

INTRODUCTORY LOCAL LAW #3-2023

Resolution #117 Motion made by Councilperson Yager and seconded by Councilperson Voelkl to approve Introductory local law #3-2023

WHEREAS, the Town Board of the Town of Hamlin did heretofore hold and conduct a Public Hearing to consider the enactment of Introductory Local Law # 3-2023; and

WHEREAS, such Public Hearing was duly held and conducted by the Town Board of the Town of Hamlin on the 13th day of March 2023 at 6:00 p.m. at which hearing, all interested persons were heard concerning the subject matter thereof; and

WHEREAS, after due consideration, the Town Board believes it would be appropriate to enact such Local Law so as to enact a local law for the PERMITTING AND PROCESSING OF BATTERY STORAGE SYSTEMS in the Town of Hamlin;

NOW, THEREFORE, be it resolved by the Town Board of the Town of Hamlin, Monroe County, New York, as follows:

Section 1. By the adoption of this Resolution, the Town Board does hereby enact Local Law # 3-2023 of the Town of Hamlin to read and provide as follows:

LOCAL LAW NO. 3 OF THE YEAR 2023

TOWN OF HAMLIN, COUNTY OF MONROE, STATE OF NEW YORK

SETTING FORTH PROCEDURES FOR PERMITTING AND PROCESSING OF BATTERY STORAGE SYSTEMS

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

1. Authority

The Town Board of the Town of Hamlin enacts this Battery Storage System section under the authority granted by:

- A. Article IX of the New York State Constitution, SS 2(c)(6) and (10).
- B. New York Statute of Local Governments, SS 10, Subdivisions 1, 6 and 7.
- C. New York Municipal Home Rule Law, ss 10, Subdivision I(i) and (ii), and ss 10, Subdivision I(ii)a(6), (11), (12) and (14).
- D. The supersession authority of New York Municipal Home Rule Law, 10, Subdivision I(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law SS 267 and SS 274-b, and as it relates to the power of the Town

Board to regulate land use within the Town to the extent the provisions of this section differ from the authority granted to the Town by Article 16 of the Town Law.

E. New York Town Law. Article 16 (Zoning).

F. New York Town Law ss 130, Subdivision I (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision I I (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).

G. New York Town Law 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).

H. New York Real Property Tax Law SS 487.

Police powers of the Town of Hamlin; and the laws of the State of New York.

2. Statement of Purpose and Findings

The Town Board of the Town of Hamlin recognizes that battery energy storage is a clean readily available and renewable energy source, and the Town of Hamlin intends to accommodate the use of battery energy storage systems. However, the Town Board finds a growing need to properly site all types of battery energy systems within the boundaries of the Town of Hamlin to protect residential areas, business areas and other land uses to preserve the overall beauty, nature and character of the Town of Hamlin to promote the effective and efficient use of battery energy resources and to protect the health, safety and general welfare of the citizens of the Town of Hamlin.

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Hamlin by creating regulations for the installation and use of battery energy storage systems, and to be consistent with the Town's Comprehensive Plan and Local Waterfront Revitalization Program (LWRP) with the following objectives:

A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;

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

C. The Comprehensive Plan sets basic Town policies for protecting the Town's important drainage features: the creeks, the floodplains and the wetlands. To mitigate the impacts and damage of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and to minimize the adverse impacts on the Town's character and environment and economy, health and safety of the Town's residents, and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and

waterways and the residential and farming communities of the Town. These features add natural beauty to the town and provide important habitats for wildlife;

D. To protect the health and economic well-being of residents, farms and businesses of the Town in the event of an explosion or fire;

E. Battery Energy Storage Systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.

The Town Board of the Town of Hamlin makes the following findings:

Shortsighted planning has often resulted in creation of problem industries which adversely affect public health and quality of life; examples are found in Hamlin, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Battery Energy Storage System facilities are not exempt from these problems and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This section will contribute to this effort. The existence of Article 10 of the Public Service Law and Section 94-c of the Executive Law does not negate this responsibility, and in fact recognizes it. Further, Article 10 and Section 94-c remain untested by judicial review addressing several potential legal issues. This section is not unduly burdensome to the mandates or the process set forth in Article 10 and Section 94-c but is rather compatible with them.

