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County City Town Village
(Select one.)

of YORK

Local Law No. 2 of the year 20 18

A local law Adding Solar Energy Systems article to the
(Insert Title)
Zoning Ordinance of the Town of York

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

County City Town Village
(Select one.)

of YORK as follows:

(See attached documentation)

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

TOWN OF YORK
LOCAL LAW NO. 2 OF THE YEAR 2018

**A Local Law Entitled “Adding Solar Energy Systems article to the Zoning Ordinance of
the
Town of York.”**

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

Article VI of the Zoning Ordinance of the Town of York (here after “Zoning Code”) shall be amended to add a new section 618 which shall be entitled “Solar Energy Systems” and shall read as follows;

618. Solar Energy Systems

- A. Authority and Legislative Intent. The Town Board of the Town of York states the following as its findings and legislative intent:
- (1) This Zoning for Solar Energy Law is adopted pursuant to New York State Town Law §§261, 263 and 264, which authorize the Town of York to adopt zoning provisions that advance and protect the health, safety, and welfare of the community.
 - (2) The Town Board of the Town of York recognizes that solar energy is a clean, readily available and renewable energy source and the Town of York intends to accommodate the use of solar energy systems.
 - (3) However, the Town Board finds it is necessary to properly site and regulate solar energy systems within the boundaries of the Town of York to protect residential uses, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of York, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of York.
 - (4) Prior to the adoption of this Article, no specific procedures existed to address the regulation and siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this Article is necessary to direct the location, size and construction of these systems.
 - (5) In addition, the Town Board believes it to be necessary to regulate and govern the proper and timely removal of solar energy systems upon such systems becoming non-functional or when they are no longer being utilized.

B. Definitions. The following definitions shall apply to this section 618:

Applicant - The person or entity submitting an application and seeking an approval under this Article; the owner of a Solar Energy System or a proposed Solar Energy System project; the operator of Solar Energy System or a proposed Solar Energy System project; any person acting on behalf of an Applicant, Solar Energy System or proposed Solar Energy System. Whenever the term “applicant” or “owner” or “operator” are used in this Article, said term shall include any person acting as an applicant, owner or operator.

Building-Integrated Solar Energy System - A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

Building-Mounted Solar Energy System - Any Solar Energy System that is affixed to the side(s) or rear of a Building or other Structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a Building.

Ground-Mounted Solar Energy System - Any Solar Energy System that is affixed to the ground either directly or by support Structures or other mounting devices where such Structure and mounting exists solely to support the Solar Energy System.

Roof-Mounted Solar Energy System - A Solar Energy System mounted on the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface.

Solar Panel - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

Solar Energy Equipment - Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit that are used with Solar Panels to produce and distribute electricity.

Solar Energy System - An electrical energy generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

Type 1 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for onsite consumption or credit for onsite consumption for a building, single-family residence, multi-family residence, business or farm. Said system shall be

considered an Accessory Use (as defined in §508) and an accessory Structure, designed and intended to generate electricity solely for use on the premises, potentially for multiple tenants, through a distribution system that is not available to the public.

Type 2 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for offsite sale to and consumption by one or more customers.

- C. Zoning districts where allowed. Subject to the provisions of this section 618, Solar Energy Systems shall be allowed as follows:
- (1) Building Integrated Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
 - (2) Building-Mounted Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
 - (3) Rooftop-Mounted and Building-Mounted Solar Energy Systems are permitted in all zoning districts, subject to the following:
 - a. The placement, construction and major modification of Roof-Mounted Solar Energy Systems shall only be permitted upon issuance of building permit based on special application materials supplied by the Town Building and Code Department.
 - b. Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions within the zoning district they are located.
 - c. Design standards. Roof-Mounted Solar Energy System installations shall comply with the following design criteria:
 - (i). Solar Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
 - (ii). No part of a Roof-Mounted Solar Energy System shall extend above, beyond, or below the edge of the roof it is mounted to. Additionally, the Code Enforcement Officer may require, at his/ her sole discretion, a minimum three (3) foot wide center walkway for safety access purposes.
 - (iii). If feasible, Solar Energy Equipment shall be installed inside walls and attic spaces to reduce their visual impact.
 - (iv). If feasible, Solar Panels affixed to a flat roof shall be placed below the line of sight from a public right of way.

