

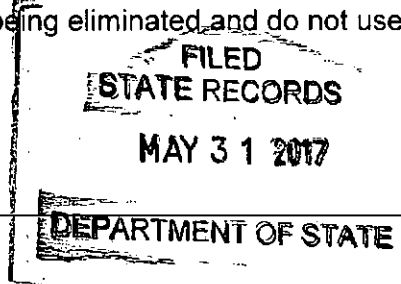
Local Law Filing

(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 MINDEN



Local Law No. 1 of the year 2017

A local law regulating solar facilities in the Town of Minden by adding Section 90-52.24
(Insert Title)
to the Code of the Town of Minden

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

County City Town Village
(Select one.)

of Minden as follows:

Section 1. Section 90-52.24 is added to the Minden Town Code as follows:

See Attached

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

§ 90-52.24 Solar Facilities

A. Purpose and Intent

- (1) The Town of Minden recognizes that solar energy is a clean, readily available, and renewable energy source. It further recognizes that energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.
- (2) The Town of Minden has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and its businesses. This section aims to accommodate solar energy systems while balancing the potential impact on neighbors while preserving the rights of property owners to install solar energy systems. This section is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to be consistent with the Town of Minden Comprehensive Plan; to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment, and on aesthetic qualities and character of the Town.
- (3) Intent; greater restrictions to prevail. It is not intended by this section to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this section imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this section shall control.

B. Applicability

- (1) The requirements of this section shall apply to all solar energy system and equipment installations modified or installed after the effective date of this local law.
- (2) Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this local law shall not be required to meet the requirements of this local law.
- (3) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

C. Requirements for Small Scale Solar Energy Systems

- (1) No small scale solar energy system shall be installed or operated in the Town except in compliance with this section.
- (2) The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, free standing or ground mounted solar collector is permitted as an accessory structure, shall meet all requirements of this sub-section (C), and shall require a building permit.
- (3) All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- (4) Setbacks for Solar Energy Systems: Solar collectors or panels shall be set back a minimum of 25 feet on any side and rear lot. No solar collector is allowed to be ground mounted in the required front yard setback except in the following circumstance:

- (a) In the case where a lot's width and road frontage is greater than the depth, and where it is not feasible to meet all setbacks to place ground mounted solar panels in the rear, ground mounted solar panels may be placed in the front yard setback placed to the side of the principal structure. No ground mounted solar panels may be placed directly in front of the home or principal structure.
- (5) Height limits for solar collectors mounted on buildings shall be five feet above the level of the permitted building height. The height of ground mounted or freestanding solar collectors height shall not exceed 20 feet when oriented at maximum tilt.
- (6) All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- (7) Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this section. However, all applicable building codes shall be met and necessary permits obtained. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered exempt or not.
- (8) In order to ensure the safety of firefighter and other emergency responders, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.
- (9) Free standing or ground mounted solar collectors are permitted as accessory structures in all zoning districts of the Town subject to the following additional conditions:
 - (a) In the Agricultural and Residential districts, a lot must have a minimum size of 2 acres in order for a ground-mounted or free standing solar system to be permitted.
 - (b) Screening shall be provided when practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.
 - (c) The total surface areas of all ground mounted and freestanding solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.

D. Solar Farms/Utility-Scale Solar Energy Systems

(1) Applicability

- (a) Any utility-scale solar energy system erected, constructed, modified, or operated in the Town of Minden after the effective date of this local law shall be in compliance with this Section. Subsection D is applicable to utility-scale solar energy systems and shall not apply to small-scale solar energy systems, as defined herein.

- (b) Utility-scale solar energy systems are allowed with a special use permit and site plan review by the Planning Board only in the Agricultural District. Such systems are prohibited from all other zoning districts in the Town of Minden.
- (c) In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this section. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

(2) Applications, Permits and Approvals Required and Applicable Zoning Districts

- (a) All applications for utility-scale solar energy systems shall be accompanied by an application for special use permit and site plan review, and all applicable fees as may be established by the Town Board. Both site plan and special use permit reviews and approvals are required. The Planning Board shall however, concurrently review the site plan and special use permit applications. All applications shall include the name and contact information for both the landowner(s) of the parcel where the project is proposed and the solar facility operators.
- (b) All applications for utility-scale solar energy systems shall include the following:
 - (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of site plan approval.
 - (2) An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices identified.
 - (3) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
 - (4) Plan for clearing and/or grading of the site. The clearing and grading plan shall also include methods to stockpile, reduce erosion of, and reuse all top soil from the site.
 - (5) A stormwater pollution prevention plan as per NYS DEC requirements to detail stormwater runoff management and erosion control plans for the site.
 - (6) Documentation of utility notification, including an electric service order number.
 - (7) Decommissioning plan and description of financial surety that satisfies the Town that all required improvements shall be made for utility-scale systems only. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.

