

# NIAGARA FALLS LOCAL LAW NO. 3 FOR THE YEAR 2021

## "REGULATION OF SOLAR ENERGY SYSTEMS"

A local law entitled "Regulation of Solar Energy Systems", is set forth herein, as follows:

**BE IT ENACTED**, by the City Council of the City of Niagara Falls, as follows:

### **1. STATUTORY AUTHORITY**

This Solar Energy Local Law is adopted pursuant to Sections 19 and 20 of the General City Law and Section 20 of the Municipal Home Rule Law of the State of New York, which authorize the City of Niagara Falls to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the General City Law of New York State, "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**

A. The City Council of the City of Niagara Falls has adopted this Solar Energy Local Law to advance and protect the public health, safety, and welfare of City of Niagara Falls by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

- I) To take advantage of a safe, abundant, renewable and non-polluting energy resource;
- II) To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
- III) To increase employment and business development in the City of Niagara Falls, to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
- IV) To mitigate the impacts of Solar Energy Systems on environmental resources such as forests, wildlife and other protected resources, and;
- V) To create synergy between solar and other land uses by encouraging the reuse and revitalization of underutilized industrial properties, creating a diverse mixture of businesses and encouraging interim land uses in vacant and underutilized industrial areas.

### **3. DEFINITIONS**

Terms utilized herein are defined in the same manner as set forth in Chapter 1303 of the Codified Ordinances of the City of Niagara Falls, New York (hereinafter "City Ordinance(s)")

#### **BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:**

A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

#### **GLARE**

The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

#### **GROUND-MOUNTED SOLAR ENERGY SYSTEM**

A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, which generates electricity for onsite or offsite consumption.

#### **ROOF-MOUNTED SOLAR ENERGY SYSTEM**

A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

#### **SOLAR ACCESS**

Space open to the sun and clear of overhangs or shade so as to permit the use of Solar Energy Systems on individual properties.

#### **SOLAR ENERGY EQUIPMENT**

Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

#### **SOLAR ENERGY SYSTEM:**

The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a *Tier 1*, *Tier 2*, or *Tier 3* Solar Energy System as follows.

A. *Tier 1* Solar Energy Systems include the following:

- a. Roof-Mounted Solar Energy Systems
- b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to [4,000] square feet and that generate up to [110] % of the electricity consumed on the site over the previous [12] months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for *Tier 1* and *Tier 2* Solar Energy Systems.

#### **SOLAR PANEL**

A photovoltaic device capable of collecting and converting solar energy into electricity.

#### **STORAGE BATTERY**

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

### **4. APPLICABILITY**

A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in City of Niagara Falls after the effective date of this Local Law, excluding general maintenance and repair.

B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than five percent (5%) of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.

D. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the City Ordinances. Where conflict amongst these regulations occur, the most stringent standard shall apply.

### **5. GENERAL REQUIREMENTS**

A. A Building permit shall be required for installation of all Solar Energy Systems.

B. City of Niagara Falls Planning and Zoning Boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

C. Issuance of permits and approval(s) shall include review pursuant to the State Environmental Quality Review Act ("SEQRA").

## 6. PERMITTING REQUIREMENTS FOR TIER 1 SOLAR ENERGY SYSTEMS

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts (subject to compliance with all other legal requirements) under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

### A. Roof-Mounted Solar Energy Systems

- I) Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
  - a. Solar Panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface the highest edge of the system.
  - b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
  - c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
  - d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface of the roof, whichever is higher.

- II) Glare: All Solar Panels shall have anti-reflective coating(s).

- III) All Roof-Mounted Solar Energy Systems shall be subject to the height regulations specified for principal and accessory buildings within the underlying zoning district.

B. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

## 7. PERMITTING REQUIREMENTS FOR TIER 2 SOLAR ENERGY SYSTEMS: All Tier 2

Solar Energy Systems shall be permitted in all zoning districts as accessory structures (subject to compliance with all other legal requirements) under the local zoning code or other land use regulations, subject to the following conditions:

A. Glare: All Solar Panels shall have anti-reflective coating(s).

B. Setbacks: Tier 2 Solar Energy Systems shall only be installed in the side or rear yards in residential districts and shall be subject to following setback regulations:

Front Setback	Side Setback	Rear Setback
30'	15'	15'

C. Height: Tier 2 Solar Energy Systems shall not exceed 15 feet in height.

D. Screening and Visibility.

- I) All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
- II) Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

## **8. PERMITTING REQUIREMENTS FOR TIER 3 SOLAR ENERGY SYSTEMS**

All Tier 3 Solar Energy Systems are permitted within the zoning districts specified in Schedule 1 of the Zoning Ordinance, and subject to site plan approval requirements set forth in this Section and the Zoning Ordinance.

A. Applications for the installation of Tier 3 Solar Energy System shall be:

- I) Reviewed by the Director of Planning or designee for completeness. Applicant shall be advised of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- II) Subject to a public hearing to hear all comments for and against the application. The Planning Board shall provide any necessary notices required under General City Law. Notice shall also be delivered by first class mail to applicant and landowners within [200] feet of the property at least ten [10] days prior to such a hearing. Proof of notices shall be provided to the Planning Board at the public hearing.
- III) Referred to the Niagara County Planning Board pursuant to General Municipal Law § 239-m, if required.
- IV) Upon closing of the public hearing, the Planning Board shall take action on the application within [62] days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and applicant.

B. Underground Requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

D. Signage.

- I) No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than eight (8) square feet.
- II) As required by National Electric Code ("NEC"), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

E. Glare. All Solar Panels shall have anti-reflective coating(s).

F. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes. Such lighting shall be properly designed and shielded so as to avoid glare, prevent visibility of the source of the light from areas off-site and other undesirable impacts on neighboring properties and streets.

G. Tree-cutting. Removal of existing trees larger than six (6) inches in diameter should be minimized to the extent possible.

H. Decommissioning.

- I) A Decommissioning Plan, signed by the Owner and/or Operator of the Solar Energy System (See Appendix A for Example Plan), shall be submitted by the applicant, addressing the following:
  - a. Identify anticipated life of the project.
  - b. Cost estimate and timeframe for decommissioning including removal of the Solar Energy System and all infrastructure, foundations, and any ancillary structures and restoration of the property to its original state prior to construction of the Solar Energy System.
  - c. All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.

- d. All disturbed ground surfaces shall be reasonably restored to original conditions including topsoil and seeding as necessary.
- e. Adherence to the 2021 Niagara County local law establishing solar panel recycling regulations is required.

II) Security.

- a. The deposit, executions, or filing with the City of Niagara Falls City Clerk of cash, bond, or other form of security reasonably acceptable to the City of Niagara Falls Corporation Counsel, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be one-hundred-twenty-five percent (125%) of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of two percent (2%) annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.
- b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the City of Niagara Falls, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
- c. In the event of default or abandonment of the Solar Energy System, the System shall be decommissioned as set forth in Section 10 herein.

III) If a Solar Energy System that has been abandoned, not being properly maintained and/or is not producing at least twenty percent (20%) of its maximum electrical generation capability for a period of one (1) year, the City may notify and instruct the Owner and/or Operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within one (1) year of the date of such notification.

IV) Owner or operator shall provide annual reports from the appropriate utility provider setting forth electrical power generated by the Solar Energy System. Said reports shall be utilized to determine whether the Solar Energy System is producing at least twenty percent (20%) of its maximum electrical generation capability. Said reports shall be provided to the Director of Inspections

V) In the event City opts to provide notification and instruction as set forth in subsection iii above, the Owner and/or Operator shall decommission and

remove the Solar Energy System at the Owner and/or Operators expense. The cost of same may be paid by the Owner, or may come from any security made with the City of Niagara Falls as set forth in subsection ii herein.

**I. Site Plan Application.** For all Tier 3 Solar Energy Systems, site plan approval shall be required in accordance with Chapter 1324 of the City Ordinances. In addition to the requirements of Chapter 1324, any site plan application shall include the following information:

- a. Property lines and physical features, including roads, for the project site
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all NEC compliant disconnects and over current devices.
- d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e. Name, address, and contact information of proposed or potential system installer and the Owner and/or Operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- f. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- i. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

j. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer or Registered Architect.

J. Additional Standards for Tier 3 Solar Systems.

I) Minimum Lot Size. The minimum Lot Size for Tier 3 Solar Energy Systems shall be 5 Acres.

II) Setbacks. The minimum setbacks shall be as follows:

Front Setback	Side Setback	Rear Setback
30'	20'	20'

III) Height. Tier 3 Solar Energy Systems shall not exceed 15 feet in height.

IV) Storage Battery. Storage Batteries shall not be permitted as part of a Tier 3 Solar Energy System.

V) Fencing Requirements. All mechanical equipment, shall be enclosed by a seven (7) foot high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

VI) Screening and Visibility.

a. Solar Energy Systems smaller than ten (10) acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

b. Solar Energy Systems larger than ten (10) acres shall be required to:

i) Conduct an assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. This analysis must consider conditions at day one of operation and when the landscaping has matured. Depending upon the scope and potential significance of the visual impacts, additional impact analyses may be required to be submitted by the applicant.

ii) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment

shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

- a) The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of evergreen/coniferous trees (planted at recommended spacing for the type of tree), at least six (6) feet high at time of planning, plus supplemental shrubs in between the trees. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species may be provided by the City of Niagara Falls.
- b) Landscape plans must be completed by a NYS Registered Landscape Architect.

**K. Ownership Changes.** If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within thirty (30) days of the ownership change.

## **9. SAFETY**

A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the Niagara Falls Fire Department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

C. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of Chapter 1328 of the City Ordinances, any applicable fire prevention and building codes when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the City of Niagara Falls and any applicable federal, state, or county laws or regulations.

**10. ENFORCEMENT:** Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the City of Niagara Falls.

**11. SEVERABILITY:** The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

**12. REPEALER:** All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

**13. EFFECTIVE DATE:** This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with the Municipal Home Rule Law.

## APPENDIX A: EXAMPLE DECOMMISSIONING PLAN

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at:  
[Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for [12] months
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# CITY OF NIAGARA FALLS, NY

## PROPOSED ZONING ORDINANCE AMENDMENTS

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Additional definitions: "Building-Integrated Solar Energy System", "Glare", "Ground-Mounted Solar Energy System", "Roof-Mounted Solar Energy System", "Solar Access", "Solar Energy Equipment", "Solar Energy System", "Solar Panel", and "Storage Battery".

Amendments as shown as underscored language to be added to Chapter Sections 1302.2.3, 1302.2.8, 1302.2.19, 1302.2.20, 1320.12.2 (G), 1320.13, 1321.9, 1323.4.2(A)(5), 1323.4.2(A)(6), 1323.4.2(D)(14), and 1323.12

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### 1302 – DEFINITIONS

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#### 1302.2 - List of Definitions

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#### 1302.2.3 "B"

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**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM** - A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

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#### 1302.2.8 "G"

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**GLARE** - The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM** -A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached

from any other structure, which generates electricity for onsite or offsite consumption.

