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AN ORDINANCE TO ADD ZONING FOR ENERGY STORAGE PROJECTS IN THE CODE OF WASHINGTON COUNTY, VIRGINIA, CHAPTER 66, ARTICLE XIV, DIVISION 3, SECTIONS 66-1271 THROUGH 66-1277

WHEREAS, the Board of Supervisors has requested the Code of Washington, County, Virginia, be re-codified in Zoning to include purpose, applicability, restrictions and requirements on battery energy storage projects.

WHEREAS, the Code of Virginia §15.2-2288.8, provides any locality may grant a special exception permit pursuant to § 15.2-2286, and include in its zoning ordinance reasonable regulations and provisions for a special exception as defined in § 15.2-2201, for any energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering that energy after it has been stored.

WHEREAS, the Code of Virginia § 15.2-2316.7 provides that any applicant for a battery storage facility shall provide written notice of the applicant's intent to locate in such locality and shall meet, discuss and negotiate a siting agreement with such locality.

NOW, THEREFORE, be it resolved the Board of Supervisors of Washington County, Virginia, after notice and public hearing, as required by law, hereby adopts this Ordinance, which shall be incorporated into the Washington County Code (2002), to add to Chapter. 66, Article XIV, Division 2, Sections 66-1271- 66-1277, zoning for battery energy storage projects and to include certain regulations and requirements for battery energy storage projects;

1. That Chapter 66, Article XIV, Division 3, Sections 66-1271 through 66-1277 of the Code of Washington County, Virginia (2002), be added, as set forth below.
2. That should any section or provision of this Ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this Ordinance or the Washington County Code (2022).
3. That this Ordinance shall become effective immediately upon its enactment.

Chapter 66: Zoning

Article XIV: Alternative Energy Generating Systems

Division 3: Energy Storage Facilities

Sections 66-1271 through 66-1299

Sec. 66-1271: Purpose and Applicability

The purpose of this Division is to provide for the siting, development, and decommissioning of battery energy storage facilities in the county, subject to reasonable conditions that protect the public health, safety and welfare of the community while promoting battery energy storage of energy sources, with the following objectives:

DRAFT

1. To provide a regulatory scheme for the designation of properties which may be suitable for the location, including construction and operation of battery energy storage facilities.
2. To ensure land use compatibility in the areas in the vicinity of the areas surrounding battery energy storage facility.
3. To mitigate the impacts of battery energy storage facilities on the environmental resources such as agriculture land, forests, wildlife and other protected resources.

State Law Reference – Similar provisions, Code of Virginia §§ 15.2-2232, 20VAC5-335-80.

Sec. 66-1272: Definitions

The following words, terms and phrases, when used in this subdivision, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ANSI means the American National Standards Institute.

Applicant means the person or entity which submits an application to the locality for a permit, to install an energy storage facility under this division.

Battery(ies) means 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. Consumer use products are excluded from these requirements.

Battery Energy Storage Management System means an electronic system that protects energy storage from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in safe condition if potentially hazardous temperatures or other conditions are detected.

Battery Energy Storage System means one or more battery energy storage devices, assembled together, capable of storing energy in order to supply electrical energy at a future date or time, but not to include a stand-alone 12-volt car battery or an electric motor vehicle or consumer products. A battery 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 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology with no more than 600kWh to be located per parcel.;
2. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

Cell means the basic electrochemical unit, characterized by an anode and cathode, used to receive, store, and deliver electrical energy.

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

DRAFT

Decommissioning means the removal, recycling and proper disposal of battery energy storage equipment, facilities or devices with a battery energy storage facility, which includes the reasonable restoration of property upon which the battery energy storage equipment, facilities, or devices are located, including, but not limited to:

1. Soil stabilization
2. Revegetation of the ground cover of the property disturbed by the battery energy storage project.

Dedicated-use-building means a building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 (“USBC”) and the International Building Code, and complies with the following:

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

Distribution Lines means utility lines that transport electricity, generally from substations to a load point at lower voltages and over shorter distances than transmission lines.

