

Local Law Filing

New York State Department of State  
162 Washington Avenue, Albany, New York 12231

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Fowler

Local Law No. 4 of the year 2021

A local law Amending Local Law Number 2 for the year 2020 Pertaining to Zoning to Provide for the Regulation of Solar Energy Facilities.

Be it enacted by the Town Board of the  
(Name of Legislative Body)

Town of Fowler as follows:

**RESOLVED** that Local Law Number 2 for the year 2020 is hereby amended as follows:

**Article III is hereby amended as follows:**

Page 19, the first paragraph/definition entitled: “**utility-scale photovoltaic system:**” shall be deleted in its entirety.

**Article III is hereby amended to add the following:**

■**battery(ies):** A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

■**battery energy storage system:** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 battery energy storage system as follows:

- A. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600kWh and, if a room or enclosed area, consist of only a single energy storage system technology.

- B. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

■**dedicated-use building:** A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the international Building Code, and complies with the following:

- A. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- B. No other occupancy types are permitted in the building.
- C. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

■**major solar collection system:** An area of land or other area used for a solar collection system principally used to capture solar energy and convert it to electrical energy to transfer to the public electric grid but also may be for on-site use and is intended to be used for any purpose, other than private, or residential, or agricultural use, including community based systems. Solar farm facilities consist of one or more freestanding ground-mounted or roof-mounted solar collector devices. Major solar systems are those systems which generate more than 100% of the energy demand for onsite use.

■**minor and accessory solar collection system:** A solar photovoltaic cell, panel, array, solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises for other lawful purposes, minor solar collection systems may consist of building-integrated photovoltaics, ground-mounted or roof-mounted solar collector devices. Minor or accessory solar collection systems that do not generate more than 110% of the energy demand for onsite use. In the case of a farm operation in any agricultural district, it shall be considered as farm equipment under New York State Agriculture and Markets Law §301.

**Article IV, Section B.1.e. is hereby amended to add the following:**

- xviii. Solar energy systems (facilities).

**Article VI is hereby amended to add the following:**

- W. SOLAR ENERGY SYSTEMS (FACILITIES), MINOR AND ACCESSORY SOLAR COLLECTION SYSTEMS.

- 1. PURPOSE AND INTENT

a. Solar energy is a renewable and non-polluting energy resource that can prevent fuel emissions and reduce the Town of Fowler energy load. Energy generated from solar energy systems can be used to offset energy demand on the New York State power grid when excess solar power is generated.

b. This section aims to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and the convenience of access necessary thereof.

## 2. APPLICABILITY TO SOLAR ENERGY SYSTEMS

a. The requirement of this section shall apply to solar energy systems modified or installed after the effective date of this ordinance.

b. Solar energy systems for which a valid permit has been properly issued or for which installation has commenced prior to the effective date of this article shall not be required to meet the requirements of this Local Law.

c. All solar energy systems shall be designed, erected, and installed in accordance with all applicable federal, state, local and industry codes, regulations, and standards.

d. Solar energy collection systems shall be permitted to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises which they erected, but nothing in this provision shall be construed to prohibit the sale of excess power through a "net billing" or "net metering" arrangement in accordance with New York Public Service Law or similar Federal or State statutes.

e. Major solar collection systems, properly permitted by the Town of Fowler may be erected for the express purpose of generating electricity for sale as a commercial enterprise.

## 3. PERMITTING SOLAR ENERGY SYSTEMS

a. No solar energy system or device shall be installed or operated in the Town of Fowler except in compliance with this article.

b. To the extent practicable, the accommodation of solar energy systems and equipment and the protection of access to sunlight for such equipment shall be encouraged in the Town Code.

c. Minor and accessory solar collection system.

i. Rooftop and building-mounted solar collectors are permitted in all districts in the Town of Fowler, subject to the following conditions:

a. Building permits shall be required for the installation of all rooftop and building mounted solar collectors.

- b. The installation of rooftop and building mounted solar collectors shall be a standard use in all districts, subject to building height restrictions for the district.
- c. The installation of rooftop and building mounted solar collectors shall be standard use provided that the panels do not extend horizontally past the roofline. The installation of such systems on buildings listed on the National or New York State Register of Historic Places is prohibited.
- d. Solar thermal systems shall be standard use, subject to site plan review in all districts. The installation of such systems on buildings listed on the National or New York Register of Historic Places is prohibited.
- e. Ingress and egress in the event of fire or other emergency, for example, solar panels or collectors, may not be installed in front of a window or door.
- f. Major solar collection system.
  - i. Major solar collectors shall conform to the seismic standards of the NYS Uniform Fire Prevention and Building Code.
  - ii. Major solar collectors are permitted within the Residential-Agricultural (R-A) District, subject to site plan review and a special use permit.
  - iii. Ground-mounted and free-standing solar collectors are permitted within the Residential-Agricultural (R-A) District, subject to the following conditions:
    - a. Building permits shall be required for the installation of all ground mounted solar collectors.
    - b. The location of the solar collector meets all applicable set-back requirements.
    - c. The height of the solar collector and any mounts shall not exceed 20 feet from finished grade when oriented at maximum tilt.
    - d. Solar energy collectors and equipment shall be located in a manner to reasonably minimize view blockage for the surrounding properties and shading of properties to the north, while still adequate solar access for the collectors.
  - iv. Design standards:
    - a. Removal of trees and other existing vegetation should be minimized or offset with planting elsewhere on the property.

