of a building

**GROUND-MOUNTED SOLAR PV SYSTEM:** A solar PV system, including its specialized solar racking or other mounting system, which is installed on the ground and not attached to any other structure.

**GROUND-MOUNTED SOLAR PV SYSTEM, SMALL SCALE:** A ground-mounted solar PV system that is limited to a system capacity of 12kW and generates no more than 110% of the kWh's of electricity consumed over the previous 12 month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said 12 month period.

**GROUND-MOUNTED SOLAR PV SYSTEM, LARGE SCALE:** A ground-mounted solar PV system that has a system capacity greater than 12kW or generates more than 110% of the kWh's of electricity consumed over the previous 12 month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said 12 month period.

**KILOWATT (kW):** A unit of electrical power equal to 1,000 Watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used. 1,000 kW is equal to 1 megawatt (MW).

**KILOWATT-HOUR (kWh):** A unit of energy equivalent to one kilowatt (1kW) of power expended for 1 hour of time.

**LOT COVERAGE:** Notwithstanding the definition of lot coverage found elsewhere in this Chapter, for the purpose of this Section lot coverage shall also include the area covered by a solar panel (or physically connected group of panels) as measured on a horizontal plane projected from the perimeter of said panel (or group of panels) vertically to the ground. For panels where the tilt angle is adjusted by week, month, season or other time period, lot coverage shall be determined by the tilt angle producing the greatest lot coverage.

**NET METER:** A meter used to measure the flow of electricity from the solar PV system to the electric utility grid for the purposes of net metering.

**REMOTE NET METERING:** An arrangement with the electric utility that allows for the kilowatt hours (kWh) generated from a solar PV system located at a specific site to be credited towards kWh of consumption at a different location.

**SOLAR ARRAY:** Any number of electrically connected solar photovoltaic (PV) panels that are connected to the same inverter.

**SOLAR PANEL:** A large, flat piece of equipment containing photovoltaic cells that use the sun's light or heat to create electricity.

**SOLAR PHOTOVOLTAIC (PV) SYSTEM:** A solar energy collection system consisting of solar photovoltaic cells, panels and/or arrays, and solar related equipment, which rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation. A solar PV system may be building-mounted, ground-mounted or building-integrated.

#### C. Facilities Permitted By-right.

(1) By-right Solar PV Systems. In order to encourage use of solar PV systems in the Town, the following systems shall be permitted by right in any zoning district in the Town, provided the system is generating a **minimum of eighty percent (80%)** of the electricity for the land use(s) located on the same lot as the system, and further provided that the system meets the standards for by-right systems identified in this Section. By-right systems require a Building Permit.

- (a) Building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and front yard area.

- (b) Building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and front yard area.

(2) Standards for By-right Systems

- (a) Accessory Use. By-right solar PV systems shall be considered an accessory use.
- (b) Maximum system size. By-right solar PV systems shall be limited to a system capacity of 12kW and generate no more than 110% of the kWh's of electricity consumed over the previous 12 month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over such 12 month period.
- (c) By-right facilities shall comply with all applicable New York State Building Codes.
- (d) Building-mounted solar PV systems.

[1] For a building-mounted system installed on a sloped roof:

- i. The highest point of the system shall not exceed the highest point of the roof to which it is attached.
- ii. Solar panels shall be parallel to the roof surface, or tilted with no more than an 18 inch gap between the module frame and the roof surface.

[2] For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than 5 feet above the height of the roof.

[3] For a building-mounted system, solar panels shall be set back no less than three feet from the edge of the roof to allow for fire access and ventilation. On sloped roofs, this requirement does not apply along that portion of the bottom edge located more than three feet from a side edge. In the event New York State shall adopt regulations that govern the placement of roof mounted solar panels for fire prevention purposes, said regulations shall supersede this setback provision.