- (v). Roof-Mounted Solar Energy Systems shall be exempt from site plan review under the Zoning Code, excepting the requirement to obtain a building permit.
- (4) Type 1 Solar Energy Systems are allowed as accessory uses and/or structures in all zoning districts except Planned Development Districts. Type 1 Solar Energy Systems which are to be located in a Planned Development Districts must comply with the requirements of section 409. before the same are permitted.
- a. The placement, construction and major modification of Type 1 Solar Energy Systems shall only be permitted upon issuance of building permit based on special application materials supplied by the Town Building and Code Department.
 - b. Height. Type 1 Solar Energy Systems shall not exceed fifteen (15) feet at the highest point when oriented at maximum tilt.
 - c. Setbacks. Type 1 Solar Energy Systems setbacks shall be twice the standard setbacks for Accessory Buildings or Structures within the zoning district it is located, but in no event shall any such setback be less than twenty (20) feet.
 - d. Coverage. Type 1 Solar Energy Systems ground coverage shall not exceed the allowable total surface or area coverage for Accessory Buildings or structures within the zoning district in which it is located and in no event shall the combination of all Accessory Buildings and structures located on the premises exceed 20% coverage of the entire area of such parcel. For purposes of this provision, coverage shall be calculated based upon the total surface area of the Solar Panels at minimum tilt.
 - e. All Type 1 Solar Energy Systems located in Residential Districts (R), Hamlet Residential Districts (HR) and High Density Residential Districts (HDR) shall be installed in the side or rear yard.
 - f. All applications for Type 1 Solar Energy Systems for businesses or farms, to the extent permitted by law, shall be subject to Site Plan review pursuant to Article XI. Applications for Type 1 Solar Energy Systems for use on residential parcels may be subject to Site Plan review at the

sole discretion of the Code Enforcement Officer.

- g. Pursuant to 6 NYCRR 617.5, Type 1 Solar Energy Systems to be used on residential parcels shall be deemed to be Type 2 Actions for purposes of review under the New York State Environmental Quality Review Act (16 NYCRR 617). All other Type 1 Solar Energy Systems shall be deemed to be Unlisted Actions pursuant to the New York State Environmental Quality Review Act.

(5) Type 2 Solar Energy Systems are permitted in all zoning districts subject to the requirements set forth in this Section, including Site Plan approval pursuant to Article XI, and are allowed only after the issuance of a Special Use Permit pursuant to section 905. D. Applications for the installation of a Type 2 Solar Energy System shall be reviewed by the Zoning Enforcement Officer and referred, with comments, to the Town of York Planning Board (for Site Plan and Special Use Permit) for its review and action, which can include approval, approval on conditions, or denial.

- a. Areas Where Type 2 Solar Energy Systems Are Not Permitted. Type 2 Solar Energy Systems shall not be permitted to be constructed in the following areas:
 - (i). Any property which is listed on either the New York State or National Register of Historic Places.
 - (ii). Any property located to the east of River Road of MacIntyre Road, as such area is deemed to be a view-shed of significant importance within the Town.
- b. Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit the Site Plan application provided to the Planning Board, any information required by section 804. B and 905. D. of the Zoning Code and the following documents and information:
 - (i). If the property of the proposed project is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
 - (ii). Plans and drawings for the Type 2 Solar Energy System signed by a Professional Engineer showing the proposed layout of the solar energy system along with providing a description of all components, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or

erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.

- (iii). Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing buildings or structures and uses on any parcel within 500 feet of the outer perimeter of the Solar Energy System.
 - (iv). Equipment specification sheets shall be provided for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.
 - (v). A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and property upkeep, such as mowing and trimming.
 - (vi). Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of York Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Type 2 Solar Energy System on the site.
 - (vii). Any such additional information as may be required by the Town's professional engineer or consultant, Town of York Planning Board, Town Attorney or Code Enforcement Officer.
- c. Decommissioning Plan. To ensure the proper removal of Type 2 Solar Energy Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Type 2 Solar Energy System is no longer operational or has been abandoned, it shall be removed by the Applicant or any subsequent owner of the improvements. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system.
- (i). Prior to obtaining a building permit, the Applicant must provide a financial security bond (or other form of surety acceptable to the

Town of York at its discretion) for the removal of the Type 2 Solar Energy System, with York as the designated assignee, in an amount approved by the Planning Board which is equal to 110% of the estimated removal cost. The bond or surety shall provide for an annual adjustment for the cost of inflation.

