COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

BILL NO. 2024-8

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND AMENDING CHAPTER 155 (ZONING) OF THE DORCHESTER COUNTY CODE FOR THE PURPOSES OF REPEALING AND REENACTING § 155-50(LL) TO PROVIDE FOR ACCESSORY, SMALL SCALE, AND UTILITY SCALE SOLAR ENERGY SYSTEMS, ADOPTING REGULATIONS REGARDING THE SAME, DEFINING TERMS ASSOCIATED THEREWITH, AND AMENDING THE TABLE OF PERMITTED USES BY ZONING DISTRICT REGARDING SOLAR ENERGY SYSTEMS; PROVIDING THAT THE TITLE OF THIS BILL SHALL BE DEEMED A FAIR SUMMARY, AND GENERALLY RELATING TO SOLAR ENERGY SYSTEMS IN DORCHESTER COUNTY, MARYLAND.

WHEREAS, pursuant to Md. Code Ann., Land Use § 4-204 and § 155-5(A)(1) of the Dorchester County Code (the "County Code"), the County Council of Dorchester County, Maryland (the "County Council") is authorized and empowered to adopt and amend the regulations, restrictions, definitions, districts, classifications, and boundaries set forth in Chapter 155 (Zoning) of the County Code ("Chapter 155"); and

WHEREAS, following a public hearing held on September 4, 2024, the Dorchester County Planning Commission (the "Planning Commission") recommended that the County Council approve a text amendment amending Chapter 155 (Zoning) of the Dorchester County Code for the purposes of repealing and reenacting § 155-50(LL) to provide for accessory, small scale, and utility scale solar energy systems, adopting regulations regarding the same, defining terms associated therewith, and amending the Table of Permitted Uses by Zoning District regarding solar energy systems; and

WHEREAS, on October 15, 2024, the County Council held a public hearing regarding the foregoing text amendment recommended by the Planning Commission, notice of which was published on September 28, 2024, and October 5, 2024, in the Star Democrat, a newspaper of general circulation in the County, in accordance with Md. Code Ann., Land Use § 4-203(b) and § 304(b) of the Dorchester County Charter; and

WHEREAS, having considered the recommendations of the Planning Commission and the Department of Planning and Zoning Staff, as well as the comments made during the September 4, 2024, public hearing, the County Council finds that it is in the best interest of the County to amend Chapter 155 (Zoning) of the Dorchester County Code for the purposes of repealing and reenacting § 155-50(LL) to provide for accessory, small scale, and utility scale solar energy systems, adopting regulations regarding the same, defining terms associated therewith, and amending the Table of Permitted Uses by Zoning District regarding solar energy systems; and

WHEREAS, the County Council finds that the text amendment set forth herein is necessary to promote and protect the public health, safety, and welfare.

SECTION ONE: Acting under Md. Code Ann., Land Use § 4-204 and § 155-5(a)(1) of the Dorchester County Code, be it enacted and ordained by the County Council Of Dorchester County, Maryland that Chapter 155 of the Dorchester County Code entitled "Zoning," § 155-50(LL), entitled "Solar energy systems, utility scale" be and it is hereby repealed in its entirety and replaced with a new § 155-50(LL), to read as follows:

Chapter 155

ZONING

* * *

§ 155-50. Supplementary use regulations.

* * *

LL. Solar Energy Systems

(1) Purpose. The purpose of this section is to facilitate the installation and construction of solar energy systems in Dorchester County for private landowners, subject to reasonable restrictions, which will preserve and protect the public health, safety and welfare.

(2) Applicability. The requirements of this section shall apply to all solar energy systems proposed after the effective date of this section. Solar energy systems for which a required permit has been properly issued prior to the effective date of this section shall not be required to meet the requirements of this section.

(3) Owner defined. Except where expressly stated otherwise, as used in this section, the term "owner" shall mean and refer to the fee simple owner(s) of the real property upon which a solar energy system is to be sited and the owner(s) of the solar energy system itself. Any obligations imposed by this section upon an "owner" shall be jointly and severally imposed upon the fee simple owner(s) of such real property and the owner(s) of such solar energy system, if such owner(s) are separate individuals or legal entities.