- (8) The Town shall require any applicant to pay all associated costs for any application review, including but not limited to engineering, legal, environmental, planning, and the review required under SEQRA to the Town Clerk. When the Planning Board determines that a review will require engineering, legal, environmental, or planning costs, they shall provide an estimate to the applicant. Subsequently, such payment shall be made prior to commencement of any further Planning Board review.
- (9) Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specifications and photos of the proposed solar energy system, solar collectors, and all other components.
- (10) Part I of the Full Environmental Assessment Form filled out.
- (11) Details of the proposed noise that may be generated by inverter fans. The Planning Board shall require a noise analysis to determine potential adverse noise impacts.

(3) General Provisions

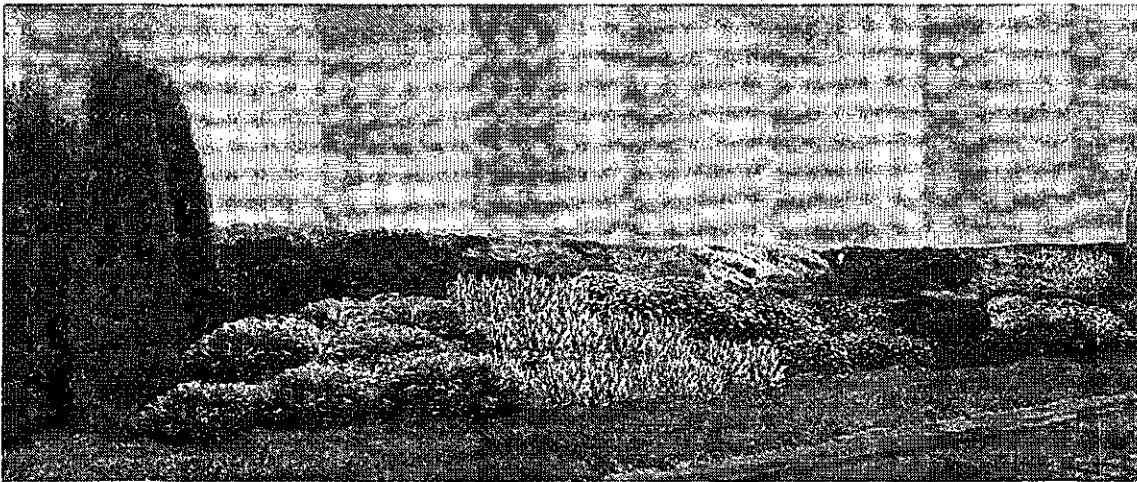
All applications for utility-scale solar energy systems shall be in accordance with the following:

- (a) All utility-scale solar energy systems shall adhere to all applicable Town of Minden building, plumbing, electrical, and fire codes.
- (b) A minimum parcel size of 20 acres is required for utility-scale solar energy systems.
- (c) Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Minden or other federal or state regulatory agencies. Applicants shall use the adopted Town of Minden Comprehensive Plan, showing sensitive environmental features along with other site information to identify and describe how the proposed utility scale solar energy system shall avoid or mitigate adverse impacts to these resources. Lands which have the highest ecological values as evidenced by large, contiguous areas of forest, undisturbed drainage areas, wetlands, or NYS DEC identified critical habitats or rare plant and animal populations shall be avoided.
- (d) There shall be a minimum 100 foot buffer between any component of the utility-scale solar energy system and the parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of site conditions and adjacent land uses.
- (e) Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing at a height of 8 ½ feet to restrict unauthorized access.
- (f) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
- (g) Previously cleared or disturbed areas are preferred locations for solar panel arrays. The clearing of additional lands to accommodate a proposed utility-scale solar facility may be permitted, provided the percentage of newly cleared land on any parcel does not exceed 30% of the existing woodlands on that parcel.
- (h) Solar arrays and agriculture. In accordance with the Comprehensive Plan, the Town of Minden does not support conversion of productive farmland to support grid-supply facilities. When proposed on an active farm located within the New York State Certified Agricultural District in Minden, a utility-scale solar energy system may occupy up to 20% of

any farmed parcel but in no case shall exceed 10 acres. Arrays shall be located on a parcel in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the USDA, NYS or NRCS.

- (i) Native grasses and vegetation shall be maintained below the arrays.
- (j) The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from:
 - (1) Publicly dedicated roads and highways, including Route 5S, 163, 80 and I-90;
 - (2) Existing residential dwellings located on contiguous parcels;
- (k) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of fully screening the site, shall be provided (See example illustration, below).

Figure 1: Example of a landscaped berm designed to fully screen a utility-scale solar energy facility.



