**TOWN OF IRVINGTON**

**ORDINANCE AMENDMENT #2022-06.uc**

**An Ordinance Amendment To Prohibit Utility Scale Solar Facilities and Motorized Skateboards and Scooters for Hire, and to Update Zoning Definitions of Variance and Accessory Use and Unpermitted Uses**

**WHEREAS,** having considered matters relevant and/or appropriate to consider,the Town Council of Irvington, Virginia, believes it is appropriate to expressly prohibit utility scale solar facilities and motorized skateboards and scooters for hire in the Town of Irvington as inconsistent with the comprehensive plan and inappropriate for the health, safety and welfare of citizens and visitors of the Town, to reflect updated definitions and state code provisions, and accordingly, amend the Irvington zoning ordinance; and

**WHEREAS**, the legal authority for the proposed amendment is the Town Charter and §§ 15.2-2201, 15.2-2280, 15.2-2285 and 15.2-2286 of the Code of Virginia (1950), as amended.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED,** that the Town Council of the Town of Irvington, Virginia does hereby amend the Town code and zoning ordinances as follows:

**TITLE XV: LAND USAGE**

**Chapter 154. ZONING**

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§ 154.004 DEFINITIONS.

(A) For the purpose of this chapter, certain words and terms used herein shall be interpreted or defined as follows. Words used in the present tense include the future, words in the singular number include the plural, and the plural, the singular, unless the natural construction of the word indicates otherwise; the word “lot” includes the “parcel;” the word “shall” is mandatory and not directory; the word “approve” shall be considered to be followed by the words “or disapproved;” any reference to this chapter includes all ordinances amending or supplementing the same; all distance and areas refer to measurement in a vertical or horizontal plane.

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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*MOTORIZED SKATEBOARD OR SCOOTER FOR HIRE* means every vehicle, regardless of the number of its wheels in contact with the ground, that (i) is designed to allow an operator to sit or stand, (ii) has no manufacturer-issued vehicle identification number, (iii) is powered in whole or in part by an electric motor, (iv) weighs less than 100 pounds, (v) has a speed of no more than 20 miles per hour on a paved level surface when powered solely by the electric motor, and (vi) is available for hire or for any form of compensation to the owner or operator. “Motorized skateboard or scooter” includes vehicles with or without handlebars but does not include “electric personal assistive mobility devices”, as defined in Virginia Code §46.2-100.

*….*

USE, ACCESSORY. A subordinate use customarily incidental to and located upon the same lot occupied by the primary permitted use~~main house~~. An accessory use may not be either (i) a prohibited use under § 154.018 or (ii) a permitted or conditional use listed elsewhere in the zoning ordinance.

UTILITY-SCALE SOLAR GENERATION FACILITIES. Solar generation facilities and equipment designed alone or in conjunction with other facilities and equipment to produce one (1) or more megawatt of electricity per day and to transfer or sell electricity generated to the electrical grid.

VARIANCE. In the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning. ~~A relaxation of the terms of the zoning ordinance granted by the Board of Zoning Appeals where such VARIANCE will not to contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this chapter, a VARIANCE is authorized only for height, area and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by VARIANCE, nor shall a VARIANCE Zoning 93 be granted because of the presence of nonconformities in the zoning division or district or adjoining zoning divisions or districts. The Virginia Supreme Court has made it clear (Cochran v. Fairfax County Board of Zoning Appeals, 594 S.E. 2d 571) that for a locality’s Board of Zoning Appeals to grant a VARIANCE from the zoning ordinance, the landowner applying for the VARIANCE must prove that not granting the variance would deprive him or her of ah use of the property. Therefore, the Court has made it clear that unless the ordinance would deny the use of the property, the BZA lacks any jurisdiction to grant a VARIANCE.~~

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§ 154.018 USES NOT PROVIDED.

(A) Permitted uses and conditional uses listed in the district regulations shall be permitted in the respective districts, provided they comply with all applicable provisions of this ordinance. All other uses shall be prohibited.

(B) If in any district established under this chapter a use is not specifically permitted and on application is made by a property owner to the Planning Commission for such use, the Planning Commission, in consultation with, and study by, the Zoning Administrator, shall make its recommendations to the governing body within 100 days.

(C)~~(B)~~ If the recommendation of the Planning Commission is approved by the governing body, the chapter shall be amended to list the use as a permitted use in that district in accordance with the provisions contained herein.

(D) Without limiting the generality of § 154.018(A) and any other reference in this ordinance to a prohibited or unpermitted use, the following uses shall be specifically and expressly prohibited in the Town of Irvington:

1. Motorized Skateboards and Scooters for Hire

2. Utility-scale solar generation facilities

**BE IT FURTHER ORDAINED AND ENACTED,** that this ordinance shall take effect immediately upon the second reading hereof.

**ADOPTED: This \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_ 2022.**

**AYES:**

**NAYS:**

**ABSTENTIONS:**

**ABSENT:**

**ATTEST:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Clerk of the Town Council of Irvington, Virginia

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Mayor, Julie Harris