Proposed Local Law No. 1 of 2024
Town of Long Lake Revised Battery Energy Storage System Law

April 22, 2024

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Proposed by Supervisor Clay Arsenault at the Regular Town Board Meeting of April 24, 2024

Section 1 Title

The Title of this local law is: TOWN OF LONG LAKE REVISED BATTERY ENERGY STORAGE SYSTEM LAW

Section 2 Authority

This Revised 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(1) and (7); sections 261-263 of the Town Law; and §10 of the Municipal Home Rule Law of the State of New York; which authorize the Town to adopt laws that advance and protect the health, safety, and welfare of the community.

Section 3 Statement of Purpose

3.1 This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

3.1.1 To provide a regulatory scheme for the use of properties suitable for the location, construction, operation, and decommissioning of battery energy storage systems.

3.1.2 To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.

3.1.3 To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources.

3.1.4 To harmonize statewide and local battery energy storage system development needs and goals of the community consistent with the Town of Long Lake Comprehensive Plan.

3.1.5 To formulate this Local Law in a way that reflects community concerns engendered by the spate of battery electric storage system fires within New York State in the year 2023, the Governor's convening of an interagency Fire Safety Working Group and the Town's declaration by local law of a Battery Electric Storage System moratorium under Local Law 3 of 2023 that was enacted to be effective from its September 2023 effective date and 12 months thereafter.

3.1.6 To herewith repeal and replace Local Law No. 1 of 2023 known as the: TOWN OF LONG LAKE BATTERY ENERGY STORAGE SYSTEM LAW and Local Law No. 3 of 2023 known as the MORATORIUM AMENDMENT TO THE TOWN OF LONG LAKE BATTERY ENERGY STORAGE SYSTEM LAW in their entirety with this Local Law No. 1 of 2024.

Section 4 Definitions

As used in this Local Law the following terms shall have the meanings indicated:

ANSI

American National Standards Institute

BATTERY(IES)

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 law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM

An electronic system that protects energy storage systems 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.

BATTERY ENERGY STORAGE SYSTEM

One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-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:

A) Tier 1 Battery Energy Storage Systems
have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

B) Tier 2 Battery Energy Storage Systems
have an aggregate energy capacity greater than 600kWh 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, is classified as Group F-1 occupancy as defined in 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 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 areas within the buildings that do not contain battery energy storage system, provided the following:
    - The areas do not occupy more than 10 percent (10%) of the building area of the story in which they are located.
    - 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 system equipment.

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.

MODIFICATION

Any change or amendment whatsoever to a permit that is currently in force, including permit transfer.

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.

NON-DEDICATED-USE BUILDING

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

NON-PARTICIPATING PROPERTY

Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE

Any residence located on non-participating 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, daycare 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.

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.

Section 5 Applicability

5.1 The requirements of this Local Law apply to all battery energy storage systems permitted, installed, augmented, or modified in Town after the effective date of this Local Law, excluding general maintenance and repair.

5.2 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 Local Law.

Section 6 General Requirements for All Battery Electric Storage Systems

The general requirements for the installation and operations of all Battery Electric Storage Systems are as follows:

6.1 A building permit, an electrical permit and operating permit for installation of all Tier 1 and Tier 2 Battery Electric Storage Systems as required under the Long Lake Town Code Enforcement Program.

6.2 Permits and approvals by the Town Board for Tier 2 Battery Electric Storage Systems including review pursuant to the State Environmental Quality Review Act (ECL Article 8) and its implementing regulations at 6 NYCRR Part 617.

6.3 All Battery Electric Storage Systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) 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.

6.4 All permits and reviews as may be required by any other state agency including the Adirondack Park Agency, The New York State Departments of Environmental Conservation, Transportation, and Public Service as appropriate. Such approvals and requirements shall be disclosed and provided to the Town in all permit applications.

6.5 Payment of Application Fee under this Local Law and the Operating Fee as specified under the Long Lake Town Code Enforcement Program Building Code Enforcement Schedule of Fees set by Town Board resolution.

6.6 Maintenance of compliance with all approvals, conditions, and permits issued by the Town, Hamilton County, or any state agency including any required approvals for road and highway crossings or right-of-way use as well as the crossing or interference with existing public water supply infrastructure locations.

