

**TOWN OF CALEDONIA**  
**Proposed Local Law No. 2**  
**of the Year 2019**

**A Local Law to Impose a Moratorium on Solar Farms and  
Large Battery Energy Storage Systems**

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

**Section 1. Title.**

This Local Law shall be known as the “Moratorium on Solar Farms and Large Battery Energy Storage Systems.”

**Section 2. Authority and Intent; Findings; Purpose.**

- a. Authority and Intent.** This Local Law is intended to be consistent with and is adopted pursuant to the authority to enact zoning laws granted to the Town under the New York State Constitution, and the laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, §§2(c)(ii)(10); Municipal Home Rule Law §10; Statute of Local Governments §10; and Town Law §§ 264 and 265.
- b. Findings of Fact.** The Town Board makes the following Findings of Fact relating to this Local Law:

  1. Caledonia is a community that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, Genesee River access, trails, and cultural, recreational, scenic and other natural resources.
  2. Preservation of the Town’s irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the people who visit the Town.
  3. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, other natural resources and aesthetics of the Town is important for both a healthy environment and vibrant economy.
  4. Solar energy is abundant, non-polluting and does not emit greenhouse gases responsible for global warming. New York State has adopted policy and law to promote the installation of solar energy on residential, commercial, and municipal buildings, and ground-mounted large commercial generating systems.

5. As renewable power sources like wind and solar provide a larger portion of New York's electricity, energy storage systems will allow clean energy to be available when and where it is most needed and better use existing resources more efficiently and with fewer emissions. New York State has adopted policy and law to promote the installation of energy storage systems to be integrated into solar and wind energy projects and in critical locations within the electrical distribution and transmission grid.
6. The Town supports the use of solar energy and energy storage systems with appropriate regulations to promote and preserve the health, safety and welfare of the Town and its citizens.
7. Solar Farms are solar energy systems located on large tracks of land which are primarily used to convert solar energy into electricity for offsite energy consumption.
8. The Town currently regulates Solar Farms pursuant to Article 1 of Chapter 106 of the Town Code, adopted November 10, 2016 (the "Existing Solar Farm Code").
9. Since enactment of the Existing Solar Farm Code, several Solar Farms have been approved or are formally under review by the Town, including a 2 megawatt/8 acre project proposed by Valley Sand & Gravel and a 2 megawatt/10 acre project proposed by Livingston Solar (together, the "Current Solar Projects").
10. On October 5, 2018, Horseshoe Solar Energy LLC ("Horseshoe") initiated a proceeding before the New York State Public Service Commission ("PSC") pursuant to Article 10 of the Public Service Law ("Article 10") for approval to site a Solar Farm in the Town and the Town of Rush totaling up to 180 megawatts of solar energy capacity (the "Article 10 Project") that is currently estimated to require approximately 1,260 acres of land, of which approximately 80% is proposed to be located in the Town.
11. On October 10, 2019, Horseshoe updated the current plan for the Article 10 Project to indicate that the "buildable area" for the Article 10 Project may include approximately 400 acres of land in the Town adjacent to Route 5 between West River Road and Quarry Road (the "Route 5 Corridor").
12. Because Article 10 supersedes all local approvals for the Article 10 Project, the Town has no approval authority over the Article 10 Project, but Horseshoe is encouraged by Article 10 to comply with the Existing Solar Farm Code.
13. The Town has received inquiries from other Solar Farm developers for future commercial projects (collectively, the "Future Projects") because the Town is economically attractive for Solar Farm development due to its proximity to high voltage transmission lines that traverse the northern and eastern Town boundaries and traverse north-south through the center of the Town.

14. While the Existing Solar Farm Code provides substantial requirements for protecting adjacent properties and limiting the impacts of Solar Farms within the Town, it currently allows Solar Farms in all zoning districts and may not fully contemplate the cumulative impacts of the Current Solar Projects, the Article 10 Project, and the Future Projects on community character and the scenic, recreational, other natural resources and aesthetics of the Town.
  15. Large Battery Energy Storage Systems are battery energy storage systems that are usually integrated with Solar Farms or connected directly into the electrical distribution or transmission grid.
  16. While battery energy storage systems are regulated by the New York State Uniform Fire Prevention and Building Code, the Town does not currently have regulations for the siting and installation of Large Battery Energy Storage Systems and the Town Planning Board has begun reviewing various possible amendments to the existing Zoning Code to address these uses.
  17. Allowing the activities prohibited by Section 4 of this Local Law without first obtaining more education and information may impair the existing character of the Town, because by their nature, such activities may have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Negative impacts suggested to be associated with those activities include, without limitation, noise, emergency response and fire fighting considerations, damage to roadways, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and loss of tourism.
  18. During the effectiveness of this Local Law, the Town Board can study and draft revisions to the Existing Solar Farm Code and regulations for Large Battery Energy Storage Systems, and study the activities prohibited by Section 4 of this Local Law and determine whether to amend the Town Zoning Code to include these uses, or to permanently prohibit them in portions, or all, of the Town.
  19. The Town Board recognizes that the Article 10 Project is not impacted by the Moratorium and Prohibitions included in Section 4 of this Local Law.
- c. **Purpose.** The purpose of this Local Law is to enable the Town to stay any and all of the activities prohibited by Section 4 of this Local Law, and all Town-level approvals relating to those activities for a period of twelve (12) months in order to provide the Town time to study the impacts, effects, and possible zoning controls over such activities, and to consider amendments to the Town's zoning laws to appropriately address the same within the confines of New York State law. The Town Board believes that a twelve-month moratorium after the effective date of this Local Law, coupled with the mechanism for use variances already contained in the Town Zoning Law, will achieve an

appropriate balancing of interests between the need to safeguard the character and other resources of the Town and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities during that period.

