

# **TOWN OF MALONE**

## **PROCESS FOR REVIEW OF LOCAL APPLICATIONS FOR SOLAR ENERGY – ROOF MOUNTED**

The Town of Malone researched and developed a zoning law applicable to solar energy systems. The law created substantive requirements applicable to all projects approved by the local government, as well as creating a process for review of smaller solar project applications subject to local review and approval.

Given New York State's policy goal to increase solar energy production by the year 2030, the Town anticipates an increasing number of applications for solar energy systems small enough to be subject to review and permitting by local government.

Attached are the local requirements for solar energy systems, and procedure for review consistent with the requirements of local laws. Attached is an application form and checklist.

### **1. Local Permitting Requirements for Solar Energy**

Local Law 2 of 2018, the Town of Malone Solar Energy Law ("Solar Law"), sets forth substantive standards and permitting requirements for Solar Energy Systems. The law provides for roof mounted and ground mounted solar energy systems. A copy of the Solar Energy Law is posted on the Town's website: [malonetown.com](http://malonetown.com).

Roof Mounted Solar Energy Systems are permitted accessory uses in all zoning districts so long as certain requirements are met and the applicant receives a Zoning Permit from the Code Enforcement Officer. The Substantive requirements for a Roof-Mounted system are as follows:

- a. All documents identified in Application for Zoning Permit for a Roof Mounted Solar Energy System
- b. Checklist – Requirements for Zoning Permit Application for a Roof Mounted Solar Energy System
- c. Application for a Zoning Permit for a Roof Mounted Solar Energy System with required fees and deposits as required by the Solar Energy Law

The Zoning Officer determines whether the Solar Energy System complies with the requirements of Solar Energy Law § 6D.

If the System complies with the Solar Energy Law, the Zoning Officer issues a Zoning Permit under Solar Energy Law § 6B and Zoning Code § 79.19.

## Application for Zoning Permit for a Roof Mounted Solar Energy System

Before approval and issuance of permit(s) for a Roof-Mounted Solar Energy System, the applicant shall submit:

### 1. Roof Mounted Solar Energy System Permit Application Requirements Checklist

#### 2. Three (3) sets of plans which include:

- Cover Sheet must include the following: (a) Project address, map, section, block and lot # of the property; (b) Owner's name, address, phone number, (c) Name, address and phone number of the person preparing the plans;
- Sheet index indicating each sheet title and number;
- Legend for symbols, abbreviations and notations used in the drawings;
- Configuration diagrams prepared by a Professional Engineer or Registered Architect which are sketched (hand-drawn or better) as follows:
  - **Roof Diagram** depicting modules or collectors and racking configuration on designated surface(s) to scale and dimensioned. The diagram should include any clearance/access required
  - **Equipment Location Diagram** indicating the location(s) of the (1) modules or collectors; (2) main electrical service; (3) inverter(s); (4) the location of all equipment disconnects on the outside of the structure (i.e. A/C disconnect); (5) any interior equipment locations
  - **One- line standard electrical diagram**
- Property Survey (only if system is proposed for an accessory structure)

### 3. Roof Mounted Solar Energy System Permit Application Information Sheet

### 4. Workers Compensation (Town of Malone as Certificate Holder)

**Checklist - Requirements for Zoning Permit Application for a Roof Mounted Solar Energy System**

Factor	Yes	No	N/A
Is it attached to a lawfully permitted building or structure?			
Does it comply with setback restrictions of underlying zoning district? Solar Energy Law §6D1			
Is it 8" or less in height between the surface of the roof on which it is mounted and the highest edge of the system? Solar Energy Law §6D2			
Is it on a sloping roof? If so, is it mounted at the same angle as the roof's surface (i.e. parallel to the roof surface on which they are mounted or attached)? Solar Energy Law §6D3a			
Is it on a flat or near flat roof? If so, does it have a perimeter area around the edges of the roof for emergency access and maintenance work? Solar Energy Law §6D3b			
is it screened by a parapet wall or other approved screening materials at an equal height as the top of the panels? Solar Energy Law §6D4			
Fees and Deposits. Solar Energy Law §8 and 9C			
Written certification that the Solar Energy System is designed and will be constructed ("as built") to meet all local, county, state, and federal structural requirements for loads, including wind and snow loads. Solar Energy Law § 9D.			

\_\_\_\_\_

Property Owner's Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Solar Installation Contractor Signature

\_\_\_\_\_

Date

**Application for a Zoning Permit for a Roof Mounted Solar Energy System**

1. Property Owner \_\_\_\_\_ Tax Account No. \_\_\_\_\_

2. Property Address: \_\_\_\_\_ Phone # \_\_\_\_\_

3. Email: \_\_\_\_\_

**4. Solar Installation Contractor:**

Business Name & Address: \_\_\_\_\_

Contact Name Phone #: \_\_\_\_\_

5. What is the existing roofing material? \_\_\_\_\_

6. Provide a letter from a Professional Engineer or Registered Architect certifying that the existing structure can support the additional gravity and wind loads of the solar energy system.

