

August 12, 2026

MINUTES

**REGULAR MEETING – EDEN TOWN BOARD
2795 East Church Street
Eden, NY 14057
August 12, 2026 at 6:30 PM**

This meeting was held in-person and virtually through GoToMeeting.com. The meeting link was made available to the public prior to the meeting.

TOWN BOARD MEMBERS PRESENT:

RICHARD VENTRY	-	SUPERVISOR
SUSAN WILHELM	-	COUNCILMEMBER
VINCENT VACCO	-	COUNCILMEMBER
MICHAEL BYRNES	-	COUNCILMEMBER (Absent)
TIMOTHY WALKER	-	COUNCILMEMBER

OTHERS PRESENT:

Marlene Grunder	-	Administrative Assistant to the Supervisor
Lisa Winter	-	Bookkeeper
Bill Trask	-	Town Attorney
Jennifer Johnston	-	Deputy Town Clerk
James Szymanski	-	Eden Boy Scout

Pledge of Allegiance

#160-2026: MOTION was made by Councilmember Wilhelm to approve the Town Board Meeting Minutes of July 8, 2026 as written; seconded by Councilmember Walker; Ayes: All; Opposed: None; Abstain: None; Motion carried.

Budget Transfers:

A889 Commercial Permit Fees	A1420.4 Legal - Contractual	Commercial Permit Fees for Expenses	\$1,875.00
SF2665 Sale of Equipment	SF 878 Restricted Capital Reserve	Proceeds of Sale of 1991 International to fire truck reserve Tanker	\$1,3750.
A889 Commercial Permit Fees	A2115 Permit Fees	Return Unused Commercial Permit Fees To Timac	\$2,860.00
A2115 Permit Fees	A899 Commercial Permit Fees	Commercial Permit Fees Received from Sunset Homes	\$3,500.00
H5031 Transfer In - Capital	H7110.2 Swartz Park Project	Swartz Field Project	\$271.95

A915.5 Assigned Rec to A9950.9 Transfer out to Capital for Swartz Project \$270.95

#161-2026: MOTION was made by Supervisor Ventry to approve the Budget Transfers as listed; seconded by Councilmember Walker; Ayes: All; Opposed: None; Abstain: None; Motion carried.

Audit of Bills:

FUND DESCRIPTION	VOUCHER NUMBERS	AMOUNT
General	438-518	\$80,614.07
Fire	205-233	\$40,602.44
Ambulance	122-137	\$4,978.86
Water	10-12	\$1,158.07
Street Lights	26-30	\$2,906.03
Refuse	14-15	\$129,005.69
Highway	171-192	\$312,424.46
Drainage District	N/A	
Capital H5110.2	3-4	\$14,153.68
Capital H7110.2	6-6	\$271.95

#162-2026: MOTION was made by Supervisor Ventry to approve the Audit of Bills as listed; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

**TOWN OF EDEN, NEW YORK
NOTICE OF PUBLIC HEARING**

Pursuant to resolution of the Town Board of the Town of Eden, New York, notice is hereby given that a public hearing will be held by the Eden Town Board in the Eden Town Hall, 2795 East Church Street, Eden, New York on the 12th day of August, 2026 at 6:30 P.M. Local Time, for the purpose of amending chapter 172 of the town code regarding solar energy systems and the energy overlay district; Copies of the proposed local law are available for review at edenny.gov or in the office of the Town Clerk. All interested parties will be given an opportunity to be heard.

#163-2026: MOTION was made by Supervisor Ventry to leave the regular board meeting and open the Public Hearing for the purpose of amending Chapter 172 of the Town Code regarding solar energy systems and the energy overlay district; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

- Resident, Michael Sheets, mentioned a prior potential project on Knoll Rd.

#164-2026: MOTION was made by Supervisor Ventry to close the Public Hearing for the purpose of amending Chapter 172 of the Town Code regarding solar energy systems and the energy overlay district; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

Departmental Reports:

Department reports for the month of August were submitted by Rick Kirst, East Eden Fire Chief; Joseph Hart, Eden Fire Chief; Robert Lazarczyk, Eden Police Chief; Judy Bigelow, Dog Control Officer; Glenn Christner, Code Enforcement Officer; Michael Rados, Assessor; Highway Superintendent, Nick Blaszc; and Emily Hawkins, Town Clerk. All Department Reports are available to the public and on file in the Town Clerk's office.

Public Comment on Agenda Items Only: No public comment.

August 12, 2026

**TOWN OF EDEN, NEW YORK
NOTICE OF PUBLIC HEARING**

Pursuant to resolution of the Town Board of the Town of Eden, New York, notice is hereby given that a public hearing will be held by the Eden Town Board in the Eden Town Hall, 2795 East Church Street, Eden, New York on the 12th day of August, 2026 at 6:45 P.M. Local Time, for a Local Law authorizing participation in Public Meetings by certain Town officials via videoconferencing, as authorized by Public Officers Law Section 103-a. Copies of the proposed local law are available for review at edenny.gov or in the office of the Town Clerk. All interested parties will be given an opportunity to be heard.

#165-2026: MOTION was made by Supervisor Ventry to open the Public Hearing regarding a Local Law authorizing participation in Public Meetings by certain Town officials via videoconferencing, as authorized by Public Officers Law Section 103-a; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

- No public comment.

#166-2026: MOTION was made by Supervisor Ventry to close the Public Hearing and return to the Regular Board meeting; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

New and Unfinished Business:

1. Wepax Water Rate:

Proposed Change to Wepax Road Water Rates

As Wepax Road must sustain their own district I am requesting an increase to the Wepax Water Rates effective immediately. Erie County Water rates have increased over the past year to the rate that is listed below. In addition, there is an anticipated increase in costs from the changeover from the Village of Farnham to the Village of Angola for reading meters and collecting water samples. I request the Wepax Water rates be as follows:

Minimum Flat Charge change from \$81.00 to \$90.00 per unit.

Water Rate Change from \$3.70 per 1,000 gallons to \$4.37 per 1,000 gallons.

#167-2026: MOTION was made by Supervisor Ventry to approve the increase in Wepax Rd. Water Rates as listed; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

2. Smoking Policy:

Town of Eden Policy Brief: Smoke-Free Vehicles & Property Policy

1. Purpose

The Town of Eden is committed to providing a safe, healthy, and clean environment for all employees, residents, and visitors. In accordance with applicable state laws and public health recommendations, this policy establishes rules regarding smoking and the use of tobacco products to reduce exposure to secondhand smoke, lower fire risks, and maintain town facilities and equipment.

2. Scope

This policy applies to:

- All full-time, part-time, seasonal, and temporary employees of the Town of Eden.
- All elected and appointed officials.
- Contractors, volunteers, and members of the public present on Town property or in Town vehicles.

3. Definitions

- **Smoking:** Includes the burning, inhaling, exhaling, or carrying of any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation (including cannabis/marijuana).
- **Vaping / Electronic Smoking Devices:** The use of any electronic device that delivers nicotine, cannabis, or other substances to the person inhaling from the device (e.g., e-cigarettes, vaporizers, vape pens).
- **Smokeless Tobacco:** Includes chew, dip, snuff, or any other oral tobacco products.
- **Town Property:** All real property owned, leased, or operated by the Town of Eden, including but not limited to Town Hall, highway garages, community centers, public parks, playgrounds, athletic fields, parking lots, and walkways.
- **Town Vehicles & Equipment:** All cars, trucks, vans, heavy equipment, lawnmowers, and utility vehicles owned, leased, or operated by the Town of Eden.

4. Policy Rules

A. Town Vehicles & Equipment

- **Strict Prohibition:** Smoking, vaping, and the use of tobacco products are strictly prohibited in all Town-owned or leased vehicles and motorized equipment at all times, regardless of whether the vehicle is moving or stationary, or whether windows are open.
- **Personal Vehicles:** Employees using personal vehicles for official Town business are strongly encouraged to refrain from smoking while transporting other employees or conducting town business.

B. Town-Owned Facilities & Grounds

- **Indoor Spaces:** Smoking and vaping are strictly prohibited inside all buildings, facilities, and structures owned, leased, or operated by the Town of Eden.
- **Outdoor Grounds & Public Parks:** Smoking and vaping are prohibited on all outdoor Town-owned grounds, including parks, sports fields, playgrounds, outdoor meeting spaces, and within a [e.g., 25-foot] perimeter of all building entrances, exits, operable windows, and ventilation intakes.
- **Designated Areas (Optional):** (If applicable) Smoking is only permitted in clearly marked “Designated Smoking Areas”; equipped with proper ash receptacles. If no designated area exists, the entire property is considered smoke-free.

5. Compliance & Enforcement

- **Employees:** Failure to comply with this policy may result in disciplinary action up to and including termination, in accordance with applicable town personnel policies, civil service rules, and collective bargaining agreements.
- **General Public:** Visitors who violate this policy will be informed of the rule and asked to extinguish or cease using the product. Persistent failure to comply may result in removal from Town property.

#168-2026: MOTION was made by Supervisor Ventry to accept the Town of Eden Policy Brief: Smoke-Free Vehicles & Property Policy as written; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

3. Ratify Resignation of Jeremy Lilga:

#169-2026: MOTION was made by Supervisor Ventry to amend Jeremy Lilga's resignation date to July 27, 2026. His last day as an Eden Police Officer was July 26, 2026; seconded by Councilmember Walker; Ayes: All; Opposed: None; Abstain: None; Motion carried.

4. Police Clerk Permanent Position through HELPS:

#170-2026: MOTION was made by Supervisor Ventry to permanently appoint Alicia Czarnecki as a Police Clerk (NY HELPS program) upon completion of her probationary period, effective August 12, 2026; seconded by Councilmember Walker; Ayes: All; Opposed: None; Abstain: None; Motion carried.

5. Videoconferencing Law:

A LOCAL LAW 6-2026 AUTHORIZING PARTICIPATION IN PUBLIC MEETINGS BY CERTAIN TOWN OFFICIALS VIA VIDEOCONFERENCING, AS AUTHORIZED BY PUBLIC OFFICERS LAW SECTION 103-a

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF EDEN AS FOLLOWS:

1. Legislative intent.

It is the intent of this chapter to give all members of any public body of the Town of Eden, as that term is defined in Public Officers Law § 102, if designated by the Town Board, the authority to participate in meetings via videoconference in a manner consistent with the authority granted in Public Officers Law § 103-a.

2. Statutory authority.

This chapter is adopted pursuant to Public Officers Law § 103-a which expressly authorizes the Town Board to adopt a local law and policies giving the members of any public body of the Town of Eden the authority to participate in meetings via videoconference from locations not accessible to the public so long as a quorum of the body participates from locations where the public may be physically present and other conditions are met.

3. Videoconferencing for public meetings.

The Town Board of the Town of Eden hereby authorizes all members of any public body of the Town of Eden the authority to participate in meetings using videoconferencing technology in a manner consistent with Public Officers Law § 103-a.

4. Severability.

If any clause, sentence, paragraph, subsection, or part of this chapter or the application thereof to any person, firm or corporation, or circumstance shall be adjudicated by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, or part of this chapter or in its application to the person, individual, firm or corporation or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

5. When effective.

This chapter shall take effect immediately upon filing with the Secretary of State.