- b. Removal of any prime agricultural soil from the subject parcel is prohibited.
- c. Proposed major solar collection systems shall minimize the displacement of prime soils that are in active agricultural production. The site plan shall depict the location and extent of prime soils, prime soils if drained, soils of statewide importance, and indicate whether the parcel(s) is/are receiving an agricultural valuation. The site plan shall also depict the location and extent of current agricultural uses on the land (e.g. rotational crops, hay land, un/improved pasture, support lands, and fallow lands) the location of diversions and ditches, and areas where tile drainage has been installed. Prime soils, prime if drained, and soils of statewide importance that are in agricultural production are a valuable and finite resource. The site plan should include a cross section of any subsurface foundations that will be used for the solar array. In the event the array utilizes at-grade ballast footers, the underlayment should include a bed or crushed stone atop monofilament woven geotextile fabric so that the stone can be readily removed from the site when the facility is decommissioned. A plan for clearing and/or grading the site and Stormwater Pollution Prevention Plan (SWPPP) for the site must be included.
- d. Roadways within the site shall be built along field edges and along elevation contours where practical, constructed at grade and have a maximum width of sixteen (16) feet. Roadways shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
- e. All on-site utility and transmission lines shall, to the extent feasible, be placed underground. Any above ground transmission lines that are used to accommodate the facility shall require utility poles that are tall enough and installed at widths able to accommodate farm machinery and equipment. The installation of guy wires to utility poles is discouraged.
- f. Solar collectors and other facilities shall be designed and located in order to minimize reflective glare and/or glint toward any inhabited buildings on adjacent properties and roads.
- g. All mechanical equipment, including any structure for batteries or storage cells, shall be enclosed by a minimum six (6)-foot-high fence with a self-locking gate.
- h. Major systems or solar farms shall be constructed in a fashion so as to not obstruct solar access to adjacent properties.
- i. Any exterior lighting installed within the facility shall be downcast and dark sky compliant with recessed bulbs and full cut off shields.

- j. Property Operations and Maintenance Plan: A property operation and maintenance plan is required, describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc. Any such plan shall propose that the property maintain a neat and orderly appearance consistent with surrounding properties. The property shall always be maintained in a manner consistent with all properties within the Town of Fowler.
- v. Abandonment and Removal:
- a. A Major Solar Collection System shall be deemed to be abandoned after it has ceased operating for a continuous one (1) year period.
- b. Upon cessation of operations of a Major Solar Collection System for a period of one (1) year, the Town may notify the owner and/or operator of the facility to implement the Decommissioning Plan. Within one hundred eighty (180) days of notice being served, the owner and/or operator can either restore operation equal to eighty percent (80%) of approved capacity or implement the Decommissioning Plan.
- c. In the event that construction of the Major Solar Collection System has been started but is not completed and functioning within eighteen (18) months of the issuance of the final Site Plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within three hundred sixty-five (365) days. If the owner and/or operator fails to perform, the Town may require the owner and/or operator to implement the Decommissioning Plan. The Decommissioning Plan must be completed within one hundred eighty (180) days of notification by the Town to implement the Decommissioning Plan.
- d. Applications for extensions of the time periods set forth in this subsection of no greater than one hundred eighty (180) days shall be reviewed by the Town Board.
- e. Upon recommendation of the Building Inspector/Code Enforcement Officer, the Town Board may waive or defer the requirement that a Major Solar Collection System be removed if it determines that retention of such facility is in the best interest of the Town.
- f. If the owner and/or operator fails to fully implement the Decommissioning Plan within the prescribed time period and restore the site as required, the Town may use the financial surety posted by the owner and/or operator to decommission the site, or it may proceed with decommissioning at its own expense and recover all expenses incurred for such activities from the defaulted owner and/or operator. Any costs incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed

thereon, and enforced and collected with interested by the same officer and in the same manner as other taxes.

#### 4. SAFETY

- a. All solar collector installations shall be performed by a qualified solar installer.
- b. Prior to operation, electrical connections must be inspected and approved by a qualified third-party electrical inspector as determined by the Code Enforcement Officer.
- c. Any connection to the public utility grid must be inspected and approved by the appropriate public utility.
- d. Rooftop and building mounted solar collectors shall meet the requirements of New York State's Uniform Fire Prevention and Building Code.
- e. If a solar collector ceases to perform its originally intended function or purpose for more than twelve (12) consecutive months, the property owner shall remove the collector, mounts and all associated equipment and return the site or building to its original condition, no later than ninety (90) days after the end of the twelve (12) month period.

#### 5. DECOMMISSIONING

Prior to the removal of a Major Solar Collection System, a demolition permit for removal activities shall be obtained from the Town of Fowler.