Section 7 Permitting Requirements for Tier 1 Battery Energy Storage Systems

Tier 1 Battery Energy Storage Systems shall be permitted Town wide, subject to the Uniform Code and the issuance of a Building Permit and an Operating Permit as required under the Uniform Code by the Code Enforcement Officer.

Section 8 Permitting Application and Permit Issuance Requirements and Procedures for Tier 2 Battery Energy Storage Systems

8.1 **Tier 2** Battery Energy Storage Systems are permitted through the issuance of a Battery Storage System Permit for a facility located within the Town and shall be subject to the Uniform Code and Operating Permits under the Uniform Code and this Local Law.

8.2 An Application form shall be issued and revised from time to time by the Code Enforcement Officer. The Town Board may cause development of an application format for any proposed project not yet formally subject to an application consistent with this Local Law.

8.3 Applications for the installation of Tier 2 Battery Energy Storage System shall be submitted to the Town Board and the Code Enforcement Officer.

8.4 The Code Enforcement Officer and Town Board shall review for completeness. The applications shall be complete when they address all matters listed in this Local Law and the Long Lake Code Enforcement Program including, but not necessarily limited to:

8.4.1. compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code;

8.4.2. matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Ownership Changes, Safety, and Permit Time Frame and Abandonment; and,

8.4.3. the execution of an Application Review Funding Agreement pursuant to the terms of **Section 9** of this Local Law.

8.5 Applicants shall be advised within **fourteen (14)** business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review at regular and special Town Board Meetings.

8.6 Upon Determination that a Complete Application has been proposed, the Town Board shall provide for the conduct of a public hearing to hear all comments for and against the application. The Town Board shall have a notice printed in its newspaper of general circulation at **least ten (10) days** in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within one (1) mile of the property at least ten (10) days prior to such a hearing. Proof of the mailing shall be provided to the Town Board before the public hearing. The complete application and all ancillary permit application submissions shall be made available to the public in electronic form by the Town and/or the Applicant at least 7 days prior to the scheduled date of the hearing. Additionally, ten (10) full color paper copies shall be provided to the Town for town officials and consultants and for public access at Town Offices. Additionally, the applicant shall provide proof of provision of the **Fire Safety Compliance Plan** and **Emergency Operations Plan** required under the application to the Local Fire District and the Hamilton County Office of Emergency Management.

8.7 The Town shall ensure referral to the entity handling review pursuant to General Municipal Law § 239-m if required.

8.8 Upon closing of the public hearing, the Town Board shall act on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and Applicant.

8.9 Complete Applications Shall Address These Permit Requirements:

8.9.1 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, except for 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.

8.9.2 Signage

8.9.2.1 The 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 24-hour emergency contact information, including reach-back phone number.

8.9.2.2 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, substations, and switchgear.

8.9.3 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. Occupancy sensors should be used as much as possible to keep lights off when the property is not occupied by human beings.

8.9.4 Vegetation and tree cutting

Areas within thirty feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared and maintained clear of combustible vegetation. Removal of trees should be minimized to the extent possible.

8.9.5 Noise

Except during short-term events including utility outages and maintenance activities, a Tier 2 Battery Energy Storage System shall be designed, installed, and operated so that the Sound Pressure Level generated by it shall not exceed 45 dBA in daytime hours nor 35 dBA at night as measured at the nearest Off-Site Residence existing at the time of approval (including structures under construction at said time) nor more than 5 dBA greater than either the nighttime or daytime pre-application Background Sound level measured in leaf-off conditions for a period of no less than 24 hours. Measurement of Background Sound may also be performed with the system turned off. Applicants may submit equipment and component manufacturers noise ratings to demonstrate anticipated post commissioning compliance. The applicant may be required as part of the commissioning plan 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 actual compliance with this standard. The Town Board may

elect to require sound absorbing fencing. By the time of any hearing upon the application, the applicant must submit pre-project sound level data taken from each corner of the property to establish background sound levels. Data will be required for daytime and nighttime conditions and for weekend and weekday conditions.

8.9.6 Decommissioning

Decommissioning Plan

The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:

8.9.6.1 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.

8.9.6.2 Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

8.9.6.3 The anticipated working life of the battery energy storage system.

8.9.6.4 The estimated decommissioning costs and how said estimate was determined.

8.9.6.5 The method of ensuring that funds will be available for decommissioning and restoration.

8.9.6.6 The method by which the decommissioning cost will be kept current.

8.9.6.7 The manner in which the site will be 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.

8.9.6.8 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.

