Town of Salem, New York
Solar Energy Collectors

SECTION 1 – AUTHORITY

This Solar Energy Local Law is adopted pursuant to sections 261-263 of the Town and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town of Salem (hereinafter referred to as "Town") to adopt zoning and land use provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

SECTION 2 – TITLE

This Local Law shall be known and cited as "Local Law No. 4 of 2023, Purpose of Amending the Town of Salem Site Plan Review Law and Town of Salem Zoning Law with Respect to Solar Energy Systems".

SECTION 3 – PURPOSE AND INTENT

A. The purpose of this article is to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar collection systems without excess regulation. The intent is to allow building- integrated photovoltaic (BIPV) systems, flush-mounted solar systems, roof-mounted and building-mounted and pole- mounted solar installations that have a minimum footprint (height) to be approved using the building permit process while requiring freestanding, ground-mounted or pole-mounted solar energy system installations over a certain height and based upon certain placement to go through the site plan review process before the Planning Board. This article is not intended to override agricultural exemptions that are currently in place for farmers.

B. Solar energy is a renewable and nonpolluting energy resource that can prevent fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid when excess solar power is generated.

C. The use of solar energy equipment for the purpose of providing electricity and for heating and/or cooling is a national priority and is a necessary component of the Town of Salem's current and long-term sustainability agenda.

SECTION 4 - DEFINITIONS

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

ALTERNATIVE ENERGY SYSTEM:
Structure, equipment devices or construction techniques for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEM:
A solar energy system that consists of integrating photovoltaic modules into the building structure such as the roof or the facade and which does not alter relief of the roof.

COLLECTIVE SOLAR:
Solar installation owned collectively through subdivision homeowner association, college student groups, "adopt-a-solar-panel," or other similar arrangements.

FLUSH-MOUNTED SOLAR PANEL:
Photovoltaic panels and tiles that are installed flush to the surface of a roof or wall and which cannot be angled or raised.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM:
A solar energy system that is directly installed on the ground and is not attached or affixed to an existing structure.

GLARE:
The effect by reflections of light with intensity sufficient as determined in a reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respect.

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.

NET METERING:
A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

PERMIT-GRANTING AUTHORITY :
The Town of Salem authority charged with granting permits for the installation of alternative energy systems.

PHOTOVOLTAIC (PV) SYSTEM:
A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, that generate electricity when light strikes them.

QUALIFIED SOLAR INSTALLER:
A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who· are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSERDA's or NABCEP's list of certified installers may still be deemed to be qualified solar installers if the Town of Salem determines such persons to have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of the exposed parts.

ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM:
A solar system in which solar panels are mounted on top of the structure of a roof either as a flush- mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

SOLAR ACCESS:
Space open to the sun and clear of overhangs or shade including the orientation of the streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

SOLAR COLLECTOR:
A solar photovoltaic cell, panel or array, or any solar hot air or solar energy collector which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored energy to heat, air or water.

SOLAR EASEMENT:
An easement recorded pursuant to the New York Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

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 Systems includes all the land inside the perimeter of the Solar Energy System, and extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2 or Tier 3 Solar Energy System as follows:

A. Tier 1 Solar Energy Systems are as follows:
   (1) Roof-Mounted Solar Energy Systems; and
   (2) Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems are Ground-Mounted Solar Energy Systems where the total surface area of all solar panels on the lot does not exceed 900 square feet and where the Solar Energy System does not generate more than 110% of the electricity consumed on the site over the previous 12-month period.

C. Tier 3 Solar Energy Systems are systems that are not Tier 1 or Tier 2 Solar Energy Systems. A SOLAR FARM is one kind of Tier 3 Solar Energy System.

SOLAR FARM:
Energy generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies with the primary purpose of wholesale or retail sales of electricity.

SOLAR PANEL:
A device for the direct conversion of solar energy into electricity.

SOLAR STORAGE BATTERY:
A device that stores energy from the sun and makes ii available in an electrical form.

