

SHARON M. KNIGHT, MMC/RMC
TOWN OF AVON CLERK & TAX COLLECTOR
23 GENESEE STREET, AVON, NEW YORK 14414
585-226-2425 Ext. 10

ADOPTED: Thursday, June 22, 2017

**RESOLUTION #122 ADOPT LOCAL LAW 2-2017 ENTITLED ESTABLISHING
A TEMPORARY LAND USE MORATORIUM PROHIBITING LARGE SCALE
SOLAR INSTALLATIONS WITHIN THE TOWN OF AVON**

On motion of Councilman Blye, seconded by Councilman Coyne the following resolution was

ADOPTED AYES 5 NAYS 0

RESOLVE to adopt Local Law 2-2017 entitled Establishing a Temporary Land Use Moratorium Prohibiting Large Scale Solar Installation within the Town of Avon which is a type II action under SEQR and was amended on June 22, 2017 as follows:

TOWN OF AVON LOCAL LAW NO. 2 of 2017

**A LOCAL LAW ESTABLISHING A TEMPORARY LAND USE
MORATORIUM PROHIBITING LARGE SCALE SOLAR
INSTALLATIONS WITHIN THE TOWN OF AVON**

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

SECTION 1. TITLE

This Local Law shall be known as the “Moratorium on and Prohibition of Large Scale Solar Installations Within the Town of Avon.”

SECTION 2. STATUTORY AUTHORITY; PURPOSE AND INTENT.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Avon 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, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6),

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(11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a); Town Law § 130(3) and (15); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law §3-0301(1)(b), 3-0301(2)(m) and 8-0113 and 6 NYCRR Part 617, also known as the State Environmental Quality Review Act, as it pertains to applications that are neither excluded nor exempt from this local law.

This Local Law is a land use regulation. This Local Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as potential negative impacts of such uses on a community.

This Local Law shall supercede and suspend those provisions of the Code of the Town of Avon and New York state law which require the Planning Board and/or the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

This Local Law is intended to temporarily prohibit the creation or siting of large scale solar power installations (as herein later defined) within the Town of Avon for a period of up to twelve (12) months, pending the development and adoption of local laws and/or ordinances designed to regulate and govern such installations.

The Town Board recognizes and acknowledges that the Town needs to study and analyze many considerations that affect the preparation of local legislation to regulate the future creation and siting of large scale solar installations. The Town Board has formally requested the Building and Zoning Department and the Planning Board of the Town of Avon to identify and review local laws from other jurisdictions, and related information and source materials, in order to assist in developing the parameters of a local law to regulate large scale solar installations. The Town Board has directed the Town Attorney to assist in this endeavor.

The Town Board also recognizes the need to review and examine its existing ordinances, local laws and Zoning Ordinance provisions insofar as they may be affected by adoption of such local law(s) regulating the creation and/or siting of large scale solar power installations. It is deemed necessary to enact this moratorium in order to permit the Town adequate time in which to draft suitable legislation for this purpose. During the term of the moratorium the Town of Avon shall work to prepare and eventually adopt new land use regulations to incorporate into the Town’s existing Zoning Ordinance.

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At this time, there are no pending applications for the location, development or site plan approval of a large scale solar installation.

During the pendency of the moratorium, the Town Board will consider how best to permit such installations so as to harmoniously integrate such installations with the existing agricultural community and landscape. At present, the Zoning Ordinance of the Town of Avon may not adequately regulate such land use. If the community allows such development during that time, the goals of the Town Comprehensive Plan and its related legislation favoring the successful continuity of agricultural operations could be undermined or damaged. Moratoria are useful in controlling or temporarily inhibiting development until satisfactory final regulations are adopted.

For these reasons, the Town Board finds that temporary moratorium legislation is both advisable and necessary for a reasonable and defined period of time in order to develop and adopt necessary zoning and land use changes to the Zoning Ordinance of the Town of Avon, thus protecting and furthering the public interest, health and safety.