D. Facilities Requiring a Special Use Permit.

(1) Solar PV Systems Requiring a Special Use Permit. Except as provided in Subsection C, entitled *Facilities Permitted By-right*, no solar PV system shall be constructed or installed without first obtaining a Special Use Permit and Site Plan Approval from the Planning Board. In addition, all solar PV systems shall require a Building Permit. Solar PV systems requiring a Special Use Permit and Site Plan Approval shall include, but not be limited to:

- (a) Ground mounted solar PV systems.

- (b) Building mounted and building integrated solar PV systems that have a system capacity greater than 12kW or generate more than 110% of the kWh's of electricity consumed over the previous 12 month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said 12 month period.
- (c) Except as provided in Subsection (C), regarding *Facilities Permitted By-right*, Solar PV systems, regardless of size, that generate and provide electricity, through a remote net metering agreement or other arrangement, to an off-site user or users located on a lot(s) other than the lot on which the system is located.
- (d) Solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.

(2) Classification: Solar PV systems requiring a special use permit may be classified as either an accessory use or a principal use as set forth below.

- (a) Principal use. A solar PV system constructed on a lot and providing electricity to an off-site user or users through a remote net metering agreement or other arrangement, shall be considered a principal use. All ground mounted solar PV systems that are classified as a principal use shall adhere to the area, yard and bulk requirements of the zoning district in which the system is located, unless such regulations are modified by other provisions of this Section.
- (b) Accessory use/accessory structure. A solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use(s) or building(s) located on the same lot as the system. Notwithstanding the location and maximum coverage provisions for accessory uses/accessory structures found elsewhere in this Chapter, all large scale ground mounted solar PV systems that are classified as an accessory use/accessory structure shall adhere to the minimum area, yard and bulk requirements for principal uses within the zoning district in which the system is located, unless modified herein by other provisions of this Section.

(3) Standards for Facilities Requiring a Special Use Permit.

- (a) Small scale ground mounted solar PV systems as accessory use. Notwithstanding the location and height standards for accessory structures and accessory uses found elsewhere in this Chapter, the following height, location and minimum yard/setback standards shall apply to small scale ground-mounted solar PV systems that are classified as an accessory use.

[1] Location. Small scale ground-mounted solar PV systems may be located within the side or rear yard. Location in a front yard is prohibited, including location in any front yard of a corner lot.

- [2] Rear and side yard. Small scale ground-mounted solar PV systems shall be permitted in a required minimum side yard or rear yard setback, provided that such system shall be set back not less than 10 feet from any rear or side lot line.
  - [3] Height. Small scale ground-mounted solar PV systems shall not exceed a height of 12 feet.
  - [4] Lot coverage. Small scale ground-mounted solar PV systems shall comply with the lot coverage requirements as defined in this Section.
- (b) Large scale ground-mounted solar PV systems and ground mounted systems classified as a principal use.
- [1] Setbacks. Large scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the zoning district in which the system is located. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system, or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.
  - [2] Setback to residential district. If a large scale ground mounted solar PV system is located on a lot that adjoins a residential district, an additional setback shall be provided between the residential district and all site improvements associated with the system. The additional setbacks are intended to provide a visual buffer between the residential district and ground mounted system. The additional setback, as well as the minimum setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable a visual screen of the ground mounted system from residential uses. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.
    - i. Large-scale ground mounted solar PV systems located in a residential district shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot located in a residential district. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential district.
    - ii. Large-scale ground mounted solar PV systems located in commercial and mixed-use districts shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in a residential district. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential district.

- [3] Utility Connections. Utility lines and connections from a large-scale ground mounted solar PV system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- [4] Fences. Notwithstanding the provisions found in this Chapter, fences not exceeding 8 feet in height, including open-weave chain link fences and solid fences, shall be permitted for the purpose of screening or enclosing a large-scale ground mounted solar PV system regardless of the district in which the system is located, provided said system is classified as a principal use.
- [5] Barbed Wire. Fences intended to enclose a large scale ground mounted solar PV system may contain barbed wire canted out.
- [6] Height. Large-scale ground-mounted solar PV systems may not exceed 12 feet in height.
- [7] Minimum Lot Size. Large scale ground mounted solar PV systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts, the minimum lot size shall be 1-acre.
- [8] Lot Coverage Requirements. Large scale ground-mounted solar PV systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which they are located. The lot coverage of a large scale ground-mounted solar PV system shall be calculated based on the definition of lot coverage found in this Chapter.
- [9] Signs. Large scale ground-mounted solar PV systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located.
- [10] Location in Front Yard Prohibited. Notwithstanding the requirements regulating location of accessory structures found elsewhere in this Chapter, large scale ground-mounted solar PV systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard of a corner lot.