SOLAR THERMAL SYSTEM:
Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

SECTION 5 - APPLICABILITY

A. The requirements of this article shall apply to all solar collector system installations modified or installed after

the effective date of this article.

B. Solar collector system installations for which a valid building permit has been properly issued, or for which installation has commenced before the effective date of this article, shall not be required to meet the requirements of this article, except in accordance with 7D, E and F.

C. All applications for the installation of solar collector systems shall be designed by a licensed engineer and contain site specific building plans which bear the seal and signature of a licensed engineer and satisfy the permitting requirements contained in this chapter.

D. All solar collector systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Fire Prevention and Building Code.

SECTION 6 - PERMITTING

A. To the extent practicable, and in accordance with the Code of the Town of Salem, the accommodation of solar access to sunlight for such equipment and the protection of access to sunlight for such equipment shall be encouraged in the application of the various review and approval provisions of the Town of Salem. Rooftop and building-mounted solar collectors. Rooftop and building-mounted solar collectors are permitted in all zoned and non-zoned districts in the Town of Salem subject to the following conditions:

(1) Site Plan Review and building permits shall be required for installation of all rooftop and building-mounted solar collectors.

(2) Height limitations contained in this chapter shall apply.

(3) Rooftop units must have a one-foot setback on all four sides.

(4) Roof structures must be properly engineered to support collectors.

(5) Rooftop units must be installed according manufacturer's specifications.

B. Building-integrated photovoltaic {BIPV) systems. BIPV systems are permitted outright in all zoning and non-zoning districts.

C. Ground-mounted racks and freestanding solar collectors that use the electricity primarily on- site are permitted as a primary and accessory structure in all zoned and non-zoned districts of the Town of Salem, subject to the following conditions:

(1) Site Plan Review and building permits are required for all ground-mounted and freestanding solar collectors.

(2) The location of the solar collectors must meet all applicable minimum yard size requirements for principal structures in the applicable zoning district.

(3) In commercial zones, the unit shall be setback at least 170 feet from the front property line.

(4) In all other zones and non-zoned areas, the unit shall be setback at least 100 feet from the front property line.

(5) The unit should be installed in a side or rear yard with a twenty-foot setback; where installed in the front

yard, a one-hundred-foot setback shall apply for all zoned and non-zoned districts.

(6) Units shall not exceed 20 feet in total height from the existing grade.

(7) The Planning Board, at their discretion, may require any ground-mount solar energy system to be screened from adjoining properties. Screening installations that would employ landscape screening and other methods of enhancing the appeal of the ground-mounted and freestanding solar collector such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area. All required screening must be installed within one year of the date of installation of the system.

(8) Small experimental solar panels for charging batteries (less than one kilowatt) would not require any permits. Solar collectors shall be located in a manner that reasonably minimizes shading of property to the north while still providing adequate solar access for collectors.

(9) There is a permitted primary structure and use located on the premises.

(10) The solar collectors shall not exceed 40% of the total lot coverage and no more than 20% of a large-scale solar system, and access roads and infrastructure related thereto, may be underlain by prime, unique or important farmland as classified by the New York State Department of Agriculture and Markets.

D. Tier 3, large-scale and/or solar farm ground-mounted racks and freestanding solar collectors. Ground-mounted and freestanding solar collectors mounted on a pole are permitted in all zoned and non-zoned districts of the Town of Salem, subject to the following conditions:

(1) Site Plan Review and building permits are required for all ground-mounted and freestanding solar collectors.

(2) A copy of the plans shall be provided to the local fire chief. All means of shutting down the solar array shall be clearly marked.

(3) The location of the solar collectors must meet all applicable minimum yard size requirements for principal structures in the applicable zoning district.

(4) In commercial zones, the unit shall be setback at least 170 feet from the front property line.

(5) In all other zones and non-zoned areas, the unit shall be setback at least 100 feet from the front property line.

(6) Units shall not exceed 20 feet in total height from the existing grade.