The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.

A. Battery Energy Storage Systems have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.

B. The Town of Hamlin is a rural community devoid of large hills and consists of mostly flat terrain.

C. The Town of Hamlin is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.

D. The Town of Hamlin has very few tall structures.

E. The Town of Hamlin is bordered on the north by Lake Ontario and on the east, south and west by towns which share Hamlin's agricultural and rural residential character and are similarly low, flat areas.

F. If not properly regulated, installation of Battery Energy Storage Systems can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.

G. Battery Energy Storage Systems when improperly sited are known to adversely affect property values and cause economic hardship to property owners.

H. The Town of Hamlin contains clusters and stretches of homes including along the Lake Ontario shoreline, along Route 18 and Lake Road as well as dispersed residences which residents have chosen as their homes, often because of a love for a rural-pastoral lifestyle.

Battery Energy Storage Systems may be significant sources of noise, including infrasound that if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.

J. Construction of Battery Energy Storage Systems can create traffic problems and can cause damage to local roads and infrastructure due to the weight of the units.

K. Battery Energy Storage Systems have the potential to cause electromagnetic interference with various types of communications.

L. Battery Energy Storage Systems need to be regulated for removal when no longer utilized.

M. Funding and mechanisms for removal of Battery Energy Storage Systems when the facilities are no longer operating need to be in place.

O. The Town of Hamlin Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Hamlin Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this section and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.

P. When considering large-scale construction and maintenance, due weight should be given to the following:

1) The relative distress caused to a community and its residents;

2) The actual necessity for such facility given energy production in the area and region, including clean energy production;

3) Past and present stresses and disruption imposed upon an area due to all types of energy production;

4) Alternatives to facilities, including location in other areas. location in areas where demand is needed. and alternative methods of producing clean energy;

5) Location in areas of highest consumption; and

6) The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.

3. Definitions

As used in this Article, 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 , Tier 2 or Tier 3 Battery Energy' Storage System as follows:

- 1) Tier I Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600k Wh that are an accessory use or structure to the principal use; and, if in a room or enclosed area, consist of only a single energy storage system technology.
- 2) Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600k Wh and less than 1 M Wh that are an accessory' use or structure to the principal use and are generating electricity to be used on-site. These systems may be either in a room or an enclosed area.
- 3) Tier 3 Battery Energy Storage Systems (Utility/Industrial Grade system) are systems that are associated with a large scale solar or wind energy system and are designed with a purpose to store energy and then put that energy back into the power grid and have an aggregate energy capacity less than 1M Wh.

BATTERY ENERGY STORAGE SYSTEM PERMIT: A special building permit application specifically created for Battery Energy Storage System projects.

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 certified 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:
 - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE: The New York State Energy Conservation Construction Code adopted pursuant to Article I I 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, and New York State Fire Code 1206, as currently in effect and as hereafter amended from time to time.

LWRP - Local Waterfront Revitalization Program - A New York State program designed to work with local governments to promote effective and sustainable regulation of waterfront areas in a manner consistent with State and federal Coastal Zone Management, while addressing local and regional waterfront issues. Goals of the program are to improve water quality and natural areas; provide for revitalization of underutilized waterfronts; guide development to areas with adequate infrastructure and services and away from sensitive resources; and promote public waterfront access. New York State towns that reside along the shore of a body of water are eligible to have a local revitalization plan.

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 US.

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.

UPS: An uninterruptible power supply or uninterruptible power source is an electrical apparatus that provides emergency power to a load when the input power source or mains power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it will provide near-instantaneous protection from input power interruptions. by supplying energy stored in batteries, supercapacitors, or flywheels. The on-battery run-time of most uninterruptible power sources is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. It is a type of continual power system.

4. Applicability

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

A. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

B. Modifications to, retrofits or replacements of an existing battery energy storage system that maintain or increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

C. The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.

5. General Requirements

A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.

B. Issuance of permits and approvals by the Hamlin Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

C. Liability insurance to protect the health and safety of the homeowner, neighbors and first responders will be required for Tier 2 and Tier 3 battery energy storage system tiers.

