**A LOCAL LAW TO AMEND CHAPTER 110-33.2 – ENERGY CONSERVATION AREAS**

Be it enacted by the Village/Town of Mount Kisco of the County of Westchester as follows:

**Section 1.** The Code of the Village/Town of Mount Kisco Chapter 110 Zoning, is hereby amended to add a new Section 110-33.2 to Article V entitled Solar Energy Law which is as follows:

1. Additions are reflected with Underlining,
2. Deletions are reflected within ~~Strikethrough~~

 **Solar Energy Law**

§ 110-33.2: Solar Energy Law.

A.  **Authority.**

This Solar Energy Local Law is adopted pursuant to sections 7-700 through 7-704 of the Village Law, and section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Village/Town of Mount Kisco to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Village and 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.”

B. **Statement of Purpose**. This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the people of the Village by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

(1) To take advantage of a safe, abundant, renewable and non-polluting energy resource;

(2) To decrease the cost of electricity to the owners of residential and commercial

properties, including single-family houses;

(3) To increase employment and business development in the Village, to the extent

reasonably practical, by furthering the installation of Solar Energy Systems;

(4) To mitigate the impacts of Solar Energy Systems on environmental resources such as

forests, wildlife and other protected resources;

(5) To create synergy between solar and the stated goals of the community pursuant to its

Comprehensive Plan, such as the protection of environmental resources, assuring that community services sufficiently meet the needs of the Village’s current and future population, and promote a balanced pattern of future land use;

(6) To invest in a locally generated source of energy and to increase local economic

value, rather than importing non-local fossil fuels;

(7) To align the laws and regulations of the community with several policies of the State

of New York, particularly those that encourage distributed energy systems;

(8) To diversify energy resources to decrease dependence on the grid;

(9) To make the community more resilient during storm events, and;

(10) To encourage investment in public infrastructure supportive of solar, such as

generation facilities, grid-scale transmission infrastructure, and energy storage sites.

C. **Applicability.**

1. The requirements of this Local Law shall apply to all Solar Energy Systems

permitted, installed, or modified in the Village of Mount Kisco after the effective date of this Local Law, excluding general maintenance and repair.

(2) Legally authorized Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

Modifications to an existing Solar Energy System that increase the Solar Energy

System area by more than 20% of the original area of the Solar Energy System (exclusive of moving any fencing) or fail to comply with zoning, shall be subject to this Local Law.

(4) All Solar Energy Systems shall be designed, erected, and installed in accordance with

all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Code of the Village/Town of Mount Kisco (“Village Code’).

 D. **General Requirements.**

(1) A Building permit shall be required for installation of all Solar Energy Systems.

1. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).

E.  **Permitting Requirements for Tier 1 Solar Energy Systems**

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

(1) Roof-Mounted Solar Energy Systems

(a) Roof-Mounted Solar Energy Systems shall incorporate the following design requirements:

(1) Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.

(2) Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

(3) Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

(4) Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

(b) Glare: All Solar Panels shall have anti-reflective coating(s).

(c) Height: All Roof-Mounted Solar Energy Systems shall comply with the height limitations in the underlying zoning district. If the installation is proposed to an existing building whose height already meets or exceeds the maximum building height, the System may be installed above the existing maximum roof height but not to exceed 24 inches above the existing maximum height.

(2) Building-Integrated Solar Energy Systems shall be shown on the plans submitted for

the building permit application for the building containing the system.

F. **Permitting Requirements for Tier 2 Solar Energy Systems**

All Tier 2 Solar Energy Systems shall be permitted in all non-residential zoning districts as accessory structures and shall be exempt from site plan review under the local zoning code or other land use regulations, subject to the following conditions:

(1) Glare: All Solar Panels shall have anti-reflective coating(s).

(2) Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations

specified for the accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards, and in no case shall any solar system be installed between the right-of-way and the edge of the building facing the right-of-way.

(3) Height: Tier 2 Solar Energy Systems shall not exceed 15 fee.

(4) Screening and Visibility.

(a) All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the maximum extent practicable~~.~~.

(b) Solar Energy Equipment shall be located in a manner to reasonably avoid

and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

(5) Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size

requirements specified for accessory structures within the underlying zoning district.

G. **Permitting requirements for Tier 3 Solar Energy Systems**

All Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit within the Conservation Development District (CD), Limited Commercial District (CL), General Commercial District (GC), General Retail District (GR), Hospital District (H), Light Manufacturing District (ML), Cottage Office District (OC), Low-Intensity Office District (OD), General Office District (OG), Preservation District (PD), Recreation District (R), Research and Development District (RD), and Service Commercial District (SC) zoning districts, and subject to site plan application requirements set forth in this Chapter.

(1) Applications for the installation of Tier 3 Solar Energy System shall be subject to all

rules, referrals, procedures and requirements applicable to special permit and site plan applications.

(2) Underground Requirements. All on-site utility lines shall be placed underground to

the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

(3) Vehicular Paths. Vehicular paths within the site shall be designed to minimize the

extent of impervious materials and soil compaction.