(7) The Planning Board, at their discretion, may require that Tier 3 Solar Energy Systems be surrounded by a six (6) foot high chain link or equivalent fencing. Opening in said fencing shall be kept closed and locked, to restrict non-essential access.

(8) The Planning Board, at their discretion, may require any ground-mount solar energy system be screened from adjoining properties. Screening installations that would employ landscape screening and other methods of enhancing the appeal of the ground- mounted and freestanding solar collector such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.

(9) All required screening and/or fencing must be installed with one year of the date of installation of the system.

(10) Signage shall be placed at all entrances of the solar energy system warning against unauthorized access and prominently display the owner/operators name, address, phone number and emergency contact information.

(11) Solar collectors shall be located in a manner that reasonably minimizes shading of property to the north while still providing adequate solar access for collectors.

(12) The solar collectors shall not exceed 40% of the total lot coverage and no more than 20% of a large-scale solar system, and access roads and infrastructure related thereto, may be underlain by prime, unique or important farmland as classified by the New York State Department of Agriculture and Markets.

(13) The Applicant shall pay all costs and expenses, including but not limited to engineering costs and legal fees, incurred by the Town of Salem (hereinafter "Town", and meaning and intending to include the Town Board and Planning Board, and any other Town department or Board), in connection with the application. Upon receipt of an application, the Planning Board shall obtain an estimate from a qualified engineer for the cost and expense to assist the Town in reviewing the proposed project, including site review upon completion of the project for compliance with Town approvals and permits. The Planning Board shall further obtain an estimate from the Town Attorney for legal costs in connection with reviewing the application and accompanying documents. The Planning Board shall then provide the Applicant with said estimates, along with the Town's other estimated costs and expenses associated with the project. The Applicant shall then remit said sum to the Town. The application shall not be considered complete until such sum is received by the Town. The Applicant shall also be responsible for any costs and expenses incurred by the Town which exceed the original sum paid by the Applicant, which additional costs and fees shall be billed to the Applicant and the Applicant shall then have ten (10) days to remit payment of same to the Town. Final approval and permitting shall not be granted by the Town until all payments referenced herein have been received by the Town.

(14) All units within this subpart shall be subject to site plan review. In addition to the requirements contained herein, the applicant shall also include the following:

(a) A site plan depicting the following:

(1) Property lines and physical features, including roads, for the project site.

(2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

(3) Blueprints or drawings of the solar energy system signed by a professional engineer licensed to practice in New York State showing the proposed layout of the system, any potential shading from nearby structures or trees, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector.

(4) One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods with all New York State Fire Prevention and Building Code compliance disconnects and overcurrent devices.

(5) Documentation of the major system components to be used, including the panels, mounting system, and inverter.

(6) Name, address, and contact information for proposed system installer.

(7) Name, address, phone number and signature of the applicant, as well as all co- applicants or

property owners, if any.

(8) The name, contact information and signature of any agents representing the project applicant.

(9) Location of agricultural district, location of active farmland, and soil type delineations, for the property and 500 feet adjoining the property.

(10) Locations of floodplains and wetlands.

(b) Documentation of actual or prospective access and control of the project site.

(c) An operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep such as mowing and trimming;

(d) A decommissioning plan. To ensure the proper removal of solar energy systems, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of an approval under this section. The decommissioning plan must specify that after the solar energy system can no longer be used, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a Town approved professional engineer or contractor. Cost estimations shall take into account inflation. Removal of solar energy systems must be completed in accordance with the decommissioning plan; and

(e) Financial surety. Applicant shall also pay the cost of an estimate, prepared by a qualified engineer, chosen by the Town of Salem, setting forth the expenses associated with decommissioning the solar energy system as well as the manner in which the surety will be held pending the final decommissioning and removal. All estimates shall take into account inflation.

E. Solar-thermal systems. Solar-thermal systems are permitted in all zoned and non-zoned districts subject to the following condition:

(1) Site Plan Review and Building permits are required for installation of all solar-thermal systems.

