

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of West Seneca

Local Law No. 5 of the year 2024

A local law Extension of Moratorium on Energy Storage Facilities
(Insert Title)

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

County City Town Village
(Select one.)

of West Seneca as follows:

See attached

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

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2024 of the ~~(County)(City)(Town)(Village)~~ of West Seneca was duly passed by the Town Board on August 26 2024, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Kate Newton, Town Clerk

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date:

September 6, 2024

(Seal)

Chapter 120. Zoning

Article XI. Battery Energy Storage System

§ 120-72. Authority and purpose.

- A. Authority. This article 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); § 261-263 of the Town Law and § 10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.
- B. Statement of purpose. This article is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of West Seneca by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
- (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems.
 - (2) To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
 - (3) To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
 - (4) To protect the public health and safety of the residents of the Town of West Seneca and to provide for the training and supplying of first responders in the event of any emergency.
 - (5) To regulate the development of battery energy storage systems in accordance with the Town's Comprehensive Plan.

§ 120-73. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ANSI

American National Standards Institute.

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 (Tier 2A and 2B) or Tier 3 battery energy storage system as follows:

- A. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. These are accessory uses to a principal use in a residential and small commercial setting (for onsite and/or vehicular use) and are intended for energy use by the principal use and do not exceed storage of 110% of two days' of energy for the user (as determined by the Town Building and Engineering Departments).
- B. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area (a Tier 2A system) or in an outdoor area (a Tier 2B system). These are accessory uses to a principal use and are intended for energy use by the principal use and do not exceed storage of 110% of two days' of energy for the user (as determined by the Town Building Department).
- C. Tier 3 battery energy storage systems (utility grade system) are systems that are designed independent of a user, with a purpose to store energy and then put that energy back into the power grid. They can be an accessory or primary use on a site. They also include any system not meeting the definition/requirements of a Tier 1 or Tier 2 system.

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

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:

- A. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- B. No other occupancy types are permitted in the building.
- C. 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.
- D. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - (1) The areas do not occupy more than ten percent (10) % of the building area of the story in which they are located.
 - (2) A means of egress is provided from the administrative and support use areas to the public way directly outside of any structure 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.

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.

NONDEDICATED-USE BUILDING

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

NONPARTICIPATING PROPERTY

Any property that is not a participating property.

NONPARTICIPATING RESIDENCE

Any residence located on nonparticipating property.

OCCUPIED COMMUNITY BUILDING

Any building in Occupancy Group A, 8, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, day-care facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

OPERATING PERMIT

As defined in Chapter __, Article __ of the West Seneca Town Code.

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 U.S.

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.

§ 120-74. Applicability.

- A. The requirements of this article shall apply to all battery energy storage systems permitted, installed, or modified in Town of West Seneca after the effective date of this article, excluding general maintenance and repair.
- B. Battery energy storage systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C. Modifications to, retrofits or replacements of an existing battery energy storage system that modify, in any way, the total battery energy storage system designed discharge duration or power rating shall be subject to this article.

§ 120-75. General requirements.

- A. A building permit, site plan review, a special use permit, an electrical permit, and an operating permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the West Seneca Town Board and 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. 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 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.
- D. Fees. Fees as set by the Town Board periodically by resolution must be paid at the time of submission of an application for site plan approval, special use permit, a building permit, operating permit, for an amended building permit, or for renewal of a building permit. The applicant, for Tier 2 or 3 projects, shall be required to pay the costs of the Town's engineers and attorneys or outside professional consultants for time spent reviewing and analyzing the application.

§ 120-76. Permitting requirements for Tier 1 battery energy storage systems.

Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable Codes and the battery energy storage system permit and are exempt from site plan review.

§ 120-77. Permitting requirements for Tier 2 (2A and 2B) battery energy storage systems.

