

Additional Amendments to the Town of Fleming Zoning Code (subsequent to the revisions of May 13, 2013)

1. Local Law 2 of 2014 to Modify and Expand Property Maintenance Requirements.
2. Local Law 3 of 2015 to include self-storage units as a permitted use by Special Use Permit in the Town's Commercial District Bulk and Use Table.
3. Local Law 2 of 2017 to Modify and Amend Sections 1 and 8 of the Zoning Code.
4. Local Law 3 of 2017 to Modify and Amend various provisions of the Zoning Code.

**TOWN OF FLEMING
LOCAL LAW 2014-2**

**A Local Law Amending the Town of Fleming Zoning Law to
Modify and Expand Property Maintenance Requirements**

WHEREAS, pursuant to authority vested in the Town of Fleming ("Town") by the Municipal Home Rule Law of the State of New York, the General Municipal Law of the State of New York and the Town Zoning Law ("Zoning Law") of the Town of Fleming, the Town Board may from time to time amend its Zoning Law as needed to clarify, supplement, reconcile, amend or correct provisions in that Law; and

WHEREAS, in consultation with Special Counsel, the Town Board has considered certain amendments to its Zoning Law and has selected those amendments to be the subject of a local law for enactment in accordance with its lawful authority; and

WHEREAS, Pursuant to General Municipal Law Sections 239(l) and (m), the proposed local law has been referred to the Cayuga County Department of Planning and Economic Development for review and comment, which Department has rendered comments that were duly considered and addressed by the Town Board and its professionals; and

WHEREAS, the Town of Fleming Planning Board has reviewed and considered the contents of the proposed local law, and has transmitted its recommendations on the law to the Town Board for the Board's consideration; and

WHEREAS, upon due notice, at regular meetings of the Town Board held on July 14 and August 11, 2014, the Town Board conducted a duly noticed public hearing to hear and consider public comments on the proposed local law; and

WHEREAS, the Town Board also addressed the project's environmental impacts pursuant to the State Environmental Quality Review Act ("SEQRA") on 9-17-2014, declaring and identifying the action as an Unlisted Action and declaring a Negative Declaration under SEQRA for the project, stating that no significant environmental impacts were identified for it, which Negative Declaration was approved by a vote of 4; and

WHEREAS, upon due notice, at a regular meeting of the Town Board for the Town of Fleming held on 9/17, 2014 at 9:35 a.m., the Town Board approved the enactment of the proposed local law amending the Zoning Law by a vote of 4; and

NOW, THEREFORE, BE IT RESOLVED,

that the Town of Fleming Town Board hereby enacts Local Law 2014-2 to amend the Zoning Law, the content of which is as follows:

1. The foregoing recitals are incorporated herein as if set forth at length.
2. Zoning Law Section 1-3 (Word Usage; Definitions) shall be amended to add the following definitions:

Brush – Uncultivated shrubs and immature trees.

Grass – Herbaceous ornamental plants intended to be periodically cut close to the ground for the establishment of a lawn or ground covering. Grass may also be used for ground covering or the establishment of drainage swales, flood routes or water detention or retention basins.

Nuisance Materials – Materials and objects that are not waste and are not considered garbage, litter, refuse or rubbish under this chapter, but which nevertheless pose a nuisance, blight or danger to public health, safety or welfare by virtue of their accumulation or scattering in publicly visible exterior locations such as lawns and porches for extended periods of time, i.e. more than 30 days. Nuisance materials may include, but are not limited to, such items as furniture, cookware, building materials (in the absence of an active building permit), scrap lumber, appliances, clothing/fabric, tires, empty barrels, any materials that could contribute to harborage of rodents, mosquitoes and other vectors, unregistered motor vehicles or vehicle parts, and abandoned, discarded, wholly or partially dismantled mobile homes.

Weeds – Wild, useless, poisonous or noxious and generally undesirable plants growing in random and inappropriate locations.

3. Zoning Law Section 7-19 (Dumping of Waste Material) shall be amended to read as follows:

7-19. Dumping of Waste Material

A. Purpose.

The purpose of this section shall be to protect and promote the health, safety and welfare of the people of the Town of Fleming insofar as they are affected by the occupancy and maintenance of structures, equipment and exterior property, and to prevent the gradual encroachment of blight, deterioration, unsightliness and property devaluation. All residential and nonresidential structures and premises within the Town of Fleming, whether improved or vacant, shall be maintained in conformity with the requirements, prohibitions and storage regulation provisions of this section.

B. Dumping, piling or accumulation of refuse, litter, garbage (other than in

closed containers which are regularly emptied in a lawful manner), waste material, nuisance materials or toxic or noxious substances is prohibited in every zoning district in the Town.

C. Brush, Grass and Weed Control.

- (1) The following regulations governing brush, grass and weed control are applicable to properties located in the following zoning districts: (R-1) Neighborhood Transitional District; (R-2) Residential District; (L) Lakeshore District; (WD) Waterfront Development District; (C) Commercial District; (H) Hamlet District; and (PDD) Planned Development District.
- (2) The owner or occupant of property located in the zoning districts listed in Section (C)(1) above shall ensure that all brush, grass and/or weeds is cut or trimmed to avoid the development of places for the accumulation of blowing litter, dumping of litter or nuisance materials, rodent harborage or infestation, criminal activity or places which constitute a blighting or unsightly influence on the neighborhood. Any trees, brush or portions thereof which are hazardous to persons or property must be trimmed or removed to eliminate the hazard.
- (3) No grass or weeds in excess of 10 inches in height shall be allowed in the zoning districts listed in Section (C)(1) above. Properties used for agricultural purposes and open or wooded lands are exempt from this requirement and are not required to be mowed.