D. All battery energy 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 New York State Fire Code 1206, 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 Fire Code, Uniform Code, the Energy Code, and the Town Code. All materials within the insulation of the battery containers and the chosen ventilation and suppressions system shall only contain non-combustible materials. All Battery Storage systems must use a single type of battery cell and not a mixture of battery cells or types.

E. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.

F. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Zoning Code or any other general or local law, ordinance, rule or regulation, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that:

1) All work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and

2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

G. Fee. The fee as set by the Town Board periodically by resolution must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

H. Maintenance. The buildings, improvements and appurtenances erected and situate upon any lot in the district shall at all times be kept in a safe, clean, wholesome condition and shall comply with all government, health and police requirements. All rubbish of any kind which may accumulate on any such building lot shall be promptly removed.

6. Permitting Requirements for Tier 1 Battery Energy Storage Systems

Tier I Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code requirements and the "Battery Energy Storage System Permit," and must include battery replacement schedule and guarantee. Tier I Battery Energy Storage Systems are exempt from site plan review.

7. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit and site plan approval within the Agricultural District, Business District, Industrial District, General Industrial District and Planned Unit Development District (PUD Zone) to be used as an UPS (uninterruptible power source) backup generator and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section. Tier 2 Battery Energy Storage Systems shall not be placed on wetlands, streams, tributaries, or land designated as a watershed protection area as designated by the Town, County or other Agency, land of Statewide Importance or Environmentally Sensitive, as shown on a Town, County, or State Map.

A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

1) Reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry', Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment and Emergency Access Road dimensions approved by the local fire code officials. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

2) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit requirements. Applicants shall also

have delivered the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least ten (10) days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.

3) Referred to the County Planning Board pursuant to General Municipal Law SS 239-m, if required.

4) Upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial of the Special Use Permit. The 62-day period may be extended upon consent by both the Planning Board and Applicant.

5) The Planning Board can then take final action on the site plan.

B. 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, with the exception of 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 and must comply with New York State Department of Agriculture and Markets requirements, where applicable.

C. Signage.

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.

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 and substations.

D. 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 minimizing light trespass:

E. Vegetation and tree-cutting. Areas within 20 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Woodlands are important environmental features of the Town that merit some degree of protection from development. Woodlands provide attractive natural settings, ofTer important habitats for wildlife and contribute to the rural character of the town. Removal of trees should be minimized to the extent possible, with no more than 10% of total acreage of trees on the site to be removed.

F. Noise. The I-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants may submit equipment and component manufacturer noise ratings to demonstrate compliance. The applicant may be required 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 compliance with this standard.

G. Soil Removal: All topsoil disturbed during construction reconstruction or modification of each Battery Storage System will be stockpiled and returned to the site upon completion of the activity that disturbed the soil. In the event of a fire or explosion, all contaminated soil must be removed and disposed of at an approved facility.

H. Decommissioning.

I) 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:

- a. 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;
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- c. The anticipated life of the battery energy storage system;
- d. The estimated decommissioning costs and how said estimate was determined;
- e. The method of ensuring that funds will be available for decommissioning and restoration;
- f. The method by which the decommissioning cost will be kept current;
- g. 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; and 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.

II) Decommissioning Fund. The owner and/or operator of the energy storage system shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system, in an amount to be determined by

the Town, for the period of the life of the facility. All costs of the financial security shall be borne by the applicant.

Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- 1) Property lines and physical features including the location and layout of the battery storage energy system, and roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- 3) A one- or three-line (as determined by the Town) 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.
- 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 description of the energy storage management system, the fire resistance rating, and an explanation of the smoke, fire, ventilation, exhaust and deflagration systems to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- 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 of the final system installer shall be submitted prior to the issuance of building permit.
- 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. Zoning district designation for the parcel(s) of land comprising the project site and those immediately adjoining the site.
- 7) 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 (NY S) 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 the Town prior to final inspection and approval and maintained at an approved onsite location.
- 8) Fire Safety Compliance Plan and Security Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the New York State Fire Code 1206, the Uniform Code and is designed for battery energy storage modules. The rooms in which the Battery Energy Storage System equipment is located shall not be used for storage purposes. Fire Walls shall also be included in the design of the project. These shall be

constructed of concrete or composite materials and positioned between containers. Site Security is important to protect the equipment as well as to prevent injury to curious neighbors. Perimeter access monitoring and notification of security breach to the site operator shall be required. The operator shall follow all recommendations of the operator's energy storage insurance coverage policy.