#171-2026: MOTION was made by Supervisor Ventry to adopt Local Law #6-2026 Authorizing Participation in Public Meetings by certain Town Officials via Videoconferencing, as authorized by Public Officers Law Section 103-a; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

6. Adopt Full Environmental Assessment Form Parts 2 & 3; Issue a Negative Declaration for Proposed Law Solar Energy Systems:

WHEREAS, the Town Board of the Town of Eden (the “Town Board”) is considering the adoption of a Proposed Local Law, entitled “A Local Law Repealing and Replacing Chapter 172 of the Code of the Town of Eden Entitled “Solar Energy Systems” (the “Proposed Action”); and

WHEREAS, the Proposed Action would update the Town’s regulation of Solar Energy Systems, including revisions to the tier structure; the establishment of an Energy Overlay District framework for Tier 3 and Tier 4 Solar Energy Systems; and updated application, siting, design, agricultural and environmental resource protection, financial security, decommissioning, enforcement, and administrative requirements; and

WHEREAS, the Proposed Action is legislative and regulatory in nature and does not approve, authorize, construct, or site any specific solar energy facility; and

WHEREAS, pursuant to Article 8 of the New York State Environmental Conservation Law and the regulations promulgated thereunder at 6 NYCRR Part 617 (collectively, “SEQRA”), the Town Board previously classified the Proposed Action as a Type I Action and declared its intent to serve as Lead Agency for a coordinated environmental review; and

WHEREAS, on July 13, 2026, the Town Board caused the Notice of Intent to Establish Lead Agency, the Proposed Local Law, the proposed Energy Overlay District Map, Full Environmental Assessment Form (“FEAF”) Part 1, and supporting materials to be circulated to identified involved and interested agencies; and

WHEREAS, the applicable coordination period expired without objection to the Town Board serving as Lead Agency, and the Town Board is therefore authorized to act as Lead Agency for the environmental review of the Proposed Action; and

WHEREAS, as Lead Agency, the Town Board has reviewed and considered the Proposed Local Law, the proposed Energy Overlay District Map, FEAF Part 1, the completed FEAF Part 2, the FEAF Part 3 narrative, available agency correspondence, comments received at the public hearing and otherwise, if any, and all other relevant information contained in the record; and

WHEREAS, the Town Board has analyzed the areas of potential environmental concern identified in FEAF Part 2 and the magnitude and importance of any potential impacts in accordance with the criteria set forth in 6 NYCRR § 617.7(c); and

WHEREAS, the FEAF Part 3 narrative explains the reasons supporting the Town Board's determination, including that the Proposed Action does not authorize any site-specific development or physical disturbance; future Tier 3 and Tier 4 Solar Energy Systems will remain subject to applicable special use permit, site plan, building permit, and project-specific SEQRA review; and the Proposed Local Law contains standards intended to protect land use and community character, visual and scenic resources, agricultural resources, natural resources, stormwater, drainage, and other environmental resources; and

WHEREAS, the Town Board has considered potential cumulative impacts and finds that the Proposed Action does not commit the Town to approve any number, size, or location of future solar energy projects, each of which will remain subject to applicable siting and design standards and project-specific environmental review; and

WHEREAS, after taking the required hard look at the potential environmental impacts of the Proposed Action and providing a reasoned elaboration for its determination in FEAF Parts 2 and 3, the Town Board finds that the Proposed Action will not result in any significant adverse environmental impacts and that preparation of an Environmental Impact Statement is not required.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Eden hereby confirms its classification of the Proposed Action as a Type I Action pursuant to SEQRA; and be it further

RESOLVED, that the Town Board hereby confirms that the coordinated Lead Agency process has been completed and that the Town Board shall serve as Lead Agency for the SEQRA review of the Proposed Action; and be it further

RESOLVED, that the Town Board hereby approves and adopts the completed FEAF Part 2 and FEAF Part 3 narrative in the forms presented to the Town Board, and directs that they be incorporated into and maintained as part of the official record of the Proposed Action; and be it further

RESOLVED, that the Town Board hereby determines, based upon the entire record and for the reasons set forth in FEAF Parts 2 and 3, that the Proposed Action will not result in any significant adverse environmental impacts; and be it further

RESOLVED, that the Town Board hereby determines that an Environmental Impact Statement is not required and issues a Negative Declaration of Environmental Significance for the Proposed Action pursuant to SEQRA; and be it further

RESOLVED, that the Town Supervisor is hereby authorized to execute FEAF Parts 2 and 3 and the Negative Declaration on behalf of the Town Board; and be it further

RESOLVED, that the Town Supervisor, Town Clerk, Town Attorney, and such other Town officials, employees, and consultants as may be appropriate are hereby authorized and directed to execute, file, circulate, publish, and maintain the Negative Declaration and related SEQRA documentation as required by applicable law and to take all other actions necessary or appropriate to complete the SEQRA process; and be it further

RESOLVED, that this Resolution shall take effect immediately.

#172-2026: MOTION was made by Councilmember Walker, on a roll call vote, to adopt as read, the full environmental assessment form parts 2 & 3 and issuing a negative declaration of environmental significance for the proposed local law repealing and replacing chapter 172 of the Town Code entitled “Solar Energy Systems”; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

7. Solar Energy Systems Law:

Local Law No. 7 of 2026

A Local Law Repealing and Replacing

Chapter 172 of the code of the Town of Eden Entitled “Solar Energy Systems”

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

Section 1. Legislative Intent.

The Town Board of the Town of Eden hereby finds that it is necessary and appropriate to update the Town’s regulations governing Solar Energy Systems in order to protect the public health, safety, welfare, agricultural resources, natural resources, scenic resources, community character, public infrastructure, emergency access, and financial interests of the Town and its residents, while continuing to accommodate appropriately sited and scaled Solar Energy Systems.

The Town Board further finds that the existing provisions of Chapter 172 of the Town Code should be repealed and replaced in their entirety to establish updated definitions, use regulations, application requirements, review procedures, design standards, siting standards, decommissioning requirements, financial security requirements, enforcement provisions, and procedures for requests for relief.

Section 2. Repeal and Replacement of Chapter 172.

Chapter 172 of the Code of the Town of Eden, entitled “Solar Energy Systems,” as previously adopted and amended, is hereby repealed in its entirety and replaced with a new Chapter 172, entitled “Solar Energy Systems,” to read as follows:

§ 172-1. Purpose and Legislative Intent.

The Town Board of the Town of Eden adopts this chapter to accommodate the use of Solar Energy Systems and to regulate the placement of Solar Energy Systems so that the public health, safety, natural resources, and aesthetics of the Town and its residents will not be jeopardized.

§ 172-2. Findings.

- A. The Town Board of the Town of Eden finds and declares that solar energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce our dependence on nonrenewable energy sources. Therefore, the Town of Eden intends to accommodate the use of Solar Energy Systems.
- B. However, regulation of the siting, installation and use of Solar Energy Systems is necessary for the purpose of protecting the health and safety of neighboring parcel owners and the general public, and the aesthetics of the community. These regulations are in place to balance the need to improve energy sustainability through increased use of solar energy while preserving the public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhoods' social and ecological stability. Further, the intent is to minimize any adverse impacts on the character of the neighborhoods, parcel values, scenic, traffic safety, historic and environmental resources of the Town.
- C. In addition, Solar Energy Systems need to be regulated for removal when they are no longer utilized or are out of compliance with the requirements of this chapter.

§ 172-3. Definitions.

The following definitions shall apply to this chapter:

AGRICULTURAL DUAL-USE — Also referred to as "dual-use" or "agrivoltaics," this involves the practice of co-locating solar photovoltaic panels on farmland in such a manner that primary agricultural activities, including

animal grazing, crop or vegetable production, can continue simultaneously on that farmland. Installations shall be regulated depending upon generation capacity as defined herein.

APPLICANT — The person or entity including any firm, partnership, association, corporation, company or organization of any kind who or which requests any approval or permit to construct solar energy systems filing an application and seeking an approval under this chapter; the owner or operator of a Solar Energy System or a proposed Solar Energy System; or any person acting on behalf of an applicant, Solar Energy System or proposed Solar Energy System. Whenever the term "applicant" or "owner" or "operator" is used in this chapter, it shall include any person acting as an applicant, owner or operator.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS — 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.

COLLECTIVE SOLAR — Solar installations owned collectively through subdivision homeowners' associations or similar groups. Collective solar installations shall be regulated depending upon generation capacity as defined herein.

ENERGY OVERLAY DISTRICT — A zoning overlay district established by the Town Board and mapped on the Town of Eden Zoning Map, within which Tier 3 and Tier 4 Solar Energy Systems may be permitted subject to the requirements of this chapter.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

FARM OPERATION — Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11]).

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A photovoltaic system mounted on a structure, pole or series of poles that are constructed specifically to support the photovoltaic system, and not physically attached to any structure, that generates electricity for on or off-site consumption.

LANDOWNER — Any person, firm, partnership, association, corporation, company or organization of any kind who or which owns real property upon which a Solar Energy System is proposed or constructed.

MINERAL SOIL GROUPS (MSG) 1-4 — Agricultural soil classifications as defined by the New York State Department of Agriculture and Markets. These soils are recognized as having the highest value based on soil productivity and capability.

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

OPERATOR — Any person, firm, partnership, association, corporation, company or organization who or which is responsible for the overall operation of a Solar Energy System or part of such System, and whose actions or failure to act may result in non-compliance with the requirements of this local law or with any permit issued by any Town officer or board.

POLLINATOR — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND — Land, designated as "Prime Farmland" or "Prime if drained" in the U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

QUALIFIED SOLAR INSTALLER — A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research

and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSERDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts. Persons includes any firm, partnership, association, corporation, company or organization.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM — Any Solar Energy System that is affixed to the roof or top surface of a building or is wholly contained within the limits of the roof or top surface, including roofing materials such as shingles and tiles.

SECURITY – as used herein, the term security shall mean a deposit of the filing with the Town Clerk, of an unconditional letter of credit establishing a right of the Town to draw on to ensure the good faith performance of requirements contained within this chapter and the Town code.

SOLAR ENERGY SYSTEM — A system of components intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, Battery Energy Storage Systems, storage, maintenance and/or other accessory buildings, inverters, fans, combiner boxes, meters, transformers, and all other mechanical structures. The area for the solar energy system is all of the area within the project fence line, as well as, the area covered by all facility components, including but not limited to, access roads, transmission lines, and support buildings. The term also includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or Tier 4 Solar Energy System as follows:

- A. Tier 1 Solar Energy Systems include the following:
 - (1) Roof-Mounted Solar Energy Systems; and
 - (2) 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 5,000 square feet and that generate up to 110% of the electricity consumed on the site over the previous 12 months.
 - (1) Notwithstanding the above, a solar energy system located on a farm operation, as defined in § 301(11) or the relevant provision of the New York State Agriculture and Markets Law, and located in a New York State Agricultural District, which primarily serves the needs of such farm operation and produces up to 110% of the farm's needs, or other amount that may be established by resolution of the Eden Town Board in accordance with New York State Department of Agriculture and Markets guidance, shall be deemed a Tier 2 solar energy system.
 - (2) A system that does not exceed the production or output limits and otherwise conforms to the requirements of this definition shall not be excluded from designation as a Tier 2 solar energy system as a result of selling or otherwise receiving credits or benefits for excess energy provided to the distribution grid.
- C. Tier 3 Solar Energy Systems are systems not included in the definition of Tier 1, Tier 2, or Tier 4 Solar Energy Systems, and include but are not limited to all Community Solar Projects. The Facility Area of Tier 3 Solar Energy Systems shall not exceed 40 acres in size and 5 MW AC in nameplate capacity.
- D. Tier 4 Solar Energy Systems include any Solar Energy System with a Facility Area greater than 40 acres in size and/or 25 MW AC generating capacity. Tier IV shall include all proposed solar energy systems subject to state level siting procedures administered by the Office of Renewable Energy Siting, Department of Public Service, or such other agency as may be designated by the State of New York.