8.9.6.9 The Decommissioning Plan must be signed by a NYS licensed engineer.

8.9.6.10 The decommissioning plan shall include photographic and/or video coverage of the facility site as it appears prior to development to provide baseline evidence that the site, after decommissioning, is fully restored to its predevelopment condition.

8.9.7 Decommissioning Fund

8.9.7.1 The owner and/or operator of the energy storage system, shall continuously maintain a fund or surety bond payable to the Town, in a form approved by the Town Board for the removal of the battery energy storage system, in an amount to be determined by the Town Board, for the period of the life of the facility. Such amount shall be annually adjusted according to the terms established in the permit using the U. S. Department of Labor Producer Price Index **(PPI)** keyed to new construction. A portion of the Decommissioning Fund may be satisfied with a letter of credit from a New York licensed bank. All costs of the financial security shall be borne by the applicant.

8.9.7.2 The Decommissioning Funding instrument established under the Permit issued under this Local Law and each renewed Operating Permit shall be in place and operative prior to commencement of construction and thereafter.

8.9.8 Firefighting Water Supply

The applicant shall demonstrate in its application that either the proposed project site is within an area served by adequate fire flow from existing hydrants or water bodies, or alternatively that the applicant has designed and shall provide for constructed fire protection and fire suppression systems adequate to protect adjacent forest land and built structures from any fire emanating from the project site.

Section 9 Application Review Funding Agreement

Operating Permit Fees and Building Code Permit Fees are stated by Town Board Resolution for the Code Enforcement Program. The Tier 2 Battery Electric Storage System application fee required under this Battery Electric Storage Local Law shall include a base amount determine by multiplying the proposed system's rated storage capacity in kWh times $2.50 per kWh which sum shall be paid with the initial proposed application. Thereafter, the applicant and the Town shall enter into a funding arrangement for application review consistent with the following terms and conditions:

9.1 The applicant shall be responsible for all extraordinary expenses of the Town connected to review, development, issuance, denial, and monitoring of compliance with the terms of any such permit issuance under Local Law 1 of 2024 and the uniform code.

9.2 Applications for permits shall not be deemed complete until the negotiation and final execution of an Application Review Funding Agreement ("Agreement") between the Town and the Applicant.

9.3 The Agreement shall be enforceable with expedited enforcement provisions such as those under the NY CPLR § 3218 (Judgement by Confession) or a substantial financial undertaking in the form of a surety. The prevailing party in any action to recover fees established according to the Agreement shall be entitled to attorney's fees and costs.

9.4 Default by the applicant in making timely payment under the Agreement shall result in immediate halt for at least 30 days in any permit review processing.

9.5 Default in making timely payment under the Agreement, beyond 60 days shall result in either termination of the review process or a permit denial.

9.6 The Agreement may have protective language to ensure only good faith charges against the Application Review Account ("Account") as established under the Agreement contemplated under this Local Law including provision for maximum hourly rates for various professional expert categories, audit, and review by the Applicant of charges against the Account and any other reasonable terms and conditions as mutually agreed by the Town and the Applicant.

9.7 Reimbursable expenses that may be charged against the Account shall be extraordinary costs to the Town and not standing costs for the use of Town facilities, use of the Town website for public notices or the engagement of its elected officials for permit review. However, extra legal costs for time expended by the Town Attorney, outside counsel, and Town-engaged outside technical consultants will be considered chargeable expenses as established in the Agreement.

9.8 The Account shall be kept funded by the applicant on an advanced basis to allow the Town to make timely reimbursement of its engaged outside experts, stenographers, and direct cost for notice publications in its official newspaper.

Section 10 Other Application Content

Battery Energy Storage System applications for a Tier 2 Battery Energy Storage System shall include the following information submitted by a responsible individual who shall certify appropriate parts of the information represented to the Town under penalty of perjury. Prior to the issuance of the building permit or final approval by the Town Board, but not required as part of the initial application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer. Specific application contents shall include:

10.1 Property lines and physical features, including roads, for the project site.

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

10.3 A 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.

10.4 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 the building permit.

10.5 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 regarding the final system installation shall be submitted prior to the issuance of the building permit.

10.6 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.

10.7 Adirondack Park Agency land use designations for the parcel(s) of land comprising the project site.

10.8 Commissioning Plan. 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 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 Code Enforcement Officer and Town Board prior to final inspection and approval and maintained at an approved on-site location.

