

**TOWN OF NUNDA
LOCAL LAW NO. 1 OF THE YEAR 2021**

A Local Law to Provide for Solar Energy System Regulation.

Be it enacted by the Town Board of the Town of Nunda as follows:

Authority

This Solar Energy Law is adopted pursuant to Sections 261 and 264 of the New York State Town Law and Section 20 of the Municipal Home Rule Law, which authorizes the Town of Nunda to adopt provisions that advance and protect the health, safety, and welfare of the community, and to provide for, so far as conditions may permit, the accommodation of Solar Energy Systems (as hereafter defined) and equipment which generate electricity primarily for on-site use

Statement of Purpose

This Solar Energy Law is adopted to permit the construction of Solar Energy Systems in the Town of Nunda in a manner that advances and protects the public health, safety and welfare of the Town of Nunda while facilitating the production of renewable energy. In so doing, this Law seeks to:

1. Take advantage of a safe, abundant, renewable and non-polluting energy resource.
2. Preserve and protect the natural resources and Prime Farmland/Farmland of Statewide Importance within the Town of Nunda in accordance with the Town's Comprehensive Plan, which requires consideration of uses that support and facilitate agriculture and prohibition of uses that do not.
3. Permit solar installations as hereinafter defined in all zoning districts as specified for the production of renewable energy to be used principally on-site, subject to reasonable conditions to mitigate potential impacts to adjoining properties and preserve neighborhood aesthetics.

ARTICLE I. Findings of Town Board.

The Town Board of the Town of Nunda makes the following findings:

- A. In connection with its review of this subject, the Town Board has recognized the desirability of promulgating regulations as to the siting and construction of Solar Energy Systems in other applications.
- B. The Town Board of the Town of Nunda recognizes that solar energy is a clean, readily available and renewable energy source. The Town of Nunda intends to accommodate the use of Solar Energy Systems with an emphasis on residential and agricultural applications, as well as single-user commercial applications in which the Solar Energy System provides energy for the commercial property. Town Board determination to further regulate is based on the Town's Comprehensive Plan as to the recognition of unique local conditions (i.e. the prevalence of highly productive soils throughout the entire Town) and further support is provided in the Town of Nunda *Soils Map, Environmental Resources Map, and Ag District Map* as contained herein.

- C. The Town Board acknowledges and finds a growing need to properly site Solar Energy Systems within the boundaries of the Town of Nunda so as to protect the large abundance of Prime Farmland/Farmland of Statewide Importance within the Town, residential properties, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Nunda, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Nunda.
- D. The Town Board of the Town of Nunda has not prohibited the erection or creation of small-scale Solar Energy Systems intended to primarily benefit the property on which the Solar Energy System is located. To date, existing Solar Energy Systems in the Town of Nunda have been built and used in residential applications.
- E. Prior to the adoption of this Law, no specific procedures existed to address the siting of Solar Energy Systems or to mitigate their potential impact upon adjoining properties or the public view shed. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- F. Solar Energy Systems need to be regulated for proper and timely removal when no longer utilized, or when systems become non-functional.

ARTICLE II. Definitions.

The following definitions shall apply to this Law:

APPLICANT/OWNER/LANDOWNER/OPERATOR/SUCCESSOR: The person or entity filing an application and seeking approval under this Law and/or operating or assuming ownership or responsibility for Solar Energy Systems including the owners of the real property upon which the Solar Energy System is to be located.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of photovoltaic building components integrated into any building envelope system such as vertical façades including glass and other façade material, semitransparent skylight systems, roofing materials, and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM - Any Solar Energy System that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity, potentially for multiple tenants, through a distribution system that is not available to the general public.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

A map showing Prime Farmland and Farmland of Statewide Importance within the Town of Nunda is available at the Town Clerk's office and is made a part of these regulations as "Exhibit 1", which is styled "Town of Nunda Soils Map".

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM -Any Solar Energy System that is affixed directly or indirectly to the ground or land surface, rather than attached to the wall or roof of a structure. Affixed by support structures or other mounting devices where such structures and mounting exists solely to support the Solar Energy System.

LOCAL LAW, ETC.: Any reference herein to a law, local law, code, rule or regulation shall mean said law, local law, code, rule or regulation currently in effect as it may be amended or replaced at any future time.

PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops.