I and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep and weed control, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.

Remote and continuous online monitoring, early detection sensors, and appropriate venting to avoid the build-up of gas and automatic fire suppression systems to NFPA 855 standards shall also be in place.

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 in the Town of Hamlin and by the Planning Board through the approval process.

12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer and signed off by Town Building Inspector and Town Engineering firm.

13) 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. Prior to activation of the facility, the system operator must meet with the Niagara County Fire Coordinator & Director of Emergency Services and the local first responders to review the Emergency Operations Plan in its entirety and to determine if specialized Personal Protective Equipment (PPE) or fire suppression/containment equipment is needed. If any additional PPE or fire suppression/containment is required that is not currently available, the system operator must purchase those items.

The emergency operations plan shall include the following information:

(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 startup following cessation of emergency conditions.

(2) Procedures for inspection and testing of associated alarms, interlocks, and controls.

(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.

(4) The property must be inspected by a subject matter engineer or other subject matter certified inspector after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did not sustain damage.

(5) 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, deenergizing equipment, and controlling and/or extinguishing the fire.

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

(7) 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. System owner shall provide guaranteed non-emergency and emergency response times of a qualified subject matter expert to the Town Hall and local first responders.

(8) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders, that shall include but not limited to a smoke plume test for evacuation purposes. All smoke plume test findings shall be made public.

(9) 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 and a map of the area showing emergency access roads with turning radii dimensions and turn around loop. Training of local first responders shall be done biannually. Training in a classroom setting shall be done annually in the winter and an onsite training session shall be done annually in the spring. This training shall include local and mutual aid first responders.

(10) The system owner shall notify' the local Fire Department, County Emergency Management office and the Town Hall at least I week prior to any' scheduled maintenance or battery swap out.

(11) In the event of a fire or explosion, all expenses related to cleanup and remediation shall be paid by the system operator/owner and all contaminated soil must be removed and placed in a landfill approved for such materials by the system owner.

14) Construction inspections.

a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subdivision B of this section is ready for inspection.

b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:

- 1) Work site prior to the issuance of a building permit;
- 2) Footing and foundation;
- 3) Preparation for concrete slab;
- 4) Framing;
- 5) Building systems, including underground and rough-in;
- 6) Fire-resistant construction;
- 7) Fire-resistant penetrations;
- 8) Solid-fuel-burning heating appliances, chimney , flues or gas vents;
- 9) Energy Code compliance: and
- 10) Inspection after all work authorized by the 'building permit has been completed and signed off by the Town Building Inspector and town Engineer.

I1) A final inspection by the fire marshal must be completed prior to activation.

c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, re-inspected, and found satisfactory as completed.

d) Fee. The fee specified in or determined in accordance with the provisions set forth in *205-67.4. Fees required by this article must be paid prior to or at the time of each inspection performed pursuant to this section.

J. Special Use Permit Standards.

1) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

In the event the battery energy storage system will be used for energy storage in conjunction with a solar farm, the battery energy storage system must be contained within the perimeter of the approved solar farm.

2) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for accessory structures of the underlying zoning district.

3) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall 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.

4) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural fixtures, 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.

K. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, reporting requirements and decommissioning plan including decommissioning bond. A new owner or operator of the battery energy storage system shall notify the Town of Hamlin of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing. The special use 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 Town in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

L. Landscaping Plan: A Plan depicting vegetation and forest cover, describing the areas to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added identified by species and size of specimens at installation and their locations. Landscaping plans should aid in the creation of a uniform and aesthetically pleasing viewshed. Landscaping plans, however, should also be designed with functionality in mind as the location of plantings should not impede first responder access, nor should they be placed in areas that may contribute to a fire.

M. Transportation Plan: a transportation plan describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the site during and after construction. Commercial traffic must adhere to operating on commercially designated roads. Such plan shall also include any anticipated improvements to existing roads, bridges or other infrastructure and measures to restore damaged/disturbed access routes and all other infrastructure following constructions. Roads shall include all state highways, county highways, Town highways, village streets and highways, which will be or may be used by the applicant.