Disturbance Zone means the area of land occupied by a battery energy storage project, and for purposes of the disturbance zone, “occupied” means not only the points of contact of the battery energy storage project with the ground but also the ground area underneath the storage array, its related appurtenances, and internal corridors within the battery storage array, if any.

Energy code means the Virginia USBC Energy Conservation Construction Code, as currently in effect and as hereinafter amended from time to time.

Fire code means the fire code sections of the USBC and the Virginia Statewide Fire Prevention Code, as currently in effect and as hereinafter amended from time to time.

Nationally recognized testing laboratory (NRTL) means a U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure they meet the requirements of both the construction and general industry OSHA electrical standards.

DRAFT

NEC means the National Electric Code.

NFPA means the National Fire Protection Association.

Non-dedicated-use building means all buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

Non-participating property means any property that is a not participating property.

Non-participating residence means any residence located on non-participating property.

Occupied community building means any building in Occupancy Group A, B, E, I, R, as defined in the USBC and/or the International Building Code, including, but not limited to, schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and places of worship.

Parcel means a tract of land having specific boundaries of legal significance for transfer of ownership or for possession and for development purposes. The word “parcel” shall be synonymous with “lot”.

Participating property means a battery energy storage system host property or any real property that is 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.

Project Owner means the person or entity who owns all or a portion of a battery energy storage project.

Property Owner means the person or entity who owns the parcel on which the battery energy storage project is located. The property owner may or not be the same person or entity as the project owner.

Siting Agreement means a mutually beneficial agreement, in compliance with the Code of Virginia § 15.2-2316.7, between an applicant and Washington County that is binding upon both the County and the applicant, whereby execution of the siting agreement that a battery energy storage project is deemed to be substantially in accord with the Washington County Comprehensive Plan and thereby satisfies the requirements of the Code of Virginia § 15.2-2232 and ensures the entire system, including batteries, invertors, wiring and other equipment work safely together. Insurance coverage shall be required in all siting agreements to include any clean-up for pollution from battery energy storage projects.

UL 9540 Certification means a comprehensive underwriters laboratories (UL) safety standard and certification for battery energy storage systems.

Uniform Code means the Virginia Uniform Statewide Building Code adopted pursuant to Code of Virginia § 36-98, as currently in effect and as hereafter amended from time to time.

DRAFT

Sect. 66-1273: General Guidelines and Requirements

All battery energy storage facilities as primary and secondary use shall be subject to the following standards:

1. *All battery energy storage system installations shall comply with site plan requirements in accordance with Code of Virginia §15.2-2316, Washington County Code section 66-1276 and Virginia Administrative Code 9VAC15-70-70.*
2. *All battery energy storage systems, all dedicated use buildings or structures that contain or are otherwise associated with battery energy storage systems and are 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 Washington County Code, Code of Virginia, Department of Environmental Quality, Federal Aviation Administration, NEPA, and all federal regulations.*
3. All battery storage systems which include batteries and various chemistries and types, are classified as hazardous waste upon reaching end of life or in a condition of degradation that requires replacement. All batteries and components, upon end of life or in a condition of degradation shall be transported in accordance with local, state and federal hazardous waste disposal regulations.
4. Permitting requirements for Tier 1 and Tier 2 battery energy storage facilities
 - a. Tier 1 battery storage systems shall be permitted in all districts, subject to the Uniform Code, Virginia Department of Environmental Quality regulations, Code of Virginia, Washington County Code, and where infrastructure allows it and shall be exempt from separate site plan review **and shall have no more than one (1) per parcel.**
 - b. Tier 2 battery energy storage systems to be located in M1 and M2 are permitted through the issuance of a special exception permit process with Board approval after Planning Commission review and recommendations. Tier 2 facilities are disallowed in all other zoning classifications and subject to the USBC, Virginia Department of Environmental Quality, Code of Virginia, Washington County Code, the site plan application requirements set forth in this section and 9VAC15-100-130.
5. *Distribution Lines, utility lines and electrical circuitry.* To the extent reasonably practical, all new distribution lines to any building, structure, or utility connection shall be located underground (trenched) to the extent permitted by the electric company.
6. *Security fencing.* The battery energy storage facility shall be enclosed around the perimeter by a security fence with a minimum height of six (6) feet.
7. *Signage.* Appropriate warning signage is required on the battery energy storage facility fencing, not to exceed thirty-two (32) square feet, displaying warnings, the facility name, address,

DRAFT

physical E-911 address and emergency contact information. Facility warning signs shall be the only signs allowed to be posted on the fence to be determined during siting agreement.