A map showing Prime Farmland and Farmland of Statewide Importance within the Town of Nunda is available at the Town Clerk's office and is made a part of these regulations as "Exhibit 1", which is styled "Town of Nunda Soils Map".

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM- Any Solar Energy System that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity for use on the lot (upon which the structure containing the Solar Energy System is located), potentially for multiple tenants, through a distribution system that is not available to the general public.

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

SOLAR ENERGY EQUIPMENT: Electrical storage devices (*incl. Battery Energy Storage Systems (BESS) w/limitations*), material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

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 of 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
- (3) Building Mounted Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems that generate no more than 110% of the electricity consumed on the site or more than one site or piece of

property within the jurisdictional limits of the Town of Nunda owned by the same person, entity, farm or business over the previous 12 months. Tier 2 Solar Energy Systems may include Solar Energy Systems that are developed, operated and maintained by a third-party by lease agreement or through a power purchase agreement, but in no event shall such systems produce power in excess of the 110% maximum yield as referenced above.

- C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems. A ground-mounted Solar Energy System intended to produce energy primarily for off-site sale to and consumption by one or more customers.

SOLAR PANEL/COLLECTOR: A photovoltaic device capable of collecting and converting solar energy into electrical energy.

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

TILT: The vertical angle, where a 0° minimum tilt means that the panel is laying flat, and a 90° maximum tilt means that it is vertical.

UNIFIED SOLAR PERMIT: An expedited solar permitting process has been developed by the NY-Sun public-private partnership, which process utilizes a standard, unified permit across municipalities in New York State.

ARTICLE III. Applicability. The placement, construction and major modification of all Solar Energy Systems within the boundaries of the Town of Nunda shall be permitted only as follows:

- A. A building permit issued by the Town of Nunda Code Enforcement Officer shall be required for the installation of any Solar Energy System.
- B. All Solar Energy Systems existing on the effective date of this local law shall be allowed to continue in usage as such presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this local law, and shall require a building permit before construction begins.
- C. No Solar Energy System shall hereafter be erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- D. All new Solar Energy Systems and all additions and modifications to any pre-existing 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 all of the Local Laws of this Town
- E. Any applications pending for Solar Energy Systems on the effective date of this local law shall be subject to the provisions of this law.
- F. To the extent this Local Law is inconsistent with any other law, local law, rule, regulation, or code, the more stringent requirements shall apply.

ARTICLE IV. General Regulations. Subject to the provisions of this Law, the placement, construction and major modifications of all Solar Energy Systems within the boundaries of the Town of Nunda shall be permitted only as follows:

- A. Tier 1 Solar Energy Systems are permitted outright in all zoning districts in the Town.
- B. Tier 2 Solar Energy Systems are permitted as accessory structures in all zoning districts in the Town.
- C. Tier 3 Solar Energy Systems are specially permitted in Agricultural/Conservation (AG/C) and Mixed-Use (MU) zoning districts in the Town.
- D. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to regulate or to allow Solar Energy Systems other than as set forth in this Law are hereby superseded.
- E. All Solar Energy Systems existing on the effective date of this Section shall be “grandfathered” and allowed to continue as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance on pre-existing systems shall comply with the requirements of this Section.
- F. No Solar Energy System shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- G. Any applications (including variance applications) pending for Solar Energy Systems on the effective date of this Section shall be subject to the provisions of this Section.
- H. For all Solar Energy Systems, no signage or graphic content may be displayed on the Solar Energy Equipment except the manufacturer’s badge, safety information and equipment specification information.
- I. For Tier 3 Solar Energy Systems, a sign not to exceed nine square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number, disconnect and other emergency shutoff information, 24-hour emergency contact information, and it will be clearly displayed on a light reflective surface.
- J. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- K. Payment in Lieu of Tax Agreement. The owners or developers and landowners of the property upon which a Tier 3 Solar Energy Systems is to be developed shall be required to enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). Upon the owner or developer providing written notification to the Town of its intent to construct a Tier 3 Solar Energy System, the Town Assessor or the Town Attorney on behalf of the taxing jurisdiction shall notify such owner or developer in writing within sixty (60) days of its intent to require a contract for payments in lieu of taxes.