- (l) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- (m) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color to aid in blending the facility into the existing environment.
- (n) All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

- (o) Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (p) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations. The manufacturers or installer's identification, contact information, and appropriate warning signage shall be posted at the site and clearly visible.
- (q) The average height of the solar panel arrays shall not exceed fifteen feet.
- (r) Due to the need to keep the solar skyspace for solar energy systems free from obstructions, the Planning Board may recommend modifying the landscaping requirements on an adjacent parcel when it is subject to a site plan or special use permit request to ensure that any landscaping proposed there is low-growth vegetation that will not obstruct the solar skyspace at mature height.
- (s) Following construction of a large-scale or utility-scale ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- (t) Special use permits granted for utility-scale solar energy systems shall be assignable or transferable to future landowners of that system on the approved parcel so long as they are in full compliance with this section and all conditions, and the Code Enforcement Officer is notified of the property transfer at least 15 days prior thereto.
- (u) Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of this article.
- (v) After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a 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 design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

E. Abandonment or Decommissioning of Utility-Scale Systems

- (1) All applications for a utility-scale solar energy facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the utility-scale solar energy facility or structure. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the engineer retained by the Town, to ensure removal of the facility or structure in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the consulting Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the consulting Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a utility-scale solar energy facility or structure, a demolition permit for removal activities shall be obtained from the Town of Minden.
- (2) If the applicant ceases operation of the utility-scale solar energy facility or structure for a period of 18 months, or begins but does not complete construction of the project within 18 months after receiving final site plan approval, the applicant will submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following:

- (a) Removal of all aboveground and belowground equipment, structures and foundations including but not limited to ground anchors, cables, wiring, concrete foundations, switchyards, control houses, fencing, and inverters.
 - (b) Restoration of the-surface grade and top soil after removal of equipment. Compacted portions shall be decompacted and excavations shall be backfilled to restore the site.
 - (c) Revegetation of restored top soil areas with native seed mixes, excluding any invasive species.
 - (d) The plan shall include a time frame for the completion of site restoration work.
- (3) In the event that construction of the utility-scale solar energy facility or structure has been started but is not completed and functioning within 18 months of the issuance of the final site plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town.
- (4) Upon cessation of activity of a fully constructed utility-scale solar energy facility or structure for a period of one year, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator shall either restore operation equal to at least 80% of approved capacity, or implement the decommissioning plan.
- (5) If the owner and/or operator fails to fully implement the decommissioning plan within the 180-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.
- (6) The Planning Board is authorized to seek and use legal, engineering, planning, or other professional assistance for the review of any utility-scale solar energy facility. All costs incurred related to retention of any such assistance shall be paid in full by the applicant.

E. Definitions

BUILDING-MOUNTED SOLAR ENERGY SYSTEM- A solar energy system that is affixed to the roof or side(s) of a building or other structure either directly or by means of support structures or other mounting devices. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems.

GROUND-MOUNTED SOLAR ENERGY SYSTEM- A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices and that is not attached or affixed to an existing structure. Pole mounted solar energy systems shall be considered ground-mounted solar energy systems for the purposes of this local law.

LESSEE -- A landowner who has a legally binding contractual lease with the Owner of a Solar Facility.

NET-METERING – a billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

OPERATOR OF SOLAR FACILITY -- A person, corporation or other entity that manages, maintains, and operates a utility-scale solar facility on a day to day basis. An operator of a solar facility may also be the owner of such facility.

OWNER OF SOLAR FACILITY -- A person, corporation, or other entity that owns a utility-scale solar facility.

REFLECTOR, SOLAR- A device for which the sole purpose is to increase the solar radiation received by a solar collector.

SOLAR ACCESS – Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of a solar energy system on individual properties.

SOLAR COLLECTOR- A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

SOLAR ENERGY SYSTEM - A complete system 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, storage, maintenance and/ or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical structures.

SOLAR ENERGY SYSTEM, SMALL-SCALE - Any solar energy system that cumulatively on a lot meets all of the following provisions:

(a) Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site.

(b) Produce up to ten kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings beyond the lot. Small-scale solar energy systems located on a farm operation (as per AML §301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

SOLAR PANEL – a device for the direct conversion of solar energy into electricity.

SOLAR SKYSPACE- The space between a solar collector and the sun through which solar radiation passes.

SOLAR THERMAL SYSTEM – A system that directly heats water or other liquid using sunlight.

UTILITY-SCALE SOLAR ENERGY SYSTEM OR SOLAR FARM- Energy generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy solely into a utility grid for sale to the general public.

Section 2. Separability

Each separate provision of this Local Law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

Section 3. Repealer

This Local Law shall supersede all prior local laws, ordinances, rules and regulations inconsistent with it and any such prior local laws, ordinances, rules and regulations shall be, upon the effective date of this local law, null and void.

Section 4. Effective date

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

Section 5. Numerical/Lettering Designations

The chapter designations and numerical/lettering designations of the section and article(s) included in the Local Law shall be delegated to the discretion of General Code Publishers, which may renumber the chapter, sections and Article(s) included in this local law as necessary to accommodate incorporation of this local law in the Code of the Town of Minden.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2017 of the ~~(County)(City)~~(Town)(Village) of Town of Minden was duly passed by the Minden Town Board on May 22 2017, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

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

3. (Final adoption by referendum.)

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

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

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

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

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

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

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

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

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

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

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Janet J. Trumbull
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: May 22, 2017