D. Notice of Violation.

- (1) If conditions existing on the inspected property violate the provisions of this section, the Code Enforcement Officer shall serve or cause to be served a written notice of such violation, referred hereinafter as a notice of violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said property.
- (2) Said notice shall contain substantially the following: the name of the owner, lessee or occupant of the property; the address or location of the property, the identification of the property as the same appears on the current assessment roll, a statement of the conditions on the property deemed upon inspection to be in violation of this chapter; a demand that the refuse, litter, garbage, nuisance materials, brush, grass and/or weeds determined to be in violation of this chapter be removed from the property on or before 10 days after the service or mailing of such notice; a statement that a failure or refusal to comply with the provisions of this section and the notice given pursuant thereto within the time specified may

result in a duly authorized officer, agent or employee of the Town entering upon the property and removing such refuse, litter, garbage, nuisance materials, brush, grass and/or weeds and causing the same to be disposed of or otherwise destroyed, and that the cost and expense of such removal and disposal or destruction shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

- (3) Nothing contained herein shall require notice as a prerequisite to the issuance of a summons or appearance ticket for a violation of any of the provisions of this section.

E. Penalties.

- (1) Any person violating any of the provisions of this section shall be subject to the provisions of Zoning Law Article IV with regard to enforcement, remedies, fines and penalties.
- (2) Instead of or in addition to the aforementioned Article IV provisions, the Town may impose a civil penalty not exceeding one hundred dollars (\$100.00) upon any person who violates any provision of this chapter or who shall omit, neglect or refuse to do any act required thereby. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional civil penalty without additional subsequent notice(s) having to be provided by the Town.
- (3) The imposition of penalties for any violation of this chapter shall not excuse the violation nor permit it to continue. The application of Article IV and/or the above civil penalty for a violation of this section shall not prevent the enforced removal of conditions prohibited thereby. The expenses of the Town in enforcing such removal, including legal fees, may be chargeable to a violator in addition to the criminal and civil penalties.
- (4) Correction of repeat or subsequent offenses occurring within the same calendar year shall be enforced by the Town in the same manner as described above, except new notice to the owner having control of the property will not be required for each repeat offense. After initial notification, such owner having control of the property will be presumed to have been given sufficient notice of violation of this section for the duration of the calendar year.

New York State Department of State
 Division of Corporations, State Records and Uniform Commercial Code
 One Commerce Plaza, 99 Washington Avenue
 Albany, NY 12231-0001
 www.dos.ny.gov

Local Law Filing

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

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

☐ County ☐ City ☒ Town ☐ Village
 (Select one.)

of Fleming

Local Law No. 3 of the year 2015

A local law To add to the Zoning Law of the Town of Fleming under the Bulk and Use Table for uses
 (Insert Title)
 requiring a Special Uses Permit. Specifically, it is going to be added that
 the Section requiring a Special Use Permit will include self storage building units
 as a permitted use requiring a Special Use Permit in the Town's commercial district

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

☐ County ☐ City ☒ Town ☐ Village
 (Select one.)

of Fleming

as follows:

Which would amend the Town's Zoning Law to permit self storage units as a permitted use by Special Use Permit in the Town's commercial district. This law shall take effect immediately.

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

**LOCAL LAW #2-2017
TOWN OF FLEMING, NEW YORK**

Be it enacted by the Town Board of the Town of Fleming, New York as follows:

Section 1 – Title - Local Law #2 of 2017 shall be a local law modifying and amending sections one and eight of the Town of Fleming Zoning Law as adopted on December 22, 2008 and revised on May 13, 2013.

Section 2- Section 1-3 of the Town of Fleming Zoning Law Word usage; Definitions is hereby modified and amended to include the following:

DEFINITIONS TO BE ADDED

Accessory Structure

A structure, the use of which is customarily incidental and subordinate to that of the principal building and is attached thereto, and is located on the same lot or premises as the principal building.

Solar Array

Any number of electrically connected photovoltaic (PV) modules providing a single electrical output.

Building-Integrated Solar System

A solar photovoltaic system that is constructed as an integral part of a principal or accessory building or structure and where the building-integrated system features maintain a uniform profile or surface of vertical walls, window openings, and roofing. Technologies include PV shingles or tiles, PV laminates, and PV glass, among others.

Ground-Mounted System

A solar photovoltaic system mounted on a structure, pole or series of poles constructed specifically to support the photovoltaic system and not attached to any other structure.

Interconnection

The technical and practical link between the solar generator and the grid providing electricity to the greater community.

Kilowatt

A unit of electrical power equal to 1,000 Watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used. 1,000 kW = 1 megawatt (MW).

Major Solar PV System

A solar photovoltaic system with a rated capacity larger than 25kW, whose principal purpose of which is to provide electrical power for sale to the general power grid or to be sold to other power customers may include both physical or virtual aggregation, and/or to be consumed on site.

Net Metering Agreement

An agreement with a local electric utility that allows customers to receive a credit for surplus electricity generated by certain renewable energy systems. Net metering may be monitored locally or remotely.

Minor Solar PV System

A solar photovoltaic energy systems with a rated capacity up to and including 25kW the principal purpose of which is to provide electrical power to be consumed on site or to provide power to be shared with other power customers (which may include both physical or virtual aggregation).