SECTION 3. DEFINITIONS.

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

Large Scale Solar Installation(s) - Any installation of solar panels, equipment and/or buildings or structures capable of generating greater than 25 kwh of power from the sun and converting such power into electricity for resale to or by a third party (which shall not include any individual or business that directs such produced energy back into the public grid predominantly to off-set their own energy consumption). Large Scale Solar Installations specifically do not include any solar panel collection system or array undertaken by individual landowners, householders or farmers for their own personal use or the use of a business owned by them.

SECTION 4. TEMPORARY MORATORIUM and PROHIBITION.

A. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of Avon, for the construction, establishment, or use or operation of

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any land, body of water, building, or other structure located within the Town of Avon, for any Large Scale Solar Installation, as defined above.

- B. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no person, entity or business shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town of Avon for any Large Scale Solar Installation, as defined above.
- C. The prohibitions set forth above in Clauses A. and B. of this Section 4. are not intended, and shall not be construed, to prevent or prohibit the use and development of solar panel arrays or collections systems for any personal or individual use on or about any residence or place of business, or any farm operation, so long as such use does not produce energy for the purpose of resale to or by any third party. The term “resale to or by any third party” as used immediately above shall not be construed to include any individual or business that directs such produced energy back into the public grid solely to off-set their own energy consumption.
- D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
- E. This moratorium and prohibition shall apply to all real property within the Town of Avon, and all land use applications for the siting or creation of Large Scale Solar Installations within the Town of Avon.
- F. Under no circumstances shall the failure of the Town Board of the Town of Avon, the Zoning Board of Appeals of the Town of Avon, the Planning Board of the Town of Avon, or the Code Enforcement Officer for the Town of Avon to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or any other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

SECTION 5. HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM.

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Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this local law following a noticed public hearing before the Town Board. It is specifically intended that this moratorium shall supersede New York State law which would otherwise confer exclusive variance authority to the zoning board of appeals.

Following a request for hardship variance relief, a noticed public hearing shall be held, at which hearing the Town Board may consider:

- A. The proximity of applicant's premises or the subject of applicant's request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other environmental concerns.
- B. The impact of the proposed application on the applicant's premises and upon the surrounding area.
- C. Compatibility of the proposed application with the existing land use and character of the area in general proximity to the subject of the application, and its effect upon aesthetic resources of the community.
- D. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of Avon.
- E. The written opinion of the Town of Avon Planning Board and the Town of Avon Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.
- F. Such other reasonable considerations and issues as may be raised by the Town Board.

In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be consistent with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner which is unique to the property owner, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the recommendations of the Comprehensive Plan.

An application for relief of application of the moratorium shall be accompanied by a fee of \$500, together with the applicant's written undertaking, in a form to be approved by the Attorney for the Town, to pay all of the expenses of the Town Board and

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any agent or consultant retained by the Town Board to evaluate and consider the merits of such application, including but not limited to any fees incurred by the Town for services provided by the Attorney for the Town.

SECTION 6. PENALTIES.

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.
- B. 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 by the Town Board.
- C. 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 costs incurred by the Town relative thereto, including attorney's 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 propert(ies) 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 7. CONFLICTS.

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Code provision.

SECTION 8. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent

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jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed here from, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

SECTION 9. EFFECTIVE DATE.

The effective date of this Local Law shall be immediately upon its filing with the Secretary of State.

Vote of the Board: Councilwoman Michalski - Aye, Councilman Coyne- Aye, Councilman Blye - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

This is to certify that I, the undersigned, Clerk of the Board of the Town of Avon of the County of Livingston, was duly adopted by the Avon Town Board of said Town on date above, and that the same is a true and correct transcript of said resolution.

In witness where of I have hereunto set my hand and the official seal of the Town Clerk this 29th day of June 2017.

Sharon M. Knight, MMC/RMC, Town Clerk & Tax Collector

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