

**A LOCAL LAW IMPOSING A MORATORIUM ON THE COMMERCIAL SOLAR USES
IN THE TOWN OF CLARENDON**

Be it enacted by the Board of Trustees of the Town of Clarendon as follows:

NOW, THEREFORE be it resolved that the following proposed local law be published for public review in accordance with the Municipal Home Rule Law and the Town Law, and that a public hearing was held thereupon on the _____ day of _____, 2019, for the purposes of consideration of adoption of the proposed local law which reads as follows:

Local Law No. 6 of the Laws of 2019 of the Town of Clarendon

I. TITLE: This Local Law shall be referred to as the “Local Law Imposing a Moratorium on Commercial Solar Uses in the Town of Clarendon.”

II. PURPOSE and INTENT: Pursuant to the statutory powers vested in the Town of Clarendon to regulate and control land use and to protect the health, welfare, and safety of its residents, the Town Board of the Town of Clarendon declares a six month moratorium on commercial solar uses, as well as a moratorium on any activity associated therewith, or intending to support such process, including, but not limited to, the establishment, implementation, placement or construction of such in the Town of Clarendon.

III. AUTHORITY: This Local Law is enacted pursuant to the provisions of the New York Town Law and the New York Municipal Home Rule Law.

IV. LEGISLATIVE FINDINGS: The Town Board enacts this moratorium pursuant to its legislative powers and to preserve for the Town Board on behalf of its residents of the town, the ability to deliberately review the issues and concerns related to commercial solar uses, and to provide adequate time to determine if permanent comprehensive local legislation is necessary and in the best interests of the town. The town board is desirous of using the moratorium period to study and give careful consideration of the subject of commercial solar uses, their impact on the physical and human environment in the town, and the possible need for local legislation.

V. DEFINITIONS:

A. The terms “Commercial Solar Use” shall mean the placement, construction, erection, installation, or use of a Solar Energy System for the generation of electrical power to be used primarily for the sale or distribution to, or consumption by distributors or users located off the site of such Solar Energy System; provided, however, this does not include On-Site Solar Energy Uses. The placement, construction, erection, installation, or use of a Solar Energy System for the generation of electrical power to be used by a collective or cooperative group of homes or businesses shall be considered a Commercial Solar Use.

B. The term “On-Site Solar Energy Uses” shall mean the placement, construction, erection, installation, or use of a Solar Energy System, whether attached to a structure, or affixed to the ground on site, for the generation of electrical power to be used primarily for the electrical needs of the residential, agricultural, or commercial property, on which such Solar Energy System is located. Provided that if a Solar Energy System is installed and used primarily for the foregoing purposes, the incidental sale, or distribution, of excess electricity generated by such Solar Energy System shall not cause such system to be deemed a Commercial Solar Use.

C. The term “Solar Energy System” shall mean an electrical generating system compose of a combination of both solar panels and solar energy equipment. A solar panel is a photovoltaic device capable of collecting and converting solar energy into electrical energy. Solar energy equipment shall mean electrical energy storage devices, material, hardware, inverters or other electrical equipment and conduit or photovoltaic devices associated with the production and/or transmission of electrical energy. Nothing herein shall prevent solar panel or solar energy equipment located on the roof of or within any legally permitted building or structure for the purpose of producing electricity primarily for on-site consumption. Further, nothing herein shall prohibit licensed load serving entities from conducting its regular and usual business of providing electrical distribution within its service territory as defined by its tariff with the New York State Department of Public Service.

D. The term “Town” shall mean the Town of Clarendon.

E. The terms “Town Board,” “Planning Board,” and “Zoning Board of Appeals” shall refer to the appropriate boards established in the Town of Clarendon, pursuant to the Town Law. The term “Code Enforcement Officer” shall mean the duly appointed officer of the Town of Clarendon charged with the enforcement of the Town’s zoning and related codes.

VI. SCOPE OF MORATORIUM: During the effective period of this local law, no person shall engage in any activity and the town board, the town planning board, the town zoning board of appeals, and the Code Enforcement Officer shall not grant any special use permit, specific use permit, building permit, variance, or approval of any kind which would result in the establishment, implementation, placement of construction of Commercial Solar Use, including any activity associated therewith or intending to support such use, including the establishment or implementation of such use or activity in the Town.

VII. TERM: This moratorium shall be in effect for a period of 6 months from the effective date.

VIII. PENALTIES and ENFORCEMENT: Any person, firm, corporation or other entity that shall take any action to establish, implement, place or construct a Commercial Solar Use, including the establishment, implementation, placement or construction of

any activity or facility associated therewith, or intended to support such process in violation of the provision of this local law, shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine not exceeding \$350.00, or to imprisonment, for each and every violation. Each week and every week that such violation continues shall constitute a separate violation. In no event may imprisonment for any one violation exceed 15 days. In addition to other penalties, the town may institute any appropriate action or proceeding to prevent the unlawful erection, construction or alteration of any building or land in violation of the requirements of this chapter.

IX. VALIDITY: The invalidity of any provision of this local law shall not affect the validity of any other provision which may be given effect without such invalid provision.

X. HARDSHIP:

A. In the event that any owner of real property affected by this local law shall suffer an unnecessary hardship because of the implementation of the letter of this local law, then the owner of such property may make a written application to the town board for a variance from strict compliance with this Local Law. Unnecessary hardship shall not mean a mere delay in being able to pursue a Commercial Solar Use or to be able to apply for and receive decision upon any permit or approval of any kind related thereto.

B. Applications for a variance shall be in writing and shall set forth or have attached thereto evidence of the claimed hardship. The town board shall schedule a public hearing on any such application within thirty 30 days of its receipt upon at least five (5) days' notice by publication in the town's official newspaper and posting on the town clerk's board. At said public hearing, the property owner and other interested parties shall be heard and given the opportunity to present evidence in connection with the application. The town board shall render a decision in writing within 30 days of the public hearing. If the town board determines that the property owner will suffer an unnecessary hardship by means of the strict application of this local law, then the town board will grant the minimum variance necessary to afford relief to the applicant.

XI. STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA): The town board has considered the provisions of Article 8 of the Environmental Conservation Law ("SEQRA") and the regulations adopted hereunder at 6 NYCRR Part 617 and find this Local Law to be a Type II Action as defined therein. Therefore, no further review is required under SEQRA.

XII. EFFECTIVE DATE: This Local Law shall take effect immediately upon filing in the Office of the New York State Secretary of State.

1. I hereby certify that the local law annexed hereto, designated as Local Law No. 6 of 2019 of the Town of Clarendon was duly passed by the Town Board on _____, 2019 in accordance with the applicable provisions of law.

2. I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Susan C. Colby
Town of Clarendon Clerk

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

John S. Sansone, Esq.
Attorney for the Town of Clarendon