Code for Commercial Solar Use in the Town of Le Roy
Draft

1. Authority

This Zoning for Solar Energy Law is adopted pursuant to the Town of LeRoy Law, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and "to make provision for, so far as conditions may permit, the accommodation of Solar Energy Systems and equipment and access to sunlight necessary therefor."

2. Statement of Purpose

This Zoning for Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of Town of LeRoy, including:

- Taking advantage of a safe, abundant, renewable, and non-polluting energy resource;
- Decreasing the cost of energy to the owners of residential properties, including single-family houses;
- Aligning the laws and regulation of the community with several policies of the State of New York, particularly those that encourage distributed energy systems.
- Becoming more competitive for a number of state and federal grants and tax benefits.
- Creating synergy between solar stated goals of the Town of LeRoy Comprehensive Plan.

3. Definitions

ANGLED ROOF
A roof with a slope greater than 2:12

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

COLLECTIVE SOLAR
Solar installations owned collectively through subdivision homeowner associations, "adopt-a-solar-panel" programs, or other similar arrangements.

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

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

GLARE
The effects of reflected light with intensity sufficient to cause annoyance, discomfort, nuisance, or visual impairment.

LOW SLOPE ROOF
A roof with a slope equal to or less than 2:12

MAJOR SOLAR COLLECTION SYSTEM or MAJOR SYSTEM or COMMERCIAL USE
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 in order to sell electricity to or receive a credit from a public utility entity, but also may be for on-site use. Facilities consist of one or

more ground- or roof-mounted solar collector devices, solar-related equipment and other accessory structures and buildings, including light reflectors, concentrators, and heat exchangers, substations, electrical infrastructure, transmission lines and other appurtenant structures and facilities. Major solar collection systems are defined as ground-mounted accessory systems with a total surface area greater than 1,000 square feet.

MINOR SOLAR COLLECTION SYSTEM or MINOR SYSTEM
A solar photovoltaic cell, panel, or array, or 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, accessory to the use of the premises for other lawful purposes. Minor solar collection systems are defined as roof- or building-mounted solar collectors greater than 60 square feet on any code-compliant structure, and ground-mounted solar collectors with the total surface area greater than 60 square feet and less than 1,000 square feet.

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

PERMIT GRANTING AUTHORITY
The Town authority (CEO) charged with granting permits for the operation of solar energy systems.

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

QUALIFIED SOLAR INSTALLER
A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Proof of certification is required.

ROOFTOP OR BUILDING MOUNTED SOLAR SYSTEM
A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames.

SMALL-SCALE SOLAR
For purposes of this Section, the term “small-scale solar” refers to solar photovoltaic systems that produce up to twenty-five kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings.

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

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

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

SOLAR ENERGY EQUIPMENT/SYSTEM
Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

SOLAR FARM
Solar systems above 25 kilowatts (kw) – 80 solar panels

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

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

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

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

ABANDONMENT
A Major Collection System, Commercial System, or Solar Farm shall be deemed “abandoned” if the system fails to generate and transmit electricity at a rate of more than fifty percent (50%) of its rated capacity over a continuous period of 12 months. This would be monitored via their yearly invoice sent to the Town of LeRoy.

4. Applicability.

- The requirements of this section shall apply to all solar energy systems modified or installed after the effective date of this section.

- All solar energy systems shall be designed, erected and installed in accordance with all applicable codes and regulations, as referenced in the New York State Uniform Code, the New York State Property Maintenance Code and the Code of the Town of LeRoy. All solar systems must be designed, erected and installed by a Qualified Solar Installer as defined in this chapter. They must meet all federal, state, and local guidelines.

5. Compliance.
It is unlawful for any person to construct, install, maintain, modify or operate a solar energy system or solar farm that is not in compliance with this chapter or with any conditions contained in a special use or zoning permit issued pursuant to this chapter.