For the purposes of this chapter, a Solar Energy System does not include: any Solar Energy System of four-square feet in size or less; and/or any self-contained appliances that are not intended to generate electricity.

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.

§ 172-4. Use districts where permitted.

Subject to the provisions of this chapter, Solar Energy Systems shall be permitted as follows:

- A. Tier 1 and tier 2 systems are permitted in all zoning districts in the Town.
- B. Tier 3 and Tier 4 systems are permitted in the Energy Overlay District. Preference shall be given to previously disturbed lands and non-prime agricultural lands.
- C. Any inconsistent provisions of Chapter 225, Zoning, which purport to or may be interpreted to allow Solar Energy Systems in other districts are hereby superseded.

§ 172-4A. Energy Overlay District.

- A. The Energy Overlay District is hereby established as an overlay zoning district that may be applied to lands within the Town of Eden as shown on the Town Zoning Map, as amended from time to time by the Town Board.
- B. The Energy Overlay District shall not replace the underlying zoning district, but shall impose additional requirements and restrictions applicable to Tier 3 and Tier 4 Solar Energy Systems or other such uses which shall be deemed appropriate in the Energy Overlay District. In the event of a conflict between the requirements of this chapter and the underlying zoning district, the more restrictive provision shall apply.
- C. In designating areas for inclusion within the Energy Overlay District, the Town Board may consider factors including, but not limited to:
 - (1) Presence of Prime Farmland or Farmland of Statewide Importance;
 - (2) Existing land use and zoning classification;
 - (3) Proximity to infrastructure and electrical interconnection;
 - (4) Presence of previously disturbed lands; and
 - (5) Potential impacts to residential uses and community character.
- D. The Energy Overlay District shall be depicted on the Town of Eden Zoning Map and adopted pursuant to Chapter 225 (Zoning).

§ 172-5. General regulations.

The placement, construction, and major modification of all Solar Energy Systems within the Town of Eden shall be permitted only as follows:

- A. All Solar Energy Systems require a building permit.
- B. Tier 3 and Tier 4 Solar Energy Systems shall be permitted only by special use permit by the Town Board of Eden in use districts where permitted, in accordance with the criteria established in this chapter, after compliance with SEQRA, upon concurrent site plan approval issued by the Town of Eden Planning Board, and upon issuance of a building permit by the Town of Eden Building Department, and shall be subject to all provisions of this chapter.
- C. All Solar Energy Systems existing on the effective date of this chapter shall be permitted to continue usage as they presently exist. Routine maintenance shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this chapter.
- D. No Solar Energy System shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with this chapter.
- E. Any applications (including variance applications) pending for Solar Energy Systems on the effective date of this chapter shall be subject to the provisions of this chapter.
- F. This chapter shall take precedence over any inconsistent provisions of the Town of Eden Code as pertains to the siting of Solar Energy Systems.
- G. Any Proposed Solar Energy System subject to review by the Office of Renewable Energy Siting pursuant to Article 94-c of the Executive Law, Article 8 of the Public Service Law, or other successor provision, shall be subject to all substantive provisions of this Section and any other applicable laws, codes, and regulations of the Town of Eden,

New York; and any other applicable State or Federal laws.

- H. 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"), and the NYS Energy Conservation Code ("Energy Code").

§ 172-6. General criteria.

- A. All Solar Energy Systems shall comply with all applicable federal, state, county and Town of Eden laws, regulations and building, plumbing, electrical and fire codes. In addition, all Solar Energy Systems shall be labeled with a permanent four-inch-by-six-inch red sign with white lettering next to the electric meter stating, "Solar on Site." The Code Enforcement Officer shall notify the Fire Departments of all Solar Energy System permits.
- B. Building-integrated Solar Energy Systems. These systems shall be shown on the plans submitted for the building permit application for the building containing the system.
- C. Rooftop-mounted Solar Energy Systems shall not exceed a maximum height of two feet from the existing roof or top surface of a building. There shall be a minimum three-foot-wide clear access pathway from the eave to the ridge on each roof slope (pitched), between the solar panels and roofline (flat), between solar panels and roof-mounted mechanical equipment, and along the roof ridge for smoke ventilation.
- D. Ground-mounted Tier 1 and Tier 2 Solar Energy Systems shall be subject to the following requirements:
- (1) One (1) meter is permitted per parcel.
 - (2) They shall be located only in a side or rear yard, and if located in a side yard shall not be closer to the street than the primary building on the lot;
 - (3) They shall only be permitted on lots three acres or larger;
 - (4) They shall be placed no closer than two times the standard setback requirements of the primary structure of the underlying zoning district in which they are located;
 - (5) The height of said Solar Energy System shall not exceed 12 feet when oriented at maximum tilt; and
 - (6) The total surface area of said Solar Energy System on a parcel will be included in the calculation of total lot coverage.
- (See § 172-8 for criteria for Tier 3 and 4 ground-mounted systems.)
- E. Solar storage batteries. When solar storage batteries are included as part of any Solar Energy System, they shall be placed in a secure container or enclosure meeting the requirements of the New York State building and fire codes, as well as any applicable Town code, now existing or hereafter enacted.
- F. Approval for placement and use of any Solar Energy System under this chapter is not a guarantee of solar skyspace access. If a solar energy operator needs or desires solar sky space access across the parcel of another it may negotiate for an easement or other written agreement containing such terms as the parties may mutually agree. The provisions of the chapter do not require any parcel owner to relinquish solar sky space access to benefit a Solar Energy System, however.
- G. All solar collectors and structures and devices used to support solar collectors shall be nonreflective and painted a subtle or earth-tone color.
- H. The design, construction, operation and maintenance of any Solar Energy System shall demonstrably prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks. If the Solar Energy System creates an adverse impact to the public or neighboring properties, the owner of the system will be required to take measures to correct the impact. Failure to take appropriate action will be considered a violation.
- I. Tier 3 and Tier 4 Solar Energy Systems shall be classified as Type I actions for purposes of review under the State Environmental Quality Review Act and Town Board shall be designated as lead agency.
- J. Artificial lighting of any Solar Energy System shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads and public parks.
- K. If the use of any approved Solar Energy System is discontinued, the owner or operator shall notify the Code Enforcement Officer within 30 days of such discontinuance. If a Solar Energy System is to be retained and reused, the owner or operator shall further inform the Code Enforcement Officer of this in writing at such time and obtain any necessary approvals within one year; otherwise, it shall be automatically deemed abandoned.
- L. All Solar Energy Systems shall be installed using an engineered mounting structure.

§ 172-7. Tier 3 and Tier 4 Solar Energy Systems and applications.

A special use permit is required to place, construct or make a major modification to a Tier 3 or Tier 4 Solar Energy System within the Town. The applicant shall submit 12 sets of the following information to the Code Enforcement Officer, who shall first present it to a professional engineer or qualified solar installer or consultant for an initial review and then present it to the Planning Board for its review and recommendation to the Town Board. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- A. A completed State Environmental Quality Review Act (SEQRA) full environmental assessment form (FEAF) Part 1.
- B. Necessary permit information.
 - (1) Name, address, and telephone number of the parcel owner. If the parcel owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and written permission signed by the parcel owner authorizing the applicant to represent the parcel owner; and
 - (2) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.; and
 - (3) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection, including the CESIR (Coordinated Electric System Interconnection Review) report application submitted to the local utility; and
 - (4) One- or three-line electrical diagram detailing the Tier 3 and/or Tier 4 Solar Energy System installation, associated components, and electrical interconnection methods, with all National Electric Code compliant disconnects, and over-current devices, plus all other applicable statutes, rules and regulations.
 - (5) Aerial site plan showing the location of relevant utility poles and lines, trees and structures, and the names of all adjacent property owners.
 - (6) Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming, and insurance coverage.
 - (7) Visual Impact Assessment (VIA). At a minimum, the VIA must include:
 - (a) A line-of-sight profile analysis.
 - (b) Photographic simulations of the facility area showing visual conditions with proposed landscaping and screening at the following intervals: At installation; At the two-year anniversary after installation, and At the five-year anniversary after installation.
 - (8) Tree Inventory for trees with a minimum 6-inch DBH within the facility area.
 - (9) Tree Clearing Mitigation Plan.
 - (10) Engineer's Report including:
 - (a) SWPPP and Erosion Control Plan,
 - (b) Preconstruction Baseline Noise Analysis,
 - (c) Preconstruction Baseline Soil Sampling Plan,
 - (a) The Sampling Plan shall be developed in accordance with NYSDEC DER-10 site investigation guidance and shall include collection of a representative number of baseline soil samples in the proposed project area, agreed upon by the Town. Each sample shall be analyzed for semi-volatile organics, volatile organics, metals, and PFAS (Per- and Polyfluorinated Substances).
 - (d) Glare Analysis,
 - (e) System component Weight Load, inclusive of snow and ice loads;
 - (f) Drainage Plan, and
 - (g) Wetland Delineation (if needed).
 - (11) Agricultural Resource Mitigation Plan. Such plan shall include the following:
 - (a) Soil map showing soil type, Prime Farmland, Prime Farmland if Drained, Farmland of Statewide Importance, and MSG 1-4.
 - (b) Confirmation of conformity with NYS Department of Agriculture and Markets guidelines for Solar Energy Projects.
 - (c) Discussion of proposed dual uses.
 - (d) Discussion of proposed mitigation.

- (12) Emergency Response Plan including, at minimum: notification plan for first responders; annual training for first responders; and emergency shut off location and material specification data sheets to be filed with the local fire department.
 - (13) Proposed Decommissioning Plan. Such plan shall include the following:
 - (a) Anticipated life of the project.
 - (b) Restoration plan.
 - (c) The projected cost of removing the solar energy system if decommissioning is required during the first five years after construction is complete, as determined by a qualified and independent third-party assessor or other consultant agreeable to both the facility owner and the Town.
 - (d) The time required to decommission and remove the solar energy system and any ancillary structures.
 - (e) The time required to repair any damage caused to the property by the installation and removal of the solar energy system.
 - (f) Proposed form of security.
 - (14) Proposed PILOT and Host Community Agreements.
 - (15) Proof of site control.
- C. A site plan in accordance with the Town of Eden's Town Code and site plan requirements, and in sufficient detail as follows:
- (1) Completed Solar Application Form.
 - (2) Completed Full Environmental Assessment Form.
 - (3) Narrative description of the proposed project, including identification of all approvals sought, existing site conditions, adjacent land uses and owners.
 - (4) Screening and Landscape Plan. This 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, following any applicable rules and standards established by the Town for such elements. Existing on-site vegetation may be used to satisfy all or a portion of the required landscaped screening.
 - (5) Lighting Plan.
 - (6) Fencing Plan.
 - (7) Utility Plan.
 - (8) A three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnects and over current devices. Interconnection data and a copy of written notification to the utility of the proposed interconnection, including the Coordinated Electric System Interconnection review.
 - (9) 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 the building permit.
 - (10) 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.
 - (11) Name, address, phone number, and signature of the project applicant, as well as all the property owner(s), demonstrating their consent to the application and the use of the property for the solar energy system.
 - (12) Any such additional information as may be required by the Town's professional engineer or consultant, Town Board, Planning Board, Town Attorney or Code Enforcement Officer.