The Town of Hamlin requires the applicant to complete all the requirements of the Town Infrastructure Preservation Law.

N. Groundwater impacts: an analysis of impacts on local groundwater resources shall be prepared regarding impacts anticipated during construction, reconstructions modification or operations, decommissioning and post decommissioning of each battery storage facility.

O. Due to the location of the Town to the Lake Ontario shoreline corridor and adjacent lands and waterways, all battery storage systems will be placed on a non-permeable surface with a

non-permeable moat type system surrounding the battery storage system to minimize and mitigate any migration of hazardous chemicals to those waterways in the event of a fire.

8. Permitting Requirements for Tier 3 Battery' Energy Storage Systems (utility scale)

Tier 3 Battery Energy Storage Systems are permitted only in the Industrial District and Planned Unit Development District (PUD) Zone of the Town through the issuance of a special use permit and site plan approval and shall be subject to the Uniform Code, Application and the Site Plan Application requirements set forth in the Tier 2 Section and other applicable sections of these regulations and the Town Code. Stand-alone Tier 3 Battery Energy Storage Systems are not allowed and must be accompanied by a large-Scale Solar Energy Conversion System (Tier 3 or 4 per the Town's Code) or an Industrial Wind Energy Conversion System. Their location shall be further restricted by the restrictions for the location of Tier 3 and 4 Solar Energy Systems and Wind Systems (see the Town laws on these facilities) and limited to an aggregate energy capacity of less than 1 M W h.

The following additional requirements (additional or superseding to the Tier 2 requirements) are required for Tier 3 projects:

- A. Road use permit for heavy equipment in accordance with the Town Infrastructure Preservation Law.
- B. Semi-Annual Report provided to the Town Board, Town Planning Board and Code Enforcement Officer. The report shall include a copy of a recent inspection report by a licensed professional engineer including any sustained structural damage and a copy of proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
- C. As these types of Battery Energy Storage systems are only allowed when accompanied by all Tier 3 or 4 Solar Energy system or Wind Energy System, these systems must also meet the requirements and restrictions of the laws for Tier 3 and 4 solar energy systems and wind systems, whichever is appropriate.

9. Safety

A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 954() (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:

- 1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
- 2) UL 1642 (Standard for Lithium Batteries),
- 3) UL 1741 or UL 62109 (Inverters and Power Converters),
- 4) Certified under the applicable electrical, building, and fire prevention codes as required.

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

6) The local Fire Marshall shall inspect all areas of the Battery energy storage system prior to activation.

7) Site Access. Battery energy storage systems 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, if the Tier 2 or Tier 3 Battery Energy Storage System is located in an ambulance district, the local ambulance corps. Combination locks shall be used for all gates and the combinations provided to the local Fire Department and the Town Hall.

8) Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

10. Permit Time Frame and Abandonment

A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or 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 Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.

B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more 6 months 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 or Tier 3 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

11. Enforcement; penalties and remedies for violations.

A. This section shall be enforced by the Town Code Enforcement Officer.

1) Any person owning, controlling or managing any building, structure or land who shall undertake a battery energy storage system in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section. shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty' of a separate offense for each week such violation shall continue.

2) The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule.

3) Special proceeding. In addition to any other remedy', the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a battery energy storage system, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.

12. Stop Work Orders

A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stopwork order to halt:

1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required and without regard to whether a building permit has or has not been issued for such work

2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or

3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.

B. Content of stop-work orders. Stop-work orders shall:

1) Be in writing;

2) Be dated and signed by the Code Enforcement Officer;

3) State the reason or reasons for issuance; and

4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.

C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their

agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.

D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop- work order.

E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subdivision A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under *205-67.3, Violations; penalties for offenses, of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

13. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

This local law shall take effect immediately upon the filing with the Secretary of State.

Section 2. That the Town Clerk's shall give due notice of the enactment of this Local Law by the filing of the same with the Secretary of State as required by statute.

VOTE OF THE BOARD

Polled votes: Councilperson Hurlbutt aye, Councilperson Voelkl aye, Councilperson Yager aye, Supervisor Baase aye. Motion carried.