Prime Farmland

Land designated by the U.S. Department of Agriculture as land 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.

Principal Use

The primary or main use of land, building or structure, as distinguished from an accessory use, building or structure.

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.

Renewable Energy Systems

Structures, equipment, devices, or construction techniques used for the production of heat, light, cooling, electricity, or other forms of energy on site and may be attached to or separate from the principal structure.

Rooftop or Building Mounted System:

A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle. This system also includes any solar-based architectural elements.

Solar-based Architectural Element

Structural/architectural element that provides protection from weather that includes awnings, canopies, porches or sunshades and that is constructed with the primary covering consisting of solar PV modules, and may or may not include additional solar PV related equipment.

Solar Access

Space that is open to the sun and clear of overhands or shade. Structures constructed on private property will not infringe on the rights of adjacent properties.

Solar Module

A module is the smallest protected assembly of interconnected PV cells.

Solar Photovoltaic (PV) System

A solar collection system consisting of one or more solar photovoltaic cells, panels or arrays and solar related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation.

Tower

The monopole, freestanding, or guyed structure that supports a wind generator.

Tracking System

A number of photovoltaic modules mounted such that they track the movement of the sun across the sky to maximize energy production, either with a single-axis or dual-axis mechanism.

Wind Energy Cluster

A facility of one or more wind power generators or towers at which wind is converted to another form of energy and distributed to a customer or customers.

DEFINITIONS TO BE EDITED

Wind Farm

The use of land for the purpose of energy production from wind with the use of wind power generation facilities. May also be referred to as a "Large-scale Wind Systems."

Wind Power Generation Facility

A system of components which converts the kinetic energy of the wind into electrical or mechanical power and which comprises all necessary components to provide electricity or mechanical power for residential, agricultural, commercial, industrial, utility or governmental use. May also be referred to as a "Wind Power Facility."

vegetation, or other issues identified by the Town.

- c. Decommissioning Plan: At the time of the application submission for a special use permit for a Large-scale Wind Power Facility, the applicant must also submit an agreement for removal and reclamation, for such a time when the Wind Power Facility becomes technologically obsolete or ceases to perform its originally intended function for more than six (6) consecutive months. Unless otherwise stated by the Planning Board, the agreement shall include:
 - i. Reclamation of roads and other disturbances;
 - ii. Notification of adjacent land owners of the removal;
 - iii. Containment of hazardous materials;
 - iv. Site security;
 - v. Time line indicating when reclamation/decommissioning will commence after the Wind Power Facility ceases power conversion;
 - vi. Removal and reclamation plan for driveways, structures, buildings, equipment, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use as a Wind Power Facility. Upon removal of said facility, the land shall be restored to its previous condition, including but not limited to seeding of exposed lands; and
 - vii. At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the Wind Power Facility and property restoration, with the Town of Fleming as the assignee, in an amount approved by the Town, but not less than sixty thousand dollars (\$60,000) per windmill tower.
3. Design Standards. For all wind power facilities, the following apply:
 - a. Setbacks: All wind power facilities shall be set back not less than the total height of the tower PLUS the blade in its vertical position.
 - b. Proximity: Setbacks shall be from permanent structures, any public road right-of-way, any overhead utility lines, and property lines.
 - c. Height: No tower shall exceed two-hundred fifty (250) feet from base to the tip of the blade in its vertical position.
 - d. Multiple Towers: Within wind energy clusters, the distance between each wind energy conversion system shall be three times the length of the longest blade.
 - e. Security: For *large-scale wind power facilities*, no ladder or permanent tower access device shall be located less than twelve (12) feet from grade level and shall be locked to preclude access to the top of the tower. Storage buildings associated with wind power facilities shall also be locked.
 - f. Visual: Unless otherwise required by the Town, all wind power facilities shall be finished in a non-reflective matte finish and in a color which minimizes obtrusive impact.
 - g. No lettering or advertising shall appear on the towers, nacelle, or blades.
 - h. All towers shall comply with applicable Federal Aviation Administration (FAA) regulations as necessary, including lighting and coloring.

B. Solar Photovoltaic (PV) Systems

1. Minor solar PV systems are permitted as accessory structures in all zoning districts, subject to the following requirements:
 - a. A permit (building/uniform solar) shall be required for installation of all rooftop,

Section 3 - Section 8 of the Town of Fleming Zoning Law is hereby modified and amended to include the following:

8-23. Renewable Energy Systems

It is the intent of this regulation to promote the safe, effective and efficient use of installed renewable energy systems that reduce consumption of utility delivered energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties. This Ordinance seeks to:

1. Provide property owners and business owners/operators with flexibility in satisfying their energy needs;
2. Reduce overall energy demands within the Town and to promote clean energy; and
3. Integrate renewable energy systems seamlessly into the Town's neighborhoods and landscapes without diminishing quality of life.