(4) Standards. A solar energy system shall be allowed in the permitted zoning districts subject to all of the following requirements, any of which may be modified by the Board of Zoning Appeals upon good cause shown and a finding that such modification(s) would not be contrary to the public health, safety or welfare nor detrimental to adjacent and neighboring properties:

(a) Setbacks. All structures related to the solar energy system shall be set back a minimum of 75 feet from all property lines. All structures related to the solar energy system shall

be set back from any Scenic Byway for a minimum of 100 feet from all property lines. This requirement does not include perimeter fencing from:

[1] Any State or County right-of-way or the nearest edge of a State or County roadway, whichever is closer;

[2] Any right of ingress or egress on the property upon which the solar energy system is to be located; and

[3] Any overhead and/or underground utility lines. Service lines owned by a private property owner of the land on which the service lines sit are exempt from the setback.

[4] Allow perimeter fencing up to eight (8) feet in height, by right.

(b) Approval and installation.

[2] A site plan shall be submitted for review and approval by the Planning Commission when a special exception is required.

[3] All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

[4] Site plans must identify soil quality and crop usage, prior to development.

[5] No topsoil shall be removed from a property to be developed for solar energy.

[6] Buffer. The site plan shall include a vegetative buffer for the visual screening of active portions of the solar energy system, including all related structures and appurtenances. The Director of Planning may waive the requirement for a vegetative buffer if they determine that sufficient vegetation is already in place on site or adjacent to the site. The vegetative buffer is to be established as follows:

[a] A minimum of three staggered rows of plant materials with ten-foot center spacing shall be placed at a width of ten feet to 20 feet between rows. The farthest row from the solar energy system must consist of evergreen trees.

[b] Plant material is to be a minimum of at least one gallon stock, or approximately 18 inches when planted.

[c] Buffers shall be installed in accordance with best management practices in order to ensure growth and plant material survival.

[d] All required buffers shall be preserved and maintained so as to effectively provide visual screening. Dead or dying buffer materials shall be replaced with similar plant materials of a similar size on an annual basis.

[e] Modifications to approved buffers may be made by the zoning administrator.

[f] If a vegetative buffer is required, a performance bond or other financial guaranty, in a form acceptable to the Department and in an amount of 125 percent of the buffer's value, shall also be required. The guaranty must remain continuously in effect for a period of two years, at which time the Department shall inspect the buffer to determine its viability. If the Department is satisfied that the buffer is viable, it shall release the guaranty. Any dead or dying material shall be replaced, and the Department shall withhold a portion of the guaranty that it deems sufficient to defray the cost of such replacement for an additional period of two years. Upon reinspection of the replaced material, if the Department is satisfied that the buffer is viable, it shall release the guaranty. Notwithstanding the foregoing, the Department reserves the right to inspect and require replacement of the buffer or any portion thereof for the duration of the life of the solar energy system, at the owner's sole cost and expense. The owner's failure to maintain the buffer as aforesaid shall constitute a violation of this Chapter and shall, among any other remedies, entitle the County to revoke any special exception which has been granted as well as any certificate of occupancy.

[7] A vegetative ground cover shall be provided within the solar array. The ground cover shall consist of species native to Dorchester County. Species deemed to be invasive or noxious shall be prohibited.

[8] If the proposed solar energy system receives approval by the Board of Zoning Appeals, the applicant shall obtain a building permit from the County and comply with all standards and requirements therein. Additional submittals may be required by other County departments and/or State agencies.

(c) Code compliance. A solar energy system shall comply with all applicable provisions of this Code, including, but not limited to, applicable building and electrical codes.

(d) Utility notification and interconnection. A solar energy system that connects to an electric utility shall comply with applicable State laws and regulations.

(e) Noise. A solar energy system shall comply with Chapter 115 (Noise) of the County Code, as well as all noise regulations promulgated by the Maryland Department of the Environment.

(f) An accessory solar energy system shall be allowed in all zoning districts and shall not be subject to the regulations set forth in this section; provided, however, that an accessory solar energy system shall obtain a County building permit prior to installation.

