

# 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.

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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]**.