7. Provide an installation manual (or the internet address of a web-based version) for the mounting system.

8. Indicate type, brand and model size and weight including manufacturer's specification sheets of the:

Mounting System: \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_ Mounting Method \_\_\_\_\_

Inverters: \_\_\_\_\_

Quantity \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

Modules: \_\_\_\_\_

Quantity \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Solar Installation Contractor Signature

\_\_\_\_\_  
Date

**Local Law Number 2 of 2018**

**Town of Malone Solar Energy Law**

**1. Authority**

This Solar Energy Law is adopted pursuant to New York State Municipal Home Rule section 10(ii)(a)(12) which authorizes the Town of Malone ("Malone" or the "Town") to adopt and amend local laws that are not inconsistent with the State Constitution nor general law and that are related to the government, protection, order, conduct, safety, health, and well-being of persons or property of the Town. In the alternative, this Solar Energy Law is adopted pursuant to the Town's general power to enact local laws relating to the government, protection, order, conduct, safety, health, and well-being of persons or property within a municipality granted directly to local governments by the People of the State of New York through Article IX, Sections 1(a) and 2(c) of the New York State Constitution. The law is also adopted pursuant to the supersession authority granted by New York Municipal Home Rule Law, § 10, Subdivision(1)(ii)(d)(3).

**2. Purpose**

The purpose of this Solar Energy Law is to plan for well-sited solar projects to protect and promote the health, safety, and welfare of the community. The objectives include:

- A. To protect and promote the farmland and agricultural economy and culture.
- B. To ensure farmland and agricultural land are put to their highest and best use.
- C. To protect and promote scenic and environmental resources by minimizing Solar Energy Systems' impacts on Malone's scenic and environmental resources such as the Adirondack Scenic Byway, flood plains, historic sites, conservation easements, trails, parklands, wetlands, wildlife and scenery, and areas for recreational and outdoor activities.
- D. To protect public resources by minimizing Solar Energy Systems' impacts on airports and other government lands.
- E. To allow local residents, farms, businesses, and government to take advantage of a safe, abundant, renewable, and non-polluting energy resource in a way that is consistent with the nature and character of the Town.

### **3. Definitions**

- A. Applicant – The individual/individuals or entity/entities that apply for any state or local government permit or permission for the installation of a Large-Scale Solar Energy System.
- B. 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 material, or shading over windows.
- C. Farmland of Statewide Importance – Land designated as “Farmland of Statewide Importance” in the U.S. Department of Agricultural Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey. Farmland of Statewide Importance is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.
- D. Ground-Mounted Solar Energy System – Any Solar Energy System other than a Building Integrated Solar Energy System or Roof-Mounted Solar Energy System.
- E. Large-Scale Solar Energy System – Any Ground-Mounted Solar Energy System with more than 2,000 square feet of Solar Panel surface area.
- F. Non-designated Farmland – Land used for agricultural purposes but not designated as Farmland of Statewide Importance, Prime Farmland, or Town Agricultural Land.
- G. Prime Farmland – Land designated as “Prime Farmland” in the U.S. Department of Agricultural Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey. Prime Farmland has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.
- H. Roof-Mounted Solar Energy System – A Solar Energy System located on the roof of any legally permitted building or structure where the Solar Panels are wholly contained on the rooftop of the building or structure.
- I. Size – The name plate generating capacity of a Solar Energy System.

- J. Solar Energy Equipment – Electrical material, hardware, inverters, conduit, storage devices, or any other equipment associated with the production, storage, or transmission of electricity produced from solar energy.
- K. Solar Panel – A device capable of collecting and converting solar energy into electricity.
- L. Solar Energy System – The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, Solar Panels and Solar Energy Equipment.
- M. Project Site – The physical area needed for a Solar Energy System including any setbacks, buffers, fencing, roads, screening, support facilities, and Solar Energy Equipment.
- N. Town Agricultural Land – Land identified as actual or proposed “Agricultural Properties” in “Town of Malone Land Use Plan Map,” available at, [http://www.malonetown.com/PDF/Planning%20&%20Zoning/malps\\_malonetownplan\\_may2007.pdf](http://www.malonetown.com/PDF/Planning%20&%20Zoning/malps_malonetownplan_may2007.pdf)

#### **4. Applicability**

- A. This law shall apply to all Solar Energy Systems installed or modified after this law’s effective date.
- B. Any modifications to existing Solar Energy Systems that increase the Project Site shall be subject to this Local Law.
- C. This law does not apply to general maintenance or repair of existing Solar Energy Systems, or to Building Integrated Solar Energy Systems.
- D. The procedural and substantive components of this law shall apply regardless of any contract, easement, or license that may exist between the Applicant and any other landowner in the Town.