- d. Special Use Permit and Site Plan Approval Standards.
- (i). Height. Type 2 Solar Energy Systems shall adhere to the height requirements of the underlying zoning district.
 - (ii). Setbacks. Type 2 Solar Energy Systems setbacks shall be a minimum of 300 feet from public roadways and adjacent property lines and shall be measured from the solar array panels at lowest elevation.
 - (iii). Lot Size. Type 2 Solar Energy Systems shall be located on lots with a minimum lot size of 25 acres.
 - (iv). Lot Coverage. Type 2 Solar Energy Systems shall not exceed 25% coverage of the lot on which it is installed. The coverage area shall be determined by the area enclosed by the perimeter of the Solar Energy System at minimum tilt.
 - (v). Coverage Restrictions for Prime Agricultural Soils: Type 2 Solar Energy Systems shall not be constructed in a fashion that will cover more than 25% of the total Prime Agricultural Soils located on any lot or parcel. The coverage area shall be determined by the area enclosed by the perimeter of the Solar Energy System at minimum tilt.
 - (vi). Recent Combination of Lots/Parcels. In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions, the Planning Board shall consider the lot or parcel to be the smallest configuration of the physical area where the Type 2 Solar Energy System is being proposed that has existed as a separate lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of York within the five (5) years immediately preceding the application seeking approval for such Type 2 Solar Energy System. This provision is specifically intended to prevent and owner of land from combining lands into larger parcels that would permit siting of larger Type 2 Solar Energy Systems on what would have otherwise been a lot that permitted a smaller Type 2 Solar Energy System with coverage as restricted herein.

- (v). Fencing and Screening. All Type 2 Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. The fencing and the system may be required to be further screened by landscaping to avoid adverse aesthetic impacts.
- (vi). Number of Type 2 Solar Energy Systems allowed per Lot. Only one Type 2 Solar Energy System shall be allowed per Lot, regardless of Lot size.
- (vii). Any Type 2 Solar Energy System shall be accessible for all emergency service vehicles and personnel.
- (viii). After completion of a Type 2 Solar Energy System, the Applicant shall provide a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
- (ix). Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Type 2 Solar Energy System.
- (x). Any application under this Section shall meet substantive Site Plan requirements in Article XI that, in the judgment of the York Town Planning Board, are applicable to the system being proposed.
- (xi). A single public hearing may be held for purposes of the Site Plan application and Special Use Permit application.
- (xii). Prior to determination or issuance of any permit, all Type 2 Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (16 NYCRR 617). The York Planning Board shall conduct the review.
- (xiii). The development and operation of a Type 2 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 York or other federal or state regulatory agencies. The York Town Planning Board and the York Zoning Board of Appeals may impose conditions on its approval of any Site Plan or Special Use Permit under this Article to enforce the

standards referred to in this Article or to discharge its obligations under the State Environmental Quality Review Act.

- (xiv). Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Type 2 Solar Energy System, an Applicant shall obtain a Building Permit within six (6) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twelve (12) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law.
- (xv). General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or Building Permit. After construction is complete, the permit holder of a Type 2 Solar Energy System shall establish a contact person, including name and telephone number for receipt of any complaint concerning any permit, approval, maintenance, or operational requirements.
- (xvi). Inspections. Upon reasonable notice, the Town of York Code Enforcement Officer, or his or her designee, may enter a Lot on which a Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Twenty-four (24) hours' notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Type 2 Solar Energy System shall be inspected by a New York State licensed Professional Engineer that has been approved by the Town of York at any time upon a determination by the Town's Code Enforcement Officer that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder and shall be reimbursed to the Town of York within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of York reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Solar Energy System is located.