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1302.2.19 "R"

ROOF-MOUNTED SOLAR ENERGY SYSTEM - Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

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1302.2.20 "S"

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SOLAR ACCESS - Space open to the sun and clear of overhangs or shade so as to permit the use of Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM - The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

- a. Roof-Mounted Solar Energy Systems
- b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to [4,000] square feet and that generate up to [110] % of the electricity consumed on the site over the previous [12] months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electricity.

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

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1320.12.2      Outdoor Patio Within Public Right-Of-Way

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G.      enter into an encroachment agreement with the City, renewable on an annual basis.

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1320.13 - Solar Energy Systems

A.      Except as otherwise stated within this Chapter, Tier 1 and Tier 2 Solar Energy Systems shall be a permitted accessory use in all zoning districts and shall be exempt from site plan review.

B.      Tier 1 and Tier 2 Solar Energy Systems are subject to the following requirements:

1.      Tier 1 Roof Mounted Solar Energy Systems

a.      Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:

1.      Solar Panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface the highest edge of the system.

2.      Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

3.      Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

4.      Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface of the roof, whichever is higher.

b.      Glare. All Solar Panels shall have anti-reflective coating(s).

c.      Height: All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings, whichever the Solar

Energy System will be locate upon, within the underlying zoning district.

2. Tier 1 Building-Integrated Solar Energy Systems

- a. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

3. Tier 2 Solar Energy Systems

- a. Glare. All Solar Panels shall have anti-reflective coating(s).
- b. Setbacks. Tier 2 Solar Energy Systems shall only be installed in the side or rear yards in residential districts and shall be subject to following setback regulations:

<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
<u>30'</u>	<u>15'</u>	<u>15'</u>

- c. Height. Tier 2 Solar Energy Systems shall not exceed 15 feet in height.
- d. Screening and Visibility:
  1. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
  2. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

C. Solar Energy Systems which require a Site Plan are subject to requirements of Chapter 1324

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1321.9 Solar Energy Systems Requiring a Site Plan

Screening and landscaping requirements for Solar Energy Systems that require a Site Plan are provided within Section 1324.12.

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#### 1323.4.2 Level 2 Review

##### A. Actions subject to Level 2 Review Procedure.

The City Council authorizes the Planning Board to review and approve, approve with modifications, or disapprove site plan applications meeting the criteria for Level 2 review.

The Level 2 review criteria are as follows:

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5. Any action (requiring Planning Board approval) involving or impacting a Historic landmark as defined in Section 1303.2.8 of this Zoning Ordinance.

##### 6. Tier 3 Solar Energy Systems.

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##### D. Standards for site development plan approval

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##### 14. Solar Energy Systems

The Planning Board should consider during their review of proposed developments on sites adjacent to Solar Energy Systems the potential impact to Solar Access to remain economically feasible over time.

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#### 1323.12 - Tier 3 Solar Energy Systems

##### A. Statement of Purpose

The City Council of the City of Niagara Falls has adopted this Solar Energy Zoning Ordinance to advance and protect the public health, safety, and welfare of City of Niagara Falls by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;

3. To increase employment and business development in the City of Niagara Falls, to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
4. To mitigate the impacts of Solar Energy Systems on environmental resources such as forests, wildlife and other protected resources, and;
5. To create synergy between solar and other land uses by encouraging the reuse and revitalization of underutilized industrial properties, creating a diverse mixture of businesses, and encouraging interim land uses in vacant and underutilized industrial areas.

**B. Applicability**

1. Chapter 1324.12 shall apply to all Tier 3 Solar Energy System uses.
2. The requirements of Chapter 1324.12 shall apply to all Tier 3 Solar Energy Systems permitted, installed, or modified in City of Niagara Falls after the effective date of this zoning ordinance, excluding general maintenance and repair.
3. Tier 3 Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of Chapter 1324.12. However, modifications to an existing Tier 3 Solar Energy System that increase the Solar Energy System area by more than five percent (5%) of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this chapter.

**C. General Requirements**

1. A Building permit shall be required for installation of all Tier 3 Solar Energy Systems.
2. Issuance of permits and approvals shall include review pursuant to the State Environmental Quality Review Act ("SEQRA").
3. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and

**Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the City of Niagara Falls Codified Ordinances. Where conflict amongst these regulations occur, the most stringent standard shall apply.**

**D. Tier 3 Solar Energy System Site Plan Requirements**

**For Tier 3 Solar Energy System uses which require Site Plan Approval, the following standards or conditions shall be required:**

- 1. Applications for the installation of Tier 3 Solar Energy System shall be:**
  - a. Reviewed by the Director of Planning or designee for completeness. Applicant shall be advised of the completeness of their application or any deficiencies that must be addressed prior to Planning Board review.**
  - b. Subject to a public hearing. The Planning Board shall provide any necessary notices required under General City Law. Notice shall also be delivered by first class mail to applicant and landowners within [200] feet of the property at least ten [10] days prior to such a hearing. Proof of notices shall be provided to the Planning Board at the public hearing.**
  - c. Referred to the Niagara County Planning Board pursuant to General Municipal Law § 239-m, if required.**
  - d. Upon closing of the public hearing, the Planning Board shall take action on the application within [62] days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and applicant.**
- 2. Underground Utilities. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.**
- 3. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.**
- 4. Signage.**

- a. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than eight (8) square feet.
- b. As required by National Electric Code ("NEC"), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

**5. Glare. All Solar Panels shall have anti-reflective coating(s).**

- 6. Lighting. Lighting of the Tier 3 Solar Energy Systems shall be limited to that minimally required for safety and operational purposes. Such lighting shall be properly designed and shielded so as to avoid glare, prevent visibility of the source of the light from areas off-site and other undesirable impacts on neighboring properties and streets.
- 7. Tree-cutting. Removal of existing trees larger than six (6) inches in diameter at breast height should be minimized to the extent possible.

**8. Decommissioning.**

- a. A Decommissioning Plan, signed by the Owner and/or Operator of the Tier 3 Solar Energy System, shall be submitted by the applicant, addressing the following:
  - 1. Identify anticipated life of the project.
  - 2. Cost estimate and timeframe for decommissioning including removal of the Solar Energy System and all infrastructure, foundations, and any ancillary structures and restoration of the property to its original state prior to construction of the Solar Energy System.
  - 3. All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.

4. All disturbed ground surfaces shall be reasonably restored to original conditions including topsoil and seeding as necessary.
5. Adherence to the 2021 Niagara County local law establishing solar panel recycling regulations is required.

b. Security.

1. The deposit, executions, or filing with the City of Niagara Falls City Clerk of cash, bond, or other form of security reasonably acceptable to the City of Niagara Falls Corporation Counsel, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be one-hundred-twenty-five percent (125%) of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of two percent (2%) annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.
2. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the City of Niagara Falls, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
3. In the event of default or abandonment of the Solar Energy System, the System shall be decommissioned as set forth in herein.
- c. Abandonment. If a Tier 3 Solar Energy System that has been abandoned, not being properly maintained, and/or is not producing at least twenty percent (20%) of its maximum electrical generation capability for a period of one (1) year, the City may notify and instruct the Owner and/or Operator of the Solar Energy System to implement

the decommissioning plan. The decommissioning plan must be completed within one (1) year of the date of such notification.

- d. Owner or operator shall provide annual reports from the appropriate utility provider setting forth electrical power generated by the Tier 3 Solar Energy System. Said reports shall be utilized to determine whether the Solar Energy System is producing at least twenty percent (20%) of its maximum electrical generation capability. Said reports shall be provided to the Director of Inspections.
- e. In the event City opts to provide notification and instruction as set forth in subsection c. above, the Owner and/or Operator shall decommission and remove the Solar Energy System at the Owner and/or Operators expense. The cost of same may be paid by the Owner, or may come from any security made with the City of Niagara Falls as set forth in subsection ii herein.

9. Site Plan Details. For all Tier 3 Solar Energy Systems requiring a Level 2 Site Plan, in addition to the requirements of Chapter 1324, any site plan application shall include the following information:

- a. Property lines and physical features, including roads, for the project site
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all NEC compliant disconnects and over current devices.
- d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e. Name, address, and contact information of proposed or potential system installer and the Owner and/or Operator of the Solar Energy System. Such information of the final

system installer shall be submitted prior to the issuance of building permit.

- f. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- i. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- j. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer or Registered Architect.

10. Minimum Lot Size. The minimum Lot Size for Tier 3 Solar Energy Systems shall be 5 Acres.
11. Setbacks. The minimum setbacks for Tier 3 Solar Energy Systems shall be as follows:

<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
<u>30'</u>	<u>20'</u>	<u>20'</u>
12. Height. Tier 3 Solar Energy Systems shall not exceed 15 feet in height.
13. Storage Battery. Storage Batteries shall not be permitted as part of a Tier 3 Solar Energy System
14. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a seven (7) foot

high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

**15. Screening and Visibility.**

- a. Tier 3 Solar Energy Systems smaller than ten (10) acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
- b. Tier 3 Solar Energy Systems larger than ten (10) acres shall be required to:
  1. Conduct an assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. This analysis must consider conditions at day one of operation and when the landscaping has matured. Depending upon the scope and potential significance of the visual impacts, additional impact analyses may be required to be submitted by the applicant.
  2. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.
    - A. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of evergreen/coniferous trees (planted at recommended spacing for the type of tree), at least six (6) feet high at time of planning, plus supplemental shrubs in between the trees. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species may be provided by the City of Niagara Falls.

B. Landscape plans must be completed by a NYS Registered Landscape Architect.

16. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within thirty (30) days of the ownership change.

17. Safety

- a. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- b. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the Niagara Falls Fire Department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

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Bold and Underlining indicate **Additions**.

Bold and Brackets indicate [Deletions].

**CITY OF NIAGARA FALLS  
PLANNING BOARD  
ZONING AMENDMENT RECOMMENDATION PACKAGE**

*FOR*

RESOLUTION OF NIAGARA FALLS CITY COUNCIL 2021-50, RELATIVE TO  
AMENDMENT OF CITY OF NIAGARA FALLS ZONING ORDINANCE AND SCHEDULE  
8: ZONING MAP FOR REGULATION OF SOLAR ENERGY SYSTEMS

## PACKET CONTENTS

City of Niagara Falls Planning Board Recommendation.....	Page 3
The Planning Board: Findings.....	Page 4
Appendix.....	Page 7
<i>Exhibit A: Written Comments.....</i>	Page 8
<i>Exhibit B: Public Hearing Minutes.....</i>	Page 9
<i>Exhibit C: Proposed Zoning Amendment.....</i>	Page

December 30, 2021

**NIAGARA FALLS PLANNING BOARD**

**Recommendation to City Council**

**Approval**

**Approval with Conditions**

**Denial**

Pursuant to action taken by the Niagara Falls Planning Board on the 30<sup>th</sup> day of December, 2021, the outcome is as follows:

**Resolution of Niagara Falls City Council 2021-50, Relative to amendment of City of Niagara Falls Zoning Ordinance and Schedule 8: Zoning Map for Regulation of Solar Energy Systems**

The Planning Board hereby recommends approval of the amendment.

