

A LOCAL LAW to amend Chapter 300 of the Code of the Town of Yorktown entitled “ZONING”

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

Section I. Statement of Authority.

This local law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II.

Section 300-81.5 of the Code of the Town of Yorktown is hereby deleted in its entirety.

Section 300 of the Code of the Town of Yorktown is hereby amended by adding the following new section 300-11(J):

§ 300-11(J). Battery energy storage systems.

- A. Authority. This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, § 2(c)(6) and (10), New York Statute of Local Governments, § 10, Subdivisions 1 and 7, §§ 261 through 263 of the Town Law, and § 10 of the Municipal Home Rule of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety, and welfare of the community.
- B. Statement of purpose. This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
 - (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
 - (2) To protect the health, welfare, safety, and quality of life for the general public;
 - (3) To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
 - (4) To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
 - (5) To create synergy between battery energy storage system development and other stated goals of the community pursuant to Yorktown's Comprehensive Plan.
- C. Definitions. As used in this section, the following terms shall have the meanings

indicated: ANSI — American National Standards Institute.

BATTERY — A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this section, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM — An electronic system that protects storage batteries from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected. The system generates an alarm and trouble signal for off normal conditions.

BATTERY ENERGY STORAGE SYSTEM — A system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 battery energy storage system as follows:

- (1) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
 - (a) Battery energy storage systems for one- to two-family residential dwellings within or outside the structure with an aggregate energy capacity that shall not exceed:
 - [1] Forty kWh within utility closets and storage or utility spaces.
 - [2] Eighty kWh in attached or detached garages and detached accessory structures.
 - [3] Eighty kWh on exterior walls.
 - [4] Eighty kWh outdoors on the ground.
- (2) Tier 2 battery energy storage systems have an aggregate energy capacity greater than 80 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL — The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING — A building that is built for the primary intention of housing battery energy storage system equipment and is classified as Group F-1 occupancy as defined in the International Building Code. It is constructed in accordance with the Uniform Code, and it complies with the following:

- (1) The building's only permitted primary use is for battery energy storage, energy generation, and other electrical grid-related operations.
- (2) No other occupancy types are permitted in the building.
- (3) Occupants in the rooms and areas containing battery-energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- (4) Administrative and support personnel are permitted in incidental-use areas within the buildings that do not contain battery energy storage system, provided the following:
 - (a) The areas do not occupy more than 10% of the building area of the story in which they are located.
 - (b) A means of egress is provided from the incidental-use areas to a public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy systems.

DWELLING UNIT — A building or portion thereof or immobile house trailer, which is used, occupied or maintained as living quarters for one family only and providing complete housekeeping facilities; except that for specialized housing as provided for in RSP Districts, living quarters may consist of sleeping accommodations only, plus individual bathrooms, such dwelling unit having one full kitchen only, free access within the dwelling unit on all floors, one main entrance and only one meter each for gas, electricity and water.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FIRE CODE — The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL) — A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC — National Electric Code.

NFPA — National Fire Protection Association.

NONDEDICATED-USE BUILDING — All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements, including all other occupancy types such as, but not limited to, commercial, industrial, offices, and multifamily housing.

NONPARTICIPATING PROPERTY — Any property that is not a participating property.

NONPARTICIPATING RESIDENCE — Any residence located on nonparticipating property.

OCCUPIED COMMUNITY BUILDING — Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, day-care facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY — A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

SPECIAL FLOOD HAZARD AREA — The land area covered by the floodwaters of the base flood is the special flood hazard area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

UL — Underwriters Laboratory, an accredited standards developer in the United States.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

D. Applicability.

- (1) The requirements of this section shall apply to all batter energy storage systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair. Battery energy storage systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
- (2) Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this section.

E. General requirements.

- (1) A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- (2) All battery energy storage systems, all dedicated use buildings, and all other buildings or structures that contain or are otherwise associated with a battery energy storage system and subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.

F. Permitting requirements for Tier 1 battery energy storage systems. Tier 1 battery energy storage systems shall be permitted in all zoning districts, shall be authorized through the issuance of a building permit, and shall be subject to the general requirements set forth above.

G. Tier 2 battery energy storage systems are prohibited within all zoning districts in the Town of Yorktown.

H. Safety.

(1) System certification. Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 or CAN 9540 (Standard for Battery Energy Storage Systems and Equipment). The systems shall comply with the following codes and regulations along with all other applicable local, state, and national codes for installation, operation, and emergency procedures:

(a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications).

(b) UL 1642 (Standard for Lithium Batteries).

(c) UL 1741 or UL 62109 (inverters and power converters).

(d) Certified under the applicable electrical, building, and fire prevention codes as required.

(e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

(f) NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition.

(2) Site access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal, in accordance with the conditions and parameters set forth in the building permit, or electrical permit, and notwithstanding any provisions therein, at a level acceptable to the local fire department and the local ambulance corps. All battery energy storage systems must undergo regular inspections at intervals specified in the plans and documents approved under this section.

(3) Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

I. Permit time frame and abandonment.

(1) The approval for a battery energy storage system shall be valid for a period of 12 months, provided that a building permit is issued for construction and construction is commenced.

(2) The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year.

J. Enforcement. Any violation of this battery energy storage system section shall be subject

to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

- K. Severability. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.
- L. Conflicts with other provisions of this Chapter 300, Zoning. Any provision of this section that conflicts with other provisions of this chapter take precedence and shall be enforceable as it pertains to uses under this section only.

Section III. Severability.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

Section IV. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency.

Section V. Effective Date.

This local law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.