8. *Noise.* Battery Energy Storage projects shall comply with the County's Noise Ordinance, Washington County Code Chapter 30, Article II, Section 30
9. *Vegetative screening.* A vegetative buffer yard shall be required and implemented prior to construction of the battery energy storage facility. Landscaping intended for screening shall consist of a combination of non-invasive species (species listed on DCR's Invasive Plant Species list shall not be allowed), pollinator species, and native plants, shrubs, trees, grasses, forbs, and wildflowers. The vegetative buffer yard shall meet two (2) or more of the following set of requirements.
 - a. Fifty (50) feet wide with;
 - i. Four (4) canopy trees per one hundred (100) linear foot which are at least six (6) feet high at time of planting and shall be within ten (10) feet high within four (4) years;
 - ii. Six (6) understory trees per one hundred (100) linear foot which are at least six (6) feet high at time of planting and shall be within ten (10) feet high within four (4) years;
 - iii. Eleven (11) evergreen trees per one hundred (100) linear foot which are at least six (6) feet high at time of planting and shall be within ten (10) feet high within four (4) years .
 - b. The use of existing, healthy, well-formed canopy trees, understory trees, evergreen trees, and shrubs shall be maximized wherever practical to comply with these vegetative buffer requirements. Any fencing shall be located interior to the vegetative buffer.
10. *Setbacks.* With the exception of poles and lines necessary to connect to the power grid, the perimeter of the system shall be located at least fifty (50) feet from the property line of any adjoining parcel owned by any landowner other than the owner of the parcel on which the battery energy storage facility is being proposed,; at least two hundred, fifty (250) feet from the nearest inhabitant residence at the time of the initial application; and at least two hundred ~~fifty~~ (250) (200) feet from the nearest road
11. *Land Disturbance.* A land disturbance plan shall be prepared by an engineer licensed in the Commonwealth of Virginia, submitted by the applicant, and approved in compliance with the Commonwealth of Virginia Department of Environmental Quality prior to any land disturbance. The owner or operator shall construct, maintain and operate the project in compliance with the approved plan. A surety bond (or other security) will be posted for the construction of the project. No **battery energy storage project** shall be permitted on land that has been clear-cut or

DRAFT

heavily timbered in the five (5) years immediately preceding the date of application. Placement of utility-scale battery energy storage facilities should be prioritized on existing impervious surfaces. This land disturbance plan does not replace the Erosion and Sediment Control Plan nor the Stormwater Management Plan, which also must be submitted in Washington County where 10,000 square feet or more land disturbance is proposed. Grading and filling shall be avoided. If grading is required, it should not result in the loss of agricultural soil and should be completed in phases to reduce erosion and sediment runoff. In cases where grading is required, topsoil should be removed from the area prior to grading. Topsoil should be stored on site and replaced after the grading is completed. Compression mats should be employed to avoid compaction of soils from heavy equipment.