Tier 2A battery energy storage systems are located within a structure shall be permitted in all commercial, manufacturing, and industrial zoning districts, subject to the Uniform Code, all other applicable Codes, the battery energy storage system permit, and an operating permit. Tier 2B battery energy storage system is located exterior of the primary building on site and shall be permitted through the issuance of site plan approval and an operating permit within all manufacturing zoning districts provided same shall not be located within 500 feet of any residential zoning districts (those districts where residential is allowed) and residential property lines or located within 500 feet of any educational facility property line, or located within 500 feet of any nursing home/skilled nursing facility or hospital, and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2B battery energy storage systems associated with a solar or wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow a solar and/or wind project). Applications for the installation of a Tier 2B battery energy storage system have the following requirements:

- A. They shall be reviewed by the Code Enforcement Officer and the Town Engineering Department for completeness. An application shall be complete when it addresses all matters listed in this article 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, fire safety, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Any deficiencies in the application must be addressed prior to substantive review.

- B. They shall be referred to the County Planning Board pursuant to General Municipal Law § 239-m, if required.
- C. They shall be referred to any fire company/district which would provide fire protection services for the property.
- D. The Planning Board shall site plan review on the application after the SEQR process is completed, which can include approval, approval with conditions, or denial. A full EAF shall be submitted by the applicant.
- E. 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.
- F. 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 twenty-four-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.
- G. 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. In accordance with Town law, there shall be no light spillage onto adjoining properties.
- H. Vegetation and tree-cutting. Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth in accordance with *all* applicable codes. 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. Removal of trees should be minimized to the extent possible and shall only be done with prior Town approval.
- I. Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside *wall* of any nonparticipating residence or occupied community building. Applicants may submit equipment and component manufacturers 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.
- J. Decommissioning.
 - (1) 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 may be required to include the following (Planning Board or Town Board to determine the extent of this plan depending on size and location of the installation):
 - (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, ancillary equipment and below ground infrastructure, 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
- (h) 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.
- (i) Provision of a bond or other financial security acceptable to the Town to be held by the Town to ensure compliance with any decommissioning.

J. Site plan application. For a Tier 2 battery energy storage system the site plan application shall include the following information:

- (1) Property lines and physical features, including roads, for the project site, together with detailed drawings showing the existence of any properties within 1000 feet of all property lines encompassing the proposed development.
- (1) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- (2) 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.
- (3) 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 building permit.
- (4) Name, address, email, emergency telephone number, and other contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information for the final system installer shall be submitted prior to the issuance of building permit.
- (5) Name, address, phone number, email address, 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.
- (6) Zoning district designation for the parcel(s) of land comprising the project site and all properties within 1000 feet of the parcel.
- (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 (NYS) 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 on-site location.
- (8) 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.
- (9) Operation and maintenance manual. Such 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) Erosion and sediment control and stormwater 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 West Seneca and by the Town Board through the approval process.
- (11) Prior to the issuance of the building permit, but not required as part of the application, engineering documents must be signed and sealed by a NYS licensed professional engineer.
- (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:
 - (a) Procedures for safe shutdown, deenergizing, 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.
 - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - (c) 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.
 - (d) 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 extinguishing the fire.
 - (e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - (f) 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.
 - (g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
 - (h) 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.

K. Additional standards (Tier 2 projects).

- (1) Setbacks. Tier 2 battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures, or as prescribed in the following paragraphs, whichever is greater.
 - (a) Shall not be placed in the front yard.
 - (b) Shall be set back a minimum of 30 feet from any side yard or rear yard if abutting a nonresidential district.
 - (c) Shall be set back a minimum of 100 feet from a side yard or rear yard abutting any residential district or a residential use.
- (2) Height. Tier 2 battery energy storage systems shall comply with the building height limitations for accessory structures of the underlying zoning district, or as required by the Fire Code.
- (3) Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be

enclosed by an eight-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, or as otherwise required by any federal, state or local laws or codes. Access shall be provided to all fire companies and the Town Code Enforcement and Engineering Department.

- (4) Screening and visibility. Tier 2 battery energy storage systems shall have views minimized 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.

§ 120-78. Permitting requirements for Tier 3 battery energy storage systems.

Tier 3 battery energy storage systems are permitted only in the _____ zoning districts, as restricted below, through the issuance of a special use permit, site plan approval, and an operating permit and shall be subject to the Uniform Code and the site plan application requirements set forth in the Tier 2 section [1] with the below additional requirements, and other applicable sections of these regulations and the Town Code.