10.9 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.

10.10 Operation and Maintenance Manual. This 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.

10.11 Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town of Long Lake.

10.12 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:

10.12.1 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.

10.12.2 Procedures for inspection and testing of associated alarms, interlocks, and controls.

10.12.3 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.

10.12.4 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.

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

10.12.6 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.

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

10.12.8 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.

10.13 Maps and Installation Layout with Required Setbacks showing that setbacks for the proposed Tier 2 Battery Energy Storage System is at least one hundred eighty-three (183) feet from the center of the approved and accepted Town, County, or State Highway. If said lot is a corner lot, said requirements apply to each highway. The setback shall be at least one hundred fifty (150) feet from any lot line of a parcel not owned or leased by the applicant or utility company, or greater if necessary to meet sound requirements. The setback shall be at least one thousand (1,000) feet from any sensitive area (flood plain, lake, wetland, historical structure/district, *etc*.). Setbacks shall be at least five hundred (500) feet from the adjacent parcel property line.

10.14 Profile and installation diagrams that show a maximum height for the proposed Tier 2 Battery Electric Storage System that will comply with a maximum height limit of ten (10) feet.

10.15 Plan and representative architectural renderings of fencing for Tier 2 Battery Energy Storage Systems mechanical equipment to be enclosed by a 7-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.

10.16 Plan and representative architectural renderings of proposed screening and visibility barriers designed to minimize views from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

Section 11 Ownership Changes, Transfers, and Modifications

11.1 Modification of an operating permit must be sought if the operator will increase the capacity of the Battery Electrical Energy Storage Facility by more than twenty percent (20 %), or if it will increase the footprint of the facility by more than two percent (2%) or if there is a proposed a change in the chemistry of the cells for the batteries, or if fire suppression system will be installed. Additionally, if the owner/operator proposes to augment the existing Battery Energy Storage System back to its original capacity this is deemed a modification. Operating permit modifications require an application submitted to the Code Enforcement Officer at least one-hundred-eighty (180) days in advance of the proposed changes. Additionally, if such modifications trigger building permit requirements, building permit applications may also be required by the Town.

11.2 The Town may request and/or initiate a permit modification proceeding if there are noise or other environmental emissions detected that exceed the operating permit level or if there are significant land use changes within the area of the Battery Electric Storage Facility that will require re-evaluation of the noise and emergency operation and Safety operation plans.

11.3 Applications for the transfer of operating permits in effect, or for operating permits under a pending application review process to a different permittee or applicant, or to change the name of the permittee or applicant, must be submitted on a form prescribed by the Code Enforcement Officer and must be done in consideration of the following:

11.3.1 Applications should be submitted at least thirty (30) days prior to transfer.

11.3.2 The applicant for permit transfer proposes no significant change in the design or operation of the previously approved project that was permitted.

11.3.3 The new permittee must satisfy required financial obligations and insurance coverage.

11.3.4 Any noncompliance by the existing permittee, associated with the permits proposed to be transferred, must be resolved to the Town's satisfaction.

11.4 Modifications, including transfers of ownership, under an Operating Permit Change application shall at minimum result in in conditions which provide for the continuation of all operating conditions, provision for the successor owner or operator to assume all the obligations of the Battery Electric Storage System permit, and decommissioning plan. An application to transfer ownership or operation must be provided to the Code Enforcement Officer at least 30 days ahead. The Battery Electric Storage System permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required time. Reinstatement of a void Battery Electric Storage System permit will be subject to the same review and approval processes for new applications under this Local Law.

Section 12 Operating Permits

Operating Permits for Tier 2 and some larger Tier 1 Battery Electric Storage Systems are Required under the Uniform Code and the Town's Code Enforcement Program (Local Law 2 of 2022).

Under the Uniform Code the term for such operating permits may be no longer than three (3) years and are subject to shorter terms at the discretion of the Town Board or the Code Enforcement Officer. An application for a new, revised or renewed Operating Permit must be submitted to the Code Enforcement Officer at least one-hundred-eighty (180) days prior to expiration or the proposed modification or transfer of such operating permit.