DATE: December 30, 2021



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Tony M. Palmer, Chairman

Niagara Falls Planning Board

## PLANNING BOARD: FINDINGS

1. The Planning Board has determined that the proposal, Resolution of Niagara Falls City Council 2021-3, Relative to amendment of City of Niagara Falls Zoning Ordinance and Schedule 8; Zoning Map for Regulation of Solar Energy Systems, conforms to the Comprehensive Plan of the City of Niagara Falls and meets the intent and objectives as expressed therein:

### General Citywide Policies

#### §7.1 Policy Area 1: Land-Use

General - Policy Statement: it is the City's policy to ensure that the City's vision for development is supported by appropriate land-use policies and regulations, and that the City pursue a fine-grained, mixed-use approach to land-use that respects the existing character of healthy, stable neighborhoods, while allowing the City to grow and revitalize. In order to achieve this, the City sets the following policies:

- o Policy §7.1.8 Encourage and support alternative or interim land uses and creative site planning solutions in vacant and/or underutilized industrial areas that support the City's overall renewal vision and strategy.
- o Policy §7.1.12 Undertake and adopt future area- and/or issue-specific plans, as needed.

#### §7.3 Policy Area 3: Built Environment

General - Policy Statement: it is the City's policy to foster a built environment that respects the City's historic architecture and design while allowing for new development and growth that possesses a high level of architectural integrity, fosters a pedestrian friendly environment, and respects the City's important natural, scenic, and open space resources. In order to achieve this, the City sets the following policies:

- o Policy §7.3.5 Mitigate the negative impacts of vacant and abandoned properties.

#### §7.4 Policy Area 4: Environmental and Open Space Resources

General - Policy Statement: it is the City's policy to preserve, conserve, and recognize the environmental and natural resources of the City in a manner that contributes the City's overall quality of life, enhances public health, and fosters appropriate development. In order to achieve this, the City will:

- o Policy §7.4.7 Protect, maintain, and enhance the City's open space resources, parks, and natural environment.

#### §7.6 Policy Area 6: Economic Development and Tourism

General - Policy Statement: It is the City's policy to ensure that the City's economy is comprised of and supported by a diverse mixture of businesses and that the City's land use, zoning and development policies are supportive of economic growth, including the development and expansion of the tourism industry, cultural resources and the health care sector. In order to achieve this, the City sets the following policies:

- Policy §7.6.1 Action 4 Diversify the economy and move beyond historical reliance on heavy industry.
- Policy §7.6.3 Coordinate the City's land use and zoning policies with the City's economic development vision.
- Policy §7.6.4 Pursue and support programs, institutions and activities aimed at the promotion and development of retraining programs, facilities and satellite facilities within key growth sectors.
- Policy §7.6.5 Retain and attract a broader population to Niagara Falls, including young families and young adults.
- Policy §7.6.6 Encourage incremental, holistic and broad based approaches to improving the City's quality of life that pay off in the long term, rather than focusing on large scale, "silver bullet" projects.

#### **§7.8 Policy Area 8: Brownfield/Greyfield Redevelopment**

Policy Statement: It is the City's policy to encourage the reuse and revitalization of vacant and/or underutilized industrial properties through the re-establishment of industrial uses, or the conversion of such properties to new uses that further the City's land use and development vision.

- Policy §7.8.2 Identify priority remediation areas, particularly along the waterfront and along entrances to the City, for remediation and redevelopment programs.
- Policy §7.8.3 Implement short term, improvements to reduce the visual impact of prominent brownfield sites.
- Policy §7.8.4 Improve the visual appearance of the edges of industrial areas adjacent to residential areas.
- Policy §7.8.5 Evaluate potential for alternative uses in industrial areas, such as residential, retail and office.
- Policy §7.8.3: Implement short term, improvements to reduce the visual impact of prominent brownfield sites.

2. On December 8<sup>th</sup>, 2021 the Planning Board held a Public Hearing on the Zoning Amendment pursuant to New York State Law and in accordance to the City of Niagara Falls Zoning Ordinance. The Planning Board makes the following findings based upon the Public Hearing:

Two citizens spoke to during the Public Hearing to the Planning Board. No additional written comments were provided to the Planning Board to be included on the official record. Written comments from the Public and Minutes from the Planning Board Public Hearing are included in Appendix A and B, respectively.

3. The Planning Board recommends no amendments to the proposal.

4. The Planning Board has determined that the proposal is conceptually sound in that it meets community needs in the design of land use configuration and that the size, location and character of future

development will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification.

5. The Planning Board cannot make a determination on the impact of drainage and roadway systems, public facilities, services and utilities available at site specific locations. The Planning Board understands that these elements in site design may be considered during each project's individual site specific development review process.

6. The Planning Board recognizes the following findings:

- a. The City of Niagara Falls Planning Board has received an application for proposed amendment of the Zoning Ordinance; Resolution of Niagara Falls City Council 2021-50, Relative to amendment of City of Niagara Falls Zoning Ordinance and Schedule 8: Zoning Map for Regulation of Solar Energy Systems
- b. The proposal and all other relevant information has been submitted and the application is considered complete.
- c. The Planning Board understand that the City Council intends to classify the project as a Type 1 Action under Section 617.5(c) of the State Environmental Quality Review (SEQR) Regulations and that the City Council intends to declare itself the Lead Agency.
- d. A referral to the Niagara County Planning Board was required and the NCPB recommended approval at their November 15, 2021 meeting.
- e. Comments regarding the proposed amendment's connections to the City of Niagara Fall's Comprehensive Plan from Corporation Counsel per letter dated November 1, 2021 were provided.
- f. Comments were received from the Niagara Falls Air Reserve Station per email dated November 15, 2015.
- f. A Public Hearing was held in regards to the proposed amendments on December 8, 2021.
- g. The Planning Board has reviewed these comments and has considered them as part of their review of the application.
- h. The Planning Board determined that the proposed amendment is in conformance with and supports the purposes of the City of Niagara Fall's Zoning Ordinance as stated in Chapter 1301.1.

## APPENDIX

**EXHIBIT A:**  
**WRITTEN COMMENTS**

No written comments were provided to the Planning Board to be included on the official record.

*EXHIBIT B:*

PUBLIC HEARING MINUTES FROM THE MEETING HELD ON  
12/08/2021

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

A regular meeting of the City of Niagara Falls Planning Board was held on Wednesday, December 8<sup>th</sup>, 2021 at 6:00PM in Council Chambers, City Hall, 745 Main Street, Niagara Falls, NY.

CALL TO ORDER & ROLL CALL

BOARD MEMBERS PRESENT:

Chairperson Tony Palmer  
Joseph Sarkees  
Charles MacDougall  
Timothy Polka  
Joyce Williams  
Ryan Dallavia

STAFF PRESENT:

Eric Cooper, Director of Planning  
Grace Celik, Planner 2/HPS  
Sarina Deacon, Planning Clerk  
Chris Mazur, Corporation Counsel

BOARD MEMBERS ABSENT:

Joseph Giaquinto  
Schurron Cowart  
Michael Murphy

ATTENDEES PRESENT:

Peter Green  
David Florio  
Andrea Fortin-Nossavage  
Ezra Scott  
Colin Ligammary  
Laura Rotella  
Sheila Zoonie  
Erica Burns  
Anthony Kutis  
Marla Price  
Cherrish Beals  
Jockline Pryor  
Bob Pascal  
Ranjit Kaur  
Jintoarl Tarapczinski  
Gretchen Letter

PLEDGE OF ALLEGIANCE:

APPROVAL OF AGENDA – FOR THIS MEETING

CHAIRPERSON PALMER requested to change the order of the Public Hearings. He asked to have Solar Law discussed first and Short Term Rentals discussed second.

A motion to change the order of the Public Hearings was made by MR. POLKA and seconded by MR. MACDOUGALL.

Motion: UNANIMOUSLY APPROVED

A motion to approve the agenda as amended was made by MR. POLKA and seconded by MR. MACDOUGALL

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021**

Motion: UNANIMOUSLY APPROVED

**PUBLIC PARTICIPATION:**

Jockline Pryor, a resident at 507 5th Street, inquired about the properties that were recommended for disposal discussed at the September 22nd Planning Board meeting. CHAIRPERSON PALMER directed the question to MR. MAZUR from Corporation Counsel. MR. MAZUR said he would get that information to MS. PRYOR at a later date.

**APPROVAL OF MINUTES**

A motion to approve the minutes from 10-20-21 was made by MR. SARKEES and seconded by MR. POLKA.

Motion: UNANIMOUSLY APPROVED

A motion to approve the minutes from 11-03-21 was made by MR. SARKEES and seconded by MR. POLKA.

Motion: UNANIMOUSLY APPROVED

**PUBLIC HEARING:**

**1. Resolution of Niagara Falls City Council, relative to Amendment of City of Niagara Falls Zoning Ordinance and Schedule 8: Zoning Map for Regulation of Solar Energy Systems.**

CHRIS MAZUR read a memo dated on November 1<sup>st</sup>, 2021. This memo was written to the Niagara Falls Planning Board from MR. MAZUR, a representative from Corporation Counsel. It was labeled **Amendment of City Zoning Ordinance (Regulation of Solar Energy Systems)**. This memo was included in the Planning Board meeting packet for the Public Hearing.

CHAIRPERSON PALMER asked how the ordinance was going to lower the cost of electricity to owners of residential and commercial property owners. MR. MAZUR responded that it possibly could reduce costs due to the technology and bypass the typical forms of hydroelectricity that is generally used. MR. COOPER added that the ordinance clarifies using solar for one's own purpose and that grants could be given to help fund the purchase of solar on one's rooftop or in one's backyard and that would help reduce the energy cost.

CHAIRPERSON PALMER asked if the City of Niagara Falls would be creating the grants. CHAIRPERSON PALMER added that the residents of Niagara Falls could already receive the grants.

CHAIRPERSON PALMER asked if adding a solar panel to a resident's property was considered a capital improvement to one's property and if the city wasn't giving that resident any money towards the capital improvement, what was the purpose of the ordinance?

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021**

MR. COOPER responded by saying the ordinance was there to clarify how solar energy improvements are regulated since it was not specifically mentioned in the existing code.