§ 172-8. Special use permit criteria for Tier 3 and Tier 4 Solar Energy Systems.

Special use permits issued for Tier 3 or 4 Solar Energy Systems shall meet the following criteria:

- A. Any Tier 3 or 4 Solar Energy System shall be placed a minimum of 300 feet from all adjacent parcel lot lines; 750 feet from any non-participating residences; and 300 feet from the centerline of any public roadway. Such

setbacks from parcel lines and residences will not apply if the application is accompanied by a legally enforceable written agreement that runs with the parcel for a period of 25 years or the life of the special use permit, whichever is longer, stating that the adjacent landowner(s) agrees to the elimination or reduction of the required setbacks.

- B. The maximum height of a Tier 3 or Tier 4 Solar Energy System shall not exceed 20 feet when oriented at maximum tilt.
- C. All transmission lines and wiring associated with a Tier 3 or Tier 4 Solar Energy System shall be buried to the power grid connection to the maximum extent practicable (including along any roads or highways) and include necessary encasements in accordance with the National Electrical Code and all other New York State Building and Fire Code and Town requirements. The applicant is required to show the locations of all proposed underground electric utility lines, including substations and junction boxes, and other electrical components for the project on the site plan including, without limitation, the location of all inverters. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection, as well as all applicable codes and industry standards.
- D. Any signage used to advertise the solar energy facility shall be in accordance with the terms and requirements of the Town's signage regulations.
- E. Design Requirements. Tier 3 and Tier 4 Solar Energy Systems shall comply with the following design, construction, siting, and operational requirements:
 - (1) **Materials and color.** All structures, support posts, racking systems, equipment cabinets, fencing, accessory buildings, and other visible appurtenances associated with a Solar Energy System shall be nonreflective and, to the maximum extent practicable, shall be painted or finished in a neutral, subtle, or earth-tone color compatible with the surrounding landscape, except where a different color is required by applicable electrical, building, fire, utility, or safety codes.
 - (2) **Panel orientation; glare.** Solar panels and related equipment shall be sited and oriented to minimize glare, reflection, and visual impacts on adjacent residential dwellings, public roads, public parks, and public spaces. No Solar Energy System shall create a material adverse glare impact on any adjacent residential dwelling, public road, public park, or public space. The Town Board may require a glare analysis and may impose reasonable conditions regarding orientation, screening, anti-reflective materials, or other mitigation.
 - (3) **Vehicular paths and emergency access.** Vehicular paths and emergency access roads shall be designed to minimize impervious surface coverage, soil disturbance, and soil compaction while providing safe and reliable access for emergency vehicles. Access roads shall be designed in consultation with the applicable fire department or emergency service provider and shall be capable of supporting the weight of fire apparatus and other emergency vehicles under all anticipated weather conditions. Access roads shall be of sufficient width, turning radius, grade, surface, and clearance to permit emergency access, including turnarounds or pull-off areas where required by the Town Board, Planning Board, Code Enforcement Officer, Town Engineer, or fire department. Where access roads are installed on agricultural soils, topsoil shall be stripped, segregated, stockpiled, and restored in accordance with the approved Agricultural Resource Mitigation Plan and applicable New York State Department of Agriculture and Markets guidance. The applicant, owner, operator, successors, and assigns shall be responsible for keeping all access roads, gates, turnarounds, and emergency access routes clear, passable, maintained, and available for emergency use at all times.
 - (4) **Signage.** No advertising, promotional, or commercial signage shall be permitted on a Tier 3 or Tier 4 Solar Energy System, except for project identification, safety, warning, emergency, and directional signage required by this chapter, the National Electrical Code, the New York State Uniform Fire Prevention and Building Code, the utility provider, or any other agency having jurisdiction. Unless otherwise required by applicable code or the Town, no sign shall exceed six square feet in area. Required safety and emergency signage shall be durable, weather-resistant, legible, and located as approved by the Code Enforcement Officer and applicable fire department. Reflective materials may be used only where necessary for emergency identification, visibility, or code compliance.
 - (5) **Required emergency and facility signage.** Signage shall be posted at the meter, facility entrances, emergency access points, and locations where access roads intersect with public roads, and at such other locations as may be required by the Code Enforcement Officer, Town Engineer, or applicable fire department. Required signage shall be updated within 10 days of any change in owner, operator, emergency contact, or other material information. Such signage shall include, at minimum:

- (a) Disconnect and emergency shut-off information as required by the National Electrical Code and applicable fire code;
 - (b) Twenty-four-hour emergency contact information;
 - (c) The owner's and operator's name, mailing address, telephone number, and emergency contact number;
 - (d) The facility address and project name;
 - (e) identification of access points and emergency access routes, where required; and
 - (f) Any additional information required by the Code Enforcement Officer, Town Engineer, utility provider, or applicable fire department.
- (6) **Lighting.** Lighting shall be limited to the minimum necessary for safety, security, emergency access, and operation. All lighting shall be dark-sky compliant, full cutoff, downward-facing, directional, and shielded to prevent glare, spillover, or illumination onto neighboring properties, public roads, public parks, and public open spaces. Continuous nighttime illumination is prohibited except where required for safety or code compliance. Motion-activated lighting shall be used where practicable.
- (7) **Fencing.** The Facility Area and all equipment requiring restricted access shall be enclosed by fencing not less than seven feet in height, or such other height as may be required by applicable code, utility requirements, or the Town Board. Fencing shall include self-closing and self-locking gates and shall be designed to maintain emergency access. Barbed wire, razor wire, and electric fencing are prohibited unless expressly required by a utility provider or other agency having jurisdiction and approved by the Town Board. Fencing shall be nonreflective and compatible with the surrounding area. Where necessary to mitigate visual impacts, the Town Board may require opaque fencing, architectural fencing, vegetative screening, berms, or a combination thereof. Wildlife-friendly fencing design shall be used where practicable and consistent with safety, security, agricultural use, and emergency access requirements.
- (8) **Screening.** The Facility Area shall be screened to the maximum extent practicable from adjacent property lines, nonparticipating residences, public roads, public parks, trails, and other public viewing areas. Screening may include existing vegetation, supplemental landscaping, berms, fencing, landforms, setbacks, equipment placement, or other measures approved by the Town Board. Existing on-site vegetation may be used to satisfy all or a portion of the required screening where the Town Board determines that such vegetation provides reliable, year-round screening and will be preserved for the life of the project. Off-site vegetation shall not be relied upon to satisfy the screening requirement unless protected by a legally enforceable easement or agreement acceptable to the Town Board. Evergreen trees used for screening shall be a minimum of six feet in height at the time of planting. Screening plans shall use a mix of species, staggered plantings, and native or non-invasive species suitable for local conditions. The Town Board may require taller plantings, berms, opaque fencing, or additional screening where necessary based on site-specific visual impacts.
- (9) **Landscaping.** Landscaping and vegetative screening shall be installed, maintained, and replaced as necessary for the life of the project in accordance with the approved Landscaping and Screening Plan. Dead, diseased, invasive, failed, or substantially damaged plantings shall be replaced during the next appropriate planting season, or sooner if required by the Town. Native vegetation and pollinator-friendly plantings are strongly encouraged to the maximum extent practicable, provided they do not interfere with emergency access, agricultural use, drainage, visibility, or safe operation of the Solar Energy System.
- (10) **Transmission lines.** All on-site utility lines, collection lines, and transmission lines shall be placed underground to the maximum extent practicable, except where the Town Board determines that above-ground installation is required by utility standards, site constraints, environmental conditions, or applicable law. All proposed underground and above-ground utility infrastructure, including inverters, transformers, substations, junction boxes, collection lines, and grid interconnection facilities, shall be shown on the approved site plan.
- (11) **Wiring.** Wiring shall be neatly grouped, routed, secured, protected, and continuously supported in accordance with the National Electrical Code, manufacturer specifications, applicable utility requirements, and all applicable building and fire codes.
- (12) **Array layout.** Where practicable, Solar Energy Systems shall be consolidated into orderly array groupings rather than situated in a scattered or disjointed manner, provided that such consolidation does not increase visual impacts, agricultural impacts, environmental impacts, stormwater impacts, or

emergency access constraints.

- (13) **Tree clearing and vegetation removal.** Tree clearing and removal of existing vegetation shall be limited to the minimum extent necessary for construction, operation, maintenance, emergency access, and decommissioning of the Solar Energy System. Removal of healthy existing trees greater than six inches DBH shall be avoided to the maximum extent practicable. Where removal of trees greater than six inches DBH is proposed, the applicant shall submit a Tree Inventory and Tree Clearing Mitigation Plan identifying the location, species, size, condition, and reason for removal of such trees. Mitigation shall be required for removal of trees greater than six inches DBH and may include replacement plantings, enhanced screening, conservation areas, reforestation, or other mitigation approved by the Town Board. Replacement trees used for mitigation shall be appropriately sized, non-invasive, and suitable for local site conditions.
 - (14) **Agricultural soils.** Disturbance of Prime Farmland, Prime Farmland if Drained, Farmland of Statewide Importance, and Mineral Soil Groups 1 through 4 shall be avoided to the maximum extent practicable. Where such disturbance cannot be avoided, the applicant shall demonstrate why avoidance is not practicable and shall implement mitigation measures approved by the Town Board, including compliance with applicable New York State Department of Agriculture and Markets guidance, topsoil segregation, compaction avoidance, restoration, drainage protection, and continued agricultural use or dual-use strategies where practicable.
 - (15) **Environmentally, historically, agriculturally, recreationally, and scenically sensitive resources.** The Solar Energy System shall be sited and designed to avoid, to the maximum extent practicable, areas of environmental, scenic, historic, agricultural, or recreational sensitivity, including unique natural areas, floodplains, wetlands, streams, regulated waterbodies, threatened or endangered species habitat, historic or archaeological resources, conservation easements, trails, parkland, public open spaces, prime agricultural soils, and significant public viewsheds, including the Lake Erie viewshed. The applicant shall identify such resources on the site plan and shall demonstrate how the project has avoided or minimized impacts to such resources.
 - (16) **Slopes.** Installation of Solar Energy System components on areas with slopes greater than 15% shall be avoided to the maximum extent practicable. Where disturbance of such slopes is proposed, the applicant shall demonstrate that the disturbance is necessary and shall provide engineering, stormwater, erosion control, and slope stabilization measures acceptable to the Town Engineer and Town Board.
 - (17) **Agricultural Mitigation.** For projects located on active agricultural lands, the applicant shall implement agricultural dual-use strategies, continued agricultural activity, or agricultural mitigation measures to the maximum extent practicable and as approved by the Town Board. Such measures may include livestock grazing, haying, pollinator plantings, crop production, soil restoration, agricultural access, drainage protection, or other measures that preserve or offset agricultural productivity. Incorporation of sheep grazing into the vegetation management plan is encouraged where feasible and compatible with site conditions, project safety, and agricultural operations.
 - (18) **Noise.** The Solar Energy System shall be designed, constructed, operated, and maintained so that operational noise from inverters, transformers, tracking motors, battery components, and all other equipment does not create a material adverse noise impact at any nonparticipating residence or nonparticipating property line. Unless a more restrictive standard is imposed by the Town Board, the operational sound pressure level attributable to the Solar Energy System, measured at the exterior of any nonparticipating residence or at any nonparticipating property line, shall not exceed the preconstruction ambient background sound level by more than 6 dBA, expressed as Leq-8hr, as measured by a qualified acoustician using a methodology approved by the Town Board or Town Engineer. The applicant shall provide a preconstruction baseline noise analysis and, if required by the Town Board, post-construction noise testing after the facility begins operation. If post-construction testing demonstrates exceedance of the approved noise standard or the presence of tonal, impulsive, or low-frequency noise that creates a material adverse impact, the owner/operator shall implement mitigation measures acceptable to the Town Board.
 - (19) **Continuing compliance.** Compliance with the requirements of this section shall be a continuing condition of any special use permit, site plan approval, building permit, or other approval issued for a Tier 3 or Tier 4 Solar Energy System. Failure to install, maintain, repair, replace, or operate the Solar Energy System and all required improvements in accordance with this section and the approved plans shall constitute a violation of this chapter.
- F. After completion of a Tier 3 or Tier 4 Solar Energy System, the applicant shall provide written post-

construction certification from a qualified solar installer, or comparably qualified professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the plans approved by the Town of Eden Planning Board and/or Town Board.