A. Wind Power Generation Facilities

1. Small-scale Wind Systems (maximum 100 kilowatts nameplate capacity)
 - a. Location: Permitted as accessory uses in all zoning districts of the Town subject to the design standards set forth in this section.
 - b. Additional Application Information: Permit applications shall be accompanied by standard drawings of all structural components of the facility, certified by a New York State registered professional engineer, that the system complies with the New York State Uniform Code.
 - c. Removal: If a wind power facility ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the facility no later than 90 days after the end of the twelve-month period.
2. Large-scale Wind Systems (greater than 100 kilowatts nameplate capacity)
 - a. Location: Accessory use in all zoning districts subject to special use permit application, site plan review, and subject to the design standards set forth in this section.
 - b. Additional Application Information: In addition to the procedures and requirements in Article IX, large-scale wind systems shall supply the following additional information:
 - i. Scale elevations and/or photographs of the proposed wind power facility showing total height, tower height, rotor diameter, and color;
 - ii. Specifications for the foundation and/or anchor design, including location and anchoring of any guy wires;
 - iii. Explanation as to whether the applicant intends to interconnect the wind power facility with any existing electrical distribution or transmission system;
 - iv. Visual impact analysis on the project, especially with respect to the scenic qualities of the area landscape;
 - v. Noise impact analysis, both at the site of the installation and the boundary of the property containing the tower;
 - vi. State Environmental Quality Review (SEQRA) form must be completed by the applicant to assist the Planning Board in determining any environmental considerations dealing with land disturbance, impacts on wildlife and

ground-mounted, and building-mounted solar collectors.

- b. Rooftop, building-mounted, and ground-mounted systems shall not obstruct solar access to adjacent properties.
 - c. Ground-mounted systems shall meet the setback requirements for accessory structures in the zoning district in which it is located.
 - d. The height of the solar collector and any mounting shall not exceed twenty (20) feet when oriented at maximum tilt.
 - e. Ground-mounted systems may not be located in the front yard.
 - f. Ground-mounted systems shall be screened when possible and practicable using architectural features, earth berms, landscaping, or other suitable screening materials which will harmonize with the character of the property and surrounding area.
 - g. Installations shall be performed by a quality solar installer and in accordance with all applicable electrical and building codes, manufacturers installation instructions, industry standards, and must be inspected by the Code Enforcement Officer or appropriate electrical inspection person/agency prior.
 - h. Where storage batteries are included, they must be placed in a secure location (enclosure or container) meeting the requirements of the Uniform Code and disposed of in accordance with applicable laws and regulations.
 - i. Systems may be interconnected (grid tied) provided it is for supplementary electricity needs or supplying excess power to the utility grid. It shall not be for the sole purpose of supplying electricity to the utility grid.
2. Major solar PV systems are specially permitted uses subject to site plan review in Article IX, and the following conditions:
- a. Systems may be permitted in the Agriculture (A) zoning district as primary or accessory uses.
 - b. A building permit shall be required for installation of all rooftop, ground-mounted, and building-mounted solar collectors.
 - c. Dimensional Requirements:
 - i. Maximum height of the solar collector and any mounting shall not exceed twenty (20) feet when oriented at maximum tilt.
 - ii. Two-hundred (200) feet front, side, and rear yard setback for all solar components from property lines and/or public right-of-way.
 - iii. Fifty (50) acre minimum lot size.
 - iv. Twenty (20) acre maximum total solar system footprint size.
 - v. Two thousand (2,000) linear foot minimum separation between any new component of a Major PV system and any existing components of a Major PV system.
 - d. Buffer/Screening: Minimum of a ten (10) foot high natural buffer set back fifty (50) feet from a public right-of-way or adjacent residential property.
 - e. Design Standards:
 - i. Removal of trees and other existing significant vegetation should be minimized or offset with planting elsewhere to the greatest extent practicable.
 - ii. Removal of any prime agricultural soils from the property is prohibited.
 - iii. Proposed major solar systems shall be located on non-prime agricultural soils to

the greatest extent feasible or otherwise not negatively impact the viability of prime agricultural soils on-site for field crops. This can be achieved through placement of facilities on lower class soils (per USDA), buffer/conservation areas (if allowed), or grazing areas.

- iv. All on-site utility lines shall, to the extent feasible, be placed underground.
 - v. Solar collectors shall be designed and located in order to minimize reflective glare and/or glint toward any inhabited buildings or adjacent properties/roads.
 - vi. Such facilities shall not be located on any land area exhibiting sensitive environmental resources such as, but not limited to: freshwater wetlands and buffer zones, 100-year floodplains, steep slopes (greater than 15%), stream corridors (top of slope PLUS 10 feet beyond), historic/archeologically sensitive areas (unless consent by State Historic Preservation Office), critical environmental areas, conservation easements or deed restricted areas, or significant natural habitats/communities.
 - vii. All mechanical equipment shall be enclosed by a minimum six-foot high fence with a self-locking gate and screened with landscaping.
 - viii. The property containing a major solar PV system shall be enclosed by fencing to prevent unauthorized access.
 - ix. No advertising shall be located at the property; signage shall be limited to disconnect and other emergency shutoff information as well as a 24-hour emergency contact. This shall be clearly displayed on a light reflective surface.
- f. Special Use Permit Requirements:
- i. Verification of utility notification, including intent to interconnect.
 - ii. Name, address, and contact information of the applicant, property owner(s), and agent submitting project.
 - iii. If the property is to be leased, the legal consent between all parties, specifying the use(s) of the land for the duration of the lease, including easements and other agreement, shall be submitted.
 - iv. Property operation and maintenance plan outlining responsibility for upkeep of the property and security.
 - v. Site decommissioning plan in accordance with these regulations.
 - vi. Site plan, in accordance with Article IX.
 - vii. If such approval is required, a landowner shall seek and obtain written approval of the State Department of Agriculture and Markets, to be provided with a building permit application prior to construction.
- g. Inspection, Removal and Decommissioning: At the time of the application, the applicant must also submit an agreement for decommissioning, including removal and reclamation. A clause indicating such agreement shall be included in the land-lease agreement between the landowner and developer. Unless otherwise stated by the Planning Board, the agreement shall include:
- i. Reclamation of roads and other disturbances;
 - ii. Notification of adjacent land owners of the removal;
 - iii. Containment of hazardous materials;
 - iv. Site security;