#### **5. Special Requirements for Large-Scale Solar Energy Systems**

- A. All Large-Scale Solar Energy Systems, regardless of size, and regardless of whether siting approval is granted by the Town or State government, shall be subject to the following requirements:
  - 1. Setback. Large-Scale Solar Energy Systems shall comply with the setback requirements set forth in the underlying zoning district.

2. Height. Large-Scale Solar Energy Systems shall not exceed a height – from the highest natural grade below each Solar Panel – of 10 feet in Residential Districts or 15 feet in all other Districts.
3. Location. Large-Scale Solar Energy Systems shall not be located in the following areas:
  - a. Prime Farmland, Farmland of Statewide Importance, and/or Town Agricultural Land.
  - b. The Adirondack Scenic Byway area as designated by the Scenic Corridor area on the “Town of Malone Land Use Plan Map,” *available at*,  
[http://www.malonetown.com/PDF/Planning%20&%20Zoning/maps\\_malonetownplan\\_may2007.pdf](http://www.malonetown.com/PDF/Planning%20&%20Zoning/maps_malonetownplan_may2007.pdf)
  - c. Areas including flood plains, historic sites, airports, government lands, conservation easements, trails, parklands, and wetlands as identified by the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.
  - d. On slopes greater than fifteen percent (15%), unless the Applicant can demonstrate through engineering studies and to the satisfaction of the Town Engineer that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
4. Sound. No Large-Scale Solar Energy System shall produce average daytime sound levels at the exterior wall of any residence or occupied structure greater than 35 dBA Leq, or average nighttime sound levels greater than 25 dBA Leq, or maximum sound level of 45 dBA (LfMax) measured using 1/8th second samples. If audible tones are present a 5 db penalty shall be applied to all sound measurements.
5. Lighting. Any outdoor lighting shall be designed to minimize the effect on any person, property, structure, road, vehicle, business, leisure activity, agriculture, parkland, sensitive resource, commercial or



transportation activity, or any other entity or activity identified by the Town Board. Motion-activated or staff-activated security lighting on or around the Project Site or accessory structure entrance shall not project off the Project Site and shall only be activated when the fenced perimeter has been entered.

6. **Parking.** For sites where the Large-Scale Solar Energy System is the primary use, equipment and vehicles not used in direct support, renovations, addition, or repair of the Large-Scale Solar Energy System shall not be stored or parked on the site.
7. **Access.** A locked gate at the intersection of the access way and a public road shall be required to prevent unauthorized vehicle entry. Such gate shall be located entirely upon the lot and not on the public right-of-way. Adequate emergency access shall be provided, as determined by the Town Board after consultation with the Applicant, relevant law enforcement, and first responder agencies.
8. **Fencing.** Large-Scale Solar Energy Systems shall be surrounded by a fence sufficient to protect the public and prevent unauthorized access, and high enough to be visible in deep snow cover. Fencing shall have warning signs with the owner's or operator's name and emergency contact information, which shall be placed on any Project Site access point and on the perimeter fencing as deemed appropriate by the Town Board.
9. **Screening.** Large-Scale Solar Energy Systems shall be surrounded by vegetative, native, noninvasive screening and landscaping, even if screening results in the shading of Solar Panels.
10. **Project Site maintenance.** the Project Site shall be maintained in a safe, neat and orderly condition. Grass and other vegetation shall be mowed and trimmed to prevent the appearance of overgrowth, and snow shall be removed from all access ways both to and within the Project Site to facilitate emergency access.
11. **Minimal Visual Impacts.** Large-Scale Solar Energy Systems shall be designed and constructed in a

manner which preserves natural vegetation and has the least visual effect practicable on the environment, as determined by the Town Board based on site specific conditions, including topography, use of contiguous properties, location of structures, proximity to vehicles on or off the road, visibility to air traffic, and use of adjacent land by other possible impacted entities.

**12. Other Visual and Safety Requirements for Large-Scale Solar Energy Systems:**

- a. Electrical transmission lines and cables shall be buried underground.
- b. No new utility poles shall be erected.
- c. Any glare produced shall not impair or make unsafe the use of contiguous properties and their structures, vehicles on or off the road, air traffic, or uses by other possible impacted entities as determined by the Town Board.
- d. Guy wires shall not be used to support any component of any Solar Energy System.