- (1) In no event shall such payment in lieu of tax agreement operate for a period of more than fifteen (15) years, commencing in each instance from the date on which the benefits of such exemption first become available and effective under Real Property Tax Law §487.
 - (2) In no event shall such payment in lieu of tax agreement require annual payments in an amount that would exceed the amount that would otherwise be payable but for the exemption under Real Property Tax Law §487.
 - (3) The payment in lieu of tax agreement shall run to the benefit of the Town of Nunda and be executed by the Applicant/developer as well as the owners of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the payment in lieu of tax agreement to be recorded at the Office of the Livingston County Clerk. Such payment in lieu of tax agreement shall, prior to commencement of construction, be recorded at the office of the Livingston County Clerk as a lien on the property upon which and indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that should the Applicant/developer or owner of the Solar Energy System default with regard to such payment in lieu of tax agreement, that such obligation will become the responsibility of the then owner of the property upon which the Solar Energy System is sited and that failure to satisfy the terms of such agreement will permit the Town of Nunda to enforce such agreement as against the owner of the real property and the real property.
 - (4) At its sole discretion, the Nunda Town Board may refer an application for a Tier 3 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required payment in lieu of tax agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required payment in lieu of tax agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the payment in lieu of tax agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the payment in lieu of tax agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of approvals for such payment in lieu of tax agreements.
 - (5) No building permit may be issued for any approved Tier 3 Solar Energy System until such time as a payment in lieu of tax agreement has been executed by all parties.
- L. Community Benefit Agreement. The owners or developers and landowners of the property upon which a Tier 3 Solar Energy Systems is to be developed shall be required to enter into a community benefit agreement with the Town for payment by the owners, developers or landowners to the Town of an agreed upon monetary amount or provision of a specified

public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Tier 3 Solar Energy System.

- (1) At its sole discretion, the Nunda Town Board may refer an application for a Tier 3 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required community benefit agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required community benefit agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the community benefit agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the community benefit agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants.
- (2) No building permit may be issued for any approved Tier 3 Solar Energy System until such time as a community benefit agreement has been executed by all parties.

ARTICLE V. Permitting Requirements for Solar Energy Systems.

- A. Tier 1 Solar Energy Systems shall be permitted in all zoning districts upon issuance of a building permit and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following requirements for each type of Solar Energy System:
 - (1) Roof-Mounted solar energy Systems may be attached to any lawfully permitted building or structure and shall incorporate the following design requirements:
 - a. Roof-Mounted solar energy systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building mounted mechanical devices or equipment.
 - b. Solar panels on pitched roofs shall be mounted with a maximum distance of 12 inches between the roof surface and the highest edge of the system.
 - c. Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. Glare: All Solar Panels shall have anti-reflective coating(s).
 - (2) Building-integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for any building containing such system.

- (3) Building-mounted solar energy systems shall not be located or extend more than 7 feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.

B. Tier 2 Solar Energy Systems

Tier 2 Solar Energy Systems shall be permitted in all zoning districts upon issuance of a building permit.

Site plan approval pursuant to the procedure set forth in the Town of Nunda Zoning Law is required for Tier 2 Solar Energy Systems to be built or modified for the production of electricity principally for on-site use for residential, commercial or industrial business within the Town of Nunda.

Tier 2 Solar Energy Systems for farm operations are exempt from site plan approval.

- (1) Tier 2 Solar Energy Systems other than for farm operations shall be subject to the following requirements:

- a. Setbacks: Tier 2 Solar Energy Systems shall be subject to all setback regulations for an accessory structure as set forth in the Town's Zoning Law, except as set forth in subparagraph b directly below.
- b. Location: Tier 2 Solar Energy Systems shall be located in the side or rear yard of a property. No placement in a front yard shall be permitted unless the location is a minimum distance of (200) feet from the road and entirely concealed from view from the road due to topography or landscape conditions that must be maintained for the duration of the installation of said system.
- c. Coverage. Tier 2 Solar Energy Systems ground coverage shall not exceed the allowable total surface or area coverage for accessory Buildings or structures within the zoning district in which it is located and in no event shall the combination of all accessory Buildings and structures located on the premises exceed 20% coverage of the entire area of such parcel. For purposes of this provision, coverage shall be calculated based upon the total surface area of the Solar Panels at minimum tilt.
- d. Height: Tier 2 Solar Energy Systems shall not exceed fifteen (15) feet at the highest point when oriented at maximum tilt.
- e. Glare: All Solar Panels shall have anti-reflective coating(s).
- f. Screening and Visibility. All such Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable. Evergreen tree and shrub plantings may be required to screen portions of the site from nearby residential property, public roads, and from public sites known to contain important views or vistas, such as gateway entrances to the Town. 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.