- v. Time line indicating when reclamation/decommissioning will commence;
 - vi. Removal and reclamation plan for driveways, structures, buildings, equipment, lighting, utilities, fencing, gates, and accessory equipment or structures. Upon removal of said facility, the land shall be restored to its previous condition, including, but not limited to seeding of exposed lands; and
 - vii. At the time of obtaining a building permit, the applicant must provide a financial security bond for decommissioning, with the Town of Fleming as the assignee, in an amount approved by the Town, with a minimum of \$100,000. The bond amount shall be re-evaluated every five (5) years during the lifetime of the project by a licensed professional engineer and adjusted as necessary.
 - viii. The system shall be removed, at the owner's or operator's expense, within 180 days of determination by the designated municipal representative that the system is no longer being maintained in an operable state of good repair or no longer supplying solar power. Such an order shall be in writing, shall offer the option to rectify, and shall notify the owner's or operators of his or her right to appeal such determination.
 - ix. The Town reserves the right to inspect a solar PV system for building or fire code compliance and safety with 24-hour notification to the property owner and/or owner-operator of the system.
- h. Additional site plan documentation:
- i. Proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - iii. Documentation of the major system components to be used, including, but not limited to, solar panels, mounting system, and inverter;
 - iv. Name, address, and contact information for proposed certified system installer;
 - v. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - vi. If applicable, documentation of submittal to the utility company of the applicant's intent to interconnect to the local utility grid and approval(s);

Section 4 – The effective date of this law shall be the early of the twentieth day after which it is approved by the Town Board of the Town of Fleming, New York or the date it is filed in with the Secretary of State.

DATED: December 11, 2017

Town of Fleming Local Law 2017-3:

A Local Law Amending the Town of Fleming Zoning Law

Be it enacted by the Town Board of the Town of Fleming, New York as follows:

Section 1. Title

The title of this local law shall be: “A Local Law Amending the Town of Fleming Zoning Law”.

Section 2. Legislative findings, intent, and purpose

The Town Board hereby finds and determines that it is necessary and desirable to amend the Town Zoning Law to:

- (a) modify Article I to add a definition of the term “principal use”;
- (b) modify Article I’s definition of “Certificate of Occupancy” to clarify that the certificate is issued by the Codes Enforcement Officer, not the Zoning Officer;
- (c) modify Article IV to clarify enforcement provisions and incorporate New York State Town Law Section 268(2)’s grant of authority to aggrieved taxpayers to initiate enforcement action under certain circumstances;
- (d) modify Article VII to (i) limit Section 7-3’s minimum lot size and width exceptions to first-time construction of a dwelling on previously undeveloped land; (ii) clarify that Section 7-4(B)’s reference to “private access way” includes driveways; (iii) modify Section 7-6 to specifically make decks subject to Bulk and Use Table restrictions and impose a three-foot height limit on fences in Front Yards in the Lakeshore Zoning District; (iv) increase the maximum fence height from six feet to seven (7) feet; and (v) add definitions of terms to supplement Section 7-19’s prohibition of dumping of waste material;
- (e) modify Article VIII to require special permits for outdoor storage uses and relocate Section 8-14 (Outdoor Storage of Materials and Equipment) to Article VII, Section 7-24;
- (f) modify the Outdoor Storage of Materials and Equipment section to (i) add motor vehicles as a regulated item; (ii) correct grammar of section;
- (g) modify Article IX (Nonconforming Uses, Buildings and Lots) to clarify restrictions and separate treatment of nonconforming uses from nonconforming structures; and
- (h) modify Article XIV’s definition of “subdivider” to include property owners and their duly authorized representatives.

Section 3. Statutory authority

This chapter is enacted under the authority of Subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law § 10(1)(iii) and Municipal Home Rule Law § 22. To the extent that the Town Law of the State of New York does not authorize the Town Board, Town Planning Board or Town Zoning Board of Appeals to handle applications or conduct procedures in the manner set forth within the Zoning Law Amendment, it is the expressed intent of the Town Board to change and supersede such statutes. It is the expressed intent of the Town Board to change and supersede Town Law §§ 64(17-a), 264, 265, 267, 267-a, 267-b, 268, 274-a, 274-b, 276, 277, 278, and 280-a to empower the Town to provide its own specific procedures for its boards to handle applications and conduct procedures.

Section 4. Intent to Amend Existing Zoning Code

This Local Law No. 2017-3 is intended to amend the existing Town of Fleming Zoning Law (adopted December 22, 2008 and amended thereafter) and the corresponding Bulk and Use Tables that accompany that Zoning Law.

Section 5. Body of Local Law

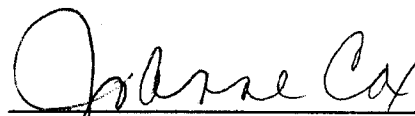
The body of Local Law No. 2017-3, *i.e.* the several amendments to the Town Zoning Law, is attached hereto in its entirety as Exhibit "A".

Section 6. Severability

If any section, clause or provision of this chapter or the application thereof to any persons is adjudged invalid, the adjudication shall not affect other sections, clauses or provisions or the application thereof that can be sustained or given effect without the invalid section, clause or provision or application, and to this end the various sections, clauses or provisions of this chapter are declared to be severable.

Section 7. Effective date

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State.