(c) Building-mounted solar PV systems.

- [1] For a building-mounted system installed on a sloped roof:
  - i. The highest point of the system shall not exceed the highest point of the roof to which it is attached.

- ii. Solar panels shall be parallel to the roof surface, or tilted with no more than an 18 inch gap between the module frame and the roof surface.
- [2] For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than 5 feet above the height of the roof.
  - [3] For a building-mounted system, solar panels shall be set back no less than three feet from the edge of the roof to allow for fire access and ventilation. On sloped roofs, this requirement does not apply along that portion of the bottom edge located more than three feet from a side edge. In the event New York State shall adopt regulations that govern the placement of roof mounted solar panels for fire prevention purposes, said regulations shall supersede this setback provision.

#### E. Placement on Nonconforming Buildings.

(1) Notwithstanding the area, lot and bulk requirements of this Chapter, building-mounted and building integrated solar PV system may be installed:

- (a) On the roof of a non-conforming building that exceeds the maximum height restriction, provided the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted.
- (b) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (c) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

#### F. Abandonment and Decommissioning.

- (1) Applicability and purpose. This section governing abandonment and decommissioning shall apply to large scale ground mounted solar PV systems with a rated capacity of 200 kW or more, hereinafter referred to as commercial solar PV systems. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Bethlehem by requiring abandoned commercial solar PV systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy producing capabilities and serve as an attractive nuisance.
- (2) Abandonment. A commercial solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than ten percent of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deemed abandoned if following site plan approval initial construction of the system

has commenced and is not completed within eighteen months of issuance of the first Building Permit for the project.

- (a) Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one year provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service, at no less than 80 percent of its rated capacity, within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.
- (3) Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the commercial solar PV system shall be in accordance with a decommissioning plan approved by the Planning Board.
- (4) Decommissioning and removal. Decommissioning and removal of a commercial solar PV system shall consist of:
  - (a) Physical removal of all above and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site,
  - (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations,
  - (c) Restoration of the ground surface and soil,
  - (d) Stabilization and re-vegetation of the site with native seed mixes and /or plant species (excluding invasive species) to minimize erosion.

Upon petition to the Planning Board, the Board may permit the system owner and/or landowner to leave certain underground or above ground improvements in place provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and do not adversely affect community character or the environment

- (5) Special use permit conditions. The following conditions shall apply to all special use permits issued for a commercial solar PV system. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

(a) Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in this Section and shall include:

- [1] An estimate of the anticipated operational life of the system,
- [2] Identification of the party responsible for decommissioning,
- [3] Description of any agreement with the landowner regarding decommissioning,
- [4] A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work,
- [5] A cost estimate prepared by a qualified professional engineer, estimating the full cost of decommissioning and removal of the solar PV system,
- [6] A financial plan to ensure that financial resources will be available to fully decommission the site.

(b) Financial surety. Prior to the issuance of a Building Permit and every three years thereafter the commercial solar PV system owner and/or landowner shall file with the Town evidence of financial security to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit or other security acceptable to the Planning Board. The irrevocable letter of credit shall include an auto extension provision, to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw on the letter of credit in the event that the commercial solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every three years thereafter, as provided herein.

- [1] Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent annual reports. The amount of the surety may be adjusted by the Town upon receipt of an annual report containing an updated cost estimate for decommissioning and removal.