12. *Utility notification.* No grid tied battery energy storage facility shall begin construction or installation until evidence has been submitted to the planning departments showing the developer and/or owner has been approved by the utility company to install the system.
13. *Slope.* All projects shall follow Virginia Department of Environmental Quality, Stormwater Management, Erosion and Sediment Control requirements and ordinances.
14. *Liability insurance.* The applicant shall provide proof of adequate liability insurance for a battery energy storage facility, to be set out in the Siting Agreement, prior to the issuance of a zoning or building permit. This shall be provided to the Zoning Official, annually, upon renewal of policy.
15. *Maintenance.* Ground cover on the site shall be maintained in accordance with an approved landscaping plan and possibly a “dual use” maintenance plan. Native grasses or any non-invasive species shall be used to stabilize the site for the duration of the facility’s use. The project owner shall be responsible for maintaining the battery energy storage facility, the vegetative screening, access roads and fully comply with Virginia Department of Environmental Quality, Stormwater and Erosion Control Act and all local ordinances.
16. *FAA requirements.* Any battery energy storage facilities located within five (5) nautical miles of any airport shall meet FAA requirements for energy storage systems.
17. *Lighting.* All outdoor lighting shall be shielded to direct light and glare onto the system’s premises.
18. *Wetland and Water Sources.* Project Owner shall preserve and prevent the destruction of wetlands, well water sources and riparian rights in a manner consistent with the Clean Water Act, Section 401 & 404 regulated by the Virginia Water Protection Program and U.S. Army Corps. of Engineers as well as Virginia Department of Environmental Quality regulations.
19. *Access.* The County Administrator, Building Official, Zoning Official, Erosion and Sediment Control Administrator or any other parties designated by those County officials shall be allowed

DRAFT

to enter the property at any reasonable time to check for compliance with the provisions of this permit. However, access shall be granted without notice if the security, health and safety standards, and regulations that apply to the project site pose a risk to the general public, environment, or if any other emergency arises.

20. *Emergency Services/Personnel.* Emergency services and personnel shall be allowed to enter the property without notice, in the event of an emergency.
21. *Change in ownership or operator and activities.* The owner and operator shall provide a written notice to the County Administrator and Zoning Official in the event of any change in ownership, change in the operator, inactivity, *technology* or modifications to equipment or activities on site, excluding general maintenance. Any change of ownership *or technology* shall be required to sign a new siting and decommissioning agreement for a review and reapproval process for Board approval, will be bound by ordinance and successor in interest is bound by UL 9540, and any previous siting agreement and decommissioning agreement.
22. *Fire Suppression Plan.* Prior to generation of power, a Fire Suppression Plan shall be based upon the facility, personnel located at such facility and prepared by property owner. The Fire Suppression plan shall be approved by the Washington County Coordinator of Emergency Management Services and the Washington County Building Official.

Sec. 66-1274: Permitting Applications and procedures

- a. All battery energy storage projects that are regulated by this division shall obtain certification of zoning compliance by the County Zoning Official before installation. In addition to zoning compliance certification, all projects must comply with applicable building code requirements, stormwater, erosion and sediment control requirements. All projects must comply with the Virginia Department of Environmental Quality's Stormwater Management Act and Washington County Erosion and Sediment Control Ordinance(s). ***All battery energy storage projects must comply with Department of Environmental Quality requirements.***
- b. Applicants for zoning compliance certification for all battery energy storage projects shall include the following items:
 1. Scaled horizontal and vertical (elevation) drawings. The drawings must show the location of the project on the parcel for a ground-mounted project, including the parcel boundaries and setback lines, and on the building for integrated or on-building-mounted projects.
 2. Written acknowledgement of the property owner of responsibility for the battery energy storage project.
 3. Documentation to show compliance with the requirements set forth in this Division.
 4. For battery energy storage projects that are not mounted on or over a building, a certified statement of the area in square feet or acreage of disturbance zone and explanation of how such figure was determined (e.g., by professional survey or by personal measurement).
- c. Special Exception Permit Requirements

DRAFT

1. All battery energy storage facilities to be located in M1 and M2 require a special exception permit before the installation may begin, subject to the following exceptions.
2. Special Exception Permits shall include conditions as determined by the Board of Supervisors to be necessary to carry out the intent of this section.
3. Battery Energy Storage projects shall follow all other requirements of Virginia Department of Environmental Quality, Code of Virginia, federal guidelines, and Washington County Code .

Sec. 66-1275: Site Plans and Agreement Required.

