

**TOWN OF FRENCH CREEK  
LOCAL LAW NO. -- FOR THE YEAR 2021**

**A LOCAL LAW ENACTING A MORATORIUM ON COMMERCIAL SOLAR ENERGY FACILITIES**

**Section 1. Enactment and Title.**

The Town Board of the Town of French Creek does hereby enact the Town of French Creek Moratorium on Commercial Solar Energy Facilities Law. This Local Law shall impose a moratorium on applications or proceedings for applications for, the review of applications for, or the issuance of approvals or permits for the construction of any Commercial Solar Energy Facilities that are not Residential Solar Energy Installations, within the Town of French Creek.

The capitalized terms in the foregoing sentence, and as used throughout this local law, shall have the following meanings ascribed to them:

**Commercial Solar Energy Facilities-** Any collection of solar panels which are designed to capture photons or sunlight and transform it into electricity and any and all related infrastructure, electrical lines, substations, access roads and accessory structures that cover more than ¼ acre of land, which are designed with the intent of producing electricity to be consumed off site.

**Residential Solar Energy Installations-** Any collection of solar panels which are designated to capture sunlight and transform it into electricity and requires less than ¼ acre of land.

**Residential Solar Energy Installations** shall also include, for purposes of this local law, all traditional agricultural uses and alternative agricultural energy uses that are intended to principally generate power for the agricultural enterprise when located within a designated Agriculture District, or as otherwise protected or recognized under New York State Agriculture and Markets Law Article 25-AA, including, without limitation § 305(3), § 305(4) and § 305-a therein, and all implementing regulations and rules, and further including policies therein implemented and hereby adopted relative to supporting traditional and generally acceptable farming practices, further including but not limited to heat recovery from composting systems, biogas recovery systems, anaerobic digester gas-to-electricity systems, and other alternative energy systems that significantly support or advance agriculture and agribusinesses within the Town and its Agricultural Districts.

**Applicant-** All landowners and all those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract, or by owner's designation as an agent for purposes of making any application or any land use review or approval, whether for a permit or otherwise.

**Section 2. Authorization, Purpose and Intent.**

Pursuant to the authority and provisions of the New York State Constitution, and Section 10 of the Municipal Home Rule Law, and the statutory powers vested in the Town of French Creek to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board (the "Board") of the Town of French Creek hereby declares a moratorium through and including December 31, 2021, on applications or proceedings for applications for, the review of applications, or the issuance of approvals or permits for the construction of Commercial Commercial Solar Energy Facilities within the Town of French Creek (the "Town").

This moratorium will allow time for Town officials to review, clarify, amend, and update the Town's Regulations for commercial solar development. Additionally, this moratorium will allow the Town to adopt such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town and its citizens.

The Town has determined that recent technological advances in the manufacture and construction of solar energy generators render it necessary and advisable to reevaluate terms, requirements and conditions currently enacted or missing in Town renewable energy development land use regulations pertaining to Commercial Solar Energy Facilities. The Town Board desires to address, in a careful manner, the establishment, placement, construction, and development of Commercial Solar Energy Facilities through a comprehensive and up-to-date review of solar energy facilities and their effects on land use, orderly and planned development, and the public welfare.

**Section 3. Scope of Controls.**

During the effective period of this Local Law:

- A. The Town shall not conduct any review or consider or grant any special permit or other approval that will result in the approval, establishment or construction of any Commercial Solar Energy Facility within the Town.
- B. To the extent permitted by law, this moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town local law and any other applicable law, rule or regulation, that may be in conflict herewith. If any ambiguity or conflict exists, this local law shall govern and the presumption shall in each case be that the moratorium is in effect.

**Section 4. No Consideration of New, Revised, or Renewal Applications.**

No new, revised, or renewal applications shall be accepted for filing, review, or consideration, and no site plans, authorizations, special permits, permits, building permits, variances, waivers or other approvals that purport to allow or advance the development, siting, or construction of any Commercial Solar Energy Facility shall be undertaken, reviewed, considered or issued by any board, officer, employee or agent of the Town, except as specifically set forth in Section 10 of this local law. Nor shall any language or term in this moratorium affect, or be construed to result in, any default approval, and any matter now pending shall be stayed in place during the pendency of this moratorium, with all deadlines or other timelines suspended for the same number of days that this moratorium is in effect.

**Section 5. Term.**

The moratorium imposed by this Local Law shall be in effect through and including December 31, 2021. This moratorium may be extended, or rescinded or removed, by local law.

During the period of this moratorium the Town shall endeavor to adopt a comprehensive set of regulations for the siting, establishment, construction, and operation of Commercial Solar Energy Facilities.

**Section 6. Location.**

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town.. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the Chautauqua County Office of Assessment and the official New York corporate boundary maps for the Town.