6. Permitting

(1) Construction schedule. Applicants must submit a proposed schedule for the completion of the project, including the proposed start date and proposed date of substantial completion, the expected date of connection to the power grid, and the expected date on which operation of the photovoltaic system shall commence.

(2) Rooftop and Building-Mounted Solar Collectors: Rooftop and building mounted solar collectors are permitted in all commercial and industrial zoning districts and interchange zones in the Town of LeRoy subject to the following conditions:

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

b. An engineering report must be submitted stating that the structural integrity of the roof can support the weight and wind conditions for the area.

c. Any height limitations of the Town of LeRoy Code shall not be applicable to solar collectors provided that such structures are erected only to such height as is reasonably necessary to accomplish the purpose for which they are intended to serve, and that such structures do not obstruct solar access to neighboring properties.

d. Placement of solar collectors on flat roofs shall be allowed as of right in non-historic districts, provided that panels do not extend horizontally past the roofline.

e. Specify that the panels used for solar cannot contain cadmium telluride. That is hazardous waste material.

f. Specify that an archeological study is required before introducing solar panels. There are several spots in our area where Indian artifacts have been found.

(3) Building-Integrated Photovoltaic (BIPV) Systems: BIPV systems are permitted outright in all commercial and industrial zoning districts, and interchange zones.

(4) Ground-Mounted, Free Standing Solar Collectors and Solar Farms: Ground-mounted, free standing solar collectors and solar farms are permitted only in industrial zoning districts and interchange zones subject to the following conditions:

a. Building permits are required for the installation of all ground-mounted, free-standing solar collectors, and solar farms.

b. The location of the solar collector system meets 100’ front/rear/side setback requirements from all bordering parcels.

c. Ground Mounted Solar Energy Systems shall not exceed a height of [12ft]. All height measurements are to be calculated when the Solar Energy System is oriented at maximum tilt.

d. Anything within ½ mile of an airports published flight path must have FAA approval. This is due to possible glare and strobe effect.

e. Solar energy equipment shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for collectors. Documentation of Major System Components (PV panels, foundation, mounting system, etc.) shall also be provided.

f. Freestanding solar energy collectors shall be screened when possible and practicable through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area. Plans to control noise and glare shall be submitted. Perimeter fencing and appropriate signage will be required.

g. The total surface area of all solar collectors when combined with all other buildings and structures on the lot, shall not exceed the maximum lot coverage for the zoning district plus ten (10) percent.

h. An engineering report must be submitted stating the structure is capable of wind resistance for our area and show the pole footer depth/construction. A site plan signed by said engineer must be submitted and must include access points, storm water control, and maintenance routines.

7. Enforcement

A. Any violation of this Local law shall be subject to the same civil and criminal penalties provided for in the Town of LeRoy Code (including any applicable zoning regulation) and/or the Laws of the State of New York.

B. The Code Enforcement Officer is hereby authorized to make inspections to determine compliance with the provisions of this chapter. When the Code Enforcement Officer determines that there is a violation, they shall cause a written notice thereof to be served upon the owner of the property in violation. Such notice shall include a statement of conditions that violate the provision of this chapter and the action required to remedy such violations.

8. Severability

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

9. Abandonment and Decommissioning.

1. Applicability and purpose. This section governing abandonment and decommissioning shall apply to a Major Collection System, Commercial System, or Solar Farm. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of LeRoy by requiring abandoned commercial solar collector systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town of LeRoy. Abandoned Major Collection System, Commercial System, or Solar Farm may become unsafe by reason of their energy producing capabilities and serve as an attractive nuisance.

A. If the Code Enforcement Officer receives a complaint, or requests access to inspect a Major Collection System, Commercial System, or Solar Farm, to assess whether the solar collector facility is operating as originally designed, the property owner shall allow access to the property and facility for testing. If it is determined after testing or inspection that the solar collector is not producing at least 50% of the energy it was originally designed to generate, the solar collector shall be removed or replaced within 120 days of notice from the Code Enforcement Officer.