**13. Additional standards. Large-Scale Solar Energy Systems shall:**

- a. Conform with all federal and state laws and all applicable rules and regulations promulgated by any federal or state agencies having jurisdiction.
- b. Comply with all other requirements of the Town of Malone Zoning Law and applicable guidelines unless expressly superseded by this law.
- c. Conform with all adopted plans of the Town of Malone.
- d. Be built, operated, and maintained to acceptable industry standards, including the most recent, applicable standards of the Institute of Electric and Electronic Engineers ("IEEE") and the American National Standards Institute ("ANSI").

14. Reimbursement for review of Application for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 Public Service Law. The Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law complies with this law's substantive provisions.

**6. Permitting Requirements and Additional Requirements for Solar Energy Systems**

- A. This section is intended to provide substantive requirements for the Town to review applications for permits for Solar Energy Systems less than 25 megawatts ("MW") in Size, as well as to provide additional substantive requirements for siting Solar Energy Systems of all Sizes, whether or not the Town has final siting approval authority.
- B. Zoning Permit Required. A Zoning Permit issued by the Town of Malone shall be required prior to the installation of any Solar Energy System less than 25 MW in Size.
- C. Special Use Permit Required. In addition to a Zoning Permit, a Special Use Permit shall be required prior to the installation of a Large-Scale Solar Energy System less than 25 MW in Size.
- D. Roof-Mounted Solar Energy Systems attached to any lawfully permitted building or structure shall be permitted as an accessory use in all zoning districts and exempt from site plan review under the local zoning code or other land use regulation, so long as the Roof-Mounted Solar Energy System complies with the following design requirements:
  - 1. Setback. Roof-Mounted Solar Energy Systems shall adhere to the setback restrictions of the underlying zoning district.
  - 2. Height. Roof-Mounted Solar Energy Systems shall have no more than 8 inches between the surface of the roof on which it is mounted and the highest edge of the system.
  - 3. Installation. Roof-Mounted Solar Energy Systems installed on a:

- a. sloping roof shall be mounted at the same angle as the roof's surface (i.e. parallel to the roof surface on which they are mounted or attached).
  - b. flat or near flat roof there shall be a perimeter area around the edges of the roof for emergency access and maintenance work. The Enforcement Officer may require larger buildings to have internal walkways to equipment, access hatches, stairways, ladders, and other roof penetrations or equipment.
4. Screening. Panels installed on a flat or near flat roof shall be screened by a parapet wall or other screening materials approved by the Enforcement Officer, which is at an equal height as the top of the panels.

E. Ground-Mounted Solar Energy Systems with a total surface area of all Solar Panels 2,000 square feet or less shall be permitted in all zoning districts as accessory structures and shall be exempt from site plan review under the local zoning code or other land use regulations, so long as it complies with the following design requirements:

1. Setback. Such Solar Energy System shall adhere to the setback restrictions of the underlying zoning district.
2. Height. Such Solar Energy System's height—from the highest natural grade below each solar panel—shall not exceed 10 feet in Residential Districts or 15 feet in all other Districts.
3. Yard Location. Such Solar Energy System in Residential Districts shall be installed in the side or rear yards.
4. Lot Coverage. Such Solar Energy System Project Sites shall not exceed 20% of their lot.
5. Screening. Such Solar Energy System shall be located in a way that the Enforcement Officer approves as reasonably avoiding and/or minimizing impacts of views from surrounding properties and reasonably minimizing changes in shading for adjoining properties.

6. Location. Such Solar Energy System shall not be located in the following areas:
- a. Prime Farmland, Farmland of Statewide Importance, and/or Town Agricultural Land.
  - b. The Adirondack Scenic Byway area as designated by the Scenic Corridor area on the "Town of Malone Land Use Plan Map," available at, [http://www.malonetown.com/PDF/Planning%20&%20Zoning/maps\\_malonetownplan\\_may2007.pdf](http://www.malonetown.com/PDF/Planning%20&%20Zoning/maps_malonetownplan_may2007.pdf)
  - c. Areas including flood plains, historic sites, airports, government lands, conservation easements, trails, parklands, and wetlands as identified by the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.
  - d. On slopes greater than fifteen percent (15%), unless the Applicant can demonstrate through engineering studies and to the satisfaction of the Town Engineer that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
- F. Large-Scale Solar Energy systems with Solar Panel surface area larger than 7000 Square Feet are inconsistent with the community character and land-use plan of the Town of Malone and are not a permitted use in any zoning district within the Town.
- G. Large-Scale Solar Energy Systems with a Solar Panel surface area less than 7000 Square Feet are permitted as principal and accessory uses through the issuance of a Special Use Permit as approved by the Town Board with prior review and recommendations on the Site Plan by the Planning Board.
- H. In addition to complying with all other requirements applicable to Large-Scale Solar Energy Systems, such systems requiring a Special Use Permit shall also meet the following requirements:
1. Applications for installing a Large-Scale Solar Energy System shall be reviewed by the Zoning Officer and referred, with comments, to the Town Planning Board for its review and recommendation. The Town Planning Board's recommendations, along with the

Zoning Officer's comments, shall be referred to the Town Board for its review and action.