SHEILA ZOONIE, from 544 5<sup>th</sup> Street, spoke and suggested that the City of Niagara Falls utilize its many open fields to use as solar fields.

JOCKLINE PRYOR spoke about how some property owners' roofs weren't strong enough to hold up solar panels. She also wondered where the open fields were at to put solar panels on. She emphasized that land was needed for the community. She asked who would be working the solar panels if they were to be constructed.

CHAIRPERSON PALMER reminded MS. PRYOR that there are 3 tiers to the ordinance and the particulars would be worked out as needed. CHAIRPERSON PALMER emphasized that the solar panels would be placed on private property, not just anywhere.

MS. PRYOR asked what the breakdown in ethnicity was for home owners in Niagara Falls. She emphasized that the City of Niagara Falls needed to work on property for the community.

With no other speakers, the Public Hearing for Zoning Amendment relative to Regulation of Solar Energy Systems was closed at 6:25PM.

**2. Resolution of Niagara Falls City Council 2021-34, relative to Amendment of City of Niagara Falls Zoning Ordinance Chapter 1328.13 Short Term Rental Units.**

CHAIRPERSON PALMER emphasized that a vote would not be taking place at this meeting.

PETER GREEN, resident of 408 Pine Avenue #2, spoke...

"My name is Peter Green. I live at 408 Pine Avenue #2 here in Niagara Falls, 14301. I am a co-owner of Niagara Vox Media Studios at 8705 Buffalo Avenue. I've lived here in Niagara Falls since 2016 and worked in tourism on this side since 2002. Prior to that, I worked nearly 20 years on the Canadian side of Niagara Falls and in Toronto.

My perspective comes from 20 years working in local tour companies, specialized niche travel and intimate tour groups exploring the unique elements of our region. For the past 12 years, I've also been a group leader for the Rhodes Scholar Program, delivered here pre-Covid, 5 to 8 times per year. So my background is strongly in the tourism industry. I participated with I Love NY for the Western New York delegation that welcomed the Chinese Travel Professionals when that market began traveling to this area. It was an introductory phase where we worked with their outbound leaders on what was here and what we could showcase for them.

Now much of my experience is antidotal and I appreciate Mr. Chairman and members of the committee for hearing me out. I do want to say for my fellow citizens, I am not refuting what you may feel are concerns about the amendment. But much of my experience is antidotal and I've been in this industry for 40 years and a lot of that 40 years I've answered one major question. Why is Niagara Falls, New York so subservient to Niagara Falls, Canada? I think part of that

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

comes from that fact that we tend to be behind the eight ball or behind the times in how we address our tourism market. I'm going to give you a quote from newsairbnb.com

*'In 2021, travel will become less about tourism and more about living, working and connecting safely away from home. AirBnB is ideally suited to meet the changing needs. Whether providing an entire home or just to take a break from the city or to reconnect with loved ones or try out a new neighborhood.'*

I bring this to your attention because one of the ways travelers are taking advantage of the new trends with AirBnB is called 'trying before they buy'. We are a city that actually offered money to move here as I recall some years ago. We're desperate to see our city regenerate and grow. A lot of people are turning to Airbnb's to test new neighborhoods and cities before making a long term commitment. From July 2021 to September of this year, there has been a 128% increase in guest reviews that mention 'relocation', 'relocate' or 'remote work' and 'trying a new neighborhood' in comparison to the same time frame from last year. So in the AirBnB industry, that is very different than someone who comes here to stay in a hotel. It is very easy to create what you could call a 'tourist ghetto'. You could create a tourist area that is wonderful with all these hotels, you could have BnB's close by as well. Right now, we are so sadly lacking in entertainment and activities that it really discourages the long term stay. But I believe our market would do far better to broaden the experiences open to our visitors. Our visitors' needs and desires are changing rapidly and I believe we are headed once again towards falling short on that.

These visitors are staying in Airbnb's outside the city core. They're not staying away from tourism. They're spending their money at Wegmans and Tops. They're dining in at restaurants on the Boulevard and Military Road. They're impacting on the community and people want to learn about these communities. They want to know who we are. Have you ever seen a group of Chinese guests, who come from China as a group, and they leave a restaurant and they walk up a nearby street and you see them taking pictures of people's homes? When I lived in Kenmore, people would walk into my driveway to take pictures of my backyard because the world wants to know how everyone else lives. And the AirBnB market allows an experience within a city, it allows visitors to choose what area of a city they want to have an impact on. I know there is good and bad in every decision you have to review. I hope we can see the good and the bad in this decision."

DAVID FLORIO, an AirBnB owner, spoke next. He explained that the area in which all the AirBnB's would be was very low income. He explained that the cost of their living would go up and cause them to leave. He explained that when he has guest at his AirBnB, he advises them onto where to and not to go in the city of Niagara Falls. MR. FLORIO agreed with MR. GREEN that visitors were curious about the city and the way the residents live. MR. FLORIO explained that if AirBnBs are only limited to one area, there would be more problems down the road.

ANDREA FORTIN-NOSAVAGE, resident at 8874 Lingbergh Avenue and AirBnB owner, spoke.

"Good evening. Thank you to Chairman Palmer and the other board members for this opportunity. My name is Andrea Fortin-Nosavage and I live at 8874 Linbergh Avenue. I want to thank you for the opportunity to participate here today. I'd like to speak in favor of the newly

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021**

proposed regulations. I also feel we should ensure we are allotting proper enforcement mechanisms with any new regulations that we create. I also want to say that I am an owner of an Airbnb in another state so I know a lot about different regulations, I know about running a business and I believe in prosperity. I believe in prosperity for all of us. We know the city needs business and I've been a lifelong resident. But I'm also thinking as I'm here speaking to you, it's really your purpose. The reason this board exists is to create a peaceful coexistence of business and prosperity for residents alike. Putting businesses, commercial enterprises and boutique hotels in our own neighborhoods has created a lot of concern and consternation in my neighborhood. Many of my neighbors are here, not because we want publicity, not because we want to talk about people on social media, we just want to live in our neighborhood and our homes peacefully and safely.

As Mr. Green mentioned, people went to go and live and work safely on a 'try and buy'. Well we did buy. We bought in our neighborhood and we lived there for 22 years. It has become increasingly difficult. Particularly when we have had issues and we've called Code Enforcement and nothing is done. Police are called and very little consequences happen. Many people in the STR community feel that enforcing the regulations that exist is something that has to happen. Because you can make as many laws as you want, but if you can't enforce them or if you're not properly, equally and fairly applying them, then what is the point? The other thing I want to say is that the STR issue was put on the ballot this last election and I believe that the people of this city spoke very resoundingly by their choice of candidates as to how they feel about that issue. And I would ask this Planning Board to respect the will of the community, the will of the people because the voters have spoken. I hope moving forward that the new City Council members will continue to monitor this issue and that the Planning Board can provide proper support for them so that people don't feel uncomfortable in their own homes and feel unsafe. I vote for prosperity for everyone, I believe in business, but I believe you have a responsibility to protect the residents that live here and I think that if you look back at any of the City Council meetings, you can perhaps see some of the notes that were submitted in writing. I know many of the STR people and my neighbors who have all taken opportunities to submit information. We spoke with Councilperson Soda and every single councilman so please listen to us, please ask us questions if you want to hear. Obviously we are here at this meeting to show our position on the issue. I recognize that both sides need to be able to speak and be able to coexist and I expect that this Planning Board will act in a way accordingly to the will of the people. Thank you for your time."

EZRA SCOTT, resident at 1735 Caravelle Drive, spoke. He explained the ordinance would cut residents off from taking advantage of the short term rental market and speed up the process of gentrification. He explained that the elected officials in Buffalo had even voted against a similar zoning ordinance. He also stated that the Code Enforcement Department needed more support if they were going to tackle issues within the STR community.

COLIN LIGAMMARI, resident at 4210 Washington Street and a STR owner, stated...

"Hello I'm Colin Ligammari. Owner/operator of two legally operating short term rentals in the LaSalle neighborhood, located outside of the proposed zone.

When I bought these two houses in 2017, they were the biggest eyesore on the block. Now they are lovely residential homes, where families come to stay for 29 days or less. During their stay, I

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

guide them to the local businesses on Buffalo Avenue, which helps them stay afloat through the winter months. There are 10 small businesses that I share tourism dollars with, 12 months a year. Zoning STRs to downtown, stops the flow of those dollars to businesses in LaSalle. It will also stop payment to 4 single moms that I employ to help me care for the homes. It stops payment to the landscaping company, and the snow removal company as well electricians, plumbers and general contractors.

Another zoning side effect will be the displacement of residents inside the zone. Housing costs will skyrocket, rents will be unaffordable, and people will have to scramble to find new places to live while gentrification gets crammed down their throats. It's been proven that a multi-use city, is a safe city. Is it not a better option to distribute tourism dollars equitably throughout? I implore this board to not recommend this new ordinance until these inequities are satisfied. There are better solutions to manage growth, as well as any problems that may come up. We have to stop making small business people vote with their feet, before all we are left with is the Holiday Inn next to the McDonalds. And for the record, it was equity that was on the ballot."

LAURA ROTELLA, resident of 960 Creekside Drive, spoke...

"Thank you very much for this opportunity for me to express about my concern about Short Term Rentals or vacation homes in residential neighborhoods. They are not necessarily bad. But they do have the potential for being destabilizing and that has in fact occurred and it is not antidotal. Niagara Falls does not need any additional reasons to destabilize our neighborhoods. We are already dealing with endless party houses. Short Term Rentals do create a form of gentrification,

they just don't bring the people. They raise housing costs but they do not increase desirability to live in the city. I am all for tourists but for the one person that's going to buy a house, does that necessitate that we be 300+ and yes 2/3 of these short term rentals are illegal. That is not the legal operator's fault nor is it the city's fault. It is the platforms fault that allows businesses to open without verification from the municipality that they are in compliance with the code. I am also to understand that people rent these things as Long Term Rentals. The long term renters rent their homes for Short Term Rentals against the knowledge of the owner of the house. So the platforms are really creating a problem. And that does need to be addressed. But I don't think it needs to be addressed by the tax payers of this city. Multibillion dollar industries list these properties, they should be the ones to clean up the mess. Our code inspectors have more than enough to deal with, without having to clean that up. So I certainly hope that you would consider passing this ordinance. It is only for a year and it gets to be reviewed. I think that is pretty fair. And I could list numerous articles citing cons about Short Term Rentals in residential areas and cities, particularly tourist destinations. I will in fact send you a lengthy list of numbers of articles with regards to the cons. They only talk about the pros, they never want cons. There are pros so there are two sides. Please consider that, thank you very much."

CHERRISH BEALS, owner of a STR, stated...