F. Solar energy systems and equipment shall be issued building permits only if the Town of Salem Planning Board and Washington County Code Enforcement are provided with engineered stamped plans and they determine that the proposed solar energy system does not present any unreasonable safety risks, including, but not limited to, the following:

(1) Weight load.

(2) Wind resistance.

(3) Ingress or egress in the event of fire or other emergency.

SECTION 7 - SAFETY

A. All solar collector installations must be performed by a qualified solar installer.

B. Prior to operation, electrical connections must be inspected by the Code Enforcement Officer/Building Inspector and by an electrical inspection person or agency in conformance with New York State Fire Prevention and Building Code.

C. Any connection to the public utility grid must be inspected by the appropriate public utility.

D. Solar energy systems shall be maintained in good working order and shall be removed if not in use for more than 12 months by removal of such system and mounting hardware within 90 days after the 12th month and decommissioned in accordance with this chapter.

E. Rooftop and building-mounted solar collectors shall be designed to be installed in conformance with the New York Uniform Fire Prevention and Building Code Standards that are applicable when the building permit is issued.

F. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Fire Prevention and Building Code when in use. When they are no longer in use, they shall be disposed of in accordance with the laws of New York State Codes and local laws of the Town of Salem and any other applicable laws or regulations.

SECTION 8 - ABANDONMENT OR DECOMMISSIONING.

A. Removal requirements.

(1) Any solar energy system which has reached the end of its useful life or which has been abandoned consistent with this chapter shall be removed. The owner or operator shall physically remove the installation no more than 90 days after the date of discontinued operations. The owner or operator shall notify the Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

(a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.

(b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

(c) Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

B. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 90 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned solar energy system. As a condition of site plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

C. Decommissioning plan. If the solar energy system is not decommissioned after being considered abandoned in accordance with the decommissioning plan, the Town may remove the system, including all mounting hardware, and restore the property and impose a lien on the property to cover these costs to the

municipality.

D. Estimate and financial surety. In addition to the decommissioning plan, the applicant shall also be required cover the cost an estimate, prepared by a qualified engineer, hired by the Planning Board, setting forth the costs associated with decommissioning the solar energy collectors. The Planning Board shall also establish the amount of such surety to be established by the applicant prior to the issuance of a building permit. The surety may be in the form of escrowed funds, bonds or otherwise, so long as the surety remains in place for the life of the solar energy system and available to the Town to ensure the solar energy system is decommissioned in accordance with the approved plan. It is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations including all mounting hardware and restore landscaping consistent with this chapter, in the event the applicant fails to comply with its decommissioning obligations. *The Town reserves the right to have amount of the surety reviewed every five (5) years at the expense of the applicant.*

SECTION 9 - APPEALS

Any person aggrieved by any final decision of the Planning Board or any other officer of the Town involved in the administration of this Local Law may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after filing of a decision or determination in the office of the Town Clerk. The Local Law does not create any right or remedy under said Article 78 where none otherwise exists or is recognized in law, equity or admiralty.

SECTION 10 - ENFORCEMENT

(A) Fines. Any person, corporation, partnership, association, or other legal entity who shall violate any of the provisions of this local law, or any conditions imposed by a permit pursuant hereto shall be guilty of an offense and subject to a fine of not more than $100.00 a day for a first offense, $500.00 per day for each subsequent offense and/or subject to a term of imprisonment not to exceed one year. Any such fines shall be recovered by the town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect- or refusal shall continue.

(B) Injunctive relief. The Town shall have the right to seek, in addition to or in lieu of any penalties or fines, injunctive relief from the appropriate court to prevent any violation of this local law or to require the removal of any building or structure or other physical matter placed within the town in violation of this local law or to require the restoration of any parcel of land modified in violation of this local law.

SECTION 11 - SEVERABILITY

If any clause, sentence, paragraph, subdivision, section, or part of this article or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this article, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 12 - Effective Date

This article shall take effect immediately after filing with the New York State Secretary of State