Section 13 Safety Certification Prior to Commissioning

A Safety Certification under seal of a New York State Licensed Professional Engineer shall be submitted to the Town Board and Code Enforcement Officer prior to the day of commissioning. Such certification shall cover representations that:

13.1 All equipment installed is listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

13.1.1 UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications)

13.1.2 UL 1642 (Standard for Lithium Batteries)

13.1.3 UL 1741 or UL 62109 (Inverters and Power Converters)

13.1.4 Certified under the applicable electrical, building, and fire prevention codes as required.

13.1.5 Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

13.1.6 Battery Energy Storage Systems, components, and associated ancillary equipment have the required working space clearance, and electrical circuitry are contained within weatherproof enclosures having a minimum environmental rating of IP65 and in compliance with NFPA 70.

13.1.7 All insulating materials associated with Battery Energy Storage Systems are non-combustible.

13.2 An Operating Permit issued under this Local Law and the Code Enforcement Local Law (Local Law 2 of 2022) shall only become effective upon the Code Officer's determinations of the execution of a successful commissioning plan and the receipt of the Certifications required under this section.

Section 14 Site Access

Battery energy storage systems in the Town shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and the local Emergency Medical Service operation.

Section 15 Permit Period and Abandonment

15.1 The Battery Electrical Energy System Permit issued under this Local Law shall be valid for a period of twenty-four (24) months, provided that a building permit is issued for construction and construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board within twenty-four (24) months after approval, the Town may extend the time to complete construction for one-hundred eighty (180) days. If the owner and/or operator fails to perform substantial construction after thirty-six (36) months, the approvals shall expire.

15.2 The 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, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

Section 16 Enforcement

16.1 Any violation of this Battery Energy Storage System Law and of any building permit or operating permit issued under the Town's local law establishing a local government code enforcement program shall be subject to the same enforcement provisions as provided in the Long Lake Town Local Law Establishing a local Government Code Enforcement Program. Notwithstanding the foregoing, any Person who violates any

provision of this local law, or any term or condition of any Permit, issued under this local law, shall be liable to pay a civil penalty or criminal penalty of not more than $250 for each day or part thereof during which such violation continues. The penalties provided by this paragraph shall be recoverable in an action instituted in the name of this Town or the People.

16.2 Processing and reviewing of an application may be suspended by written notice to the applicant if an enforcement action has been or is commenced against the applicant for alleged violations of the Town Code or any other state environmental law. The alleged violations that can cause suspension of permit review are those related to the operation of the Battery Electric Storage System. Such suspension of processing and review may remain in effect pending final resolution of the enforcement actions.

Section 17 Variances

17.1 Any applicant or perspective applicant under this local law may petition the Department of State pursuant to 19 NYCRR Part 1205 for relief of any provision or requirement of the Uniform Code made applicable by the Uniform Code.

17.2 For requirements established by this Local Law which are more stringent than the Uniform Code or which are wholly based upon the Local Law establishment of project requirements, the applicant who has otherwise submitted a complete application and executed an Application Review Funding Agreement pursuant to Section 9 of this Local Law may submit an application for a variance under this Local Law to the Town Board.

17.3 The Town Board may vary or modify, in whole or in part, any provision or requirement of the Local Law where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted. Any such variance or modification shall not substantially adversely affect provisions for health, safety, and security; and equally safe and proper alternatives may be prescribed. When deciding whether to approve a variance or modification, the Town Board shall have the authority to fashion suitable additional mitigating requirements as a condition to granting the variance or modification, so as to protect the Town from the hazards of fire and inadequate system construction. The party seeking the variance or modification shall show by the weight of the evidence that, in the particular case before the Town Board that strict compliance with the particular provision or requirement:

17.3.1 would create an excessive and unreasonable economic burden;

17.3.2 would not achieve the Uniform Code's or this Local Law’s intended objective;

17.3.3 would inhibit achievement of some other important public policy;

17.3.4 would be physically or legally impracticable;

17.3.5 would be unnecessary either in light of alternatives which ensure the achievement of the Uniform Code's or Local Law’s intended objective or in

light of alternatives which, without a loss in the level of safety, achieve the Uniform Code's or this Local Law's intended objective more efficiently, effectively, or economically; or

17.3.6 would entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the Uniform Code or this Local Law.

Section 18 Severability

If any section, subsection, paragraph, sentence, clause, provision, or phrase of the sections of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, as declared by the valid judgment of any court of competent jurisdiction, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law which shall remain in full force and effect.

Section 19 Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

[End of Proposed Local Law Text]