- g. Native plantings and pollinator plant species shall be seeded beneath installed solar panels or alternatively ag-co-location will be encouraged.
- (2) Tier 2 Solar Energy Systems which are a part of a farm operation as defined by Article 25 AA of the New York State Agriculture and Markets Law shall not be subject to site plan review but shall be subject to the following requirements:
- a. Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations for an accessory structure as required by the Zoning Law.
 - b. Height: Tier 2 Solar Energy Systems shall not exceed fifteen (15) feet at the highest point when oriented at maximum tilt.
 - c. Glare: All Solar Panels shall have anti-reflective coating(s).

C. Tier 3 Solar Energy Systems

Tier 3 Solar Energy Systems are permitted only in Agricultural/Conservation (AG/C) and Mixed Use (MU) Districts and are subject to the requirements set forth in this Section, including Site Plan review as may be provided for elsewhere in the Zoning Law or as may be established by further action of the Town, and are allowed only after the issuance of a Special Use Permit pursuant to these provisions. Applications for the installation of a Tier 3 Solar Energy System shall be reviewed by the Code Enforcement Officer and referred, with comments, to the Town of Nunda Planning Board (for Site Plan) and the Town of Nunda Board of Appeals (for Special Use Permit) for their review and action, which can include approval, approval on conditions, or denial.

- (a) Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit the Site Plan application provided to the Planning Board, any information required by the Code Enforcement Officer and the following documents and information:
 - (i) If the property of the proposed project is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
 - (ii) Plans and drawings for the Tier 3 Solar Energy System signed by a Professional Engineer showing the proposed layout of the Solar Energy System along with providing a description of all components, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.
 - (iii) Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or structures and uses on any parcel within 500 feet of the outer perimeter of the Solar Energy System.
 - (iv) Equipment specification sheets shall be provided for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.

- (v) A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and property upkeep, such as mowing and trimming.
 - (vi) Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Nunda Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Tier 3 Solar Energy System on the site.
 - (vii) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Nunda Planning Board, Town of Nunda Board of Appeals, Town Attorney or Code Enforcement Officer.
 - viii) At its sole discretion, the Town of Nunda Planning Board and/or the Town of Nunda Zoning Board of Appeals may refer an application for a Tier 3 Solar Energy System to one or more private consultants for review to assist such Board in properly fulfilling its duties. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town (through either Board) for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, either Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest-bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval, either Board may require that additional monies be deposited with the Town before further review of the application will continue. A reviewing Board may suspend indefinitely the review of any application as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.
- (b) Special Use Permit and Site Plan Approval Standards.
- (i) Height. Tier 3 Solar Energy Systems shall not exceed fifteen (15) feet at the highest point when oriented at maximum tilt.
 - (ii) Setbacks. Tier 3 Solar Energy Systems shall be sited to create a front setback of no less than 200 feet from roadways and setbacks of 100 feet from all side and rear property lines. In addition, no Tier 3 Solar Energy System (measured from perimeter fence-line of project) shall be located closer than 300 feet from any residential structure located on another parcel.