G. Ownership Changes

- (1) The Owner of the project and/or the lessee of the parcel shall give written notice to the Town Board of any proposed change in ownership of the project as soon as possible but not later than 60 days prior to the change in ownership. Such notice shall contain:
 - (a) A statement signed by the successor owner that such person/entity assumes all of the obligations of the permit including the site plan approval, and the decommissioning plan.
 - (b) Acknowledgement in the security that the obligations of the financial institution shall continue despite the proposed change in ownership. In the alternative the notice may contain a new security in full compliance with all requirements of this local law.
- (2) In the event of failure to give timely notice the permit shall be deemed terminated and the project shall be deemed abandoned. The town may immediately give notice to commence decommissioning pursuant to the Decommissioning Plan.

- A. Fees. The applicant/owner/operator of Solar Energy Systems shall pay all applicable fees set forth in the Town's Schedule of Fees, including an application fee, special use permit fee, building permit fee and annual inspection fee. All consulting fees and expenses will be borne by the permit holder. The applicant for a Special Use Permit shall deliver to the Town Clerk, along with its application for a Special Use Permit, \$50,000 (the "Initial Deposit") to be held in escrow by the Town for use by the Town to pay consultants and attorneys engaged by the Town to assist in review of all applications for the proposed solar energy system. If the amount held in escrow is depleted prior to grant or denial of all applications associated with the solar energy system, the Applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants. Following approval or denial of the required applications, any excess remaining in escrow shall be returned to the Applicant within 30 days. The Town Board may enter into an escrow agreement with the Applicant at its discretion.

I. Financial Security Requirements.

- (1) Prior to commencement of construction of any Tier 3 or Tier 4 Solar Energy System, and as a continuing condition of any special use permit, site plan approval, building permit, or other approval issued pursuant to this chapter, the applicant, owner, operator, lessee, successor, or assign shall provide financial security in forms and amounts acceptable to the Town Board, in its sole discretion, to secure the full and timely performance of all obligations imposed pursuant to this chapter and any approval issued hereunder. The required financial security shall include, at minimum, (1) decommissioning and site restoration security; (2) construction/performance security; and (3) maintenance security. The Town Board may require such additional or modified security as it determines necessary to protect the Town, adjoining properties, public infrastructure, agricultural resources, environmental resources, emergency access, and the public health, safety, and welfare.
- (2) Acceptable forms of security. Unless otherwise approved by the Town Board pursuant to Subsection I(7) below, required financial security shall be provided in the form of an irrevocable and unconditional letter of credit issued by a financial institution licensed and authorized to do business in the State of New York, naming the Town of Eden as beneficiary, and in a form acceptable to the Town Board, Town Attorney, and Town Engineer. The Town Board may also accept, in its sole discretion, cash escrow, a surety bond, performance bond, maintenance bond, or other form of financial assurance, provided that the Town Board determines that such instrument provides protection equal to or greater than an irrevocable letter of credit. In all cases, the financial institution, surety, issuer, form, terms, expiration provisions, renewal provisions, draw provisions, and amount of the security shall be subject to approval by the Town Board in its sole discretion.
- (3) The applicant, owner, operator, lessee, successor, or assign may apply to the Town Board to substitute, replace, modify, or change the form of the decommissioning and site restoration security. No substitution, replacement, modification, or change in the form of security shall be effective unless approved by resolution of the Town Board and accepted by the Town Attorney as to form. Existing security shall remain in full force and effect until the replacement security has been fully executed, delivered to the Town Clerk, and accepted by the Town Board.

- (4) The security shall provide that it may not be cancelled, terminated, allowed to expire, materially modified, or reduced without at least **90 days' prior written notice** to the Town Clerk, Town Attorney, Code Enforcement Officer, and Town Board. If the security is drawn upon, reduced, cancelled, terminated, set to expire, or deemed insufficient by the Town Board, the applicant, owner, operator, lessee, successor, or assign shall replenish, replace, or increase the security within **15 days** after written demand by the Town, unless a shorter period is required by the Town Board to protect the Town.
- (5) Decommissioning and site restoration security. The applicant, owner, operator, lessee, successor, or assign shall provide decommissioning and site restoration security to secure the full and complete removal of the Tier 3 or Tier 4 Solar Energy System and restoration of the site in accordance with this chapter, the approved decommissioning plan, and all conditions of approval.
- (a) The decommissioning and site restoration security shall be in an amount equal to 150% of the full estimated cost of decommissioning, removal, disposal, site restoration, and repair of any damage to public or private property, as determined by the Town's professional engineer, consultant, or other qualified professional retained by or acceptable to the Town.
 - (b) The decommissioning cost estimate shall include, without limitation, the cost of removing all above-ground and below-ground improvements and equipment, including solar panels, racking, posts, piles, foundations, inverters, transformers, substations, fencing, gates, access roads, cabling, electrical components, collection lines, concrete pads, stormwater facilities, equipment pads, buildings, signage, and all other project-related improvements. The estimate shall also include the cost of disposal, recycling, transportation, grading, decompaction, topsoil restoration, seeding, stabilization, drainage restoration, agricultural restoration, repair of public roads, and all engineering, legal, administrative, and consultant costs reasonably anticipated to be incurred by the Town in connection with decommissioning and site restoration.
 - (c) No salvage value, resale value, recycling value, or other offset shall be deducted from the required amount of decommissioning security. The applicant may identify anticipated salvage value for informational purposes only, but such value shall not reduce the amount of required security. The decommissioning and site restoration security shall include an annual escalator of not less than **3% per year** for the operable life of the Solar Energy System, unless a higher amount is required by the Town Board based upon the recommendation of the Town Engineer, Town Attorney, or other Town consultant.
 - (d) The applicant, owner, operator, lessee, successor, or assign shall remain fully responsible for all decommissioning, removal, disposal, reclamation, site restoration, enforcement, legal, engineering, administrative, consultant, and related costs, including any such costs that exceed the amount of the security. All expenses and costs of establishing, maintaining, renewing, replacing, increasing, modifying, enforcing, drawing upon, or reviewing the security shall be borne solely by the applicant, owner, operator, lessee, successor, or assign.
 - (e) In the event of default, abandonment, inoperability, revocation, failure to decommission, failure to restore the site, failure to maintain required security, or failure to comply with the approved decommissioning plan or any condition of approval, after notice and expiration of any applicable cure period specified by the Town, the Town may draw upon, make demand against, or otherwise enforce the decommissioning and site restoration security. The Town may use the proceeds of such security to pay for investigation, inspection, engineering, legal review, consultant review, administration, enforcement, decommissioning, removal, disposal, recycling, site restoration, public infrastructure repair, agricultural restoration, and all related costs.
 - (f) In the event of default, abandonment, inoperability, revocation, failure to decommission, failure to restore the site, failure to maintain required security, or failure to comply with the approved decommissioning plan or any condition of approval, after notice and expiration of any applicable cure period specified by the Town, the Town may draw upon, make demand against, or otherwise enforce the decommissioning and site restoration security. The Town may use the proceeds of such security to pay for investigation, inspection, engineering, legal review, consultant review, administration, enforcement, decommissioning, removal, disposal, recycling, site restoration, public infrastructure repair, agricultural restoration, and all related costs.

- (g) Proof of the decommissioning and site restoration security shall be filed with the Town Clerk prior to commencement of construction and thereafter on an annual basis, or more frequently if required by the Town Board.
 - (h) Any remaining security shall be returned to the applicant, owner, operator, lessee, successor, or assign only after the Town Board determines that decommissioning and site restoration have been fully completed in accordance with the approved decommissioning plan, all conditions of approval, and this chapter, and after all costs owed to the Town have been paid in full.
- (6) Construction/performance security. In addition to the decommissioning and site restoration security, the applicant, owner, operator, lessee, successor, or assign shall provide construction/performance security to guarantee the faithful construction, installation, and completion of the Tier 3 or Tier 4 Solar Energy System and all required improvements, mitigation measures, and conditions of approval in an amount to be determined by the town Board. The construction/performance security shall secure, without limitation:
- (a) Construction of the Solar Energy System in accordance with the approved plans and conditions of approval;
 - (b) Installation and completion of required access roads, gates, fencing, screening, landscaping, berms, stormwater facilities, erosion and sediment controls, drainage improvements, emergency access improvements, signage, utility improvements, agricultural mitigation measures, and other required site improvements;
 - (c) Protection and repair of Town roads, drainage facilities, rights-of-way, utilities, and other public infrastructure affected by construction;
 - (d) Compliance with all approved plans, including the site plan, stormwater pollution prevention plan, erosion control plan, landscaping and screening plan, agricultural mitigation plan, emergency response plan, tree clearing mitigation plan, traffic or road use plan, and any other plan approved by the Town;
 - (e) Payment of all costs incurred by the Town to enforce compliance during construction, including engineering, legal, planning, environmental, code enforcement, administrative, inspection, and consultant costs; and
 - (f) Stabilization, restoration, or correction of any incomplete, unsafe, defective, noncompliant, or abandoned construction activity.
- (7) Maintenance security. In addition to decommissioning security and construction/performance security, the applicant, owner, operator, lessee, successor, or assign shall provide maintenance security to guarantee the continued maintenance, repair, replacement, monitoring, and performance of required project improvements, mitigation measures, and conditions of approval following construction in an amount to be determined by the Town Board. Unless a longer period is required by the Town Board, the maintenance security shall remain in effect for a period of not less than **five years** after issuance of final post-construction certification or such longer period as may be necessary to ensure the establishment and effectiveness of landscaping, screening, stormwater facilities, agricultural mitigation, and other long-term conditions of approval. The Town Board may require the maintenance security to be renewed, extended, increased, replenished, or replaced if the Town determines that the security is insufficient, will expire before the secured obligations are complete, or no longer provides adequate protection to the Town. The maintenance security shall secure, without limitation:
- (a) Maintenance, repair, replacement, and survival of required landscaping, screening, berms, plantings, native vegetation, pollinator plantings, and visual mitigation measures;
 - (b) Maintenance and repair of fencing, gates, access roads, emergency access routes, signage, lighting, stormwater facilities, erosion controls, drainage improvements, agricultural mitigation measures, and other required site improvements;
 - (c) Compliance with the approved operation and maintenance plan, emergency response plan, landscaping and screening plan, agricultural mitigation plan, stormwater plan, decommissioning plan, and all conditions of approval;
 - (d) Correction of failed plantings, inadequate screening, erosion, sedimentation, drainage failures, damaged fencing, blocked access, unsafe conditions, road damage, or other noncompliant conditions;
 - (e) Payment of Town costs incurred for inspections, enforcement, consultant review, legal review, corrective action, emergency action, or other compliance-related activity; and
 - (f) Any other long-term maintenance obligation imposed by the Town Board as a condition of approval.