A. Special use permit standards (Tier 3 projects).

- (1) Setbacks. Tier 3 battery energy storage systems (as measured from the fence line) shall be setback a minimum of 30 feet from any property line, or as prescribed in the following paragraphs, whichever is greater.
- (a) Shall not be placed in the front yard (for a property having a principal use). For a property not having a principal use or the BESS is the principal use, the front yard setback shall be at least 200 feet.
 - (b) Shall be set back a minimum of 500 feet from any side yard or rear yard if abutting a property in a residential district or a property with a residential, educational, skilled nursing facility, or hospital use.
 - (c) Shall be set back a minimum of 30 feet from a side yard or rear yard abutting any property in a commercial district.
 - (d) Shall be set back a minimum of 30 feet from a side yard or rear yard abutting any nonparticipating property in an Industrial district, and 30 feet for a participating property in an Industrial district.
 - (e) Shall be set back a minimum of 100 feet from a side yard or rear yard abutting any nonparticipating property containing a petroleum storage tank and at least 500 feet from the tank itself. If a participating property, the setback from the tank shall be a minimum of 500 feet or as prescribed by any other law or requirement, whichever is greater.
 - (f) Shall be set back a minimum of 30 feet from a side yard or rear yard abutting any nonparticipating property containing electrical infrastructure (substation, electrical towers, etc.).
 - (g) Shall not be located within 200 feet any public park or recreation facility.
- (2) Height. Tier 3 battery energy storage systems shall have building/structure height limitation of 20 feet.
- (3) Fencing requirements. Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by an eight-foot-high fence with a self-locking gate to prevent unauthorized access, or as otherwise required in federal, state, local laws and codes including national codes and standards, and/or professional consensus standards. Access shall be provided to all fire companies and the Town Code Enforcement and Engineering Department.

- (4) Screening and visibility. Tier 3 battery energy storage systems shall have views minimized 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. The Planning Board shall provide the direction on the location and type of screening based on a visual analysis/study to be submitted by the applicant.
- (5) Safety standards. Tier 3 battery energy storage systems shall meet all required New York State and federal safety standards including, but not limited to requirements for spill containment, personal protection (eye-wash stations, safety showers, etc.) and fire suppression. After completion of a Tier 3 system but prior to beginning operation, the fire department and applicable emergency service providers will be provided a training and education day with the owner and equipment manufacturers on the system (at the cost of the owner/applicant) along with sufficient firefighting apparatus and suppression chemicals or similar substances at no cost to the Town or the respective fire companies.
- (6) A road use agreement with the Town may be required if utilizing Town roads for construction access.

B. Additional site plan and other requirements for Tier 3 systems.

- (1) Access design. Due to the nature of these large facilities, it will be a requirement to have a primary and secondary means of access from the public right-of-way (ROW) to the site. The ROW used for access shall not be a dead-end road. Access shall be provided through roadways/driveways designed to Town standards with input from emergency service providers. Primary and secondary access may be created through a public improvement permit.
- (2) Any infrastructure to be placed to service the site (water, sewer, etc.) must meet Town and other applicable standards. Public water and sewer extensions may be provided through a public improvement permit.
- (3) A noise study will be required addressing noises and tonal issues.

C. Decommissioning fund. The owner and/or operator of any Tier 3 battery 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 accordance with the approved decommissioning plan), in an amount to be determined by the Town (based on 125% of the estimated value for decommissioning), for the period of the life of the facility. This estimate will be updated on a prescribed basis and account for inflation, and the fund or bond will reflect these revised estimates. This fund may consist of a letter of credit from a State of New York licensed financial institution acceptable to the Town. All costs of the financial security shall be borne by the applicant. The applicant shall also provide a notarized acknowledgement that if the costs for removal of battery facility exceed the bond for decommissioning, the battery developer/owner are fully fiscally responsible.

§ 120-79. Safety.

- A. System certification. Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 (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) Other standards for other battery types,
 - (4) UL 1741 or UL 62109 (Inverters and Power Converters),

- (5) Certified under the applicable electrical, building, and fire prevention codes as required.
 - (6) 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.
- B. Site access maintenance. 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 emergency service providers.
- C. 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.

§120-80. 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 eighteen 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 18 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to complete construction after 24 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than six months. 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 or Tier 3 energy storage system and restoration of the site in accordance with the decommissioning plan. The Town retains the sole right to make the determination site decommission completion (whether by the site owner or by the Town through the security). Any costs borne by the Town to make the determination that the site is decommissioned fully may be passed on to the developer/site owner.