JO ANNE COX
Town Clerk of the Town of Fleming
Cayuga County, New York

TOWN OF FLEMING
LOCAL LAW 2017-3

A Local Law Amending the Town of Fleming Zoning Law

WHEREAS, pursuant to authority vested in the Town of Fleming ("Town") by the Municipal Home Rule Law of the State of New York, the General Municipal Law of the State of New York and the Town Code of the Town of Fleming, the Town Board may from time to time amend its Zoning Law as needed to clarify, supplement, reconcile, amend or correct provisions in that Law; and

WHEREAS, in consultation with the Town Zoning Officer and Town Codes Enforcement Officer, the Town Board has considered a number of amendments to its Zoning Law and has selected certain of those amendments to be the subject of a local law for enactment in accordance with its lawful authority; and

WHEREAS, Pursuant to General Municipal Law Sections 239(l) and (m), the proposed local law has been referred to the Cayuga County Department of Planning and Economic Development for review and comment, which Department has rendered comments that were duly considered and addressed by the Town Board and its professionals; and

WHEREAS, the Town of Fleming Planning Board has reviewed and considered the contents of the proposed local law, and has transmitted its recommendations on the law to the Town Board for the Board's consideration; and

WHEREAS, upon due notice, at the regular meetings of the Town Board held on December 11, 2017, the Town Board conducted a public hearing to hear and consider public comments on the proposed local law; and

WHEREAS, the Town Board also addressed the project's environmental impacts pursuant to the State Environmental Quality Review Act ("SEQRA") on _____, declaring and identifying the action as an Unlisted Action and declaring a Negative Declaration under SEQRA for the project, which Negative Declaration was approved by a vote of _____; and

WHEREAS, upon due notice, at a regular meeting of the Town Board for the Town of Fleming held on December 11, 2017 at 6:30 p.m., the Town Board approved the enactment of the proposed local law amending the Town Zoning Law by a vote of 5; and

NOW, THEREFORE, BE IT RESOLVED,

that the Town of Fleming Town Board hereby enacts Local Law 2017-3 to amend the Town Zoning Law, the content of which is as follows:

1. The foregoing recitals are incorporated herein as if set forth at length.

EXHIBIT “A”

TEXT OF LOCAL LAW 2017-3

2. Zoning Law Section 1-3 (“Word usage; Definitions”) shall be amended by adding the following definition:

Principal Use: The specific purpose for which any land or structure is designed, arranged or occupied. An individual lot may host only one principal use.

3. Zoning Law Section 1-3 (“Word usage; Definitions”) shall be amended by clarifying the definition of “Certificate of Occupancy” to state that the certificate is issued by the Codes Enforcement Officer, not the Zoning Officer.
4. Zoning Law Article IV (“Violations”) shall be amended in its entirety, as follows:

4-1. Enforcement and Remedies

A. If any building or structure is erected, constructed, reconstructed, altered, converted or maintained in violation of this Law, or if any building, structure or land is used in violation of this Law or any regulation issued under this Law’s authority, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to: prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business or use in or about such premises.

B. Whenever an alleged violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Codes Enforcement Officer, who shall properly record such complaint and promptly investigate and report thereon to the Town Board.

C. Upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten (10) days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

4-2. Fines and Penalties

For any and every violation of the provisions of this Law:

A. The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or other exist; and

B. The general agent, architect, builder, contractor, or any other person who knowingly commits, takes part, or assists in any such violation or who maintains any buildings or premises in which any such violation shall exist, shall be liable on conviction thereof to a fine or penalty not to exceed two hundred dollars (\$200.00) or by imprisonment for a period not exceeding ten (10) days or by both such fine and imprisonment. Each day's continued violation shall constitute a separate, additional violation.

C. A violation of a condition imposed pursuant to this chapter shall be deemed a violation of this chapter and shall be an offense punishable pursuant to Section 4-2(B).

4-3. Severability

It is hereby declared to be the legislative intent that:

A. Should the courts declare any provision of this law to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this law shall continue to be separately and fully effective.

B. Should the courts find the application of any provision or provisions of this Law to any lot, building or other structure, or tract of land, to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property or situation immediately involved in the controversy, and the application of any such provision to other persons, properties or situations shall not be affected.

5. Zoning Law Section 7-3(A) ("Exceptions of Minimum Lot Sizes and Lot Widths") shall be amended as follows:

A. The provisions of the Bulk and Use Tables shall not prevent the first-time construction of a one-family dwelling on previously undeveloped land, provided: the lot was lawful when created; the yard requirements specified at the time of the lot's creation are observed; and prior to the effective date of this Law, the lot was in separate ownership duly recorded by plan or deed, i.e., it was not one of multiple lots under common ownership.

6. Zoning Law Section 7-4(B) (“Traffic Visibility Across Corners [clear sight triangle]”) shall be clarified to state that the scope of the term “private access way” includes a driveway, as follows:

B. Where a private access way (including a driveway) intersects a public street, visual obstructions shall be limited to a height of not more than two (2) feet above street level within the triangular area bounded by the street line, the edge of the private access way, and a straight line drawn between points on both the street line and the edge of the access way ten (10) feet from the intersection of said lines.

7. Zoning Law Section 7-6 (“Fences, Terraces, etc. and Projections in Required Yards”) shall be amended as follows:

The provisions of the Bulk and Use Tables shall specifically apply to decks and uncovered porches, but shall not apply to fences, terraces, steps or other similar features not over three (3) feet high above the floor level of the ground story. Arbors, open trellises, flagpoles, recreation and drying yard equipment are exempt from the Bulk and Use Regulations. Fences located in the Front Yard in the Lakeshore Zoning District may not exceed three (3) feet in height as measured from the ground.