"There is a long list of reasons why the proposed STR ordinance should not be passed –

1 – It will impact the growth of tourism in Niagara Falls which ultimately impacts the revenues of our local businesses. A rough back of the envelope calculation of the revenue STRs currently

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

bring to the city shows that. For example, there are ~400 STRs operating in the City of Niagara Falls right now according to AirBnB. If on average each hosts 4 guests for 130 nights a year and each of those guests spends \$88 a day (what is estimated to be the typical average spend for tourists (excluding lodging) in Niagara Falls each day) that equals \$18,304,000 a year!

2 – It is unconstitutional because it impacts my land use rights. As a residential home owner, which STRs are required to be zoned residential, I have the 3 basic property rights – I can purchase, sell or rent my property. That is why ordinances similar to this proposed STR ordinance don't exist for long term rentals.

3 – Short term rentals are not an issue in the City of Niagara Falls. We have plenty of housing stock so it is not taking from those seeking long term housing. Based on the response to our FOIA, very few complaints have been made to code enforcement regarding STRs and the handful that were made were regarding issues unrelated to guests such as high grass. We have been waiting since Jul 2020 for a response to our FOIA requesting a list of complaints/calls made to the Police Dept. for STRs. Especially after Councilman Tompkins made the unproven and false claim in one meeting that there were over 300. If the city was truly concerned about issues related to rentals within the city then they should be focused on the slumlords that own the long term rentals.

4 – Unhealthy gentrification will be forced upon the residents within the proposed STR zone.

5 – Tourist safety and the Niagara Falls brand will be compromised as it forces STRs to be in one of the highest areas of crime within the city.

6 – It is in direct contradiction with the City's Comprehensive plan. One specific example is under section

7 – General Citywide Policies subsection 7.1 Policy Area Land Use which states “

General Policy Statement:

It is the City's policy to ensure that the City's vision for development is supported by appropriate land use policies and regulations, and that the City pursue a fine-grained, mixed use approach to land use that respects the existing character of healthy, stable neighborhoods, while allowing the City to grow and revitalize.

In this section the City sets the 12 policies specific to land use. This ordinance is in direct violation of 5 which include -

1. Policy 7.1.1 Conserve and strengthen existing residential neighborhoods

Action 1 Promote development that rehabilitates existing housing stock within city neighborhoods.

Remember, this is the section of the Comprehensive Plan that is not specific to the Core but is regarding the entire city of Niagara Falls.

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

2. Policy 7.1.2 Encourage a pattern for new development that incorporates a mix of uses at a variety of densities.
3. Policy 7.1.3 Pursue a "fine grained" approach to land use that allows uses to mix and benefit from one another.
4. Policy 7.1.4 Strengthen the Core City by encouraging higher density development that encompasses a mix of uses that supplies services to residents, especially to adjacent neighborhoods, as well as to tourists.
5. Policy 7.1.7 Encourage commercial and light industrial uses only where most appropriate. There are many other sections within the comprehensive plan that this ordinance is in direct violation of. As such, this ordinance should not be passed and implemented."

MS. BEALS then read four written statements that were prepared by people who could not attend the meeting.

Lori McDermott – 612 3<sup>rd</sup> Street

"An attempt to change zoning and prohibit certain zones from having an STR, is a form of discrimination. Our neighborhood has benefited from guests staying in our home. Guests have benefited and enjoyed staying in our home. We have beautified our home and have watched neighbors start to take pride in their homes. The city has enjoyed and benefited from receiving our short term rental's hospitality tax. Removing our ability to make a living is detrimental to Niagara Falls. Additionally, how does having a short term rental differ from a long term rental? This is another form of the city's discriminatory actions that must end."

Rachel Novelli – 146 Old Carriage House Road, Grand Island NY

"By trying to pass this ordinance, you are trying to tell me I can only rent my house out long term? The wear and tear on my home for a long term rental is very bad, plus I would have to ask my renters if I can come and inspect and keep up the house and property. In my experience with long term renters (20 years), long term renters DO NOT want to allow you into the home. My short term renters keep the property nice, they follow house rules, which include quiet time after 10PM, no smoking on the property, no parties and only 4 people allowed into the home. They are held responsible and know they will be receiving a review which will affect their future ability to get a short term rental. So, they behave and treat the neighborhood and home very well. It is ridiculous to think that is a long term rental, with no rules, much less rent, no invested interest, and would keep the neighborhood and the home better and cleaner. Please do not opuses this ordinance, it is a clear violation of my rights as a homeowner."

Elena Levine – 418 Hoyt Street, Buffalo NY 14213

"To Whom It May Concern,

My name is Elena Levin, and I'm an owner of STRs both in Niagara Falls (460 Memorial) and Buffalo. I have moved initially to Niagara Falls from Russia back in 2009 to pursue individual

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021**

and entrepreneurial freedom. I worked hard for the last 12 years and saved up enough money to invest in a STR property in Niagara Falls with my business partner in 2019. However, in the last two years, the local government has stifled my freedom as an entrepreneur and a member of the community trying to make a positive impact on Niagara Falls. The number of pressing regulations that Niagara Falls is trying to impose makes me feel like we, the people who are trying to make a change on the grassroots level, are not welcome in the city. That includes regulations like trying to impose unlawful taxes and limiting areas where STR can exist and operate. In the last few months, I have invested in two properties in Buffalo and Florida. Those could be the money invested in the Niagara Falls community that I chose to take somewhere else due to the uncertainty of current government regulation. I respectfully ask you to reconsider imposing limitations for a single zone for STRs and instead support the opportunities for a local entrepreneur to invest and revitalize different parts of the city that is in dire need of care and improvement”

Marina Dorka-Salansky – 2578 LaSalle Avenue

“My name is Marina Dorka-Salansky. I moved to USA just four years ago from Zheleznodorozhny, Russia. I came here for 4 days, which turned into 5 months and now forever. My second day in Western NY was spent with a kind stranger who is now my husband and father of our two little girls. He loves showing the beauty of our area. We fell in love with each other in Niagara Falls and have invested in two properties. One in the “zone” and another outside the zone. We see the beauty and potential in this city. I cry about the struggles this potential ordinance would place on my properties. I’ve spent every last dollar in my pocket (twice) to help revitalize this city. I am not sure if we’re safe here. I love both houses. I love my guests. I love USA. This is my job, my retirement, my college savings plans for my girls. I get sick watching the City Council on YouTube. This is unfair, will someone listen to me or my husband? Thank you.”

BOB PASCAL, resident at 1321 James Avenue, spoke. He stated that the ordinance zone would make it difficult for people who want to invest in houses in the STR community. He also said the insurance requirement would be difficult. He stated he owns another property that was previously rented to long term tenants. He says his neighbors are happy – as he is - to have this property as a short term rental as it allowed him to make improvements to the property. He further stated that he believes there are many extra houses in the community currently deteriorating, many bad properties. He believes we should do what we can to find and allow people to invest in these properties.

ERICA BURNS, owner of 18 Cleveland Avenue and 1424 Walnut Avenue, spoke. She moved to Niagara Falls because it was affordable. She bought and originally rented her property to a long term tenant who trashed it. She said that operating her property as a short term rental allowed her to purchase another home and to be the first person in her family to be an entrepreneur. She further stated that STR’s provided an extra level of safety during the COVID-19 pandemic and the revenue brought in during that time was due to STR’s. Finally she stated that STR’s are safer for tourists during the COVID emergency than are hotels.

ANTHONY KUTIS, resident at 921 Creekside Drive, spoke. He believes he is the only person in the room that lives directly adjacent to an AirBnB. He said this neighboring AirBnB has become the talk of the neighborhood due to music and pool parties. He stated that AirBnBs, when run properly, aren’t even

Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021

noticeable in the community. He stated that certain AirBnB's made him uncomfortable in his own neighborhood. He stated that residents should not come second to a lucrative business. He believes people have different opinions about living next to AirBnB's and those that do not want this should not be treated the same as those that do. He believes whole blocks of homes are concerned about AirBnB's.

COUNCILPERSON SPAUNBAUER said he was thrilled to see so much communication on the ordinance issue. He further asked that people read what was submitted to the Niagara County Planning Board and to note that it was unanimously approved by the Niagara County Planning Board.

ALICIA N, resident at 2259 Willow Avenue, spoke about the ordinance. She stated that she recently got a new job hosting AirBnB's and is a property manager for her boss. She is in the process of rehabbing 8 homes, 3 of which were condemned. She said that her neighbors love the AirBnB and she does not allow properties. She believes AirBnB's are allowing the condemned housing to be brought back to life.

BOB PASCAL, resident at 1321 James Avenue, spoke again. He believes there is commonality between the two groups in the audience. He said as the Chair of the Niagara Falls Landlord group, they tried to identify violations and unsightliness to be remedied. He said we should correct existing violations before adding new rules.

With no other speakers, the Public Hearing for Zoning Amendment relative to Chapter 1328.13: Short Term Rental Units was closed at 7:15pm

**ACTION ITEMS:**

1. Approval of the 2022 Niagara Falls Planning Board Meeting Schedule

CHAIRPERSON PALMER asked if anyone had any issues with the listed dates for 2022. MR. COOPER asked if anyone had any issues with the meeting on November 23<sup>rd</sup>, 2022 with it being the day before Thanksgiving. He asked if the Planning Board wanted to leave it on the schedule. CHAIRPERSON PALMER said they could wait until the October 9<sup>th</sup> meeting to see if they wanted to cancel the November 23<sup>rd</sup>, 2022 meeting. It was decided that the meeting would be left on the schedule.

**OLD BUSINESS:**

**NEW BUSINESS:**

CHAIRPERSON PALMER brought up the next meeting on December 22<sup>nd</sup> at 6:00 PM. He asked if the members were ok with holding this meeting or if they felt it should be cancelled with the next meeting being January 12<sup>th</sup>. MR. POLKA asked if it could be rescheduled to December 29<sup>th</sup> at 6:00 PM. With board consent, CHAIRPERSON PALMER said they would reschedule the December 22<sup>nd</sup> meeting to December 29<sup>th</sup>.

**PLANNING REPORT:**

MR. COOPER wanted to keep CHAIRPERSON PALMER updated with the DRI Project (Downtown Revitalization Initiative) He stated there was not much movement. MR. COOPER stated that the work plans were still being finalized with the state. MR. COOPER reminded the board of the three current

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
December 8<sup>th</sup>, 2021**

projects, Small Project Grant Fund, Street Scape Project along Main Street and the Freedom Overlook Plaza.

CHAIRPERSON PALMER asked what the status of Blue Cardinal was. MR. COOPER said he hadn't received any updates as of late. MRS. CELIK stated that the Blue Cardinal had been looking for permits for their historic rehab project in early spring. MRS. CELIK stated that it was a loose timeline that changed frequently.