(g) When a Certificate of Public Convenience and Necessity from the Maryland Public Service Commission is sought to construct a solar energy system in the County, a representative from the Department shall attend all meetings and hearings relating thereto. Additionally, the representative shall provide comment to the Maryland Public

Service Commission regarding the proposed system and its compatibility with this section.

(5) Decommissioning.

(a) A decommissioning plan is required to be submitted and approved by the Department prior to the application for a building permit. Amendments to the plan prior to decommissioning must also be approved by the Department.

(b) The owner must notify the Department in writing of an intent to decommission at least 45 days in advance. Once the written notice of intent to decommission has been filed with the Department, it may not be revoked.

(c) Decommissioning must begin within three months of either of the following conditions, unless a plan for its continuing use has been provided to, and approved by, the Department:

[1] The solar energy system has been damaged to such an extent that it will not be replaced or repaired; or

[2] Upon the abandonment of the solar energy system by the owner, as determined by the Department.

(c) Decommissioning shall be completed within one year of the filing of the notice of intent to decommission, unless decommissioning is being conducted by the County.

(d) Following decommissioning, the Department shall perform an inspection of the property(s) to determine adequacy of the decommissioning and adherence to the decommissioning plan before any financial surety will be released.

(e) Decommissioning plan elements must include, but are not limited to:

[1] Decommissioning cost estimates;

[2] Removal of all above ground structures including, but not limited to: solar panel arrays, inverters and transformers, concrete pads, internal roads materials, fencing and other debris;

[3] Removal of underground wiring and other structures;

[4] A plan for decommissioned material that includes reclamation, salvage, recycling and disposal;

[5] Restoration of the property(s) to a similar or better condition than at the time of

installation, including, but not limited to, reseeding, tilling, or reforesting;

[6] An approved bond or other financial guaranty for the approved estimated cost for decommissioning; and

[7] If the land on which the proposed solar energy system is to be located is leased, a copy of the lease agreement between the lessee and lessor.

(f) A decommissioning cost estimate must accompany the decommissioning plan and be prepared by a Maryland licensed engineer at the owner's sole cost and expense. The decommissioning cost estimate must be updated every five years or upon a change in either the lessee or lessor of the property, if applicable, by a Maryland licensed engineer at the owner's sole cost and expense and submitted to the Department. If the change in the estimated cost of decommissioning exceeds the current bond or other financial guaranty, then the bond or other financial guaranty must be increased to reflect the new estimated costs. Before decommissioning can begin, a decommissioning cost estimate must be prepared by a Maryland licensed engineer, at the owner's sole cost and expense, regardless of the amount of time that has passed since the prior cost estimate. If the change in the estimated cost of decommissioning exceeds the current bond or other financial guaranty, then the bond or other financial guaranty shall be increased to reflect the new estimated costs. The Department may prepare its own decommissioning cost estimate, with all costs to be borne by the owner. No calculation of components or material shall be sold as a profit and/or consideration of value.

(g) Financial surety.

[1] Once a decommissioning cost estimate has been determined and approved by the Department, the owner shall provide a performance bond or other financial guaranty, in a form acceptable to the Department, in the amount of the estimated decommissioning cost and which must remain continuously in effect until decommissioning has been completed and approved by the Department. Such bond or other guaranty shall not be subject to termination for any reason, including but not limited to the owner's financial condition, nonpayment of bond premium or assignment or sublease of the land or solar energy system. The bond or other guaranty must be amended in accordance with the decommissioning cost estimate prepared every five years.

[2] The Department shall not issue a building permit for the solar energy system until the decommissioning plan and estimated decommissioning cost have been determined and approved as provided hereinabove and the approved bond or other financial guaranty is effective and has been tendered to the County.

[3] The owner's failure to continuously maintain in effect an approved bond or other financial guaranty for the approved estimated cost shall constitute a violation of this Chapter and shall, among any other remedies, entitle the County to revoke any special exception which has been granted as well as any certificate of occupancy.

(6) Public Service Commission. Any owner seeking to construct a solar energy system for which an approval from the Maryland Public Service Commission is required under Md. Code Ann., Public Utilities § 7-207.1, as amended, shall obtain such approval from the Maryland Public Service Commission and provide documentation thereof to the County prior to construction of, and being issued a permit for, the solar energy system.