- (iii) Lot/Parcel Coverage. Tier 3 Solar Energy Systems shall not exceed 20 acres of coverage on parcels that are 40 acres or more in size. On parcels that are less than 40 acres in size, Tier 3 Solar Energy Systems coverage shall not exceed 60% of the total parcel size. The coverage shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt.
- (iv) Additional Lot/Parcel Coverage for parcels containing Prime Farmland/Farmland of Statewide Importance. If a Tier 3 Solar Energy System is to be constructed on a parcel or parcels that contain Prime Farmland/Farmland of Statewide Importance, in no instance shall more than 10% of the Prime Farmland/Farmland of Statewide Importance on any given lot be permitted to be used, developed or covered for purposes of Tier 3 Solar Energy Systems. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland/Farmland of Statewide Importance and it is the express intention of the Town of Nunda that no variance or hardship request be granted to permit increased coverage by Tier 3 Solar Energy Systems on Prime Farmland/Farmland of Statewide Importance by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request. The coverage area shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt.
- (v) Fencing and Screening. All Tier 3 Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. The fencing and the system may be required to be further screened by landscaping to avoid adverse aesthetic impacts. The Planning Board shall provide for enhanced screening and buffering for Tier 3 Solar Energy Systems that are placed adjacent to residentially zoned areas or abut a public road.
- (vi) Number of Tier 3 Solar Energy Systems allowed per lot. Only one Tier 3 Solar Energy System shall be allowed per lot or parcel, regardless of lot size.
- (vii) Recent Subdivision of Lot/Parcel. In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions, the Town of Nunda Zoning Board of Appeals shall consider the lot or parcel to be the smallest configuration of the physical area where the Tier 3 Solar Energy System is being proposed that has existed as a separate lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of Nunda within the five (5) years immediately preceding the application seeking approval for such Tier 3 Solar Energy System. This provision is specifically intended to prevent any owner of land from combining multiple parcels of land in order to permit siting of a larger Tier 3 Solar Energy Systems than would have been otherwise allowable pursuant to these regulations.
- (viii) Vegetation and Habitat. Tier 3 Solar Energy System owners/developers 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. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, owners/developers shall use native plant species and seed mixes.

- (ix) If a Tier 3 Solar Energy System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Construction Mitigation for Agricultural Lands for Solar Energy Projects.
- (x) Any Tier 3 Solar Energy System and site shall be accessible for all emergency service vehicles and personnel to the satisfaction of the local fire chief and county Office of Emergency Management Services.
- (xi) After completion of a Tier 3 Solar Energy System, the Applicant shall provide a post-construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
- (xii) Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Tier 3 Solar Energy System.
- (xiii) Any application under this Section shall meet any substantive Site Plan requirements as may be provided for elsewhere in the Zoning Law or as may be established by further action of the Town, or that in the judgment of the Nunda Town Planning Board, are applicable to the system being proposed.
- (xiv) The Planning Board shall be required to hold public hearings relating to Site Plan and Special Use Permit for any Tier 3 Solar Energy System.
- (xv) Prior to determination or issuance of any permit, all Tier 3 Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (6 NYCRR 617). All applications (Site Plan and Special Use Permit) for approval of a Tier 3 Solar Energy System shall be deemed to be a Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act (6 NYCRR 617.4 (a) (1) and (2) specifically allow the Town to classify such actions in addition to the list established by such statute) with The Nunda Planning Board and the Nunda Zoning Board of Appeals conducting a coordinated review.

D. Solar storage batteries. When solar storage batteries are included as part of any Solar Energy System, they shall be placed in secure container or enclosure meeting the

requirements of the New York State Building Code. Electrical storage devices will be permitted under this law so long as it is storing energy that is generated onsite and is consumed onsite.

- E. All Solar Energy Systems shall adhere to all applicable federal, state, county and Town of Nunda codes, laws, regulations and building, plumbing, electrical and fire codes.
- F. Any Solar Energy System shall be situated in a location which shall be readily accessible for all emergency service vehicles and personnel.
- G. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- H. The design, construction, operation and maintenance of any Solar Energy System shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists and shall otherwise not have any significant adverse impact on said areas.
- I. The development and operation of a Solar Energy System shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Nunda or other federal or state regulatory agencies. The Nunda Town Planning Board and the Nunda Zoning Board of Appeals may impose conditions on its approval of any Site Plan or Special Use Permit under this Section to enforce the standards referred to in this Section or to discharge its obligations under the State Environmental Quality Review Act.
- J. Artificial lighting of any Solar Energy Systems shall be limited to lighting required for safety and operational purposes only and shall be dark sky compliant and shielded from all neighboring properties and public roads so as to prevent the illumination of adjoining properties or excessive lighting.
- K. If the use of an approved Solar Energy System is discontinued for any reason other than temporary repair, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a Solar Energy System is to be retained and reused, the owner or operator shall also inform the Building Inspector of this in writing at the same time. Any such reuse shall require a new building permit, and also site plan review where applicable. If such new permit is not obtained in one (1) year, the system shall be deemed abandoned.

ARTICLE VI. Maintenance, procedures and fees.

- A. Time limit on completion. Where site plan review is required, a building permit must be obtained within six (6) months after approval from the Planning Board is received. Otherwise, a new site plan review approval must be first obtained.