- (c) Annual report. The commercial solar PV system owner shall on a yearly basis provide the Town Building Inspector a report showing the rated capacity of the system, and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve month period. The report shall also identify any change in ownership of the solar PV system and/or the land upon which the system is located, and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the commercial solar PV system. The Town may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of this Section and Chapter.
- (6) Decommissioning and removal by Town. If the commercial solar PV system owner and/or landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this Section the Town may enter upon the property to decommission and remove the system.
- (a) Procedure. Upon a determination by the Building Inspector that a commercial solar PV system has been abandoned, the Building Inspector shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility under construction, to complete construction and installation of the facility within 180 days, or (b) in the case of a fully constructed facility that is operating at a rate of less than 10 percent of its rated capacity, to restore operation of the facility to no less than 80 percent of rated capacity within 180 days, or the Town will deem the system abandoned, and commence action to revoke the special use permit and require removal of the system. Being so notified, if the system owner, landowner and or permittee fails to perform as directed by the Building Inspector within the 180 day period, the Building Inspector shall notify the system owner, landowner and permittee by certified mail that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Building Inspector's determination of abandonment to the Planning Board and request a Hearing on the matter. Said appeal and request for Hearing must be made and received by the Town within 20 days of mailing notice. Failure by the permittee to submit an appeal and request for Hearing within the 20 day period will result in the special use permit being deemed revoked as stated herein. In the event the permittee appeals the determination of the Building Inspector and requests a hearing, the Planning Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a Hearing is held, the Planning Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board, or whether to revoke the permit and order removal of the solar PV system. Upon a determination by the Building Inspector or Planning Board that a special use

permit has been revoked the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and or landowner fail to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.

- (7) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in this Section. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected with interest by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

G. Reimbursement for Costs of Review by Town Designated Engineer.

- (1) The Applicant for a special use permit shall be responsible for reimbursing the Town for the cost of the engineering review by the Town Designated Engineer. The amount of the escrow shall be commensurate with the scale of the project.
- (2) The Planning Board may use the Town Designated Engineer (TDE) and retain consultants and/or experts necessary to assist the Town in reviewing and evaluating the Application.
- (3) An Applicant shall deposit with the Planning Board funds sufficient to reimburse the Town for all reasonable costs of TDE and consultant evaluation and consultation in connection with the review of any Application. An initial deposit of \$1,500.00 (the "Initial Deposit") shall be filed with the Application. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services in reviewing the Application. If at any time during the process the escrow account has a balance of less than \$500.00, the Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$500.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant.
- (4) The total amount of the funds needed as set forth in subsection (3) of this section may vary with the scope and complexity of the project, the completeness of the Application

and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. In the event the Planning Board determines that the Initial Deposit will be insufficient for review of the Application, the Planning Board shall notify the Applicant, and the Applicant shall supplement the escrow fund within thirty (30) days of notice from the Building Inspector of the estimated amount of the review fees necessary to process the Application.

- (5) Notwithstanding anything to the contrary in this section, the Planning Board may waive, or decrease, the amount of the Initial Deposit for small scale projects.

H. Guidelines for Future Solar Access.

- (1) New structures shall be sited to take advantage of solar access insofar as practical, including the orientation of proposed buildings with respect to sun angles, the shading and windscreen potential of existing and proposed vegetation on and off the site, and the impact of solar access to adjacent uses and properties.
- (2) To permit maximum solar access to proposed lots and future buildings, wherever reasonably feasible, consistent with other appropriate design considerations and to the extent practicable, new streets shall be located on an east-west axis to encourage building siting with the maximum exposure of roof and wall area to the sun. The Planning Board shall also consider the slope of the property and the nature and location of existing vegetation as they affect solar access.
- (3) The impact of street trees on the solar access of the surrounding property shall be minimized to the greatest possible extent in selecting and locating shade trees. Every effort shall be made to avoid shading possible locations of solar collectors.
- (4) When the Planning Board reviews and acts upon applications for subdivision approval or site plan approval, it shall take into consideration whether the proposed construction would block access to sunlight between the hours of 9:00 a.m. and 3:00 p.m. Eastern Standard Time for existing approved solar energy collectors or for solar energy collectors for which a permit has been issued.
- (5) The Planning Board may require subdivisions to be platted so as to preserve or enhance solar access for either passive or active systems, consistent with the other requirements of the Town Code.
- (6) The plan for development of any site within cluster subdivisions shall be designed and arranged in such a way as to promote solar access for all dwelling units. Considerations may include the following:
  - (a) In order to maximize solar access, the higher-density dwelling units should be placed on a south-facing slope and lower-density dwelling units sited on a north-facing slope.