SECTION TWO: Be it further ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155 of the Dorchester County Code entitled "Zoning," § 155-13, entitled "Terms defined" be and it is hereby amended as follows:

§ 155-13 Terms defined.

* * *

SOLAR ARRAY

A structure containing one or more receptive cells or panels for the purpose of converting solar energy into usable electrical energy by way of a solar energy system.

SOLAR ENERGY SYSTEM

Solar collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware, or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation, and distributed. Solar energy systems include solar thermal and photovoltaic systems.

SOLAR ENERGY SYSTEM, ACCESSORY SCALE

A solar energy system designed and intended to provide electricity for the principal use of a lot and/or a use that is incidental and subordinate to the principal use of a lot. An accessory solar energy system may serve residential, commercial, agricultural, industrial, or institutional uses and may either be located on the same lot as such use and/or an adjacent lot under common ownership.

SOLAR ENERGY SYSTEM, SMALL SCALE

A solar energy system with a rated capacity of up to two megawatts of power and that is connected to the electric distribution grid serving the State of Maryland.

SOLAR ENERGY SYSTEMS, UTILITY SCALE

~~Any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any structure or device which collects sunlight for generating energy primarily for use off site. Energy generated may be used to serve on-site~~

~~power needs~~ **A solar energy system with a rated capacity of more than two megawatts of power, that is connected to the electric distribution grid serving the State of Maryland, and for which a Certificate of Public Convenience and Necessity is required from the Maryland Public Service Commission**.

SECTION THREE: Be it further enacted and ordained by the County Council of Dorchester County, Maryland that Chapter 155 of the Dorchester County Code entitled "Zoning," Attachment 1, Table of Permitted Uses by Zoning District, be and it is hereby amended to provide that accessory scale solar energy systems shall be a permitted accessory use in all Zoning Districts, that small scale solar energy systems shall be permitted by special exception in the Resource Conservation, Agricultural Conservation, Agricultural Conservation-Resource Conservation Area, General Business, Light Industrial, and Heavy Industrial Zoning Districts, and as follows:

Use Category	Use	Includes/Excludes	Requirements
Utilities	**Small Scale and Utility Scale** Solar Energy Systems~~, Utility Scale~~	~~Includes:~~ ~~1. Solar collection of devices or combination of devices such as large scale ground-mounted solar photovoltaic array installations.~~ ~~2. Solar energy systems, utility scale, sites must be on a lot or parcel that is a minimum of 25 acres or more in size~~	See supplementary use regulations for **small scale and utility scale** solar energy systems ~~utility scale~~
Utilities	**Accessory Solar Energy Systems**		**See supplemental use regulations for accessory solar energy systems**

SECTION FOUR: And be it further enacted and ordained that if any section, subsection, sentence, clause, phrase, or portion of this Bill is for any reason held invalid or unconstitutional 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 of this Bill, it being the intent of the County Council that this Bill shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION FIVE: And be it further enacted and ordained that all bills, ordinances, or parts thereof inconsistent with the provisions of this Bill are hereby repealed to the extent of such inconsistency.

SECTION SIX: Pursuant to the Acts be it further enacted and ordained by the County Council of Dorchester County, Maryland that General Code Publishers is directed to codify the above amendments to Chapter 155 of the Dorchester County Code accordingly.

SECTION SEVEN: And be it further enacted and ordained pursuant to § 308 of the Charter of Dorchester County, Maryland that promptly after enactment of this Act, the County Manager shall

cause a fair summary of this Act to be published at least once in a newspaper of general circulation in Dorchester County, Maryland.

SECTION EIGHT: And be it further enacted and ordained by the County Council of Dorchester County, Maryland that this Bill shall be known as Bill No. 2024-8 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage.

PASSED this _____ day of _____, 2024.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

BY: _____
Jerry Jones, County Manager

BY: _____
George L. Pfeffer, Jr., President

Pfeffer –

Detmer –

Kramer –

Nichols –

Travers –