

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one.)

of Whitestown

FILED  
STATE RECORDS

NOV 03 2021

DEPARTMENT OF STATE

Local Law No. 3 of the year 2021

A local law Temporary Moratorium prohibiting Large Scale Solar Installations within the Town.  
(Insert Title)  
of Whitestown.

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Whitestown as follows:

Please see attached.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

TOWN OF WHITESTOWN LOCAL LAW NO. 3 2021

A LOCAL LAW ESTABLISHING A TEMPORARY MORATORIUM PROHIBITING  
LARGE SCALE SOLAR INSTALLATIONS WITHIN THE TOWN OF WHITESTOWN

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

SECTION 1. TITLE.

This Local Law shall be known as the "Temporary Moratorium on and Prohibition of Large Scale Solar Installations within the Town of Whitestown."

SECTION 2. STATUTORY AUTHORITY; PURPOSE AND INTENT.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of WHITESTOWN under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and 14; Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law §10(4)(a), and (b); Statute of Local Government § 10(1), (6), and (7); Town Law § 64 (17-a); Town Law § 130(3) and (15); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law 3-0301(1)(b), 3-0301(2)(m) and 8-0113 and 6 NYCRR Part 617, also known as the State Environmental Quality Review Act, as it pertains to applications that are neither excluded nor exempt from this Local Law.

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

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

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

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

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

During the pendency of the moratorium, the Town Board will consider how best to permit such installations in light of the anticipated increase in demand for residential development resulting from the construction at the Marcy Nanocenter Site by Cree, Inc., which is in close proximity to the Town of WHITESTOWN, as well as the relocation of Village of Whitesboro residents displaced by the flooding of Sauquoit Creek.

Section 487 of the Real Property Tax law would exempts the value of solar panel systems from local property taxation. As such, the Town Board desires to review the economic impact of permitting the siting of further solar panel systems on its tax base, particularly in light of the economic crisis caused by the COVID-19 Pandemic.

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

### SECTION 3. DEFINITIONS.

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

**Large Scale Solar Installation(s)** Any installation of solar panels, equipment and/or buildings or structures undertaken for commercial purposes with an intention of generating power from the sun and converting such power into electricity for resale to or by a third-party (which does not include any individual or business that directs such produced energy back into the public grid solely to off-set their own energy consumption). Large Scale Solar Installations specifically do not include any solar panel collection system or array undertaken by individual landowners, householders or farmers for their own personal use or the use of a business owned by them. Large Scale Solar installations have also been referred to as Tier 3 Solar Energy Systems by NYSERDA and/or as "community solar" projects.

#### SECTION 4. TEMPORARY MORATORIUM and PROHIBITATION.

A. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official agent of the Town of WHITESTOWN, for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town of WHITESTOWN, for any Large Scale Solar Installation, as defined above.

B. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town of WHITESTOWN for any Large Scale Solar Installation, as defined above.

C. The prohibitions set forth above in Subsections A. and B. of this Section 4, are not intended, and shall not be construed, to prevent or prohibit the use and development of solar panel arrays or collections systems for any personal or individual use on or about any residence or place of business, or any farm operation, so long as such use does not produce energy for the purpose of resale to or by any third party.

The term "resale to or by any third party" as used immediately above shall not be construed to include any individual or business that directs such produced energy back into the public grid solely to off-set their own energy consumption.

D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

E. This moratorium and prohibition shall apply to all real property within the Town of WHITESTOWN, and all land use applications of the siting or creation of Large Scale Solar Installations within the Town of WHITESTOWN.

F. Under no circumstances shall the failure of the Town Board of the Town of WHITESTOWN, the Zoning Board of Appeals of the Town of WHITESTOWN, the Planning Board of the Town of WHITESTOWN, or the Code Enforcement Officer for the Town of WHITESTOWN to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate., or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

## SECTION 5. HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM.

Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this local law following a noticed public hearing before the Town Board, at which hearing the Town Board may consider:

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

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

An application for relief of application of the moratorium shall be accompanied by a fee of \$500, together with the applicant's written undertaking, in a form to be approved by the Attorney for the Town, to pay all of the expenses of the Town board and any agent or consultant retained by the Town Board to evaluate and consider the merits of such application, including but not limited to any fees incurred by the Town for services provided by the Attorney and/or Engineer for the Town.

## SECTION 6. PENALTIES.

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars

(\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Section A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

- B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the Court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

#### SECTION 7. CONFLICTS.

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

#### SECTION 8. SEVERABILITY.

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

#### SECTION 9. EFFECTIVE DATE.

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

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2021 of the (County)(City)(Town)(Village) of Town of Whitestown was duly passed by the The Town Board on October 20th 2021, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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

*Mary E. Finegan*

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 10/21/21

(Seal)