(4) Signage.

(a) No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer’s name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted on the smallest sign feasible and in no case shall the sign be of an area greater than 8 square feet.

(b) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

(5) Glare. All Solar Panels shall have anti-reflective coating(s).

(6) Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally

required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(7) Tree-cutting. Removal of existing trees larger than 8 inches in diameter should be

minimized to the extent practicable and a replanting plan may be required and not necessarily on-site. In determining any replanting or replacement, the Planning Board may require a Pollinator Friendly Habitat as an additional means of mitigation.

(8) Decommissioning.

(a) Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the Owner and/or Operators expense.

(b) A decommissioning plan (see Appendix 1) signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

(1) The cost of removing the Solar Energy System.

(2) The time required to decommission and remove the Solar Energy System any ancillary structures.

(3) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

(c) Security/Lien.

(1) Appropriate arrangements shall be made between the Owner and Operator to provide necessary security or bond in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal as set forth in the decommissioning plan.

(2) In the event of default upon performance of such decommissioning, after proper notice, the Village shall be entitled to arrange for removal or decommissioning and the cost of same shall constitute a lien on the Owners real property.

(9) Site plan application. For any Solar Energy system requiring a Special Use Permit,

site plan approval shall be required. Any site plan application shall, in addition to the material required by §110-45, include the following information:

(a) Property lines and physical improvements and features, including driveways, roads, topography, and trees as taken from an updated survey for the project site.

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

(c) A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

(d) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

(e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

(f) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.

(g) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

(h) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

(10) Special Use Permit Standards.

(a) Lot size. The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements of the underlying zoning district.

(b) Setbacks. The Tier 3 Solar Energy Systems shall comply with the setback requirements of the underlying zoning district for principal structures~~,~~

(c) Height. The Tier 3 Solar Energy Systems shall not exceed 15 feet in height in residential districts and shall not exceed 20 feet in non-residential districts, except that the Planning Board, in its discretion, may alter same to accommodate vehicle clearance for carports.

(d) Development coverage.

1. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for development coverage requirements:
2. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
3. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
4. Access roads servicing the Solar Energy System.

(2) Development coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirement of the underlying zoning district.

(e) Fencing Requirements. All mechanical equipment, including any structure

for storage batteries, shall be enclosed and secured as required by NEC and the Planning Board, with a self-locking gate to prevent unauthorized access.

(f) Screening, Visibility, and Habitat. Solar Energy Systems shall be required

to:

(1) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.

(2) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the Village.

(3) Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators consistent with any requirements of the Agriculture and Markets Law. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

(11) Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan.

H. **Safety**

(1) Solar Energy Systems and Solar Energy Equipment shall be certified under the

applicable electrical and/or building codes as required.

(2) Solar Energy Systems, and access to same, shall be maintained in good working

order, in accordance with industry standards, and as may be specified or required by the Planning Board.

(3) If Storage Batteries are included as part of the Solar Energy System, they shall meet

the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Village and any applicable federal, state, or county laws or regulations.

I.  **Permit Time Frame and Abandonment**

1. The Special Use Permit and site plan approval for a Solar Energy System shall be

subject to commencement of construction within 12 months from the date of site plan approval. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 12 months after commencement of construction, the Planning Board, upon prior written application of the applicant may extend the time to complete construction for an additional 6 months. If the applicant fails to achieve substantial completion after 24 months, the approvals shall expire.

1. Upon cessation of electricity generation of a Solar Energy System on a continuous

basis for 12 months, the Village may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.

(3) If the owner and/or operator fails to comply with decommissioning upon any

abandonment, the Village may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

J. **Enforcement**

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Village.

K. **Severability**

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

**APPENDIX 1: EXAMPLE DECOMMISSIONING PLAN**

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at:

[Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by the Village/Town of Mount Kisco, [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the “Facility”).

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends

2. The system does not produce power for 12 months

3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.

2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.

3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within 12 months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_

**Section 2.** The Code of the Village/Town of Mount Kisco Chapter 110 Zoning, **§**110-59 Definitions, is hereby amended to add the following terms which shall have the meanings indicated:

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity.

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.

NATIVE PERENNIAL VEGETATION: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

POLLINATOR: bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

1. Roof-Mounted Solar Energy Systems
2. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to 1,000 square feet and that generate up to 110% of the electricity consumed on the site over the previous 12 months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems, or any Tier 1 or 2 system that does not comply with the applicable regulations.

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

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

**Section 3.** The Village Clerk shall cause the amendments effected by this Local Law to be incorporated into the Code of the Village/Town of Mount Kisco.

**Section 4.** Should any section or provision of this Law be determined by any court of competent jurisdiction to be unconstitutional or invalid, then such section shall be null and void and shall be deemed separable from the remaining section(s) of this Law, and such determination shall in no way affect the validity of the remaining sections or provisions of this Law.

**Section 5**. This Law shall become effective immediately upon its filing with the Secretary of State of the State of New York.