### **Section 3. Definitions.**

For purposes of this Local Law, the following terms shall have the meanings set forth below:

- a. "Battery Energy Storage System" shall mean a rechargeable energy storage system consisting of batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed to provide electrical power to a building or to provide electrical grid-related services.
- b. "Large Battery Energy Storage System" shall mean Battery Energy Storage Systems having an aggregate energy capacity greater than 20 kilowatt-hours.
- c. "Solar Collector" shall mean a device, structure, panel or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.
- d. "On-Farm Solar" shall mean the use of land where a series of one or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power that is eligible as a customer-generator for net energy metering, pursuant to New York Public Service Law §66-j and associated regulations and orders of the New York Public Service Commission, on a farm operation in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.
- e. "Solar Farm" shall mean the use of land where a series of one or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of at least 15 kilowatts (KW) direct current (dc) or more when operating at maximum efficiency. For the purposes of this Local Law, the term "Solar Farm" shall not be construed in such a way as to include the Current Solar Projects, On-Farm Solar, or the installation or mounting of a series of one or more solar collectors upon the roofs of residential, municipal, and /or commercial structures regardless of whether the said series of one or more solar collectors collectively has a total nameplate generation of at least 15 kilowatts (KW) direct current (dc) or more when operating at maximum efficiency, so long as such activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the NYSDEC and any other regulating agencies.
- f. "NYSDEC" shall mean the New York State Department of Environmental Conservation.

- g. "Town" shall mean the Town of Caledonia, in Livingston County, New York.

**Section 4. Moratorium and Prohibition.**

- a. For a period of twelve (12) months after the effective date of this Local Law, no application for a special permit, zoning variance, building permit, operating permit, site plan approval, subdivision plat approval, certificate of occupancy, certificate of compliance, temporary certificate, or other permit of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for a Solar Farm or Large Battery Energy Storage System.
- b. For a period of twelve (12) months after the effective date of this Local Law, no person or entity shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for a Solar Farm or Large Battery Energy Storage System.
- c. The prohibitions set forth in this Section 4 shall not prevent or prohibit property owners from applying for use variance based on unnecessary hardship pursuant to Section 130-104 of the Town of Caledonia Zoning Code.

**Section 5. Enforcement.**

- a. **Building Inspector.** The provisions of this Local Law shall be administered and enforced by the Code Enforcement Officer and his or her Deputies. The Code Enforcement Officer and his or her Deputies are authorized to issue appearance tickets for violations of this law requiring appearance by the alleged violator in the Town of Caledonia Town Justice Court.
- b. **Criminal Penalties.** Any person, firm or corporation who violates, disobeys, neglects, refuses to comply with or resists the enforcement of any provision of this Local law or any written order of the Code Enforcement Officer or his or her Deputies directing compliance with this Local Law shall be guilty of an offense, and upon conviction thereof shall be subject to a fine of not more than one thousand dollars, or imprisonment for a period of not more than fifteen days, or both such fine and imprisonment for each offense. However, a person, firm or corporation convicted of a second or other repeated violation of this Local Law shall be guilty of a misdemeanor, and shall be subject to a fine of not more than two thousand dollars, or imprisonment for not more than six months, or both such fine and imprisonment for each offense.
- c. **Civil Penalties.** Any person, firm or corporation who violates, disobeys, neglects, refuses to comply with or resists the enforcement of any provision of this local law or any written order of the Code Enforcement Officer or their Deputy directing compliance with this

Local Law shall be deemed to have violated this Local Law, and shall be liable to pay the Town a civil penalty of up to one thousand dollars for each such violation. Such a civil penalty may be assessed in any action or proceeding brought by the Town or its taxpayers, pursuant to Town Law §268(2), or by the Town, to enforce the provisions of this local law.

- d. **Continuous Violations.** Each day a violation or offense is continued or not corrected shall be deemed a separate violation or offense.
- e. **Injunction.** Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town.
- f. **Costs and Attorneys' Fees.** In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative to such action, including attorneys' fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property or properties within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

**Section 6. Superseding Intent and Effect.**

This Local Law shall supersede any inconsistent provisions of the Town Zoning Code, or any and all other local ordinances, laws or resolutions of the Town of Caledonia.

**Section 7. Severability.**

If any provision of this Local Law is determined to be unconstitutional or invalid, the validity and enforceability of the remainder shall not be affected.

**Section 8. Effective Date.**

This Local Law shall take effect immediately upon filing with the Secretary of State.