Once a building permit is obtained, completion of the project must occur within twelve (12) months, which time is of the essence. If such construction is timely and properly completed, the Code Enforcement Officer shall issue a Certificate of Compliance. No solar energy system may be activated or used until such certificate is issued.

If the project is not completed and fully operational in said twelve (12) months, a certificate of compliance shall not be issued, the building permit shall be automatically revoked, and before any more work can be done on the project, a new building permit must be obtained after, where applicable, a new site plan review..

- B. Inspections. Upon reasonable notice, the Town of Nunda Building Inspector or his or her designee may enter a lot on which a Solar Energy System has been constructed for the purpose of compliance with all requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed one method of reasonable notice. Any fee or expense associated with this inspection shall be borne entirely by the permit holder/applicant and/or owner and/or operator. Irrevocable consent to such inspection shall be deemed given by the applicant upon submission of the application for a building permit and shall be contained in the written application for same signed by all property owners.
- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a site plan or building permit, and stop work order shall be complied with immediately.
- D. Continued operation. A Solar Energy System shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a Solar Energy System regarding the system's usage at any time, which request shall be complied with within seven (7) days.
- E. Traffic Routes. Construction and delivery vehicles for Solar Energy Systems shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include;
 - (1) Minimizing traffic impacts from construction and delivery vehicles.
 - (2) Minimizing Solar Energy System related traffic during times of school bus activity.
 - (3) Minimizing wear and tear on local roads.
 - (4) Minimizing impacts on local business operations.
 - (5) Solar Energy System Permit conditions may limit solar Energy System related traffic to specified routes and include a plan for disseminating traffic route information to the public.
- F. Road Use Agreement. Prior to issuance of any building permit for a Tier 3 Solar Energy System and as a condition to any Special Use Permit being issued, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town and in a format acceptable to the Town at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Tier 3 Solar Energy System. As a part of such Road Use Agreement, Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Nunda at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
 - (1) In the event that any damage is done to any Town road as a result of the development of an Applicant's Tier 3 Solar Energy System, said Applicant and/or its General Contractor

shall be responsible to perform repairs to such road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.

- (2) Such repairs shall be completed within sixty (60) days of when written notice of a demand to repair was personally served or sent via certified mail to Applicant or its General Contractor. Should Applicant or its General Contractor fail to effectuate such repairs within sixty (60) days, or within a different timeline at the discretion of the Highway Superintendent, the Town shall be permitted to execute on the irrevocable financial security bond (or other form of surety) with written notice to Applicant or its General Contractor.
- (3) The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
- (4) No building permit may be issued for any approved Tier 3 Solar Energy System until such time as a Road Use Agreement has been executed by all parties.

G. Road Remediation. The applicant shall be responsible for the remediation of damaged roads upon or if necessary, during the construction of or completion of the installation of Solar Energy System. A public improvement bond shall be posted prior to the issuance of any building permit in the amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant.

H. Removal and Soil Remediation. Other than is provided in Article V, paragraph K above, where reuse has been requested and timely obtained, where a solar energy system has been discontinued, abandoned, or where the permit has been revoked, such system shall be dismantled, all remnants thereof removed from the property owner(s)' land, and full soil remediation for ground-mounted systems shall be fully completed. All such removal and remediation shall occur within six months after both (1) such discontinuance, abandonment or revocation has occurred, and (2) the Code Enforcement Officer issues an Order to Remedy directing such removal and remediation with a one-time extension at the discretion of the Code Enforcement Officer. All such work shall be inspected for satisfactory compliance by the Code Enforcement Officer. The soil remediation required is that the land on and near where such ground-mounted systems are located be properly landscaped to the Code Enforcement Officer's satisfaction and planted to support vegetation and natural plant life of that area to the extent such existed prior to installation.

The requirement for said removal and remediation shall be the joint and severable obligation and liability of each and every applicant, landowner, operator, and successor of said system. If said removal and remediation is not completed to the satisfaction of the Code Enforcement Officer in the time allowed, the Town may seek all remedies allowed by law and this Local Law. As one such remedy, the Town may, but does not have to, conduct the removal and remediation itself, and charge all costs and expenses to the aforesaid parties obligated to perform same, together with all legal fees and related costs to fully enforce and collect all such sums, along with all civil penalties set forth herein.