8. Zoning Law Section 7-16(A)(3) (“Accessory Structures and Uses”) shall be amended as follows:

Fences are not accessory structures; however, the height of any fence shall not exceed seven (7) feet.

9. Zoning Law Section 7-19 (“Dumping of Waste Material”) shall be amended as follows:

Dumping, piling or accumulation of garbage or rubbish (other than in closed containers which are regularly emptied in a lawful manner), scrap materials, agricultural wastes, commercial wastes, industrial wastes or other noxious substances is prohibited. For purposes of this section, “garbage” means putrescible waste generated from a kitchen or bathroom, and “rubbish” means nonputrescible and solid wastes (combustible and noncombustible) such as, but not limited to, paper, cardboard, metal cans, wood, glass, furniture, bedding, appliances and crockery.

10. Zoning Law Article VII (“Regulations Applicable to All Zoning Districts”) is amended to add a new Section 7-24 as follows:

7-24. Outdoor Storage of Materials and Equipment

A. No material of any kind shall be stored outdoors in any zoning district, except a one- or two-family lot, unless:

- (1) Allowed as part of an approved site plan; or
- (2) Used in the construction or alteration of a structure on the same lot or in the same development and stored for not more than one year in total or not more than 60 days after completion of construction, whichever is less; or
- (3) Such outdoor storage is limited to machinery, equipment or supplies essential to the operation of a farm or storage of any products grown on the premises of a farm or nursery located in a state certified, county managed Agricultural District, and the storage is expressly allowed by New York State Agriculture and Markets Law; or
- (4) Allowed as part of the operation of an approved junkyard.

B. No more than one unregistered, unlicensed motor vehicle is allowed to be stored outside on any lot except in accordance with §8-3, Automobile and General Repair.

C. No front yard shall be used for any open storage or other storage of boats, motor homes, camping trailers, utility trailers or other similar equipment.

D. No side yard shall be used for any open storage or other storage of motor vehicles, boats, motor homes, camping trailers, utility trailers or other similar equipment unless the required side yard setback can be maintained without obstruction so as to allow emergency access.

E. All enclosed storage shall be within structures which meet the requirements of the New York State Uniform Fire Prevention and Building Code. Storage of and in mobile homes not connected to public utilities or tractor-trailer bodies is not allowed in any district.

F. No outdoor storage shall occur within 100 feet of a Residential or Lakeshore Zoning District. Allowed outdoor storage shall provide adequate screening via appropriately dense plantings and/or setback from residential or transitional uses or districts.

G. The outdoor storage of motorized watercraft, watercraft designed to be propelled by a motor that do not display current registration stickers, or any type of watercraft that is not seaworthy, shall be prohibited. No seaworthy, motorized watercraft or watercraft designed to be propelled by a motor shall be stored outdoors on any residential or vacant property unless said watercraft is currently registered to the owner of the property or to the tenant or tenants who reside thereon.

11. Zoning Law Section 8-14 (“Outdoor Storage of Materials and Equipment”) is amended as follows:

All proposed outdoor storage of materials and equipment that qualifies under the limitations of Section 7-24 shall be subject to the special use permit requirements of Section 8-1.

12. Zoning Law Article IX (“Nonconforming Uses, Buildings and Lots”) shall be amended in its entirety, as follows:

A. Purpose.

1. This section regulates and limits the continued existence of uses, structures or other improvements established prior to the effective date of this Law that do not conform to the regulations of this Law applicable in the zoning districts in which such nonconformities are located.

2. The continued existence of certain nonconformities is frequently inconsistent with the Comprehensive Plan’s grouping of compatible uses to promote and protect the public’s health, safety and general welfare, and thus the gradual elimination of such nonconformities is desirable.

3. The regulations of this section are intended to restrict further investments that would make nonconformities more permanent in their location in inappropriate districts or locations as well as to afford opportunities for creative use and reuse of those nonconformities in ways more consistent with the goals of the Comprehensive Plan.

B. Nonconforming uses.

1. Authority. Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the regulations contained in this section. Ordinary repair and maintenance or replacement, and installation or relocation of non-loadbearing walls, non-loadbearing partitions, fixtures, wiring or plumbing, may be performed.

2. Structural alteration or enlargement. No structure shall be structurally altered or enlarged unless the use thereof shall thereafter conform to the use regulations of the zoning district in which it is located. No parking, yard, space or bulk nonconformity may be created or increased.

3. Damage or destruction.

- (a) When a structure is damaged or destroyed, by any means not within the control of the owner, to the extent of more than 75% of the cost of replacement of the structure new, the structure shall not be restored except where the structure so damaged or destroyed is a single-family

residential structure and/or its accessory structure(s), and the use of the structure(s) is single-family residential use, without regard to the zoning district in which the structure(s) is located. In such a case, the structure(s) may be replaced, rebuilt or repaired upon the issuance of a special use permit from the Town Board pursuant to Section 8.1 and provided that:

(i) No parking, yard, space or bulk nonconformity may be created or increased.

(ii) A building permit is obtained and restoration is actually begun within nine months and completed within 18 months after the date of such damage or destruction.

(b) When a structure is damaged or destroyed by any means not within the control of the owner thereof to the extent of 75% or less of the cost of replacement of the structure new, repair or restoration of such structure may be made; provided, however, that:

(i) No parking, yard, space or bulk nonconformity is created or increased.

