

# Town of Berkshire Solar Energy Systems Law

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Be it enacted by the Town Board of The Town of Berkshire to declare its intent to protect the welfare of the citizens and to regulate and control the use of solar energy systems in the Town of Berkshire as follows:

Section I: Purpose and Intent:

This Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of the Town of Berkshire, including:

- A. Taking advantage of a safe, abundant, renewable and non-polluting energy resource while still protecting the rural character of the town;
- B. Mitigating negative impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- C. Avoiding negative impacts of Solar Energy Systems on the residents from such occurrences as decreasing property value, objectionable visual obstructions, and improper decommissioning;
- D. Creating synergy between Solar Energy Systems and other goals of the community pursuant to the Comprehensive Plan;
- E. Increasing economic and business opportunities in the region by furthering the installation of Solar Energy Systems;
- F. Ensuring New York State and local regulations are followed to provide a safe, efficient and beneficial resource to our town and its residents.

Section II: Definitions:

**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.

**PRIME FARMLAND OR FARMLAND OF STATEWIDE IMPORTANCE:** Land, as designated 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 importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

**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.

**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.

**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-roof mounted or building-integrated, Tier 2-residential ground-mounted, or Tier 3-typically larger system not included in Tier 1 or 2, Solar Energy Systems (more detail in Section III).

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

### Section III: Provisions and Requirements:

#### I. General Installation Requirement:

- A. An approved Building Permit shall be required for installation of all Solar Energy Systems.
- B. A Site Plan Review is not required for Tier 1 and 2 but is required for all Tier 3 Solar Energy Systems.
- C. All solar energy panels are required to have an anti-glare coating.

#### II. There are three (3) tiers of solar energy systems as identified by the New York State Energy Resource and Development Authority (NYSERDA). They differ primarily between onsite use, mainly for residential use, and larger solar energy systems. Additional design requirements are as follows:

##### A. Tier 1 - Roof Mounted or Building Integrated:

- 1) Pitched roof installations require
  - a) a maximum distance of 8 inches between the roof surface and the highest edge of the system,
  - b) need to be parallel to the roof surface,
  - c) shall not extend higher than the highest point of the roof.
- 2) Flat roof installation 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.
- 3) Building Integrated Energy Systems shall be shown on the plans submitted for the Building Permit application for the building containing the system including new construction plans.

##### B. Tier 2 - Ground Mounted for onsite or residential use:

- 1) Ground Mounted Solar Energy Systems are specified as accessory structures and shall meet height and distance from boundaries accordingly; Maximum fifteen(15) in height and a distance of ten (10) feet from a property line.
  - 2) A Ground Mounted Solar Energy System shall have views minimized from adjacent properties to the extent reasonably practicable and avoid distraction from vehicular traffic flow.
  - 3) Any system no longer producing electricity must be removed by the owner no later than 1 year after use of the system ceases.
- C. Tier 3 – Systems not covered by Tier 1 or 2, usually larger Solar Energy Systems installations, whose principal purpose is to transfer energy to the public electric grid:
- 1) A Site Plan application and Site Plan review are a required first step (See Site Plan Review Law).
  - 2) An application fee will be based on project size and will be assessed utilizing the costs as depicted on the current fee schedule.
  - 3) Should the Town determine that the project review requires the expertise of consulting engineers, the cost of such services shall be passed onto the developer.
  - 4) Complete design details and EAF (Environmental Assessment Form) will accompany the application.
  - 5) A screening & landscaping plan will 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. This plan shall include a landscaping buffer of 8-foot evergreens around all equipment and solar collectors that provides screening to minimize visibility of the solar energy system from adjacent residential properties and roads. Existing on-site trees and vegetation should be preserved to the maximum extent possible.
  - 6) A maintenance plan shall describe the maintenance and upkeep of the solar energy system, such as mowing and trimming. Maintenance of any landscaping buffer that involves trees is required. Trees must be inspected annually and must be healthy and growing or should be replaced. The applicant must demonstrate that all private access roads will be maintained in order to ensure access by emergency vehicles on a year-round basis.
  - 7) A 239-County Review may be required depending on location.
  - 8) Placement of system on property that consist of Prime Farmland or Farmland of Statewide Importance shall not exceed [50] % of the entire lot.
  - 9) The developer will provide the design and coordinate system functionality with the Code Enforcement Officer (CEO) and the utility provider. Tier 3 Systems shall have a maximum of fifteen (15) feet in height and a minimum distance of one hundred (100) feet from any boundary.
  - 10) All on-site utility lines shall be placed underground when feasible and as permitted by the serving utility.
  - 11) Disconnect and other emergency shutoff information shall be clearly displayed as required by the National Electric Code (NEC).