2. Any new Solar Energy System proposed as an extension or addition of an existing Solar Energy System shall require de novo review of all projects as a single new project. The standards set forth in this law shall apply to the combined attributes of an existing and any proposed associated Solar Energy System.
  3. No Special Use Permit, Special Use Permit renewal, or Special Use Permit amendment relating to a Large-Scale Solar Energy System shall be granted by the Town Board unless the Applicant demonstrates that the Large-Scale Solar Energy System meets the requirements set forth in this Law.
  4. An application for a Special Use Permit for a Large-Scale Solar Energy System shall be a Type I action under the State Environmental Quality Review Act ("SEQRA").
  5. The Town, at the expense of the Applicant, may employ its own technical consultant(s) and attorneys to examine the application and related documentation and make recommendations as to whether the criteria for granting the Special Use Permit have been met, including whether the Applicant's conclusions regarding safety analysis, visual analysis, structural inspection, and stormwater management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.
- I. Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit the following:
1. A completed project application form in such detail and containing such information as the Town Board may require.
  2. A Full Environmental Assessment Form ("EAF") for the proposed Large-Scale Solar Energy System, which the Town Board shall require in fulfillment of the State Environmental Quality Review Act ("SEQRA"). The Town Board shall also require the submission of a

more detailed visual impact analysis to be provided with the completed Full EAF.

3. Evidence that each of the requirement in this law's Special Requirements for Large-Scale Solar Energy Systems section will be met.
4. A site plan that includes:
  - a. Name, address, and phone number of the person preparing the reports.
  - b. Postal address and Tax Map parcel number of the property or properties.
  - c. Zoning district(s) in which the property is situated.
  - d. Exact location including geographic coordinates of the proposed Large-Scale Solar Energy System including any Solar Panels, Solar Energy Equipment, and extensions to any interconnection equipment if applicable.
  - e. Onsite and adjacent areas, containing Farmland of State Importance, Prime Farmland, Town Agricultural Land, Non-designated Farmland, Adirondack Scenic Byway, slopes greater than 15%, flood plains, historic sites, and sites or structures eligible for listing on the state or national registry, airports, other government lands, conservation easements, trails, parkland, cemeteries, schools, assisted living facilities or nursing homes, hospitals, and wetlands as identified by the New York State Department of Environmental Conservation, or the United States Army Corps of Engineers. For the purposes of this section "onsite and adjacent areas" shall mean any area on the lot(s) where a Project Site is located, and any area on any lot from which any component of the Solar Energy System is visible.
  - f. Location of all structures, whether inhabited by people or not, and located on the lot(s) where a Project Site is located, or on any lot from which any Solar Energy Equipment is visible.

5. Details of the Large-Scale Solar Energy System including:
- a. Maximum height of any component of the Large-Scale Solar Energy System.
  - b. An equipment specification sheets for all Solar Panels, Solar Energy Equipment, interconnection equipment and extensions thereto, mounting systems, and any other significant components to be installed.
  - c. The size in acres and square feet of the Project Site.
  - d. The total nameplate generation capacity of the Solar Energy System.
  - e. Location, type, and intensity of any lighting on the site.
  - f. Information concerning the property boundaries and names of all adjacent landowners, including any adjacent landowners who may have entered into any agreement with respect to the proposed Solar Energy System or project.
  - g. Documentary evidence of the legal consent of every property owner who has a contractual interest in the proposed project, including copies of easements, lease agreements, licenses, and other written agreements.
  - h. A description of how emergency access to the Project Site will be accommodated, which and including a description of the vehicle size limitations, access ways for vehicles and helicopters, firefighting capabilities, and other prominent features.
  - i. A maintenance plan providing for property upkeep such as snow removal, mowing and trimming.
  - j. Location, nature, and extent of any proposed:
    - i. Fencing, landscaping, and screening.
    - ii. Utility easements, access roads, or drives.
  - k. Glare assessment and any mitigation efforts that may be utilized to minimize glare.



