

**Local Law No. 1 for 2018**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF BERNE, NEW YORK AS FOLLOWS:

**SECTION 1. Title.**

This local law may be cited as the “Town of Berne Small Scale Solar Energy Law.”

**SECTION 2. Authority.**

The Town Board of the Town of Berne enacts this article under the authority granted by § 10 of the New York State Municipal Home Rule Law and the New York State Town Law.

**SECTION 3. Purpose.**

The purpose of this article is to provide for the construction and operation of small scale solar photovoltaic (PV) systems in the Town of Berne, subject to reasonable conditions that will protect the public health, safety and welfare, and reduce potential impacts to adjoining properties, and to be in accordance with the adopted Town of Berne Comprehensive Plan.

**SECTION 4. Definitions.**

As used in this section, the terms shall have the following meanings:

**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 transparent skylight systems, within roofing systems, replacing traditional roofing materials; or within other building envelope systems.

**DECOMMISSIONING:** The process of making a solar PV system inoperable, removal and proper disposal of all components, and remediating either the land upon which it was sited, and/or the building on or in which it was installed.

**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.

**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 one megawatt (MW).

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

**LOT COVERAGE:** Lot coverage shall also include the area covered by a solar panel or array as measured on a horizontal plane projected from the perimeter of said panel or array vertically to the ground. For panels or arrays 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 the kilowatt (kWh) generated from a solar PV system located at a specific site to be credited towards kWh of consumption at a different location.

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

**SOLAR PV SYSTEM, SMALL SCALE:** A solar PV system for residential, business, or farm use that has the capacity to generate no more than 110% of the electricity consumed over the previous twelve-month period by land use(s) existing on the lot where the system is located or on multiple lots in cases where remote net metering is allowed. For new construction that does not have a twelve-month log of electricity use, a projection of electricity use over the first twelve months shall be used. For the purposes of this law, all small scale solar PV systems shall be considered an accessory use.

**SOLAR ARRAY:** Any number of solar PV panels that are electrically connected together.

**SOLAR PANEL:** A large, flat piece of equipment containing PV cells that use the sun's light to create electricity. Also known as a solar module.

**SOLAR 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 storage and distribution of electrical energy. The solar PV cells, panels and/or arrays may be roof-mounted, ground-mounted or building-integrated.

## **SECTION 5. Applicability.**

- A. This law applies to roof-mounted, building-integrated and ground-mounted solar PV systems installed and constructed after the effective date of this law.
- B. This law also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity beyond the limits defined herein, location or placement of an existing solar PV system.

## **SECTION 6. Solar Use Schedule.**

The attached Solar Use Schedule is hereby adopted and declared to be part of this law. All solar PV systems shall be permitted in accordance with the Solar Use Schedule.

## **SECTION 7. Permits.**

- A. Permit requirement. No solar PV system shall be constructed, reconstructed, moved, or modifications to physical size, location or placement undertaken in the Town of Berne except by first obtaining a Town of Berne Small Scale Solar PV System Permit.

- B. Exemptions. Replacement in kind or repair of a solar PV system may occur without Planning Board approval when there shall be:
  - (1) No increase in total height,
  - (2) No increase in physical size,
  - (3) No change in location,
  - (4) No increase in rated capacity beyond the limits defined herein.
- C. Transfer. The transfer of any solar PV system or solar PV system permit, or sale of the entity owning such facility, shall not eliminate the liability of an applicant nor of any other party under this article.