I. Decommissioning/Abandonment Plan. To ensure the proper removal of Tier 3 Solar Energy Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Tier 3 Solar Energy System is no longer operational or has been abandoned, it shall be removed by the Applicant or any subsequent owner of the improvements and/or the subsequent owner of the property upon which the improvements are

placed. The Decommissioning Plan shall run to the benefit of the Town of Nunda and be executed by the Applicant as well as the owners of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the plan to be recorded at the Office of the Livingston County Clerk. Such plan shall, prior to commencement of construction, be recorded at the office of the Livingston County Clerk as irrevocable deed restrictions indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that all future owners of such properties will be obligated to comply with the Decommissioning Plan requirements if the Applicant or then owner of the Solar Energy System fails to do so.

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 and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system.

1. Prior to obtaining a building permit and as a condition to any Special Use Permit being issued, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Nunda at its discretion) for the removal of the Tier 3 Solar Energy System, with the Town of Nunda as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 110% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Tier 3 Solar Energy System has been constructed, and no later than ten (10) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Nunda with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.

J. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Code Enforcement Officer, who shall provide the Solar Energy System owner, applicant, landowner and successors with written notice and an order to Remedy by personal service or certified mail.

K. Application and annual fees.

- (1) Site plan application for Ground-Mounted Solar Energy Systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution. In addition, the applicant shall be responsible to pay, up front, for all engineering, legal and other professional expenses reasonably incurred by the Town throughout its review process. Failure to pay said fee and expenses shall suspend the site plan review process.
- (2) Fee for issuance of a building permit. In addition to any site plan application fee, an applicant shall pay a building permit fee for a:

Building-Mounted, Ground-Mounted or Rooftop-Mounted Solar Energy System: one-half of one percent of the project cost, or such other amount as the Town Board may, from time to time, determine by resolution.

L. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county and local permits have been obtained.

M. In the context of the requirement of site plan approval, the Town of Nunda Planning Board may:

For Ground-Mounted Solar Energy Systems when review is required by the Board pursuant to this article, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the Ground-Mounted Solar Energy System.

N. Any changes or alterations after construction to a Ground-Mounted Solar Energy System shall be done only by amendment to any previously issued building permit and/or site plan (if required) subject to all requirements of this Law.

ARTICLE VII. Duties of Code Enforcement Officer, Enforcement, Penalties, and Revocation.

A. Designation of Code Enforcement Officer

The duty of administering and enforcing this Law is hereby conferred upon the Town of Nunda Code Enforcement Officer (CEO). The CEO shall be appointed by the Town Board and receive compensation as the Town Board shall determine.

B. Duties and Procedures of the Code Enforcement Officer

The duties and procedures of the Code Enforcement Officer (CEO) are as follows:

1. Review permits and grant or deny same.
 - a. The CEO shall review all applications for permits.
 - b. If the CEO determines that a proposed Solar Energy System meets the requirements of this Law, upon payment of required fees he/she shall issue the permit. If the applicant's plans do not meet the requirements of this Law, the CEO must deny the permit. He/she shall not use discretionary judgment but enforce the "letter of the law."
 - c. An applicant who has been denied a zoning permit may appeal the decision of the CEO by delivering a written, signed appeal to the Town Board within thirty (30) days of the date of the denial. Otherwise the right to appeal is lost.
2. The CEO shall issue the Certificate of Compliance pursuant to this Law if the Solar Energy System conforms to plans and conditions under which the Permit was granted. Until such certificate is issued, the system cannot be used.