B. Abandonment. If requested by the Code Enforcement Officer, the property owner and/or operator of the Major Collection System, Commercial System, or Solar Farm shall provide the Code Enforcement Officer, within forty-five (45) days of a written request, a report certified by a qualified consultant demonstrating that the solar collector system is operating at a rate of at least 50% of its rated capacity. Failure to provide a report within 45 days of a written request shall create a presumption that the solar collector facility is not operating at the rate of at least 50% of its rated capacity. A Major Collection System, Commercial System, or Solar Farm also shall be deemed abandoned if, following site plan approval, construction of the system has commenced but is not completed within eighteen (18) months of issuance of the first Building Permit for the project. The time at which a Major

Collection System, Commercial System, or Solar Farm shall be deemed abandoned may be extended by the Planning Board and Town Board for one additional period of one year, provided the system owner presents to the LeRoy Planning Board and the LeRoy Town Board a viable plan outlining the steps and schedules for placing the system in service or back in service, at no less than eighty percent (80%) of its rated capacity, within the time period of the extension. Any application for an extension of time shall be made to the LeRoy Planning Board by the owner (and/or operator) prior to abandonment as defined herein. Extenuating circumstances as to why the Major Collection System, Commercial System, or Solar Farm has not been operating or why construction has not been completed may be considered by the LeRoy Planning Board and the LeRoy Town Board in determining whether to grant an extension.

C. All applications for Major Collection System, Commercial System, or Solar Farm shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address:

1) Include an affirmative obligation and acknowledgement that after any Major Collection System, Commercial System, or Solar Farm can no longer be used it shall be removed by the applicant and/or any subsequent owner.

2) 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. A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work

3) Include a cost estimate detailing the projected expense of executing the decommissioning plan signed by a Professional Engineer. Cost estimations shall take into account inflation.

4) Obligate the owner, operator and/or successors in interest to remove any ground mounted solar collector structures, batteries, equipment, security barriers and transmission lines which have reached the end of their useful life or have been abandoned, to physically remove the installation no more than 6 months after the date of discontinued operations and also notify the LeRoy Code Enforcement Department by certified mail of the proposed date of discontinued operations and the plans for removal.

5) Include an obligation to dispose of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

D. Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances any Major Collection System, Commercial System, or Solar Farm shall be considered abandoned when it fails to operate as set forth in 8.B of this section for more than 6 months without the written consent of the Town of LeRoy Planning Board and LeRoy Town Board. If the owner or operator of any Major Collection System, Commercial System, or Solar Farm fails to remove the installation in accordance with the requirements of this Section within 6 months of abandonment or the proposed date of decommissioning, a Town of LeRoy Code Officer may enter the property and physically remove the installation upon application to a Court of appropriate jurisdiction to obtain access to said property for that purpose with approval of the LeRoy Town Board.

E. In the event that an application is approved for a Major Collection System, Commercial System, or Solar Farm, the Town of LeRoy shall require that the applicant and/or property owner provide or establish a bond, surety bond, financial deposit, undertaking, financial escrow and/or other financial security, the amount, substance and character of which is to be determined by and at the sole discretion of LeRoy Town Board and reviewed by the Town Engineer, the spirit and intent of same being to ensure that sufficient funds are available to remove the installation and restore landscaping consistent with the best interests of the landowner and/or Town of LeRoy in the event the applicant fails to comply with its

decommissioning obligations with same to be annually reviewed for financial sufficiency (with any decision relating to continued financial sufficiency also to be in the sole discretion of the LeRoy Town Board) and reserves the right to request reasonable access to the property upon notice and consent.

F. If the Major Collection System, Commercial System, or Solar Farm is not decommissioned after being considered abandoned, the Town of LeRoy may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality, and to collect such amounts in the same way as other Town of LeRoy taxes, in addition to any other remedies available to the Town of LeRoy.

G. Decommissioning Plan needs to be included in the original permit application. The price for hauling away hazardous materials, which may include; soil remediation, or any other waste or debris associated with the solar array or its' components.