**ADJOURNMENT:**

A motion to adjourn was made by CHAIRPERSON PALMER and seconded by MR. POLKA.

Motion: UNANIMOUSLY APPROVED

Meeting adjourned at 7:18 PM.

*EXHIBIT C:*

PROPOSED ZONING AMENDMENTS

**CITY OF NIAGARA FALLS, NY**

**PROPOSED ZONING ORDINANCE AMENDMENTS**

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October 27, 2021 Amendments

Additional definitions: "Building-Integrated Solar Energy System", "Glare", "Ground-Mounted Solar Energy System", "Roof-Mounted Solar Energy System", "Solar Access", "Solar Energy Equipment", "Solar Energy System", "Solar Panel", and "Storage Battery".

Amendments as shown as underscored language to be added to Chapter Sections 1302.2.3, 1302.2.8, 1302.2.19, 1302.2.20, 1320.12.2 (G), 1320.13, 1321.9, 1323.4.2(A)(5), 1323.4.2(A)(6), 1323.4.2(D)(14), and 1323.12

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**1302 – DEFINITIONS**

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**1302.2 - List of Definitions**

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**1302.2.3 "B"**

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**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM** - A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

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**1302.2.8 "G"**

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**GLARE** - The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM** -A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached

from any other structure, which generates electricity for onsite or offsite consumption.

\*\*\*

1302.2.19 "R"

ROOF-MOUNTED SOLAR ENERGY SYSTEM - Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

\*\*\*

1302.2.20 "S"

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SOLAR ACCESS - Space open to the sun and clear of overhangs or shade so as to permit the use of Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT - Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM - The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

- a. Roof-Mounted Solar Energy Systems
- b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to [4,000] square feet and that generate up to [110] % of the electricity consumed on the site over the previous [12] months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electricity.

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

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1320.12.2      Outdoor Patio Within Public Right-Of-Way

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G.      enter into an encroachment agreement with the City, renewable on an annual basis.

\*\*\*

1320.13 - Solar Energy Systems

- A. Except as otherwise stated within this Chapter, Tier 1 and Tier 2 Solar Energy Systems shall be a permitted accessory use in all zoning districts and shall be exempt from site plan review.
- B. Tier 1 and Tier 2 Solar Energy Systems are subject to the following requirements:
  - 1. Tier 1 Roof Mounted Solar Energy Systems
    - a. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:
      - 1. Solar Panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface the highest edge of the system.
      - 2. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
      - 3. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
      - 4. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface of the roof, whichever is higher.
    - b. Glare. All Solar Panels shall have anti-reflective coating(s).
    - c. Height: All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings, whichever the Solar

Energy System will be locate upon, within the underlying zoning district.

2. Tier 1 Building-Integrated Solar Energy Systems

a. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

3. Tier 2 Solar Energy Systems

a. Glare. All Solar Panels shall have anti-reflective coating(s).

b. Setbacks. Tier 2 Solar Energy Systems shall only be installed in the side or rear yards in residential districts and shall be subject to following setback regulations:

<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
<u>30'</u>	<u>15'</u>	<u>15'</u>

c. Height. Tier 2 Solar Energy Systems shall not exceed 15 feet in height.

d. Screening and Visibility:

1. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.

2. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

C. Solar Energy Systems which require a Site Plan are subject to requirements of Chapter 1324

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1321.9 Solar Energy Systems Requiring a Site Plan

Screening and landscaping requirements for Solar Energy Systems that require a Site Plan are provided within Section 1324.12.

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#### 1323.4.2      Level 2 Review

##### A.      Actions subject to Level 2 Review Procedure.

The City Council authorizes the Planning Board to review and approve, approve with modifications, or disapprove site plan applications meeting the criteria for Level 2 review.

The Level 2 review criteria are as follows:

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5.      Any action (requiring Planning Board approval) involving or impacting a Historic landmark as defined in Section 1303.2.8 of this Zoning Ordinance.

6.      **Tier 3 Solar Energy Systems.**

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##### D.      Standards for site development plan approval

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#### 14.      Solar Energy Systems

The Planning Board should consider during their review of proposed developments on sites adjacent to Solar Energy Systems the potential impact to Solar Access to remain economically feasible over time.

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#### 1323.12 - Tier 3 Solar Energy Systems

##### A.      Statement of Purpose

The City Council of the City of Niagara Falls has adopted this Solar Energy Zoning Ordinance to advance and protect the public health, safety, and welfare of City of Niagara Falls by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;

3. To increase employment and business development in the City of Niagara Falls, to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
4. To mitigate the impacts of Solar Energy Systems on environmental resources such as forests, wildlife and other protected resources, and;
5. To create synergy between solar and other land uses by encouraging the reuse and revitalization of underutilized industrial properties, creating a diverse mixture of businesses, and encouraging interim land uses in vacant and underutilized industrial areas.

**B. Applicability**

1. Chapter 1324.12 shall apply to all Tier 3 Solar Energy System uses.
2. The requirements of Chapter 1324.12 shall apply to all Tier 3 Solar Energy Systems permitted, installed, or modified in City of Niagara Falls after the effective date of this zoning ordinance, excluding general maintenance and repair.
3. Tier 3 Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of Chapter 1324.12. However, modifications to an existing Tier 3 Solar Energy System that increase the Solar Energy System area by more than five percent (5%) of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this chapter.

**C. General Requirements**

1. A Building permit shall be required for installation of all Tier 3 Solar Energy Systems.
2. Issuance of permits and approvals shall include review pursuant to the State Environmental Quality Review Act (“SEQRA”).
3. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and

Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the City of Niagara Falls Codified Ordinances. Where conflict amongst these regulations occur, the most stringent standard shall apply.

**D. Tier 3 Solar Energy System Site Plan Requirements**

For Tier 3 Solar Energy System uses which require Site Plan Approval, the following standards or conditions shall be required:

- 1. Applications for the installation of Tier 3 Solar Energy System shall be:**
  - a. Reviewed by the Director of Planning or designee for completeness. Applicant shall be advised of the completeness of their application or any deficiencies that must be addressed prior to Planning Board review.**
  - b. Subject to a public hearing. The Planning Board shall provide any necessary notices required under General City Law. Notice shall also be delivered by first class mail to applicant and landowners within [200] feet of the property at least ten [10] days prior to such a hearing. Proof of notices shall be provided to the Planning Board at the public hearing.**
  - c. Referred to the Niagara County Planning Board pursuant to General Municipal Law § 239-m, if required.**
  - d. Upon closing of the public hearing, the Planning Board shall take action on the application within [62] days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and applicant.**
- 2. Underground Utilities. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.**
- 3. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.**
- 4. Signage.**

- a. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than eight (8) square feet.
- b. As required by National Electric Code ("NEC"), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

5. Glare. All Solar Panels shall have anti-reflective coating(s).
6. Lighting. Lighting of the Tier 3 Solar Energy Systems shall be limited to that minimally required for safety and operational purposes. Such lighting shall be properly designed and shielded so as to avoid glare, prevent visibility of the source of the light from areas off-site and other undesirable impacts on neighboring properties and streets.
7. Tree-cutting. Removal of existing trees larger than six (6) inches in diameter at breast height should be minimized to the extent possible.
8. Decommissioning.
  - a. A Decommissioning Plan, signed by the Owner and/or Operator of the Tier 3 Solar Energy System, shall be submitted by the applicant, addressing the following:
    1. Identify anticipated life of the project,
    2. Cost estimate and timeframe for decommissioning including removal of the Solar Energy System and all infrastructure, foundations, and any ancillary structures and restoration of the property to its original state prior to construction of the Solar Energy System.
    3. All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.

4. All disturbed ground surfaces shall be reasonably restored to original conditions including topsoil and seeding as necessary.
5. Adherence to the 2021 Niagara County local law establishing solar panel recycling regulations is required.

b. Security.

1. The deposit, executions, or filing with the City of Niagara Falls City Clerk of cash, bond, or other form of security reasonably acceptable to the City of Niagara Falls Corporation Counsel, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be one-hundred-twenty-five percent (125%) of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of two percent (2%) annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.
2. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the City of Niagara Falls, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
3. In the event of default or abandonment of the Solar Energy System, the System shall be decommissioned as set forth in herein.

c. Abandonment. If a Tier 3 Solar Energy System that has been abandoned, not being properly maintained, and/or is not producing at least twenty percent (20%) of its maximum electrical generation capability for a period of one (1) year, the City may notify and instruct the Owner and/or Operator of the Solar Energy System to implement

the decommissioning plan. The decommissioning plan must be completed within one (1) year of the date of such notification.

- d. Owner or operator shall provide annual reports from the appropriate utility provider setting forth electrical power generated by the Tier 3 Solar Energy System. Said reports shall be utilized to determine whether the Solar Energy System is producing at least twenty percent (20%) of its maximum electrical generation capability. Said reports shall be provided to the Director of Inspections.
- e. In the event City opts to provide notification and instruction as set forth in subsection c. above, the Owner and/or Operator shall decommission and remove the Solar Energy System at the Owner and/or Operators expense. The cost of same may be paid by the Owner, or may come from any security made with the City of Niagara Falls as set forth in subsection ii herein.

9. Site Plan Details. For all Tier 3 Solar Energy Systems requiring a Level 2 Site Plan, in addition to the requirements of Chapter 1324, any site plan application shall include the following information:

- a. Property lines and physical features, including roads, for the project site
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures
- c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all NEC compliant disconnects and over current devices.
- d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e. Name, address, and contact information of proposed or potential system installer and the Owner and/or Operator of the Solar Energy System. Such information of the final

system installer shall be submitted prior to the issuance of building permit.

- f. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- i. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- j. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer or Registered Architect.

10. Minimum Lot Size. The minimum Lot Size for Tier 3 Solar Energy Systems shall be 5 Acres.
11. Setbacks. The minimum setbacks for Tier 3 Solar Energy Systems shall be as follows:

<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
<u>30'</u>	<u>20'</u>	<u>20'</u>
12. Height. Tier 3 Solar Energy Systems shall not exceed 15 feet in height.
13. Storage Battery. Storage Batteries shall not be permitted as part of a Tier 3 Solar Energy System
14. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a seven (7) foot

high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

**15. Screening and Visibility.**

- a. Tier 3 Solar Energy Systems smaller than ten (10) acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
- b. Tier 3 Solar Energy Systems larger than ten (10) acres shall be required to:
  1. Conduct an assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. This analysis must consider conditions at day one of operation and when the landscaping has matured. Depending upon the scope and potential significance of the visual impacts, additional impact analyses may be required to be submitted by the applicant.
  2. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

B. Landscape plans must be completed by a NYS Registered Landscape Architect.

16. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within thirty (30) days of the ownership change.