- J. General Liability Insurance Required.
- (1) The applicant shall provide a certificate of insurance, declaration pages and policy of insurance, including all endorsements, in a form and amount as determined by the Town Board which, at minimum, provides for the following:
- (a) That the applicant and any and all organizations, corporations, and/or subsidiaries, successors or assigns, that in any way have and/or are engaged or contracted with by the applicant to either develop, build, construct, monitor, maintain, repair, replace and/or decommission the Utility-Scale Solar System shall establish, among other things, that they have adequate general liability coverage, as determined by the Town Board, in its sole discretion, including without limitation, property damage coverage, pollution and environmental damage coverage and third party liability coverage.
 - (b) That the Town of Eden, including all departments, Boards, and committees, are listed as an additional insured under said policy. If the property the Utility-Scale Solar Energy System is not legally owned by the applicant then the actual owner shall also be listed as an additional insured under said general liability policy of insurance.
 - (c) The general liability policy of insurance shall not exclude coverage for any environmental or pollution damages that occurs at the solar site during its development, construction, monitoring, operation, repair, replacement, maintenance or decommissioning.
 - (d) The policy of insurance shall provide that it is primary coverage, and that any applicable policies of insurance possessed by the Town are excess insurance. No payment of the primary coverage required herein shall diminish in any manner the capacity, defense obligations and/or policy limits of any policies of insurance possessed by the Town.
- K. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local regulatory agencies having jurisdiction over Tier 3 or Tier 4 Solar Energy Systems.
- L. The special use permit may be granted or denied, or granted with stated written conditions. Denial of a special use permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a special use permit, the applicant shall seek a building permit for the Tier 3 or Tier 4 Solar Energy System.

§ 172-9. Completion; inspections; continued operation; removal; determination of abandonment; fees; alterations; transferability.

- A. Time limit for completion of Tier 3 or Tier 4 Solar Energy Systems. After the granting of a special use permit of a Utility-Scale Solar Energy System with site plan approval, a building permit shall be obtained within twelve (12) months. The project shall be completed within eighteen (18) months after issuance of the building permit. If not completed within 18 months of issuance of the building permit, a \$1,000 per week fee will be paid by the project owner to the Town of Eden. If not completed within 24 months of permit issuance, the Special use Permit and Building Permit will be revoked and project will be terminated. The Project Owner may seek relief from this section by application to the Town Board and a showing of good cause.
- B. Inspections. Upon reasonable notice, the Code Enforcement Officer or his or her designee may inspect any Solar Energy System for the purpose of assuring compliance with this chapter. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Utility-Scale Solar Energy System shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a belief by the Town Board and/or the Code Enforcement Officer that damage may have occurred, or that the Solar Energy System is not in compliance with the requirements of this chapter. A copy of the inspection report shall be submitted to the Code Enforcement Officer. Fees or expenses associated with inspections shall be borne entirely by the permit holder.
- C. Continued operation. All Solar Energy Systems shall be maintained in safe operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions required by the Town Board. Further, the Code Enforcement Officer shall have the right to require annual documentation of the on-site usage and total electricity output of any Solar Energy System.
- D. If the project sustains any damage greater than normal maintenance, applicant must apply for a building permit for repairs. If not repaired within 3 months, a \$1,000 per week fee will be paid by the developer to the Town of Eden. If not completed within the 6 months of permit issuance, the Special use Permit and Building

Permit will be revoked and project will be decommissioned.

- E. Removal. All Solar Energy Systems shall be dismantled and removed immediately, at the cost of the applicant, when the special use permit or approval has been revoked by the Town of Eden Town Board, or the Solar Energy System has been deemed by the Code Enforcement Officer to be inoperative or abandoned for a period of more than 180 days consecutively. If the applicant does not dismantle and remove the Solar Energy System as required, the Town may do so at the applicant's expense, and the Town shall be deemed to be fully authorized to apply the funds from the security to satisfy all expenses, costs and fees it incurs to enforce its rights pursuant to this chapter, and also which it incurs to dismantle and decommission the Tier 3 and/or Tier 4 Solar Energy System, and site in a manner that returns it to the natural state and condition it was in before the development and construction of the Tier 3 and/or Tier 4 Solar Energy System began. The Town may file a tax lien on the parcel should it deem it necessary to afford it the ability to recover any items of expense, fees, and costs, that are not covered by the security, and/or which are determined to exceed the limits of the security.
- (1) Decommissioning and site Restoration Plan (the "Plan"). A decommissioning Plan signed by the applicant/owner/operator of the Solar Energy System and prepared by a qualified engineer licensed in the State of New York and approved by the Town shall be submitted, addressing the following:
 - (a) The anticipated efficient viable life of the Solar Energy System in accordance with industry standards and state of the art knowledges.
 - (b) The Plan, at minimum, shall provide for the removal of all infrastructure and restoration conducted to return the parcel to its original state prior to construction. The applicant shall include photo documentation of the site prior to construction to document restoration goals as part of the decommissioning plan. The Town of Eden shall determine whether the applicant/owner/operator of the Solar Energy System has fully complied with all elements of the decommissioning plan. Fees, costs and expenses associated with the use of outside consultants for technical review, field survey, or other related needs to ensure compliance, with this chapter, including attorney's fees and expenses shall be reimbursed to the Town by the applicant/owner/ operator of the Solar Energy System within 30 days of receipt of notice from the Town that the fees, costs, and expenses have been incurred.
 - (c) The time required to decommission and remove the Solar Energy System and any ancillary structures, including repair of any damage caused to the parcel by the installation or removal of the Solar Energy System.
 - (d) The Plan must provide that all hazardous waste will be properly disposed upon decommissioning as required.
 - (e) The Plan must provide that all Tier 3 and/or Tier 4 Solar Energy System components will be removed above and below grade in their entirety.
 - (f) The Plan must provide for removal and restoration of access road locations at the direction of the Town Board or the landowner based on solar energy system layout, and for the repair of any public roads damaged during the decommissioning process.
 - (g) An expected timeline for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor acceptable to the Town. Cost estimates shall take inflation into consideration and be revised every three years during the operation of the system and exclude any salvage value. Removal of the Tier 3 or Tier 4 Solar Energy System must be completed in accordance with the approved Plan and the standards and requirements provided for in this chapter and in any and all applicable State or Federal laws and regulations in effect at the time of decommissioning including, without limitation as follows:
 - (2) All structures and foundations associated with the Tier 3 or 4 Solar Energy Systems shall be removed, including all above and below ground improvements and equipment, structures, and foundations, including, but not limited to, solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and other associated facilities, so that any agricultural ground upon which the facility or system was located is again tillable and suitable for agricultural use;
 - (3) All disturbed ground surfaces shall be restored to original quality and conditions, including topsoil and seeding as necessary; and
 - (4) All electrical systems shall be properly disconnected, and all buried cables and wiring shall be removed.

- F. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Town Code Enforcement Officer, or a designee appointed by the Town, who shall provide the applicant/owner/operator with written notice of such determination by personal service or certified mail. The applicant/owner/operator may appeal the Code Enforcement Officer's determination of abandonment or inoperability by written request to the Town Board filed within 30 days of the owner's receipt of the written notice from the Code Enforcement Officer. The Town Board shall hold a public hearing on the owner's appeal on not less than 10 days' written notice to said owner. Any person aggrieved by the decision of the Town Board, following such hearing may apply to the Supreme Court for review under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within 30 days after the filing of the Town Board's decision in the office of the Town Clerk.
- G. Alterations. Any post-construction changes or alterations to a Tier 3 or 4 Solar Energy System shall be done only after amendment of the special use permit and/or site plan (if required) and/or the building permit, and subject to all requirements of this chapter.
- H. Transferability. Special use permits for Utility-Scale Solar Energy Systems shall be assignable or transferable so long as they are in full compliance with this chapter, and the Code Enforcement Officer or his appointed designee is notified in writing at least 60 days prior thereto. If it is anticipated that the applicant/owner/operator, its successor or assigns of the Tier 3 or Tier 4 Solar Energy System is going to change or that the owner of the parcel is going to change, the new applicant/owner/operator shall notify the Code enforcement officer of such anticipated change in ownership or operator within 60 days prior to the ownership change. The successor applicant/owner or operator shall assume in writing all of the obligations within the decommission plan. Proof of acknowledgement of the decommission plan and proof of the continuation of the security after the transfer/change in ownership shall be provided to the Town 60 days prior to the time of ownership change; failure to comply with this section may result in revocation of all permits and approvals issued with regard to the Tier 3 and/or Tier 4 Solar Energy System.
- I. Contact Information for Owner's Designated Contact. The Owner shall maintain current contact information including name, address, email address, and cell phone number on file with the Town Clerk. Changes in the designated contact information must be filed with the Town Clerk within 10 days.

§ 172-10. Enforcement; remedies; penalties.