(ii) A building permit is obtained and restoration is actually begun within six months and completed one year after the date of such partial damage or destruction.

(c) In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with this chapter.

4. Movement of use. No structure or use of land shall be moved in whole or part, for any distance whatsoever, to any other location on the same or any other lot, unless the entire structure and/or use conform to all regulations of the zoning district in which it is located after being so moved.

5. Expansion of use.

(a) No use shall be expanded or enlarged or increased in intensity. Such prohibited activity shall include, but shall not be limited to:

(i) Expansion of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of this Law, or any amendment hereto, which causes such use to become nonconforming.

(ii) Expansion of such use within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Law, or any amendment hereto, which causes such use to become nonconforming.

(iii) An extension of the hours of operation of such use beyond the existing hours of operation at the adoption of this Law shall not be allowed.

(b) Notwithstanding the general prohibition in Section 5(a) above, a nonconforming use may be expanded or enlarged in accordance with the following provisions:

(i) Such alteration or extension shall be permitted only upon the same lot as in existence at the date the use became nonconforming.

(ii) Any increase in volume, area or extent of the nonconforming use shall not exceed an aggregate of more than 25% during the life of the nonconformity.

(iii) For the purposes of this section, "volume" does not mean volume of business but rather an increase of cubic volume within a structure.

(iv) Proof of compliance with these provisions shall be submitted in advance to the Codes Enforcement Officer for a determination as to qualification for this exception under Section 5(b).

6. Change in use.

(a) A nonconforming use in a structure designed for a use permitted in the district in which it is located shall not be changed to any use other than a use permitted in the zoning district in which the property is located, except under the following conditions:

(i) Such change shall be permitted only by special use permit, under the provisions of §8-1; and

(ii) The applicant shall show that the nonconforming use cannot reasonably be changed to a permitted use in the district where such nonconforming use is located; and

(iii) The applicant shall show that the proposed change will be less objectionable in external effects than the existing nonconforming use with respect to: (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic; (2) Noise, smoke, dust, noxious matter, heat, glare, vibration; (3) Storage and waste disposal; and (4) Appearance.

(b) Once changed to a permitted use or to a more restrictive use in accordance with Subsection 6(a) above, the use shall not be changed back to the prior nonconforming use. The use is changed when an existing nonconforming use is terminated and a new use commences and continues for a period of seven consecutive days, including any change of use in violation of this subsection.

7. Abandonment or discontinuance.

(a) When the active operation of a nonconforming use is discontinued or abandoned for a period of six consecutive months or for 540 days during any three-year period, regardless of any intent to resume or not to abandon the use, the use shall not be reestablished or resumed. The active operation of a use shall be the typical or normal activities associated with the use. Any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such structure is located.

(b) For the purpose of this section, the following circumstances, which shall not be exclusive, shall contribute towards evidence of discontinuance or abandonment of a use:

(i) Failure to maintain regular business hours, typical or normal for the use (past operations of the use and/or industry standards may be used to determine typical or normal hours); or

(ii) Failure to maintain equipment, supplies or stock-in-trade which would be used for the active operation of the use; or

(iii) Failure to maintain utilities which would be used for the active operation of the use; or

(iv) Failure to pay taxes, including, but not limited to, sales taxes, workers' compensation taxes, property taxes, corporate taxes, etc., that would be required for the active operation of the use; or

(v) Failure to maintain required local, state or federal licenses or other approvals that would be required for the active operation of the use.

(c) The legality of one or more nonconforming uses located within a property shall not affect the determination that another nonconforming use on the same property has been discontinued or abandoned.

(d) An owner or operator shall have the opportunity to submit any evidence or proof that the property and its use has not been discontinued or abandoned. The Codes Enforcement Officer shall then issue a letter of determination based upon the evidence of any of the above circumstances or other relevant evidence that a nonconformity has continued or been discontinued or abandoned.

8. Nonconforming accessory uses and structures. No use, structure or sign that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated.

C. Nonconforming structures.

1. Continuance. Any nonconforming structure which is devoted to a use which is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in this section.

2. Enlargement, repair or alterations. Any nonconforming structure may be enlarged, maintained, repaired or altered, provided no additional nonconformity is created or the degree of the existing nonconformity is not increased. Nonconforming structures may not be wholly demolished and rebuilt on the same footprint unless they comply with the provisions of Section 3(a) below.

3. Damage or destruction.

(a) In the event that any part of a nonconforming structure which contributed to its nonconformity is damaged or destroyed, by any means, to the extent of more than 75% of the cost of replacement of said part new, such part shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located.

(b) When such a part of a nonconforming structure is damaged or destroyed, by any means, to the extent of 75% or less of the cost of replacement of such part new, no repairs or restoration except in conformity with the applicable zoning district regulations shall be made unless a zoning certificate is obtained and restoration is actually begun within six months after the date of such partial destruction and completed within one year.

4. Movement of structure. No nonconforming structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

D. Zoning District Boundary Changes. Whenever the boundaries of a zoning district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses or structures existing therein.

13. Zoning Law Section 14-2 ("Definitions") is amended as follows:

SUBDIVIDER – Any person, firm, corporation, partnership or association who shall lay out subdivision or part thereof as defined herein, either personally or on behalf of ownership, lessee or building development, and shall include resubdivision. The subdivider must be the property owner or a representative (e.g., a contract vendee) with specific written authorization to proceed from the owner.