**SECTION 8. Development standards.**

- A. All solar PV systems shall be installed by a qualified solar installer, as determined by the Building and Zoning department.
- B. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations and standards set forth in this law and any applicable federal, state, and county laws.
- C. Building-integrated solar PV systems.
  - (1) Building-integrated solar PV systems are permitted to face any rear, side, and front yard area, or installed as a roofing surface.
  - (2) Solar panels installed on the sides of buildings that are not designed and constructed as an integral part of the building are not considered building-integrated and are not permitted.
- D. Roof-mounted solar PV systems.
  - (1) Roof-mounted solar PV systems are permitted to face any rear, side and front yard area.
  - (2) Roof-mounted system installed on a sloped roof.
    - (a) The highest point of the system shall not exceed the highest point of the roof to which it is attached,
    - (b) Solar panels shall be parallel to the roof surface.
  - (3) 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. Ground-mounted solar PV systems.
  - (1) Location.
    - (a) Ground-mounted systems may be constructed in the side or rear yards in all zoning districts.
    - (b) Ground-mounted systems may be constructed in the front yard in in the RAF district upon site plan approval. The Planning Board may require screening as set forth in this section.
  - (2) Setbacks. Ground-mounted systems shall be set back no less than 100 feet from property lines.

- (3) Maximum height. The height of ground-mounted systems shall be measured when the array is at its maximum tilt.
  - (a) The height of ground-mounted systems permitted by-right shall not exceed 12 feet.
  - (b) Any ground-mounted system proposed for a height greater than 12 feet requires a site plan review pursuant to § 190-57 of the Berne Town Code. No permit may be granted for a ground-mounted system greater than 20 feet in height.
- (4) Screening. The Planning Board may require ground-mounted systems to be screened with architectural features, earth berms, trees, bushes or other methods which will harmonize the proposed structure with the character of the property and surrounding area and to reduce visibility from the road or neighboring lots.

F. By-right systems.

- (1) By-right solar PV systems shall not exceed a rated capacity of 25 kW. Proposed systems exceeding a rated capacity of 25 kW shall require a site plan approval pursuant to § 190-58 of the Berne Town Code.
- (2) Maximum capacity on a lot. No system shall be considered for by-right permitting if the total solar PV capacity on the lot on which it is to be situated exceeds 25 kW. All roof mounted, ground mounted, and building-integrated systems existing at the time of application, regardless of when said systems were installed, shall be included in this calculation. Such systems where the total solar PV capacity exceeds 25kW shall require a site plan approval. Such systems being proposed for farm use in a designated NYS Agricultural District shall only require a modified site plan approval as set forth in this law.

G. Systems requiring site plan approval.

- (1) Building-integrated and roof-mounted systems in an Historic District shall be subject to Planning Board review pursuant to § 190-21 of the Berne Town Code, and site plan approval.
- (2) Ground-mounted systems in any zoning district designed for a height greater than 12 feet when oriented at maximum tilt shall require site plan approval regardless of its location on the lot. No site plan shall be approved by the Planning Board for construction of a system greater than 20 feet in height when oriented at maximum tilt.

H. Systems requiring special use permit.

- (1) The following systems shall require the issuance of a special use permit by the Planning Board pursuant to § 190-64 of the Berne Town Code:
  - (a) Ground-mounted systems in the zoning districts designated in the SUS table.
  - (b) Roof-mounted systems on a flat roof.
- (2) The Planning Board may require review of the special use permit application by a qualified engineer in order to evaluate the need for, and the design of, the solar PV system. The cost of this review will be borne by the applicant.

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

J. Placement on nonconforming buildings. Notwithstanding the area, lot and bulk requirements of the Berne Town Code, building-mounted and building integrated solar PV systems may be installed:

- (1) On the roof of a nonconforming 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.
- (2) 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.
- (3) 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.

## **SECTION 9. Abandonment, Decommissioning, Removal.**

Any small scale solar PV system which has been abandoned must be removed. 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 and potential health impact on the Town. Abandoned PV systems may become unsafe by reason of their energy-producing capabilities and heavy metal and other toxic material components, and serve as an unattractive nuisance.