- 12) 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.
- 13) All mechanical equipment, including any structure for storage batteries, shall be enclosed by a [7-foot-high] fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
- 14) A decommission plan, signed by the owner and operator of the solar energy system, must be provided to the CEO prior to installation. The plan will include time requirements for removal of the solar energy system and for restoring property to as close to original condition as possible.
- 15) The responsible party will secure a bond for 150% of the estimated site reclamation cost. This bond will be secured by a financial institution agreeable to both parties. At least every two years, the applicant shall submit an analysis to confirm the sufficiency of the demolition bond and a report of the cost of removal and property restoration, which are to be performed by a professional engineer licensed in New York State, at the applicant's expense. If the analysis and report determine that the amount of the bond is insufficient to cover the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report.
- 16) Any system no longer producing electricity must be removed by the owner no later than 1 year after use of the system ceases. If the system is not removed by the owner after 12 months of abandonment, within 90 days thereafter, the town will remove the system and restore the property. The town reserves the right to impose a lien on the property to recover decommission cost minus any recycle revenue (any revenue in excess of cost will be designated as surplus).

Section IV: Exclusions:

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.

Section V: Administration and Enforcement:

This Local Law shall be enforced by the CEO when acting pursuant to his or her special duties and those assigned by Berkshire Local Law for Administration and Enforcement of New York State Uniform Fire Prevention and Building Code. The CEO shall work with the land owner and developers and monitor progress until the project is complete. The CEO is responsible for the overall inspection of site improvements including coordination with the Town Board and other officials and agencies, as appropriate.

Section VI: Enforcement Procedures:

- A. The CEO is the lead agent for the Town of Berkshire to assure appropriate building standards are followed to protect the town and its citizens. The CEO will refer to this

law and the New York State Uniform Fire Prevention and Building Code to issue building permits, stop work orders, and certificates of occupancy/compliance.

- B. Failure to obtain a building permit shall result in a stop work directive from the CEO until the required permit is approved. Noncompliance with this directive will result in a fine as stated in the Town of Berkshire Fee Schedule, as well as other actions the CEO may deem appropriate including legal action that includes the issuance of an appearance ticket.
- C. The CEO will monitor progress on the building project construction to ensure building standards are being met and will inspect the project at given intervals as described in the Site Plan Local Law and the Building Construction and Enforcement Local Law. The CEO will share the findings with the owner or builder.
- D. Violations will be documented, and if steps are not taken to remedy the situation, the CEO will issue a stop work order to bring the project back into compliance. If the situation is not remedied in 30 days, an appearance ticket will be issued.
- E. The CEO will act as prosecutor representing the Town of Berkshire in any court proceeding regarding the violation of the Building Code Local Law or this Local Law.

#### Section VII: Reference:

Berkshire Site Plan Local Law and the Building Construction and Enforcement Local Law  
General Municipal Law §239  
New York State Energy Resource and Development (NYSERDA) guidelines and regulations  
State Environmental Quality Review Act

#### Section VIII: Severability/Invalid Segments:

Should any section or provision of this local law be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this local law as a whole or any part thereof other than the part declared to be invalid.

#### Section IX: Penalties:

A violation of this Local Law shall constitute an offense punishable by a fine not to exceed \$1,000.00.

#### Section X: Effective Date:

This Local Law shall take effect immediately upon filing by the Secretary of State.