The Code of Virginia § 15.2-2316.6, § 15-2316.7, and § 15.2-2316.8 provides that any applicant for an energy storage project shall give to the host locality written notice of the applicant's intent to locate in such locality and request a meeting to discuss and negotiate a siting agreement with such locality, which may contain terms and conditions, including (i) mitigation of any impacts of such energy storage project (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband and provides that the governing body of a host locality shall have the power to: hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the siting of an energy storage project; meet, discuss and negotiate a siting agreement with the applicant, enter into a siting agreement that is binding upon the governing bodies of the locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the parties' option. Upon agreement of the siting plan agreement terms and conditions, the host locality shall schedule a public hearing, pursuant to subsection A of § 15.2-2204, for the purpose of consideration of such siting agreement.

Sec. 66-1276 Site plan required.

The Code of Virginia § 15.2-2232, provides that a local planning commission may recommend a comprehensive plan or part thereof for the locality and if such plan is approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Battery storage facilities must be developed in accordance with an approved site plan that meets the standards of Section § 15.2-2232.e Code of Virginia §15.2-2239, provides that the local planning commission may, and at the direction of the governing body, shall, prepare and revise annually a capital improvement program based on the comprehensive plan of the locality for a period to not exceed five years.

Sec. 66-1277 Decommissioning Agreement *and* Plan, and Surety Bond

1. *Decommissioning Agreement and Surety.* Prior to installation of a battery energy storage project, the project or property owner shall record in the land records of the Circuit Court of Washington County, a County-approved Decommissioning Agreement. The Decommissioning Agreement shall include the decommissioning plan and the owner's commitment to comply with the County

DRAFT

Zoning Ordinance as such may be amended from time to time and shall be written to run with the land and terminate upon removal from the property of the battery energy storage project and completion of site restoration. The decommissioning agreement will include the following terms and conditions:

- a. The system owner and owner of the land shall provide acceptable surety to the County, in the form of surety bond, letter of credit or cash, based upon an estimate of a professional engineer licensed in the Commonwealth with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may not include the net salvage value of such equipment, facilities or devices, plus a reasonable allowance for estimated administrative costs-related to the default of the owner, lessee, or developer, and an annual inflation factor and shall be updated every five (5) years. Surety instruments shall only be released after decommissioning has been completed in accordance with the provisions below, Siting agreement and Decommissioning Agreement, and;
- b. The system owner and the owner of the land on which the battery storage facility is located shall be responsible and liable, jointly and severally, to begin removing all obsolete or unused systems, facilities and equipment within six (6) months of cessation of operation and shall have them fully removed within twelve (12) months.
- c. All component disposal of a battery energy storage project shall comply with all requirements of local, state and federal law and regulations and any components that may be recycled shall be recycled whenever feasible and disposed in locations other than Washington County, Virginia.
- d. Reasonable extensions of that time may be granted from time to time by the Zoning Official upon timely application and a showing that:
 - i. The system owner and/or landowner are actively seeking sale or lease of the battery energy storage facilities for future operation; or
 - ii. The system owner and/or landowner have continuously maintained the land and facilities in good condition.
- e. If the owner defaults in the obligation to decommission such equipment, facilities or devices in the timeframe set out in such agreement, the locality has the right to enter the property on which the battery energy storage project is located without further consent of such owner and engage in decommissioning.
- f. Every charge authorized by this section which remains unpaid shall constitute a lien against the property on which a battery energy storage facility is located ranking on a parity with liens for unpaid County taxes and enforceable in the same manner as provided in the Code of Virginia § 58.1-3940 et seq. and § 58.1-3965 et. seq., as amended.

A decommissioning plan shall be prepared and shall include the following:

1. The anticipated life of the project;

DRAFT

2. Any conditions that may be warrant decommissioning;
3. The estimated decommissioning cost and how cost is determined;
4. The manner in which it shall be decommissioned;
5. ***All battery energy storage projects decommissioning must comply with federal regulations, Department of Environmental Quality requirements, Code of Virginia and Washington County Code .***

The decommissioning plan must provide for the disconnection from the power grid at a minimum; removal of all battery energy storage systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that the ground is again tillable and suitable for agricultural purposes. Disturbed earth shall be graded and reseeded. Hazardous material shall be disposed of in accordance with federal and state law.

Sections 66-1271-1277 Reserved