- l. A plan for clearing and/or grading the site and a Stormwater Pollution Prevention Plan (SWPPP) for the site.
  - m. Blueprints and site plan for the Large-Scale Solar Energy System, which shall bear the seal of an engineer licensed to practice in New York State.
  - n. The Town Board may require additional information, such as line-of-sight drawings, detailed elevation maps, visual simulations, before and after renderings, and alternate designs to more clearly identify adverse impacts for the purpose of their mitigation.
  - o. Decommissioning plan as set forth in this law.
- J. The Town Board may impose conditions on its approval of any Special Use Permit under this section to enforce the standards of this Local Law or to discharge the Town Board's obligations under SEQRA.
- K. Upon review of the application, the Town Board may approve, approve on conditions, or deny the application.

## **7. Abandonment and Decommissioning**

- A. Decommissioning Plan and Cost Estimate. The Applicant shall include with its application a detailed written plan with an estimate, in current dollars, of the cost of hiring a third party to decommission the Large-Scale Energy System.
1. At a minimum, the decommissioning plan and cost estimate shall include the cost to load, transport, and dispose of the Large-Scale Energy System components from the Project Site, and a planned timeframe for each of these steps. Cost estimates shall also include or reflect the design, materials, equipment, labor, administration, and quality assurance for decommissioning.
  2. The decommissioning cost estimate shall not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the Large-Scale Solar Energy System at the time of

decommissioning.

3. The total decommissioning cost estimate shall be increased by a contingency factor of 25%.
4. The supporting documentation used to substantiate the cost estimates shall be submitted with the cost estimates to the Town Board for review and approval.

**B. Letter of Credit.**

1. No Large-Scale Solar Energy System shall be built unless the Applicant has obtained and submitted to the Town of Malone an irrevocable letter of credit for decommissioning the Large-Scale Energy System, which conforms to the requirements of this Local Law. The letter of credit shall be effective no later than the date the building permit for the Large-Scale Solar Energy System is issued. The issuing institution shall be an entity that has the authority to issue letters of credit. The original letter of credit shall be submitted to the Town Board for review and approval along with evidence or a certification by the issuing institution that the institution meets the requirements of this Local Law.
2. The letter of credit shall name the Town of Malone, New York, as the sole beneficiary.
3. The letter of credit shall be accompanied by a letter from the Applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the Solar Energy System and the amount of funds.
4. The letter of credit shall be irrevocable and issued for a term greater than or equal to a period of at least one year in an amount at least equal to 125% of the current cost estimate for decommissioning the Large-Scale Solar Energy System.
5. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has

cancelled the letter of credit in accordance with the conditions for cancelation set forth in this Local Law.

6. The letter of credit shall be renewed each year until the project is decommissioned in accordance with this law.
7. Any notice of cancellation, reinstatement, or any other changes to the letter of credit shall clearly identify each owner or operator for which the letter of credit provides financial assurance, including the name and address of the owner or operator, and the name, address, and amount assured for the Large-Scale Solare Energy System.
8. If the issuing institution cancels a letter of credit, or decides not to extend the letter of credit beyond the expiration date, then the following process is required:
  - a. The issuing institution shall send a notice of cancellation by certified mail to the owner or operator and to the Town Board 120 days in advance of cancellation.
  - b. The owner or operator shall obtain a new letter of credit and submit it, along with other documentation required by this Law to be submitted along with a letter of credit, to the Town Board within 90 days after both the Town Board and the owner or operator receive the notice of cancellation from the issuing institution.
  - c. Town Board shall review the letter of credit and accompanying documentation and determine whether to grant written approval of the new letter of credit. If the Town Board does not approve of the letter of credit, the owner operator shall obtain a new letter of credit that complies with the requirements of this law, and new letter of credit shall remain subject to the approval of the Town Board.
9. The letter of credit may only be cancelled under the following conditions:

- a. The Town Board authorizes cancellation in advance and in writing and the owner or operator substitutes a new letter of credit in compliance with this law; or
  - b. The owner or operator is no longer required to demonstrate financial assurance because the project has already been decommissioned and the project site has been adequately remediated to its pre-project condition.
10. The letter of credit may be drawn upon under the following conditions:
- a. Following a Town Board determination that the owner or operator has failed to perform decommissioning according to the decommissioning plan or provisions of this law, the Town Board may draw on the letter of credit and restore the site in accordance with the decommissioning plan or the condition of the property as it existed before the Large Solar Energy System was installed.
  - b. The Town Board will draw on the letter of credit if, within 90 days of receiving a notice of cancellation from the issuing institution, the owner and operator has failed to obtain a new letter of credit and written Town Board approval in accordance with this Local Law. The Town Board may delay the drawing if the issuing institution grants an extension of the term of credit. During the last 30 days of any extension the Town Board will draw on the letter of credit if the owner or operator has failed to obtain a new letter of credit and written approval of the assurance from the Town Board.
  - c. Payments made under the terms of the letter of credit will be deposited as directed by the Town Board. Payments from the letter of credit proceeds shall be approved in advance by the Town Board in writing.
- C. Upon cessation of electricity generation or maintenance of any Solar Energy System for 6 continuous months, the Town may notify and instruct the owner and/or operator of the Solar Energy System shall implement the decommissioning plan. The decommissioning plan shall be completed within 180 days of notification.