- A. **Enforcement authority.** The Code Enforcement Officer, Town Board, Town Attorney, and any other officer or employee designated by the Town Board shall have authority to administer and enforce the provisions of this chapter, any permit, special use permit, site plan approval, building permit, decommissioning plan, emergency response plan, operation and maintenance plan, landscaping and screening plan, agricultural mitigation plan, host community agreement, escrow agreement, security instrument, or other condition or requirement imposed pursuant to this chapter
- B. **Violations.** It shall be a violation of this chapter for any applicant, landowner, owner, operator, lessee, successor, assign, contractor, or other person or entity responsible for a Solar Energy System to:
 - (1) Construct, install, operate, maintain, modify, repair, transfer, abandon, or decommission a Solar Energy System except in compliance with this chapter and all approvals issued hereunder;
 - (2) Fail to comply with any condition of a special use permit, site plan approval, building permit, decommissioning plan, operation and maintenance plan, emergency response plan, landscaping or screening plan, agricultural mitigation plan, stormwater pollution prevention plan, road use agreement, host community agreement, escrow agreement, or other Town approval or agreement applicable to the Solar Energy System;
 - (3) Fail to maintain the Solar Energy System, project site, landscaping, screening, fencing, access roads, stormwater controls, signage, emergency access, electrical equipment, or other approved project components in good repair and in accordance with the approved plans;
 - (4) Fail to maintain, renew, replenish, replace, or provide required financial security, escrow funds, insurance, inspection reports, certifications, notices, or other required submissions;
 - (5) Fail to permit inspection by the Town or its designated representatives as authorized by this chapter or any approval issued hereunder;
 - (6) Fail to provide required notice of discontinuance, abandonment, inoperability, damage, repair, transfer, ownership change, operator change, or other material change affecting the Solar Energy System;
 - (7) Fail to complete construction, repair, decommissioning, removal, restoration, mitigation, or corrective action within the time required by this chapter, by permit condition, or by written order of the Town;

- (8) Make any materially false, misleading, or incomplete statement or submission to the Town in connection with an application, approval, inspection, certification, transfer, decommissioning obligation, security instrument, or required compliance filing; or
 - (9) Violate any other requirement of this chapter.
- C. **Notice of violation and order to remedy.** Upon determining that a violation exists, the Code Enforcement Officer or other authorized enforcement official may issue a written notice of violation and order to remedy to the applicant, landowner, owner, operator, lessee, successor, assign, or other responsible party. The notice shall identify the nature of the violation, the corrective action required, and the time within which the violation must be corrected. Notice may be served by personal delivery, certified mail, overnight delivery, or such other method reasonably calculated to provide notice to the responsible party at the address provided to the Town.
- D. **Cure period.** Unless a shorter period is necessary to protect public health, safety, welfare, property, the environment, public infrastructure, emergency access, or the Town's financial interests, the responsible party shall correct the violation within 30 days after service of the notice of violation. The Town may require a shorter cure period where the violation involves an immediate or ongoing risk, including but not limited to unsafe electrical equipment, damaged fencing, blocked emergency access, stormwater failure, road damage, fire hazard, failure to maintain required security, or abandonment or inoperability of the Solar Energy System.
- E. **Stop-work order; suspension of work.** The Code Enforcement Officer may issue a stop-work order where any work, construction, installation, clearing, grading, repair, modification, or decommissioning activity is being performed in violation of this chapter, an approved plan, a permit condition, the New York State Uniform Fire Prevention and Building Code, the New York State Energy Conservation Construction Code, or any other applicable law. Upon issuance of a stop-work order, all affected work shall immediately cease except work expressly authorized by the Town to stabilize the site, protect public safety, prevent environmental damage, preserve emergency access, or correct the violation.
- F. **Town corrective action; use of security.** If a responsible party fails to correct a violation within the time required by the Town, or if immediate action is necessary to protect public health, safety, welfare, property, the environment, public infrastructure, emergency access, or the Town's financial interests, the Town may, in addition to any other remedy available at law or equity:
 - (1) Enter upon the property to inspect, stabilize, secure, repair, correct, remove, restore, or otherwise remedy the violation to the extent permitted by law and by any applicable approval, agreement, easement, security instrument, or court order;
 - (2) Draw upon or make demand against any escrow, letter of credit, bond, cash deposit, or other financial security provided pursuant to this chapter;
 - (3) Apply such funds to the Town's engineering, legal, administrative, inspection, enforcement, stabilization, repair, decommissioning, removal, restoration, mitigation, and related costs; and
 - (4) Require the responsible party to replenish any escrow or security drawn upon by the Town within 15 days after written demand.
- G. **Reimbursement of Town costs.**

All costs and expenses incurred by the Town in connection with investigation, inspection, consultant review, legal review, enforcement, corrective action, emergency action, decommissioning, removal, site restoration, or collection under this chapter shall be reimbursed by the applicant, landowner, owner, operator, lessee, successor, assign, or other responsible party within 30 days after written demand by the Town. Such reimbursable costs shall include, but shall not be limited to, engineering fees, legal fees, planning consultant fees, environmental consultant fees, fire safety consultant fees, administrative costs, testing costs, inspection costs, emergency response costs, and costs of labor, materials, and equipment.
- H. **Assessment and lien.** If any amount due to the Town under this chapter is not paid when due, the Town may assess such amount against the real property on which the Solar Energy System is or was located, and such amount shall become a lien upon the property and shall be collected in the same manner as real property taxes, to the extent permitted by law. This remedy shall be in addition to, and not in limitation of, the Town's right to recover such amounts from the applicant, owner, operator, landowner, lessee, successor, assign, or other responsible party by civil action or any other lawful means.
- I. **Civil and criminal penalties.** Any person or entity who violates this chapter or any condition of approval issued pursuant to this chapter shall be subject to the penalties set forth in Chapter 225 of the Town Code and any other applicable penalty provision of the Town Code. Each day that a violation continues shall constitute a separate and distinct offense. The imposition of a penalty shall not relieve any person or entity from the obligation to correct the violation, reimburse the Town, restore the property, decommission the Solar Energy System, or comply with any

permit condition or approval.

- J. **Injunctive relief.** In addition to any other remedy available at law or equity, the Town may commence an action or proceeding in a court of competent jurisdiction to compel compliance with this chapter, restrain any violation, require removal or decommissioning of a Solar Energy System, require restoration of the property, recover costs and expenses, draw upon or enforce financial security, or obtain any other relief deemed necessary by the Town.
- K. **Revocation or suspension of approvals.**
The Town Board may suspend or revoke any special use permit, site plan approval, building permit, or other approval issued pursuant to this chapter upon a finding that the applicant, landowner, owner, operator, lessee, successor, assign, or other responsible party has violated this chapter, violated a condition of approval, failed to maintain required financial security or insurance, failed to reimburse Town costs, failed to correct a violation after notice, made a material false or misleading submission, or failed to construct, operate, maintain, transfer, decommission, or restore the Solar Energy System in accordance with the approved plans and conditions. Prior to revocation, the Town Board shall provide written notice of the alleged violation and an opportunity to be heard, except where immediate action is necessary to protect public health, safety, welfare, property, the environment, public infrastructure, emergency access, or the Town's financial interests. Nothing herein shall limit the Town's ability to issue stop-work orders, take emergency action, draw upon security, or seek judicial relief before or during a revocation proceeding.
- L. **Emergency action.** Where the Town determines that a condition associated with a Solar Energy System presents an imminent or substantial threat to public health, safety, welfare, property, the environment, public infrastructure, or emergency access, the Town may take or direct immediate action to abate or mitigate the condition without prior notice. The responsible party shall reimburse the Town for all costs incurred in connection with such emergency action within 30 days after written demand.
- M. **Remedies cumulative.** The remedies provided in this chapter are cumulative and not exclusive. The Town may pursue any one or more remedies simultaneously or sequentially, including notice of violation, stop-work order, civil penalty, criminal penalty, suspension or revocation of approvals, use of escrow or security, assessment and lien, civil action, injunctive relief, decommissioning, removal, restoration, or any other remedy available under the Town Code, state law, federal law, permit condition, approval, agreement, or security instrument.

§ 172-11. Interpretation; conflict with other law; severability.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern. If any portion of this chapter is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 172-12. Requests for Relief.

- A. **Purpose.** The purpose of this section is to establish a procedure by which an applicant, owner, operator, lessee, successor, or assign may request limited relief from specific requirements of this chapter where strict compliance is impracticable, unnecessary, duplicative, or inconsistent with the purposes of this chapter, and where such relief may be granted without requiring a use variance or area variance from the Zoning Board of Appeals.
- B. **Authority of Town Board.** The Town Board may, by resolution, grant relief from one or more specific requirements of this chapter applicable to Solar Energy Systems, provided that the requested relief does not authorize a use not otherwise permitted under this chapter, does not modify or reduce a dimensional requirement that would require an area variance, does not modify any requirement imposed by state or federal law, and does not otherwise fall within the jurisdiction of the Zoning Board of Appeals.
- C. **Relief not available for use or area variance matters.** Nothing in this section shall be construed to authorize the Town Board to grant a use variance, area variance, interpretation of the Zoning Code, or other relief within the jurisdiction of the Zoning Board of Appeals. Where the Code Enforcement Officer, Town Attorney, or Town Board determines that the requested relief would require a use variance or area variance, the applicant shall be referred to the Zoning Board of Appeals, and no relief may be granted by the Town Board pursuant to this section.
- D. **Eligible requests.** Subject to the limitations of this section, the Town Board may consider requests for relief

from technical, procedural, application, design, construction, operational, maintenance, or mitigation requirements of this chapter, including but not limited to requirements concerning submission materials, sequencing of submissions, form of reports, design details, equipment layout, undergrounding of lines where impracticable, screening methods, landscaping details, emergency access design, signage location, inspection timing, maintenance procedures, or similar requirements, provided that the Town Board determines that the proposed alternative satisfies the purposes and protective intent of this chapter.

- E. **Application for relief.** A request for relief shall be submitted in writing to the Town Clerk and shall be referred to the Code Enforcement Officer, Town Attorney, Town Engineer, Planning Board, and any other consultant, agency, official, or board deemed appropriate by the Town Board. The request shall include, at minimum:
- (1) Identification of the specific provision or provisions of this chapter from which relief is requested;
 - (2) A detailed explanation of the relief requested;
 - (3) The reason strict compliance is impracticable, unnecessary, duplicative, inconsistent with project-specific conditions, or inconsistent with the purposes of this chapter;
 - (4) A description of the proposed alternative, substitute measure, mitigation, design revision, condition, or method of compliance;
 - (5) A demonstration that the proposed alternative provides protection equal to or greater than strict compliance with the requirement from which relief is requested, or otherwise satisfies the purposes and protective intent of this chapter;
 - (6) Supporting plans, drawings, engineering information, environmental information, agricultural information, emergency response information, cost estimates, or other documentation necessary for the Town Board to evaluate the request;
 - (7) A statement as to whether the requested relief affects any approved plan, pending application, permit condition, decommissioning obligation, security requirement, emergency response measure, agricultural mitigation measure, stormwater measure, screening measure, or other project approval;
 - (8) A statement as to whether the requested relief may affect neighboring properties, nonparticipating residences, public roads, public infrastructure, agricultural lands, emergency access, environmental resources, scenic resources, or public health and safety; and
 - (9) Payment of any application, escrow, consultant, engineering, legal, or review fees required by the Town.
- F. **Review procedure.** The Town Board may refer any request for relief to the Planning Board, Code Enforcement Officer, Town Attorney, Town Engineer, fire department, highway department, agricultural consultant, environmental consultant, or any other board, official, agency, or consultant for review and recommendation. The Town Board may require supplemental information from the applicant where necessary to determine whether the requested relief satisfies this section.
- G. **Public hearing.** The Town Board may hold a public hearing on any request for relief where it determines that the request may materially affect neighboring properties, public roads, public infrastructure, agricultural resources, environmental resources, scenic resources, emergency access, public health and safety, or any prior condition of approval. A public hearing shall be required where the requested relief relates to a Tier 3 or Tier 4 Solar Energy System that has not yet received a special use permit, unless the request is considered as part of the public hearing on the special use permit.
- H. **Required findings.** The Town Board may grant a request for relief only upon making written findings that:
- (1) The requested relief does not constitute a use variance, area variance, interpretation, or other matter within the jurisdiction of the Zoning Board of Appeals;
 - (2) The requested relief will not authorize a use that is not otherwise permitted under this chapter;
 - (3) The requested relief is limited to a specific requirement or requirements of this chapter and is no broader than necessary;
 - (4) Strict compliance with the requirement is impracticable, unnecessary, duplicative, or not reasonably related to the purposes of this chapter under the specific circumstances presented;
 - (5) The proposed alternative, substitute measure, mitigation, design revision, condition, or method of compliance provides protection equal to or greater than strict compliance, or otherwise satisfies the purposes and protective intent of this chapter;
 - (6) The requested relief will not create a material adverse impact on neighboring properties, nonparticipating residences, public roads, public infrastructure, agricultural lands, emergency access, environmental resources, scenic resources, community character, or public health, safety, and welfare;
 - (7) The requested relief is consistent with the purposes and findings of this chapter;