17. Safety

- a. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- b. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the Niagara Falls Fire Department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

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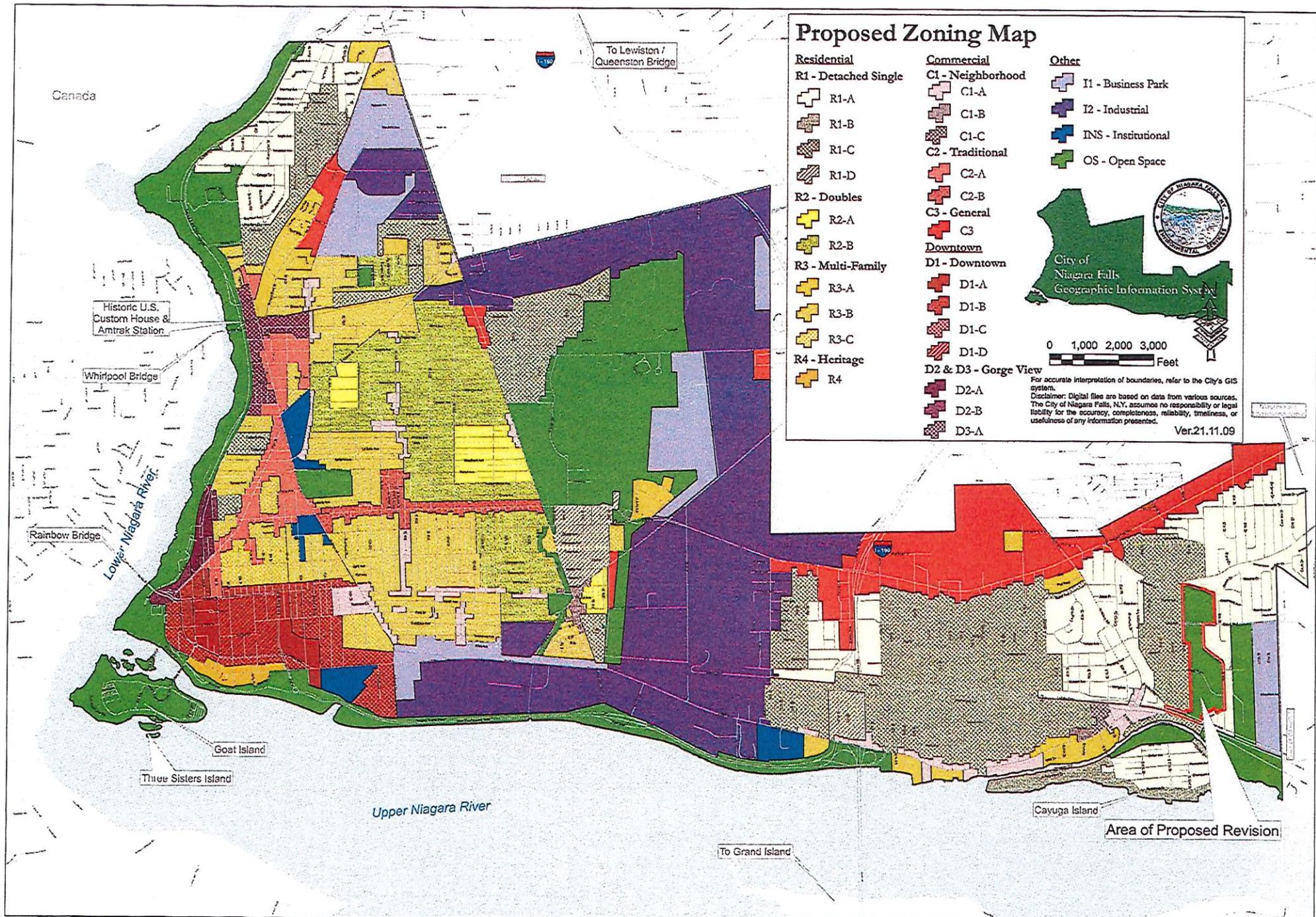
Bold and Underlining indicate Additions.  
Bold and Brackets indicate [Deletions].

## Schedule 1

### Schedule 1

### Schedule 1

Schedule 1



**Full Environmental Assessment Form**  
**Part 2 - Identification of Potential Project Impacts**

Project :	Agency Use Only [If applicable] Local Law No. 3, Ordinance, and Map Amer
Date :	

**Part 2 is to be completed by the lead agency.** Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency and the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "Yes" to a numbered question, please complete all the questions that follow in that section.
- If you answer "No" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

<b>1. Impact on Land</b>		<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES																																			
<p>Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1)</p> <p><i>If "Yes", answer questions a - j. If "No", move on to Section 2.</i></p>																																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="width: 10%; text-align: center;">Relevant Part I Question(s)</th> <th style="width: 10%; text-align: center;">No, or small impact may occur</th> <th style="width: 10%; text-align: center;">Moderate to large impact may occur</th> </tr> </thead> <tbody> <tr> <td>a. The proposed action may involve construction on land where depth to water table is less than 3 feet.</td> <td style="text-align: center;">E2d</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>b. The proposed action may involve construction on slopes of 15% or greater.</td> <td style="text-align: center;">E2f</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.</td> <td style="text-align: center;">E2a</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.</td> <td style="text-align: center;">D2a</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>e. The proposed action may involve construction that continues for more than one year or in multiple phases.</td> <td style="text-align: center;">D1e</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).</td> <td style="text-align: center;">D2e, D2q</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>g. The proposed action is, or may be, located within a Coastal Erosion hazard area.</td> <td style="text-align: center;">B1i</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>h. Other impacts: _____</td> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>			Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur	a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input checked="" type="checkbox"/>	<input type="checkbox"/>	c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input checked="" type="checkbox"/>	<input type="checkbox"/>	d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input checked="" type="checkbox"/>	<input type="checkbox"/>	e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input checked="" type="checkbox"/>	<input type="checkbox"/>	f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input checked="" type="checkbox"/>	<input type="checkbox"/>	g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input checked="" type="checkbox"/>	<input type="checkbox"/>	h. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>
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## 2. Impact on Geological Features

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

NO

YES

*If "Yes", answer questions a - c. If "No", move on to Section 3.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

## 3. Impacts on Surface Water

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

NO

YES

*If "Yes", answer questions a - l. If "No", move on to Section 4.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I. Other impacts: _____	_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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#### 4. Impact on groundwater

The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. (See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)

*If "Yes", answer questions a - h. If "No", move on to Section 5.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

#### 5. Impact on Flooding

The proposed action may result in development on lands subject to flooding.

(See Part 1. E.2)

*If "Yes", answer questions a - g. If "No", move on to Section 6.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____	<input type="checkbox"/>	<input type="checkbox"/>
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## 6. Impacts on Air

The proposed action may include a state regulated air emission source.

(See Part 1. D.2.f., D.2.h, D.2.g)

*If "Yes", answer questions a - f. If "No", move on to Section 7.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels:			
i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> )	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O)	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs)	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> )	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
v. More than 1000 tons/year of carbon dioxide equivalent of hydrochlorofluorocarbons (HFCs) emissions	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
vi. 43 tons/year or more of methane	D2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

## 7. Impact on Plants and Animals

The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.)

*If "Yes", answer questions a - j. If "No", move on to Section 8.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input checked="" type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### 8. Impact on Agricultural Resources

The proposed action may impact agricultural resources. (See Part 1, E.3.a. and b.)

*If "Yes", answer questions a - h. If "No", move on to Section 9.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**9. Impact on Aesthetic Resources**

The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.)

*If "Yes", answer questions a - g. If "No", go to Section 10.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: <ul style="list-style-type: none"> <li>i. Seasonally (e.g., screened by summer foliage, but visible during other seasons)</li> <li>ii. Year round</li> </ul>	E3h	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: <ul style="list-style-type: none"> <li>i. Routine travel by residents, including travel to and from work</li> <li>ii. Recreational or tourism based activities</li> </ul>	E3h E2q, E1c	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: <ul style="list-style-type: none"> <li>0-1/2 mile</li> <li>½ -3 mile</li> <li>3-5 mile</li> <li>5+ mile</li> </ul>	D1a, E1a, D1f, D1g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

**10. Impact on Historic and Archeological Resources**

The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.)

*If "Yes", answer questions a - e. If "No", go to Section 11.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register of Historical Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.	E3e	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory.	E3g	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Source: \_\_\_\_\_

d. Other impacts: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:		
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	<input type="checkbox"/>

#### 11. Impact on Open Space and Recreation

The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan.

(See Part 1. C.2.c, E.1.c., E.2.q.)

If "Yes", answer questions a - e. If "No", go to Section 12.

NO  YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### 12. Impact on Critical Environmental Areas

The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d)

If "Yes", answer questions a - c. If "No", go to Section 13.

NO  YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**13. Impact on Transportation**

The proposed action may result in a change to existing transportation systems.  
(See Part 1, D.2.j.)

*If "Yes", answer questions a - f. If "No", go to Section 14.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

**14. Impact on Energy**

The proposed action may cause an increase in the use of any form of energy.  
(See Part 1, D.2.k)

*If "Yes", answer questions a - e. If "No", go to Section 15.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____			

**15. Impact on Noise, Odor, and Light**

The proposed action may result in an increase in noise, odors, or outdoor lighting.  
(See Part 1, D.2.m., n., and o.)

*If "Yes", answer questions a - f. If "No", go to Section 16.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. The proposed action may result in light shining onto adjoining properties.	D2n	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### 16. Impact on Human Health

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.)

*If "Yes", answer questions a - m. If "No", go to Section 17.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____			

**17. Consistency with Community Plans**

The proposed action is not consistent with adopted land use plans.

(See Part 1, C.1, C.2, and C.3.)

If "Yes", answer questions a - h. If "No", go to Section 18.

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, Elb	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. Other: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

**18. Consistency with Community Character**

The proposed project is inconsistent with the existing community character.

(See Part 1, C.2, C.3, D.2, E.3)

If "Yes", answer questions a - g. If "No", proceed to Part 3.

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

***Full Environmental Assessment Form***  
***Part 3 - Evaluation of the Magnitude and Importance of Project Impacts***  
***and***  
***Determination of Significance***

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

**Reasons Supporting This Determination:**

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

See attached narrative.