## **8. Fees and Deposits**

- A. The fees for a Special Use Permit, Site Plan Review, and Zoning Permit for a Solar Energy System shall be set from time to time by Town Board resolution.
- B. The Applicant for either state or local siting approval shall deliver to the Town Board, along with its application if local approval is sought, and concurrent with the filing of an Article 10 Application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"). This sum shall be held by the Town in a non-interest-bearing account, and these funds shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in application review if a local permit is sought, and to pay consultants and attorneys engaged by the Town to assist in review of an Article 10 Application should awarded intervenor funds be insufficient to fully participate in the Article 10 Process, or should intervenor funds be otherwise exhausted. Following the grant or denial of the state or local application, the Town shall return to the Applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants.

## **9. Zoning Permits and Special Use Permits**

- A. A holder of a Zoning Permit and/or Special Use Permit from the Town Board for a Solar Energy System shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code and shall maintain the same, in full force and effect, until the Solar Energy System is decommissioned.
- B. A holder of a Zoning Permit and/or Special Use Permit from the Town Board for a Solar Energy System shall construct, operate, maintain, repair, provide for removal of, modify, or restore the permitted Solar Energy System in strict compliance with all applicable technical, safety, and safety-related codes adopted by the Town, County, State, or United States, including the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

- C. Unless waived by the Town Board, there shall be a pre-application meeting for the Zoning Permit application for a Solar Energy System that requires a Special Use Permit or Site Plan review. The purpose of the pre-application meeting will be to address issues which will help expedite the review and permitting process. The pre-application meeting may also include a site visit at the Town Board's discretion. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the Applicant.
- D. The Applicant shall furnish written certification that the Solar Energy System is designed and will be constructed ("as built") to meet all local, county, state, and federal structural requirements for loads, including wind and snow loads. If the Solar Energy System is subsequently approved and constructed, similar as-built certification indicating that it has been constructed in accordance with all standards shall be furnished prior to the Town issuance of any certificate of occupancy or compliance.
- E. After construction and prior to receiving a certificate of occupancy or compliance, the Applicant shall furnish written certification that the Solar Energy System is grounded and bonded to protect persons and property and installed with appropriate surge protectors by a certified and approved NYS Licensed Electrical Inspector.

#### **10. Right to Inspect**

- A. In order to verify that the Solar Energy System's owner or operator and any and all lessees, renters and/or operators of the Solar Energy System place, construct, modify, and maintain the Solar Energy System in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances, regulations, and other applicable requirements, the Town may inspect all facets of the Solar Energy System's placement, construction, modification, and maintenance.
- B. Any inspections required by the Town that are beyond the Town's technical expertise or ability shall be conducted by third parties at the expense of the Applicant.

#### **11. Effective Date**

This Local Law shall take effect upon filing in the office of the Secretary of State.

## **12. Severability**

If any section, subsection, paragraph, sentence, clause, provision, or phrase of this Local Law is declared by the valid judgement of any court or administrative body of competent jurisdiction, to be unconstitutional, void, waived, preempted, or not applied, such declaration or judgment shall not affect the validity or enforcement of this law as a whole or any other part thereof, which shall remain in full force and effect.

## **13. Prior Local Law.**

This Local Law shall supersede or repeal any prior inconsistent Local Solar Energy Law enacted by the Town.

Irrevocable Letter of Credit

[Name and address of banking establishment]

[Date]

Town Supervisor  
Town of Malone  
27 Airport Road  
Malone, New York 12953

Re: Letter of Credit No. \_\_\_\_\_

Dear Town of Malone Supervisor:

We hereby establish and open our Irrevocable Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [insert amount of dollars in words] U.S. dollars (\$), available upon presentation of:

(1) your sight draft, bearing reference to this Letter of Credit No. \_\_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Town of Malone Solar Energy Law."

This letter of credit covers decommissioning at the following [facility or facilities]:

[identify each of the owner's or operator's facilities by name and address, and the amount for each].

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date thereafter, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail, return receipt requested, that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight



draft and the above-referred-to signed statement for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

The [insert name of bank issuing letter of credit] agrees that whenever this letter of credit is drawn on, under and in compliance with the terms of this letter of credit, that [insert name of bank issuing letter of credit] shall duly honor such draft upon presentation to [insert name of bank issuing letter of credit] and the [insert name of bank issuing letter of credit] shall deposit the amount of the draft into the standby trust fund of [owner's or operator's name] or the amount will be otherwise disbursed in compliance with the Town of Malone's instructions.