- D. General regulations. The placement, construction and major modification of all Solar Energy Systems within the boundaries of the Town of York shall be permitted only as follows:
- (1) Any inconsistent provisions of the Code of the Town of York which purport to or may be interpreted to regulate placement or size of Solar Energy Systems are hereby superseded.
 - (2) All Solar Energy Systems existing on the effective date of this section 618 shall be “grand fathered” and allowed to continue as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance on pre-existing systems shall comply with the requirements of this section.
 - (3) No Solar Energy System shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
 - (4) Any applications (including variance applications) pending for Solar Energy Systems on the effective date of this article shall be subject to the provisions of this section 618
 - (5) This section 618 shall take precedence over any inconsistent provisions of the Zoning regulations contained within the Code of the Town of York.
 - (6) The owners or developers of all Type 2 Solar Energy Systems shall be required to enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). Upon the owner or developer providing written notification to the Town of its intent to construct a Type 2 Solar Energy System, the Town Assessor on behalf of the taxing jurisdiction shall notify such owner or developer in writing within sixty (60) days of its intent to require a contract for payments in lieu of taxes.
 - a. In no event shall such payment in lieu of tax agreement operate for a period of more than fifteen (15) years, commencing in each instance from the date on which the benefits of such exemption first become available and effective under Real Property Tax Law §487.
 - b. In no event shall such payment in lieu of tax agreement require annual payments in an amount that would exceed the amount that would otherwise be payable but for the exemption under Real Property Tax Law §487.

E. Abandonment and Decommissioning.

- (1) If the use of an approved Solar Energy System is discontinued, the owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. In any case, Solar Energy Systems are considered inoperative and abandoned after 90 days without electrical energy generation which is consumed onsite (or credit for onsite consumption is received) for Type 1 Solar Energy Systems or without production of energy for offsite sale to and consumption by one or more customers for Type 2 Solar Energy Systems.
- (2) Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Town Code Enforcement Officer, who shall provide the permit holder/owner with written notice by personal service or certified mail. Any appeal by the permit holder/owner of the Code Enforcement Officer's determination of abandonment or inoperability shall be filed with the Town of York Zoning Board of Appeals within thirty (30) days of the Code Enforcement Officer causing personal service or mailing certified mail his written determination upon the permit holder/owner and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 91 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals and/or permits granted or issued for the Solar Energy System shall automatically expire.
- (3) Removal. All Solar Energy Systems (and related infrastructure) shall be dismantled and removed immediately from a Lot where the Special Use Permit or Site Plan approval has been revoked by the Town of York Zoning Board of Appeals or the Town Planning Board respectively, or if the Solar Energy System has been deemed by the Code Enforcement Officer to be inoperative or abandoned for a period of more than 90 days and the Lot shall be restored to its pre-development condition. All such costs of removal shall be the sole responsibility of the permit holder and/or owner of the Solar Energy System. If the permit holder and/or owner does not dismantle and remove said Solar Energy System as required, the Town Board may, after a hearing at which the permit holder/owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and levy all related expenses associated with the removal onto the real property tax bill associated with the property upon which the Solar Energy System was located, regardless of who the permit holder is/was.
- (4) Removal of all Type 2 Solar Energy Systems shall be in accordance with the Decommissioning Plan required by section 618 C. (5) c. above. In the event

that Applicant or the then owner of the Type 2 Solar Energy System fails to remove all equipment, infrastructure or appurtenances thereto, the Town shall be permitted at its sole discretion utilize the financial security bond (or other form of surety) provided for in the Decommissioning Plan or to exercise its right after notice as provided for above, to dismantle and remove said facility and levy all related expenses associated with the removal onto the real property tax bill associated with the property upon which the Solar Energy System was located, regardless of who the permit holder is/was.

F. Revocation.

If the Applicant violates any of the conditions of its Special Use Permit, Site Plan approval or violates any other local, state or federal laws, rules or regulations, such violation shall be grounds for revocation of the Special Use Permit or Site Plan Approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of York Zoning Board of Appeals holds a hearing to determine if the Applicant has violated the terms of its approved Special Use Permit or Site Plan.

G. Interpretation; conflict with other law.

In its interpretation and application, the provisions of this Article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. This Article is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that whenever the requirements of this Article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards shall govern.

H. Severability.

If any section, subsection, phrase, sentence or other portion of this Article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

I. Effective Date.

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