

LOCAL LAW FILING

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVE., ALBANY, NY 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.

County
City
Town of HIGHLAND
Village of

FILED
STATE RECORDS
DEC 21 2016

Local Law No. 5 of the year 2016

DEPARTMENT OF STATE

A local law imposing a limited commercial solar energy generating facility land use moratorium in the Town of Highland, Sullivan County, New York.

Be it enacted by the TOWN BOARD of the

County
City
Town of Highland
Village of _____, as follows:

Section 1. Title:

This local law shall be known as the "2016 Town of Highland Limited Commercial Solar Energy Generating Facility Land Use Moratorium."

Section 2. Purpose:

The purpose of this local law is to protect the health, safety and welfare by restricting the development of commercial solar energy generating facilities within the Town of Highland for a limited period of time in order to develop and implement zoning law provisions specific to special use review and approval of such uses and establishment policies and procedures to implement a program for payment in lieu of taxes pursuant to §487(9)(a) of the Real Property Tax Law.

Section 3. Findings:

The State of New York has, as a matter of public policy, undertaken to encourage the development facilities for the generation of solar energy. As the result, there has been a sudden increase in developmental pressures within the Town of Highland with respect to development of commercial solar energy generating facilities. The Town Board is therefore concerned that the current Town of Highland Zoning Law (the "Zoning Law") may not be adequate for the review of the impacts and mitigation of the consequences of such uses and the approval thereof. There is also little guidance within the provisions of §487 of the Real Property Tax Law with respect to establishing programs for payment in lieu of taxes agreements as an alternative to opting out of

the exemption provided thereby. The Town Board wishes to explore the development of a payment in lieu of taxes program in an effort to avoid the necessity of opting out of the tax exemption under §487 of the Real Property Tax Law. Therefore, it is necessary and appropriate to implement a temporary and limited moratorium with respect to the development of commercial solar energy generating systems in the Town of Highland. Doing so shall preserve the status quo while the Town Board completes an evaluation and formulates revisions in the Zoning Law to provide for an effective process to regulate, review and approve applications for commercial solar energy generating facilities, and develops policies and procedures for a payment in lieu of taxes program, thereby reducing the possibility that any such zoning revisions may be rendered ineffective and their purpose defeated in the interim, and avoiding the necessity of immediately opting out of the tax exemption afforded under §487 of the Real Property Tax Law.

Section 4. Moratorium Imposed.

A. Commercial Solar Energy Generating Facilities Temporarily Prohibited. For a period of six (6) months following the date of adoption of this local law, no site plan or special use permit shall be reviewed or approved by the Planning Board and no building permit shall be issued by the Code Enforcement Officer with respect to commercial solar energy generating facilities, hereby defined as non-farm commercial solar systems generating 25 kW or more of energy for sale to utility companies or for other commercial use.

B. Evaluation and Revision of Existing Regulations. During the period of the moratorium established by this local law, the Town Board shall endeavor to evaluate and adopt revisions to the Town's Zoning Law to address the use and regulation of commercial solar energy generating facilities and to evaluate and adopt policies and procedures for a payment in lieu of taxes program pursuant to the provisions of Real Property Tax Law §287(9)(a).

Section 5. Extension of Moratorium.

This moratorium may be extended for up to two additional periods not exceeding three (3) months each by resolution of the Town Board upon a finding of necessity for such extension.

Section 6. Relief From Requirements.

The Town Board reserves to itself the power and sole discretion to vary or adapt the strict application of this local law in the case of unusual hardship or circumstances that would deprive a property owner of the reasonable use of lands affected by this local law. Accordingly, by duly adopted resolution, the Town Board may authorize the Planning Board to review and consider for approval or disapproval a special use and site plan the review of which is otherwise precluded by this local law, or the Code Enforcement officer to issue a building permit that is otherwise precluded by this local law, subject to the regular review process for such special use and site plan, or building permit, under circumstances where:

A. An application for a variance is filed, in writing, with the Town Clerk, together with a filing fee in the sum of \$150.00. The application shall specifically identify the land involved,

recite the nature and scope of the proposed development, provide a narrative description and a sketch plan of the proposed development, and describe the reasons for which the variance is requested and the grounds upon which it is sought to be approved, including all facts and circumstances upon which hardship is claimed.

B. All costs incurred by the Town in connection with the consideration of the application for a variance are paid by the applicant, including but not limited to all professional consulting fees such as attorneys, engineers and planners.

C. The applicant demonstrates that this local law has resulted in unnecessary hardship in that: the applicant has been deprived of substantially all economic use or benefit from the property in question, which must be unique to the applicant's property and does not apply to a substantial portion of other properties in the areas of the Town to which this local law applies; and the variance, if granted, will not pose a present or future risk to the health, safety and welfare of the residents in the vicinity of the proposed development and the Town at large.

D. The Town Board may refer any applications for a variance hereunder to the Town Planning Board, the Zoning Board of Appeals, any other Town board, committee or department, and/or its professional consultants for their advice and recommendations. Nevertheless, all decisions as to the granting or denying of such variances shall be made by the Town Board in its sole and absolute discretion after determining whether the requested variance is compatible with protection of the environment and any contemplated revisions to the Town's Zoning Law. No variance shall be granted unless the Town Board determines the requested variance is compatible therewith.

E. The Town Board shall conduct a public hearing on any request for a variance within forty-five (45) days after it determines that a complete application has been submitted to it. The Town Board shall render its determination upon any application for a variance within sixty-two (62) days after the conclusion of the public hearing.

Section 7. Conflict With Other Laws

This local law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law and, during the time it is in effect, it specifically supersedes and shall take precedence over any contrary laws, ordinances and provisions, including but not limited to §267, §267-a, §267-b, §274-a, §274-b of the Town Law of the State of New York, the Zoning Law of the Town of Highland and any other local law or ordinance of the Town of Highland.

Section 8. Penalties for Offenses and Enforcement.

Any person who shall develop or erect or install improvements upon land in violation of this local law, or break ground for the purpose thereof, shall be guilty of a violation and subject to a fine not to exceed \$1,000.00 or six (6) months in jail, or both. Each week a violation continues shall be considered a separate violation. This local law shall be enforced by the Code Enforcement Officer of the Town of Highland who is hereby granted authority to issue appearance tickets for the purpose thereof. Upon authorization by the Town Board, this local law

may also be enforced by civil action brought in the name of the Town for the purpose of obtaining injunctive relief and recovering civil penalties of \$1,000.00 for each week a violation of the local law continues.

Section 9. Effect of Invalidity.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjusted finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

Section 10. Effective Date.

This local law shall take effect immediately upon adoption.

I hereby certify that the local law annexed hereto, designated as local law No. of 2016 of the Town of Highland was duly passed by the Town Board on December 13, 2016 in accordance with the applicable provisions of law.

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

Doreen Hanvey
Town Clerk

Date: 12-13-2016

STATE OF NEW YORK
COUNTY OF SULLIVAN

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.

MICHAEL DAVIDOFF, ESQ.
ATTORNEY FOR THE TOWN
TOWN OF HIGHLAND
Date: _____