##### a. Decommissioning Bond:

- i. Prior to issuance of a building permit for a Major Solar Collection System, the owner or operator of the Solar Energy System shall post a surety in an amount and form acceptable to the Town for the purposes of removal in the event the Major Solar Collection System is abandoned. The amount of the surety required under this section shall be one hundred twenty-five percent (125%) of the projected cost of removal of the Solar Energy System and restoration of the property with an escalator of two percent (2%) annually for the life of the Solar Energy System. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee removal of the Major Solar Collection System should the system be abandoned. In such case, the Town Building Inspector/Code Enforcement Officer shall then provide written notice to the owner or operator to remove the Major Solar Collection System, and the owner or operator shall have one (1) year from written notice to remove the Solar Energy System including any associated accessory structures and/or equipment, and restore the site to a condition approved by the Planning Board. If the owner, operator applicant or lessee fails to remove any associated structures or restore the site to the condition approved by the

Board, all costs of the Town incurred to enforce or comply with this condition shall be paid using the surety provided by the applicant.

- b. Decommissioning Plan. An application for a Major Solar Collection System shall include a Decommissioning Plan. Removal of a Major Solar Collection System must be completed in accordance with the Decommissioning Plan. The Decommissioning Plan shall:
- i. Specify that after the Major Solar Collection System will no longer be used, it shall be removed by the owner and/or operator or any subsequent owner/operator and shall include a signed statement from the applicant acknowledging such responsibility. The application shall disclose the lease start date, length of the original lease, and number of options and timeframes if the lease is renewed.
  - ii. Demonstrate how the removal of all infrastructures (including but not limited to above ground and below ground equipment, structures and foundations) and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. In areas where agricultural production will resume, re-vegetation shall include native plants and seed mixes and exclude any invasive species. The reclamation of land when the training facility is decommissioned shall include the removal of rock, construction materials and debris to a depth of four (4) feet, the decompaction of soils to a depth of eighteen (18) to twenty-four (24) inches, regrading and reseeding the site to its original condition prior to the project construction.
  - iii. Include photographs or archival color images of the proposed site plan area for Major Solar Collection System. Such information must, in aggregate, adequately portray the entire property for the purpose of future reference when soil and vegetation remediation of the property occurs.
  - iv. State that disposal of all solid and hazardous waste shall be in accordance with local, state and federal waste disposal regulations.
  - v. Provide an expected timeline for decommissioning within the three-hundred-sixty-five-day (365) period set forth below.
  - vi. Provide a cost estimate detailing the projected cost of executing the Decommissioning Plan, subject to third party verification at the developer's expense, if required by the Town.



## X. BATTERY ENERGY STORAGE SYSTEM

1. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure, meeting the requirement of New York State's Uniform 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 Town of Fowler and all applicable federal, state, county and/or regional laws and/or regulations. A building permit shall be required for installation of all battery energy storage systems.

a. 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"].

b. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulation, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town of Fowler Code.

c. Permitting requirements: Tier 1 Battery Energy Storage Systems shall be permitted as an accessory use in all zoning districts when they are enclosed in a building and are used to store energy for a principal use on the property. These systems shall be subject to the Uniform Code and are exempt from Planning Board review. Examples include: a battery bank installed in a residential garage to store energy collected from a dwelling's solar panel; and a battery bank installed in the basement of an institutional, government or office building (e.g. library, hospital, government offices).

Tier 2 Battery Energy Storage Systems shall be permitted in the R-A and Shoreline Districts, subject to the Uniform Code and special use permit application requirements set forth in this law.

REPEALER: All sections of Local Law Number 2 for the year 2020 which are not in conformity with or otherwise contradict this law are hereby repealed, effective the date of this law.

EFFECTIVE DATE: This Local Law shall be effective upon the date of filing with the Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.

*(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)*

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as Local Law No.   4   of   2021   of the Town of   Fowler   was duly passed by the Town Board on   December 13  ,   2021  , in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No.        of 20       Of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20   , and was (approved)(not  
(Name of Legislative Body)  
disapproved)(repassed after disapproval) by the \_\_\_\_\_ and  
(Elective Chief Executive Officer\*)  
was deemed duly adopted on \_\_\_\_\_, 20   , in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No.        of 20       of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20   , and was (approved)(not  
(Name of Legislative Body)  
disapproved)(repassed after disapproval) by the \_\_\_\_\_ on  
(Elective Chief Executive Officer\*)  
\_\_\_\_\_, 20   . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_, 20   , in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No.        of 20       of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20   , and was (approved)(not  
(Name of Legislative Body)  
disapproved)(repassed after disapproval) by the \_\_\_\_\_ on  
(Elective Chief Executive Officer\*)  
\_\_\_\_\_, 20   . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20   , in accordance with the applicable provisions of law.

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Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_, of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_, of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_, 20\_\_, pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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.

(Seal)

*Tami L. Gale*

Clerk of the County legislative body, City, Town or Village  
Clerk or officer designated by local legislative body.

Tami Gale

Date: DECEMBER 13, 2021

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK     )  
  )ss  
COUNTY OF ST. LAWRENCE)

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.

*Henry J. Leader*

Henry J. Leader, Esq.

Town Attorney

Town of     Fowler

Date: December 15, 2021