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. Chapter 300 of the Code of the Town of Yorktown entitled "ZONING" is hereby amended in its entirety by replacing section 300-81.5 entitled "Battery Energy Storage Systems" with the following:

§ 300-81.5. 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) Issuance of special permits and approvals by the Planning Board shall include review pursuant to §§ 300-28 through 300-37 of the Zoning Code of the Town of Yorktown and the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617 (SEQRA).

(3) 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. Notwithstanding that prohibition, any battery energy storage systems with an aggregate energy capacity greater than 600 kWh or that is comprised of more than one storage battery technology in a room or enclosed area existing within the Town as of January 1, 2025 (“Existing Tier 2 battery energy storage system”) shall be considered a legal non-conforming use. All approvals, including special permits, for an Existing Tier 2 battery energy storage system shall continue in full force and effect until expiration, nullification or abandonment. All Existing Tier 2 battery energy storage system shall comply with the following requirements and any conditions of Town approvals applicable to such system:

(1) Applications for the modification of Existing Tier 2 battery energy storage system shall:

(a) Address all matters listed in this section, including, but not necessarily limited to, compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and matters relating to the proposed battery energy storage system and floodplain, utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, permit time frame and abandonment. The Planning Board may require additional information pursuant to requirements in Chapter 195, Land Development, and Chapter 300, Zoning, of the Code of the Town of Yorktown.

(b) Subject to a public hearing to hear all comments for and against the application pursuant to Town Law § 274-b and Chapter 205 of the Code of the Town of Yorktown.

(c) Be referred to the County Planning Department pursuant to General Municipal Law § 239-m if required and referred to interested and involved agencies pursuant to the State Environmental Quality Review Act, Article 8, of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617 (SEQRA).

(2) Floodplain. Battery energy storage systems are prohibited in designated floodplains and flood zones.

(3) Utility lines and electrical circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

(4) Signage.

(a) Signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including reach-back phone number.

(b) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light-reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

(5) Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(6) Vegetation and tree cutting. Areas within 20 feet on each side of Existing Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover, such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be

exempt, provided that they do not form a means of readily transmitting fire.

(7) Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 60 dBA as measured at the outside wall of any nonparticipating residence and occupied community building. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

(8) Decommissioning.

(a) Decommissioning plan. The applicant shall submit a decommissioning plan developed in accordance with the Uniform Code, containing a narrative description of the activities to be accomplished for removing the energy storage system from service, and from the facility in which it is located. The decommissioning plan shall also include:

[1] A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;

[2] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

[3] The anticipated life of the battery energy storage system;

[4] The estimated decommissioning costs and how said estimate was determined;

[5] The method of ensuring that funds will be available for decommissioning and restoration;

[6] The method that the decommissioning cost will be kept current;

[7] The manner in which the battery energy storage system will be decommissioned, and the site restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and

[8] A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

(b) Decommissioning fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town, for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.

(9) Site plan amendment application. Modifications to Existing Tier 2 battery energy storage systems shall require site plan approval. Any site plan application shall include the following information:

(a) Property lines and physical features, including roads, for the project site.

(b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

(c) A one- or three-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

(d) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.

(e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of a building permit.

(f) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.

(g) Zoning district designation for the parcel(s) of land comprising the project site.

(h) Commissioning plan.

[1] Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Planning Board prior to final inspection and approval and maintained at an approved on-site location.

[2] Energy storage system commissioning shall not be required for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than 50 VAC and 60 VDC.

(i) Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

(j) System and property operation and maintenance manual. Such plan shall describe

continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.

(k) Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

(l) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS licensed professional engineer.

(m) An emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

[1] Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

[2] Procedures for inspection and testing of associated alarms, interlocks, and controls.

[3] Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

[4] Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire. Procedures must follow all applicable local, state and national codes.

[5] Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

[6] Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.

[7] Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

[8] Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate

response procedures.

[9] The Planning Board may require additional information not specifically contained herein that would be necessary to provide to the greatest extent practicable, maximum protection of the health, safety and welfare of the general public.

(10) Special use permit standards. All Existing Tier 2 battery energy storage systems shall comply with the following requirements:

(a) Lot size. Existing Tier 2 battery energy storage systems shall be located on lots with a minimum lot size of 40,000 square feet.

(b) Lot coverage. Lot coverage shall not exceed 15% of the area of the lot or 33,000 square feet, whichever is less. "Lot coverage" shall mean the area formed by the outermost perimeter of the footprint of all of the equipment and battery storage units, including the clearance spaces between the individual equipment.

(c) Setbacks. Existing Tier 2 battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures, provided that adequate screening can be accomplished within the allotted setback. The Planning Board may determine that the setback be increased to accommodate such required screening.

(d) Height. Existing Tier 2 battery energy storage systems shall not exceed 15 feet in height, unless part of a larger structure housing a main use as allowed in the underlying zoning district.

(e) Fencing requirements. Existing Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports. Type and design of fencing shall be determined by the Planning Board.

(11) Screening and visibility. An Existing Tier 2 battery energy storage system shall be fully screened from adjacent residential properties, streets or roads on which it fronts or is visible from, and any other views, which the Planning Board determines is necessary. Views from adjacent commercial properties shall be minimized to the extent reasonably practicable and screened from streets or roads on which it fronts. Screening and buffering may be accomplished using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfere with ventilation or exhaust ports.Ownership changes. If the owner of the Existing Tier 2 battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the applicable Town approvals, including the site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Building Inspector of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Building Inspector in writing. All approvals for the Existing Tier 2 battery energy storage system would be void if a new owner or operator fails to provide written notification to the

Building Inspector in the required time frame.

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 special use permit, building permit, or electrical permit, and notwithstanding any provisions therein, at a level acceptable to the local fire department and , if the Existing Tier 2 battery energy storage system is located in an ambulance district, 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 building permit approval for a Tier 1 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) A battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the available bond and/or security for the removal of a Existing Tier

2 battery energy storage system and restoration of the site in accordance with the decommissioning plan.

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.