We certify that the wording of this letter of credit is identical to the wording identified in the Town of Malone Solar Energy Law.

Very truly yours,

[Insert name of bank issuing credit]

By: \_\_\_\_\_

[insert name and Title of authorized employee or officer of bank issuing letter of credit.]

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

This credit is subject to the most recent edition of the Uniform Commercial Code of the State of New York.

## RESOLUTION 294 -2020

### Applications for Zoning Permit pertaining to Solar

Resolved to approve the applications to be used by the Code Office and set a fee of \$2500.00 per megawatt for applications for Solar Projects. These applications would still require Planning Board and Town Board approval.

**CARRIED (3-0) – Supervisor Stewart – Aye, Deputy Supervisor Maguire – Aye,  
Councilor Walbridge – Aye.**

**Motion offered by: Deputy Supervisor Maguire  
Second by: Councilor Walbridge**

STATE OF NEW YORK  
COUNTY OF FRANKLIN                      SS:

I, Jean Marlow, Town Clerk of the Town of Malone, New York, do hereby certify that the foregoing resolution, #294-2020, was duly adopted at a Regular Meeting of the Malone Town Board, held on December 30, 2020; and the same is a true and complete copy of the record on file in the Office of the Town Clerk and of the whole thereof. **IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town this 10th day of February, 2021.**



*Jean Marlow*

---

Malone Local Waterfront Revitalization Plan. Any easement or trail construction should accommodate a pedestrian walkway or pathway having a right-of-way width of at least 20 feet along the length of and abutting the Salmon River shoreline.

- (4) When located adjacent to historic structures, new buildings shall reflect the architectural character of the existing historic structure.

#### **§ 79-18.4. Site plan review.**

Any proposed principal building or any proposed or expanded paved area larger than 5,000 square feet that would be partially or entirely located within the WO District shall be submitted for review by the Planning Board. Site plan review shall be conducted in accordance with the procedures established in this chapter.

### **ARTICLE IV Administration and Enforcement**

#### **§ 79-19. Zoning permit process.**

##### **A. Notification of intent.**

- (1) Prior to beginning construction or occupancy, the owner or occupier of real property shall give notice to the enforcement officer designated by the Town Board if:
  - (a) A new building is to be constructed;
  - (b) The outside dimensions of an existing building are to be enlarged;
  - (c) A building is to be altered to provide for a different primary use; or

(d) A change in the primary use of a building is to occur.

(2) The notice shall include the following:

(a) A sketch of the property, indicating the location and dimensions of the new or altered building. The sketch need not be drawn to scale, but the dimensions and distances must be stated accurately.

(b) A statement of the use to which the building will be put.

(c) Any other data or evidence required by this chapter, including but not limited to a photostatic copy of any state health certificate that may be required or any engineer's certificate required.

(d) The name and mailing address of the applicant or occupier.

**B. Determination.**

(1) The enforcement officer shall, within 15 days, determine whether or not the proposed construction or use is permitted by this chapter and shall notify the applicant in writing, by certified mail, by issuance of one of the following:

(a) Notification of compliance stating that the application is in compliance with this chapter and the applicant is authorized to proceed in accord with the information supplied in the notification of intent; or

(b) Notification of objection stating that the application is not in compliance with this chapter. Such notice shall state precisely why the notification of intent is not in compliance

and what provisions of the chapter would be violated by approval of the application.

- (2) No construction or occupation against which a notification of objection has been issued shall begin until and unless the Board of Variances and Appeals has determined in writing and according to its procedures outlined elsewhere in this chapter that such construction or occupation may proceed.

**§ 79-20. Board of Variances and Appeals.**

- A. **Establishment.** There is hereby established a Board of Variances and Appeals consisting of five members which shall function in the manner prescribed by law. The members of the Board of Variances and Appeals shall be residents of the Town of Malone and shall be appointed by the Town Board as prescribed by law.
- B. **Procedure.** The Board of Variances and Appeals shall act in strict accordance with the procedure specified by law and by this chapter. The Board of Variances and Appeals shall adopt such rules and regulations as it may deem necessary to carry into effect the provisions of this chapter, and all its resolutions and orders shall be in accordance therewith. All applications for appeal or variance made to the Board shall be in writing. Every application shall refer to the specific provision of this chapter involved and shall set forth the details of appeal or variance that is applied for and the basis thereof. All meetings of the Board shall be held at the call of the Chairman and at such other times as such Board may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. Meetings of the Board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.