3. Enforce this Local Law.

- a. It shall be the duty of the CEO to enforce all of the provisions of this local Law.
- b. It shall be the duty of the CEO to cause any plans, buildings or premises to be examined or inspected to determine whether they are in violation of the provisions of this Law.
- c. Where the CEO, in the course of his/her duties, determines that any plans, buildings, or premises are in violation of the provisions of this law, he/she shall order all responsible parties, including but not limited to all landowners, operators and their successors, in writing, to remedy such conditions. Said written order shall specify:
 - i. The name and address of each responsible party;
 - ii. The nature of the violation found to exist, citing the appropriate section of this Law, and, where applicable, a stop order to constrain the continuance of the violation;
 - iii. The remedy ordered and the time permitted for such remedy;
 - iv. The penalties and remedies which may be invoked by the Town (Article VII (C) below), as well as the provisions of Article VII B (3d) below, and
 - v. The violator's rights of appeals to the Town of Nunda Zoning Board of Appeals by delivering a written, signed appeal to said Board within thirty (30) days of the date of the Order to Remedy, otherwise, the right to appeal is lost.
 1. If an order to Remedy is not fully complied with in the time specified therein, the building permit for the Solar Energy System shall automatically and immediately expire, and be deemed revoked, and said System shall immediately cease operation. Operation shall not resume until there has been full compliance with said order AND a new building permit has been obtained after site plan review approval has first been obtained for Tier II systems other than farm operations.
 2. The CEO shall have the authority to obtain from the Town Justice or other court of competent jurisdiction a stop order to constrain the continuance of the violation.
 3. The CEO, with the advance consent of the Town Board, shall have the right to commence and prosecute all civil and criminal proceedings to enforce the provisions of this Law and to invoke and enforce all penalties and remedies allowed by this Local Law as well as by State Law.

- d. If an order to remedy is not fully complied with in the time specified therein, the building permit for the Solar Energy System shall automatically and immediately expire and be deemed revoked and said system shall immediately cease operation. Operation shall not resume until there has been full compliance with said order and a new building permit has been obtained, after site plan review approval has first been obtained for Tier 2 and Tier 3 systems other than farm operations.

4. Records and Reports

- a. The CEO shall maintain a permanent record of all matters considered and all actions taken by him/her. Such records shall be filed with the Town Clerk and shall be available for the use of the Town Board and other officials of the Town and available for inspection by the public.
- b. The CEO shall prepare a written monthly report to be presented to the Town Board describing and enumerating action taken and permits issued.

C. Penalties and Remedies for Violation

- a. A violation is deemed to occur if an order to Remedy aforesaid is not complied with in the time specified therein.
- b. Each violation of any provision of this Local law shall constitute a criminal offense and shall subject the person(s) and/or entity(ies) violating same, as well as all owners of the real property affected, **to a fine of \$250 or to imprisonment for fifteen (15) days, or both.** Said violation shall be deemed to occur when the written order in subparagraph B (3c) above has not been complied with within the time specified therein. Each week's continued violation shall be deemed a separate and distinct offense.
- c. For each such violation as specified in subparagraph C. a. directly above, all violators shall also owe the Town of Nunda **a civil fine of \$200 and an additional \$200 for each subsequent week** of such violation.
- d. In addition all other remedies allowed, each person and/or entity that violates any provision of this Law shall also owe the Town of Nunda all legal fees, court costs and disbursements incurred by the Town of Nunda to enforce this Local Law, cure said violations, and pursue and collect the remedies allowed herein.

D. Appeal to the Town Board

- a. An appeal to the Town Board as allowed herein shall be in writing, signed by the appellant. Said appeal shall contain: the name, address and telephone number of appellant, and of all landowners and owners of the system if different from appellant, the land involved including address and tax map number, the nature of the action of the Town official(s) being appealed from; and the full legal and factual grounds on which said appeal is based.
- b. **Within thirty (30)** days after the appeal is received, the Town Board shall schedule and begin to hold a due process hearing on **at least fourteen (14)** days advance notice

to all concerned. The date of the hearing may be extended beyond said 30 days on the mutual consent of all concerned.

- c. At such hearing, the appellant shall proceed first in presenting its evidence and shall have the burden of proof. Otherwise the rules of evidence and trial procedure for trial courts of New York State shall apply. Opening and closing statements shall be allowed but not required.
- d. The Town Board shall render and serve a written decision ***within forty-five (45)*** days after said hearing is completed, setting forth its findings of fact and decision concerning said appeal.
- e. The Town Board may, but need not, issue a stay of the Town official(s)' action(s) being appealed from pending said appeal.

ARTICLE VIII. Applicability; Interpretation; conflict with other law. In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards shall govern. The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair.

ARTICLE IX. Severability. If any section, subsection, phrase, sentence or other portion of this Law is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE X. Effective date. This Local Law shall take effect immediately upon filing with the Secretary of State of New York.

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

RECEIVED

FEB 16 2021

**NUNDA
TOWN CLERK**

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

February 9, 2021

Town Clerk
Town of Nunda
Nunda NY 14517

RE: Town of Nunda, Local Law 1, 2021, filed on February 8, 2021

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492



**Department
of State**