**Section 7. Penalties.**

The following provisions shall apply generally, and the violation of this Local Law shall allow and permit enforcement in any one or more of the following manners:

- A. When any term, provision, or requirement of this Local Law is violated the Enforcement Officer may issue a written notice of violation to the Applicant (or other Person in violation hereof). The notice of violation shall contain; (i) the name and address of the Person alleged to have violated this Local Law; (ii) the address, when available, or a description of the building, structure or parcel upon which the violation occurred or is occurring; (iii) a brief statement specifying the nature of the violation; (iv) a statement of the fine or penalty that may or could be assessed against any Person to whom the notice of violation is directed; and (v) a clear statement identifying whether the notice commences or may commence a civil or criminal proceeding. The failure to comply with a written notice of violation by correcting the violation is in itself a separate violation of this Local Law and may be further enforced as such. In addition, Executive Law § 382 may be duly enforced separately from any such notice, and both notices may take the form of a single notice which must, in addition to the above, contain the information and be served as required by said § 382.
- B. The Enforcement Officer may issue stop work orders for violations of this Local Law. Any Person receiving a stop work order shall be required to halt all clearing, grading, construction, and any other or related activities, until the Enforcement Officer or a court of competent jurisdiction allows work to re-commence.
- C. The Town may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with, restrain by injunction the violation of any provision or requirement of this Local Law, including to prevent, enjoin, correct, enforce, or abate any violation of, or non-conformance with, any provision or requirement of this local law or the terms and conditions set forth in any waiver or approval issued hereunder. In any such proceeding the Town shall not be required to: (i) prove the lack of an adequate remedy at law; or (ii) to post a bond or other undertaking as a condition or requirement for any preliminary,

interim, or permanent restraining order or injunction. No such action or proceeding shall be commenced without the appropriate authorization from the Town Board.

- D. This Local Law may be enforced civilly or criminally by seeking fines, penalties, and like punishments to deter future violations and sanction offenders. All provisions of New York law and process generally applicable to misdemeanors shall apply to any criminal proceeding brought upon any violations of this Local Law, including for purposes of conferring jurisdiction. The following civil and criminal fines and penalties shall apply to any violation of the requirements or terms of this Local Law:
1. For a first offense, any Person that violates any of the provisions of this Local Law shall be (i) guilty of a violation and subject to a fine of not more than \$500, or (ii) subject to a civil penalty of not more than \$500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.
  2. For a second offense, being any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any violation of this Local Law, a Person shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500, or (2) subject to a civil penalty of not more than \$2,500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.
  3. The above fines are in addition to any penalty, fine, or sentence allowed or imposed pursuant to said Executive Law § 382.
- E. Upon any violation of this Local Law by an Applicant or any Person, the Town may, and the Enforcement Officer shall, decline and refuse to issue any approvals, endorsements, certifications, building permits, certificates of occupancy, certificates of compliance, and any similar or other document or approval until the Applicant or Person rectifies and cures such violation.
- F. Any Person violating this Local Law may be required to restore land to its prior or undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence any one or more civil proceedings in the Town Court, or any other court or tribunal of competent jurisdiction, to recover the costs of such restoration.
- G. For purposes of this Local Law the Justice Court of the Town is hereby vested and imbued with jurisdiction to: (i) issue administrative or other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York; and (ii) hear and

adjudicate allegations relating to the criminal or civil violation of this Local Law and to thereafter, if appropriate, impose any fine, penalty, or sanction.

- H. Criminal matters arising in relation to enforcement matters under this local law shall be and be classified as offenses per the following guidelines: (i) first offenses shall be deemed violations; (ii) second offenses shall be deemed unclassified misdemeanors; and (iii) violations of Executive Law § 382 shall be classified as set forth by New York State in such § 382.
- I. No remedy or penalty specified in this local law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirements of this local law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not in limitation of or in substitution for any other right or remedy of the Town, whether sounding in law, equity, or admiralty. Further, the election by the Town of any one right or remedy does not forestall or prevent the simultaneous or future election of any other right or remedy, whether relating to enforcement, sentencing, or otherwise.

**Section 8. Exemptions and Non-Conforming Uses.**

Notwithstanding any provision hereof to the contrary, any Commercial Solar Energy Facility that has already been issued all necessary approvals or permits from the Town (the "Town Approvals") may continue such projects and such support activities that are being conducted in the Town as of the effective date of this Local Law, so long as such supporting activities are in all respects being conducted in accordance with all applicable laws and regulations and any conditions of approval, including all Town Approvals. Such limited right to proceed when Town Approvals have been issued shall include the right to apply for and obtain a building permit, so long as the same is or are in conformance with any existing Town Approvals.

Any expansion of a lawful, pre-existing, non-conforming use shall not be grandfathered under this Section and instead shall in all respects be prohibited as contemplated by Section 3 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

**Section 9. Validity.**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

**Section 10. Hardship.**

The Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a waiver application of the provisions of this Local Law by persons aggrieved hereby.

No such waiver shall be granted by the Town without a showing by the Applicant that applicable regulations and restrictions have caused unnecessary hardship.

- A. Unnecessary Hardship. In order to prove such unnecessary hardship the Applicant is required to demonstrate to the Town Board that, with respect to every permitted use under Town land use, each of the following four criteria is satisfied: (i) the Applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by