§120-81. Construction inspections (Tier 3 projects).

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer and Engineering Department or their designee. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection. In the event that an outside inspector is used by the Town, the developer shall be responsible for the costs associated with such inspector.
- 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, chimneys, flues or gas vents.
 - (9) Energy Code compliance.
 - (10) Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector/CEO and Town Engineer.
 - (11) A final inspection by the fire inspector 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, reinspected, and found satisfactory as completed.
 - D. Fee. A fee will be set by the Town Board for construction inspections and that fee must be paid prior to or at the time of each inspection performed pursuant to this section.
 - E. At the completion of construction, the applicant shall have an engineer inspect and certify (PE stamped) that the project has been constructed in accordance with all required standards and in accordance with Town approvals.

§ 120-82. Ownership changes (Tier 2 and 3).

- A. If the owner (or lessee) of the battery energy storage system changes or the owner of the property changes, the special use permit and/or operating permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of any special use permit, operating permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of West Seneca of such change in ownership or operator within 20 days of the ownership change. A new owner or operator must provide such notification to the Town in writing.
- B. The successor owner or operator shall assume in writing all of the obligations within the decommission plan. Proof of acknowledgement of the decommission plan and proof of bond may be requested by the Town at time of ownership change. The new owner should sign the acknowledgement regarding the costs exceeding the bond. The special use permit and/or operating 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 time frame. Reinstatement of a void special use permit and/or operating permit will be subject to the same review and approval processes for new applications under this article.

§ 120-83. 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 an 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 \$500 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. BESSs requiring an operating permit, shall be required to submit a certified report by the owner and be inspected annually, and shown to be in accordance with the operating permit and any other approvals.

§ 120-84. 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 stop-work 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 Subsection 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 § 120-83, Enforcement; penalties and remedies for violations, 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.

TOWN OF WEST SENECA



Legal Department

TOWN SUPERVISOR
Gary A. Dickson

TOWN COUNCIL
Robert J. Breidenstein
Susan K. Kims
Jeffrey A. Piekarec
Scott D. Robertson

WHEREAS, the State of New York has taken steps to encourage and require the use of electrical energy sources other than those generated by fossil fuels such as natural gas and oil, and

WHEREAS, the Governor has announced the formation of a new Inter-Agency Fire Safety working group which has as its focus the bringing together of various state agencies for the purpose of making safety inspections of energy storage sites and the development of best practices to address the risks with energy storage facilities, and

WHEREAS, one of the goals of the group is to develop training and fire suppression plans for emergency responders when faced with a fire incident in one of these facilities, and

WHEREAS, there have been, according to the Governor, "multiple fire safety incidents across New York", and

WHEREAS, such practices and training for first responders has not yet been established, and

WHEREAS, questions and concerns have arisen with respect to the ability and method of responding to a fire or other emergency at these facilities, and

WHEREAS, the safety of the residents and property within the Town of West Seneca is of paramount importance, and

WHEREAS, applications for the development of such facilities may be considered in the Town by companies prior to the development of the best practices and training contemplated by the State, and

WHEREAS, the Town Attorney has a draft of a local law pertaining to Energy Storage Units that was provided to relevant Town departments for their comments which have only recently been received,

NOW, BE IT THEREFORE RESOLVED, that the Town of West Seneca, acting in the best health and safety interests of the residents and property owners of the Town hereby suspends Sections 120-21 to 120-23, inclusive, and declares an extension of the prior nine (9) month moratorium on the development and/or creation of any energy storage facility in the Town of West Seneca for an additional twelve months until August 31, 2025 pending further recommendations from the Inter-Agency Fire Safety Working Group and the completion of the Local Law with respect to related zoning and land use issues involving Energy Storage Units, and

BE IT FURTHER RESOLVED, that interested applicants may seek further review of same from the Zoning Board of Appeals for an interpretation of the Code and any relevant variances, and

BE IT FURTHER RESOLVED, that the Town shall re-examine the continuation of the moratorium at the completion of this additional period in order to fully and adequately protect the residents of the Town.