- A. Abandonment. A solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. If the Code Enforcement Officer receives a complaint of suspected abandonment, or requests access to inspect a solar PV system to assess whether it is functioning as designed, the property owner shall allow access to the property and system for testing. The Code Enforcement Officer may require the owner to produce proof of solar PV system functionality via reports from National Grid, NYSERDA, or other means.
- B. Removal required. A solar PV system which has been abandoned shall be decommissioned and removed. The 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.
- C. Permit Required. No solar PV system shall be decommissioned or removed except by first obtaining a Town of Berne Small Scale Solar PV System Decommissioning and Removal Permit.
- D. Decommissioning and Removal.
  - (1) Decommissioning and removal of a solar PV system shall consist of:
    - (a) Complete removal of all above-ground and below-ground equipment, including all solar PV modules, mounts, and other associated equipment,
    - (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 non-GMO plant species (excluding invasive species) to minimize erosion.
  - (2) Upon petition to the Planning Board, the Board may permit the system owner and/or landowner to leave certain underground or aboveground 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.

## **SECTION 10. Planning Board Action on a Modified Site Plan**

- A. The Planning Board shall, at the first regularly scheduled meeting held after submission of the modified site plan application, begin the review process. Incomplete applications shall be returned to the applicant, without prejudice, with a letter stating application deficiencies. No modified site plan application shall be deemed complete until the application form, fee, and site plan information described in this section have been accepted by the Planning Board.
- B. Once a complete application has been received, the Planning Board shall conduct its modified review and render a decision within 45 days unless an extended time frame is mutually agreed upon with the applicant. If the application is deemed complete, the Planning Board shall conduct its review and render a decision on the modified site plan at the first regularly scheduled meeting held after submission of the modified site plan application to the Planning Board. The Planning Board may hold a public hearing if deemed necessary. All requirements of SEQRA, Part 617 shall be met prior to decision.
- C. The Planning Board's action shall be in the form of a resolution stating whether the modified site plan is approved, disapproved or approved conditionally with modifications. Any modification required by the Planning Board shall be considered a condition for issuance of a building permit. If the modified site plan is disapproved, the Planning Board's resolution will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.
  - (1) Approval. Upon approval of the modified site plan and payment by the applicant of all fees due to the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall, within five (5) business days of its decision, file with the Town Clerk a copy of the approved resolution approving the modified site plan with the Building Inspector. A copy of the written statement of approval shall be mailed to the applicant. Upon approval of the modified site plan, the applicant shall be eligible for applying for a building permit if one is required.
  - (2) Approval with Modifications. The Planning Board may approve the modified site plan and require that specific modifications or conditions be made. A copy of the resolution of approval containing the modifications required by the Planning Board shall be mailed to the applicant and filed with the Town Clerk and the Building Inspector. The Building Inspector shall not issue a building permit until the modified abbreviated site plan has been reviewed and determined that the plan reflects modifications as required by the Planning Board.
  - (3) Disapproval. The Planning Board shall make a resolution if its decision is to disapprove the application. The resolution shall set forth the reasons for the Board's decision not to approve the application. Upon disapproval of the site plan, the Planning Board shall, within five (5) business days, file the resolution with the Town Clerk and Building Inspector. No building permit shall be issued when an abbreviated site plan has been disapproved.
  - (4) Extension of Time. The time period in which the Planning Board must render its decision on the modified site plan may be extended only upon mutual consent of the applicant and the Planning Board. Failure of the Planning Board to act within the 62-day time period specified or other time frame agreed upon between the applicant and Board, shall constitute Planning Board approval of the site plan as submitted or last amended, and shall be deemed automatic approval. An applicant's failure to follow through within the specified time period on submitting application requirements shall not be considered a failure of the Planning Board, and thus shall not be deemed automatic approval.

**SECTION 11. Enforcement**

Any violation if this Solar Energy Law shall be subject to the same civil and criminal penalties provided for in the zoning regulations of the Town of Berne.

**SECTION 12. Severability**

The invalidity or unenforceability of any section, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase which shall remain in full force and effect.

## Solar Use Schedule

Zoning District	RAF	MDR	NC	GC	TN/MU1	TN/MU2	HIST.
Building Integrated	P	P	P	P	P	P	P+
Roof Mounted	P	P	P	P	P	P	P+
Ground Mounted	P	P	X+	X+	X+	X+	X+

P Designates a use permitted by right

+ Designates a use subject to site plan approval by the Planning Board

X Designates a conditional use contingent upon securing a special use permit by the Planning Board