(b) Subject to the Town's setback requirements, structures should be sited as close to the north lot line as possible to increase yard space to the south for reduced shading of the south face of a structure.

(c) A tall structure should be sited to the north of a short structure.

G. Solar Easements.

(1) Where a subdivision or land development involves the use of solar energy systems, solar easements may be provided. Any such easements shall be in writing, and shall be subject to the same conveyance and instrument recording requirements as other easements.

(2) Any such easements shall be appurtenant; shall run with the land benefited and burdened; and shall be defined and limited by conditions stated in the instrument of conveyance. Instruments creating solar easement shall include but not be limited to:

(a) A description of the dimensions of the easement including horizontal and vertical angles measured in the degrees or the hours of the day, on specified dates, during which direct sunlight to a specified surface or structural design feature may not be obstructed.

(b) Restrictions on the placement of vegetation, structures and other objects which may impair or obstruct the passage of sunlight through the easement.

(c) Enumeration of the terms and conditions, if any, under which the easement may be revised or terminated.

(d) An explanation of the compensation for the owner of the real property subject to the solar easement for maintaining the easement and for the owner of the real property benefiting from the solar easement in the event of interference with the easement.

2. Amend §§ 190-11; 190-12; 190-14; 190-17; 190-18, "Schedule of Uses," by amending the Schedule of Uses chart set forth in Chapter 190 to indicate that "solar PV systems, principal use" is a permitted land use following special use permit approval in the Residential Forestry (RF); Residential Agricultural (RA); Residential Conservation (R2); Commercial (COM); and Industrial (IND) zoning districts.

3. Amend §§ 190-11; 190-12; 190-14; 190-17; 190-18, "Schedule of Uses," by amending the Schedule of Uses charts to indicate that "solar PV systems, by-right," "Building-Integrated PV Systems," and "Building Mounted Solar PV Systems" are permitted land uses in all zoning districts, provided the applicant satisfies all provisions of this law.

4. Amend §§ 190-11; 190-12; 190-13; 190-14; 190-15; 190-16; 190-17; and 190-18, "Schedule of Uses" by amending the Schedule of Uses chart to indicate that "Ground-Mounted Solar PV System, Small Scale," is a permitted land use following special use permit and site plan approval

in the Residential Forestry (RF); Residential Agricultural (RA); Medium Density Residential (MDR); Residential Conservation (R2); Residential Hamlet (RH); Commercial Hamlet (CH); Commercial (COM); and Industrial (IND) zoning districts, provided the applicant satisfies all provisions of this law.

### **SECTION III. SEVERABILITY**

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

### **SECTION IV. CONFLICT WITH OTHER LAWS**

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective law of the Town and the public shall apply.

### **SECTION V. REPEAL OF OTHER LAWS**

All local laws in conflict with provisions of this Local Law are hereby superseded. This Local Law supersedes any inconsistent provisions in Chapter 190 of the Town of New Scotland Code, relating to zoning.

### **SECTION VI. EFFECTIVE DATE**

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.

### **SECTION VII. AUTHORITY**

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

#### **1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board on \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board \_\_\_\_\_ on 20 \_\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the New Scotland Town Board \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20\_\_ of the Town of New Scotland was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_.

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20 \_\_\_\_, in accordance with the applicable provisions of law.

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\* **Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20 \_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_ of 20 \_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_, above.

\_\_\_\_\_  
New Scotland Town Clerk

(Seal)

Date: \_\_\_\_\_

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature \_\_\_\_\_  
New Scotland Town Attorney

Date: \_\_\_\_\_