**Determination of Significance - Type 1 and Unlisted Actions**

SEQR Status:  Type 1  Unlisted

Identify portions of EAF completed for this Project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the \_\_\_\_\_ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: Niagara Falls Local Law No. 3 (2021), Zoning Ordinance Amendments, and Zoning Map Amendment

Name of Lead Agency: City of Niagara Falls City Council

Name of Responsible Officer in Lead Agency: Kenny Tompkins

Title of Responsible Officer: Chairman

Signature of Responsible Officer in Lead Agency:

Date:

Signature of Preparer (if different from Responsible Officer)

Date:

**For Further Information:**

Contact Person: Kenny Tompkins, Chairman City of Niagara Falls City Council

Address: City Hall - Room 202, 745 Main Street, Niagara Falls, NY 14302

Telephone Number: 716-286-4301

E-mail: kenny.tompkins@niagarafallsny.gov

**For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:**

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)  
Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

# **FEAF PART 3**

## **WITH NARRATIVE**

**Part 3: Evaluation of the Magnitude and Importance of Impacts and  
Determination of Significance For Proposed Solar Law (Local Law No. 3 of 2021),  
Ordinance Revisions, and Map Amendment**

**City of Niagara Falls, New York**

The action proposed by the City of Niagara Falls City Council is the adoption of Niagara Falls Local Law No. 3 (2021), revisions to Zoning Ordinance (Chapters 1302.2, 1320.12.2, 1320.13, 1321.9, 1323.4.2, 1323.12, and Schedule 1), and a Zoning Map Amendment.

The proposed solar law and ordinance contain three tiers for different types and sizes of Solar Energy Systems:

- Tier 1 Solar Energy Systems
  - Roof-mounted and building integrated systems;
- Tier 2 Solar Energy Systems
  - Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to 4,000 square feet and that generate up to 110 % of the electricity consumed on the site over the previous 12 months; and
- Tier 3 Solar Energy Systems
  - Systems not included in the list for Tier 1 and Tier 2 Energy Systems, generally assumed to be larger solar energy systems.

The purpose of the law and ordinance is to advance and protect the public health, safety, and welfare of City of Niagara Falls by creating regulations for the installation and use of solar energy generating systems and equipment. The City of Niagara Falls currently has no law or ordinance regulating solar energy systems.

The corresponding map amendment will rezone approximately 58.6 acres from R1-A to Open Space, which will provide additional available acreage for Tier 3 solar energy systems.

The City of Niagara Falls City Council as the designated Lead Agency under SEQR, has considered the impacts of the proposed local law, ordinance revisions, and map amendment in preparing its determination of significance for the proposed action. The City of Niagara Falls City Council has carefully reviewed the information and answers given in the Part 1 FEA. This information informed City Council's preparation of the Part 2 FEA.

Based on this analysis, the City Council has not identified any large, significant adverse impacts on the environment as a result of the proposed action. Instead, the potential impacts identified using the Part 2 of the FEA were found to be small or moderate in importance, particularly in consideration of their magnitude, geographic scope, irreversibility, duration, number of people affected, and probability. City Council therefore issues a Negative Declaration for the project.

The following information has been provided to document the findings of the City Council with regard to the significance of potential environmental impacts and to document issues where small to moderate impacts have been identified for the proposed action.

## **Impacts on Land**

Tier 1 systems consist of roof-mounted and building integrated systems. These systems would be incorporated into the footprint of existing and proposed structures, effectively minimizing impacts to land. Tier 2 ground-mounted systems would also have limited impacts to land as the total surface area of all solar panels on single lot will be limited to 4,000 square feet.

Impacts to land from Tier 3 projects would also be small because these projects can only be sited in the I1, I2, and Open Space Districts. While the map amendment rezones land in the R1-A to Open Space district for the purpose of providing land for Tier 3 systems, the area rezoned is only 58.6 acres.

Standard construction practices would be required to minimize ground disturbance, erosion, and excess drainage that may result during and after construction of ground mounted systems. Vehicular access paths on Tier 3 systems would be designed to minimize impervious surfaces and soil compaction. Tier 3 projects would also be required to develop stormwater management plans to mitigate stormwater impacts to nearby properties and erosion control measures to prevent sedimentation. Tier 3 systems would also require a property operations and maintenance plan as well as a decommissioning plan detailing how project components would be removed and how land would be restored to original conditions. The decommissioning plan would also require project owners to comply with the 2021 Niagara County Local law establishing solar panel recycling. Therefore, the proposed solar law, ordinance revisions, and map amendment would not result in significant impacts on land.

## **Impacts on Wetlands and Waterbodies**

The City of Niagara Falls, a heavily urbanized area, features a number of regulated wetlands and waterbodies, including the Niagara River. Regardless, proposed solar energy systems' impacts to City wetlands and waterbodies would be limited. Systems would be required to comply with relevant state and federal laws, such as the Clean Water Act. As such, activities impacting wetlands would be subject to the review and permitting procedures of the NYS DEC and US Army Corps of Engineers. Additionally, erosion sediment and stormwater management plans would be required for Tier 3 projects, minimizing runoff and sedimentation in wetlands and waterbodies. Therefore, the proposed solar law, ordinance revisions, and map amendment would not result in significant impacts on wetlands and waterbodies.

## **Impacts on Habitats and Species**

Proposed solar energy system projects would be required to comply with relevant federal and state statutes including the federal and state Endangered Species Acts, limiting impacts on habitats and endangered, threatened or rare species. Where required by the State Environmental Quality Review Act, for example, applicants would identify habitats and endangered, threatened, or rare species potentially impacted by project development activities. Depending on the type and extent of these impacts, applicants would be required to comply with the consultation and permitting procedures of the US Fish and Wildlife Service and NYS Department of Environmental Conservation (NYS DEC).

Impacts to habitats and endangered, threatened, or rare species would also be limited by site plan and special use permit review requirements. For example, Tier 3 systems would be required to minimize impervious surfaces. Additionally, projects would be required to limit the removal of trees six inches in diameter or larger. Therefore, the proposed solar law, ordinance revisions, and map amendment would not result in significant impacts on habitats and endangered, threatened, or rare species.

### **Impacts on Historic and Archaeological Resources**

Proposed solar energy system projects would be required to comply with the state and federal Historic Preservation Acts as well as local review procedures, limiting their impacts on historic and archaeological resources. For example, the New York State Historic Preservation Office (SHPO) could require an archaeological survey, building survey, or viewshed analysis to determine the impacts of a Tier 3 solar energy system on nearby properties. SHPO review of landscaping plans could also be required.

Moreover, solar energy systems proposed on historic landmarks or buildings located within the City's historic districts would be subject to review by the Historic District Commission. Additionally, Level 2 site plan review by the Planning Board is required for actions involving or impacting a historic landmark as defined in Section 1303.2.8 of the Zoning Ordinance. Therefore, the proposed solar law, ordinance revisions, and map amendment would not have significant impacts on historic or archaeological resources.

### **Impacts on Open Space, Recreation, and Aesthetic Resources**

The proposed map amendment would increase the amount of land in the Open Space District by almost 60 acres. The proposed solar law and ordinance, in turn, could reduce the amount of open space available for purposes such as recreation by allowing Tier 3 systems as a specially permitted use in this district.

The proposed solar law and ordinance revisions would limit the visual impacts of solar energy systems on open space and aesthetic resources. The proposed law and ordinance revisions require all solar panels to have anti-reflective glare coatings. Height and setbacks would be restricted by zoning district requirements and Schedule 15 of the Zoning Ordinance.

Lighting for Tier 3 projects would be limited to what is minimally required for safety and operational purposes. Moreover, utility lines for these projects would be buried underground to the maximum extent feasible.

Tier 2 and Tier 3 solar energy systems would be subject to screening and visibility requirements. Tier 2 systems would be sited to minimize blockage of views from adjacent properties. Tier 3 systems smaller than 10 acres would use architectural features, berms, landscaping, and screening to reduce visual impacts to surrounding properties. Tier 3 systems larger than 10 acres would require a visual assessment of proposed solar energy systems on public road ways and adjacent properties and a screening and landscaping plan completed by a NYS registered landscape architect. Therefore, the proposed solar law, ordinance revisions, and map amendment would not have significant impacts on open space and aesthetic resources.

## **Impacts on Transportation**

Construction activities could create temporary transportation impacts during regular business hours on weekdays. For example, commuter traffic could be slowed down by construction vehicles accessing solar energy system project sites. However, it is anticipated that traffic impacts from solar construction activities would not have significant impacts on regular traffic flows. The City is an urban area where minor traffic pattern interruptions from construction and other activities would be expected.

A portion of the City is located in the Airport Protection Overlay zone, including the proposed map amendment area. Proposed developments, including new construction and projects requiring the repair, rehabilitation, expansion or modification of structures that cost more than 50% of the appraised value, would be subject to special site plan review requirements of the overlay zone and compliance with guidance provided by the Niagara Frontier Transportation Authority, Federal Aviation Administration, and the Air Force Reserve Station. Proposed solar energy systems meeting the above requirements would be reviewed to determine potential airport hazards. Therefore, the proposed solar law, ordinance revisions, and map amendment would not result in potentially significant impacts on transportation.

## **Impacts on Noise and Air Pollution**

Intermittent construction noise could exceed existing ambient noise levels for short periods of time during daytime solar system construction activities. Once operational noise levels exceeding the existing ambient noise levels are not anticipated for Tier 1, 2, or 3 solar energy systems.

Construction activities could create temporary mobile sources of air pollution, caused by activities such as on-site generator use. Once constructed, regular maintenance or repair work by trucks and other vehicles could produce temporary mobile sources of air pollution. However, as noted above, mobile sources of air pollution would be temporary in nature and would not result in potentially significant environmental impacts. Therefore, the proposed solar law, ordinance revisions, and map amendment would not have significant impacts on noise and air pollution.

## **Impacts on Community Plans and Character**

The proposed solar law, ordinance revisions, and map rezoning further the City's 2009 Comprehensive Plan by supporting and regulating the development of solar energy systems in the City. For example, solar energy development aligns with the City's renewal vision and strategy to encourage and support alternative land uses and creative site planning solutions in vacant and/or underutilized areas (Policy 7.1.8). Additionally, solar energy development would protect, maintain, and enhance the City's natural environment by providing City residents with a green, alternative energy resource which could be sited in all zoning districts (Policy 7.4.7). Finally, proposed map amendment rezoning 58.6 acres of R1-A to Open Space aligns with comprehensive plan policy 7.1.12, undertake and adopt future area- and/or issue-specific plans, because it will provide additional acreage for siting Tier 3 systems.

As discussed above, the solar law and ordinance revisions would limit how and where different types of solar energy systems would be sited. Smaller Tier 1 and Tier 2 systems would be permitted in all zoning districts and subject to the area restrictions of the underlying zoning district. The proposed law and ordinance would encourage the siting of Tier 3 projects on industrial properties located in I1 and I2 districts. While Tier 3 projects would also be sited on properties located in the Open Space District (including the area encompassed by the map amendment), impacts to character of surrounding uses from Tier 3 projects would be limited because these projects require site plan, special use permit, and in many cases, SEQRA review. Additionally, siting Tier 3 solar energy systems in the Open Space District would not prevent land in this district from being used for recreational and other open space purposes. Therefore, the proposed solar law, ordinance revisions, and map amendment would not result in significant impacts on community plans and character.