- (8) The requested relief is consistent with SEQRA and any environmental review conducted for the Solar Energy System;
 - (9) The requested relief will not impair the Town's ability to enforce this chapter, any approval, any approved plan, any security requirement, any decommissioning obligation, or any condition of approval; and
 - (10) The requested relief is in the best interests of the Town and is consistent with the public health, safety, and welfare.
- I. **Conditions.** In granting relief, the Town Board may impose such conditions as it determines necessary to protect neighboring properties, nonparticipating residences, public roads, public infrastructure, agricultural lands, emergency access, environmental resources, scenic resources, community character, and public health, safety, and welfare. Conditions may include, without limitation, additional screening, additional setbacks where legally permissible, alternative mitigation, monitoring, reporting, inspection, testing, maintenance, emergency response measures, agricultural protections, stormwater protections, financial security, escrow replenishment, or other conditions necessary to ensure compliance with the purposes of this chapter.
 - J. **Decision.** The Town Board may grant, grant with conditions, or deny a request for relief by resolution. The decision shall identify the specific provision from which relief is granted, the nature and extent of the relief, any approved alternative or mitigation measure, and any conditions imposed. Any relief granted shall be limited to the specific Solar Energy System, application, permit, plan, condition, or circumstance identified in the Town Board's resolution and shall not constitute a general waiver or amendment of this chapter.
 - K. **No precedent.** The granting of relief pursuant to this section shall not create any right, entitlement, or precedent for the applicant or any other person or entity. Each request shall be reviewed based upon the specific facts, site conditions, project design, impacts, mitigation, and public health, safety, and welfare considerations presented.

Section 3. Transition; Existing Approvals; Pending Applications.

- A. Any Solar Energy System lawfully existing as of the effective date of this local law may continue as provided in Chapter 172, as amended by this local law, provided that any expansion, major modification, alteration, reconstruction, replacement, transfer, abandonment, decommissioning, or new construction shall comply with Chapter 172 as amended.
- B. Any complete application for a Solar Energy System pending as of the effective date of this local law shall be subject to Chapter 172 as amended by this local law, except to the extent the Town Board determines that vested rights have been established under applicable law.
- C. Nothing in this local law shall be construed to waive, release, impair, or otherwise affect any existing violation, enforcement action, permit condition, approval condition, decommissioning obligation, financial security obligation, escrow obligation, agreement, remedy, penalty, or right of the Town existing prior to the effective date of this local law. Any such violation, obligation, agreement, remedy, penalty, or right may be enforced as if this local law had not been adopted, except that the Town may also apply any remedial or enforcement provisions of Chapter 172 as amended to the extent permitted by law.
- D. Any prior approval, permit, special use permit, site plan approval, building permit, variance, agreement, or condition issued or imposed prior to the effective date of this local law shall remain valid according to its terms, unless expired, revoked, abandoned, modified, superseded, or otherwise subject to review under applicable law. Any future amendment, modification, renewal, transfer, extension, or enforcement of such approval shall be subject to Chapter 172 as amended to the extent permitted by law.

Section 4. Zoning Map Amendment; Energy Overlay District.

The Town Zoning Map is hereby amended to depict the Energy Overlay District as adopted by the Town Board and as shown on the map entitled "Attachment #1 Solar Overlay, Town of Eden," dated "June 15, 2026," which map is hereby incorporated by reference and made part of Chapter 172 and Chapter 225 of the Town Code.

Section 5. Supersession.

To the extent permitted by the New York State Constitution, the Municipal Home Rule Law, the Town Law, the Statute of Local Governments, and any other applicable law, this local law is intended to supersede any inconsistent provision of state or local law relating to the siting, review, approval, construction, operation, maintenance, transfer, abandonment, decommissioning, removal, restoration, enforcement, or financial security requirements for Solar Energy Systems.

Section 6. Severability.

August 12, 2026

If any clause, sentence, paragraph, subdivision, section, or part of this local law or its application to any person, entity, property, or circumstance is adjudged by any court of competent jurisdiction to be invalid, void, unconstitutional, or unenforceable, such judgment shall not affect, impair, or invalidate the remainder of this local law or its application to any other person, entity, property, or circumstance.

Section 7. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State in accordance with the Municipal Home Rule Law.

**TOWN OF EDEN
TOWN BOARD RESOLUTION NO. 173 OF 2026
RESOLUTION ADOPTING LOCAL LAW NO. 7 OF 2026, A LOCAL LAW REPEALING AND
REPLACING CHAPTER 172 OF THE CODE OF THE TOWN OF EDEN ENTITLED “SOLAR
ENERGY SYSTEMS”**

At a regular meeting of the Town Board of the Town of Eden, Erie County, New York, held on August 12, 2026, the following resolution was offered by Supervisor Ventry, who moved its adoption, seconded by Councilmember Wilhelm:

WHEREAS, a proposed local law, designated as Introductory Local Law No. 7 of 2026 and entitled “A Local Law Repealing and Replacing Chapter 172 of the Code of the Town of Eden Entitled ‘Solar Energy Systems’” (the “Proposed Local Law”), was duly introduced before the Town Board for its consideration; and

WHEREAS, the Proposed Local Law would update the Town’s regulations governing Solar Energy Systems, including the tier structure, use regulations, establishment of an Energy Overlay District for Tier 3 and Tier 4 Solar Energy Systems, application and review procedures, design and siting standards, agricultural and environmental resource protections, decommissioning requirements, financial security requirements, enforcement provisions, and related administrative procedures; and

WHEREAS, the Town Board duly scheduled a public hearing on the Proposed Local Law for August 12, 2026, and caused notice of the public hearing to be published and posted in accordance with the Municipal Home Rule Law and other applicable provisions of law; and

WHEREAS, on August 12, 2026, the Town Board conducted the public hearing, at which all persons wishing to be heard were afforded an opportunity to comment on the Proposed Local Law, and the Town Board considered the public hearing record and all written and oral comments received, if any; and

WHEREAS, pursuant to Section 239-m of the New York General Municipal Law, the Proposed Local Law was referred to the Erie County Department of Environment and Planning on June 25, 2026, for review and recommendation, and no response was received within the applicable review period; and

WHEREAS, the Town Board determined that the Proposed Local Law is subject to review under the New York State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law and the implementing regulations set forth at 6 NYCRR Part 617; and

WHEREAS, the Proposed Local Law and associated Energy Overlay District Map were classified as a Type I Action pursuant to SEQRA, and the Town Board initiated coordinated environmental review by circulating a Notice of Intent to Establish Lead Agency and supporting materials to identified involved and interested agencies on July 13, 2026; and

WHEREAS, the applicable coordination period expired without objection to the Town Board serving as Lead Agency, and the Town Board thereafter served as Lead Agency for the SEQRA review of the Proposed Local Law; and

WHEREAS, on August 12, 2026, before acting on the Proposed Local Law, the Town Board adopted Full Environmental Assessment Form Parts 2 and 3, determined that the Proposed Local Law would not result in any significant adverse environmental impacts, determined that preparation of an Environmental Impact Statement was not required, and issued a Negative Declaration of Environmental Significance pursuant to SEQRA; and

WHEREAS, the Town Board has reviewed the Proposed Local Law, the proposed Energy Overlay District Map, the complete SEQRA record, available agency correspondence, the public hearing record, and all other materials and information presented to it; and

WHEREAS, the Town Board finds that adoption of the Proposed Local Law is in the best interests of the Town of Eden and will promote the public health, safety, and welfare by updating the Town's regulation of Solar Energy Systems while protecting agricultural resources, natural resources, scenic resources, community character, public infrastructure, emergency access, and the financial interests of the Town and its residents.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Eden hereby adopts Local Law No. 7 of 2026, entitled "A Local Law Repealing and Replacing Chapter 172 of the Code of the Town of Eden Entitled 'Solar Energy Systems,'" in the form presented to and considered by the Town Board; and be it further

RESOLVED, that the Energy Overlay District Map presented with and incorporated into the Proposed Local Law is hereby approved and adopted as part of Local Law No. 7 of 2026; and be it further

RESOLVED, that the Town Clerk is hereby authorized and directed to:

1. Present the adopted Local Law to the Town Supervisor for approval in accordance with applicable law;
2. File the adopted Local Law with the New York State Secretary of State in accordance with the Municipal Home Rule Law;
3. Maintain the original Local Law, this Resolution, the Energy Overlay District Map, and the related SEQRA documents in the official records of the Town;
4. Cause the Local Law and associated zoning map amendment to be incorporated into the Code and official zoning records of the Town of Eden, as appropriate; and

5. Take all other actions and execute such documents as may be necessary or appropriate to effectuate this Resolution and the adoption, filing, and implementation of the Local Law; and be it further

RESOLVED, that the Town Supervisor, Town Clerk, Town Attorney, Code Enforcement Officer, and other appropriate Town officials, employees, and consultants are hereby authorized and directed to take all actions necessary or appropriate to implement and administer Local Law No. 7 of 2026; and be it further

RESOLVED, that this Resolution shall take effect immediately.

#173-2026: MOTION was made by Supervisor Ventry, on a roll call vote, to adopt as written, Local Law No. 7 of 2026, a Local Law Repealing and Replacing Chapter 172 of the Code of the Town of Eden entitled “Solar Energy Systems”; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

8. Set Public Hearing for Proposed Law Imposing a Moratorium on Data Centers:

#174-2026: MOTION was made by Supervisor Ventry to set a Public Hearing for a proposed local law imposing a twelve (12) month moratorium on siting, development or construction of data centers, accessory data centers and cryptocurrency data mines within the Town of Eden for September 9, 2026 at 6:30 pm. A zoning referral (GML 239-m) will be sent to Erie County; seconded by Councilmember Walker; Ayes: All; Opposed: None; Abstain: None; Motion carried.

Supervisor’s Report:

- Supervisor Ventry thanked the Corn Festival board for a job well done. He also thanked all of the volunteers and our community for making the festival a success.
- Councilmember Wilhelm added that she was impressed with everyone’s dedication.

Hearing of Visitors:

- James Szymanski, a local boy scout, proposed a collaborative project with the Town to fulfill his Eagle Scout requirements.
- James would like to design a Town of Eden flag.
- James would also like to work on redesigning the Town Seal if time allows. The project must be completed by his 18th birthday.
- The Board would like to see a proposal packet for the project and time to discuss it.
- The Board suggested creating a feedback committee for community input.

#175-2025: MOTION was made by Supervisor Ventry to end the Regular Board meeting at 7:30 pm and enter into executive session for a discussion regarding Police Contractual; seconded by Councilmember Wilhelm; Ayes: All; Opposed: None; Abstain: None; Motion carried.

Executive Session ended at 8:30 pm.

Respectfully submitted by,

Jennifer Johnston, Deputy Town Clerk