Town of Byron Battery Energy Storage System Local Law

1. Authority

The Town of Byron Town Board enacts this Battery Energy Storage System chapter under the authority granted by:

A. Article IX of the New York State Constitution, § 2(c)(6) and (10).

B. New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.

C. New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)(a)(6), (11), (12) and (14).

D. The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(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 §§ 267 and 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 chapter 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 § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (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 § 487.

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

2. Statement of Purpose

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 Byron by creating regulations for the installation and use of battery energy storage systems, 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. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;

D. To prevent or mitigate risks to public and first responder health and safety posed by battery energy storage systems;

E. To preserve the agricultural base of land and farm operations;

F. To maintain the rural character of the town;

G. To support the following vision statement included in the 2019 Town of Byron Comprehensive Plan: The Town of Byron should seek to preserve its rural nature and agricultural base. There is room and a need for limited residential, industrial and commercial development, but the current character of the community is what has attracted and keeps the residents of the Town here – the character should not be radically altered. Any new development must take place in a very planned, measured, and directed manner.

3. Definitions

As used in this Section of the Town of Byron Zoning Law, the following terms shall have the meanings indicated:

ABANDONMENT: A battery energy storage system that has not stored or produced electrical energy for 12 consecutive months.

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:

A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. Tier 1 battery energy storage systems are an accessory use or structure to the principal use.

B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area. Tier 2 battery energy storage systems are an accessory use or structure to the principal use and store up to 110% of the electricity consumed on the site over the previous 12 months.

   1. Notwithstanding the above, a battery energy storage system located on a farm operation, as defined in § 301(11) or the relevant provision of the New York State Agriculture and Markets Law, and located in a New York State Agricultural District, which primarily serves the needs of such farm operation and stores up to 110% of the farm's needs, or other amount that may be established by resolution of the Byron Town Board in accordance with New York State Department of Agriculture and Markets guidance, shall be deemed a Tier 2 battery energy storage system.

   2. A system that does not exceed the production or output limits and otherwise conforms to the requirements of this definition shall not be excluded from designation as a Tier 2 battery energy storage system as a result of selling or otherwise receiving credits or benefits for excess energy provided to the distribution grid.

C. Tier 3 Battery Energy Storage Systems are utility or industrial grade systems that have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area. Tier 3 battery energy storage systems may be the principal use or an accessory use to a Wind Energy Conversion System or Tier 3 Solar Energy System as defined in Byron Town Code §11.08____ and §11.15(c)(iii), respectively.

BESS — A Battery Energy Storage System.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.

2) No other occupancy types are permitted in the building.

3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

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.

FACILITY AREA — The physical area, measured in both square feet and acres, used for any battery energy storage system, including the area within fencing, roads, visual screening, support facilities, and all other components of a battery energy storage system facility. The Facility Area is part of the Project Site.

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.

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.

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.

4. Applicability

A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Byron after the effective date of this Local Law, excluding general maintenance and repair at the discretion of the Code Enforcement Officer.

B. 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.

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

D. Any proposed Solar Battery Energy Storage Systems subject to review by the New York State Department of Public Service or New York State Office of Renewable Energy, shall be subject to all substantive provisions of this Section and any other applicable laws, codes, and regulations of the Town of Byron, New York; and any other applicable State or Federal laws.

E. All Battery Energy Storage Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and NEC

5. General Requirements

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

B. All applications shall be reviewed by the Code Enforcement Officer for completeness.

C. The Applicant shall pay the costs of the Town's engineers and attorneys for time spent assisting the Town of Byron with its review of the application.

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

E. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that contain or are otherwise associated with a battery energy storage system and are 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 of Byron Code.

F. The substantive provisions of this law are intended to apply to any Battery Energy Storage System subject to review pursuant to Articles 8 or 10 of the Public Service Law or Article 94-c of the Executive Law, or any other state level permitting or approval process implemented by the State of New York.

G. Applicant shall provide proof that the proposed Battery Energy Storage System has a

current Certificate of Approval issued by the City of New York Fire Department pursuant to 3 RCNY 608-01.

H. Compliance with Building Code.

1. Building permit applications shall be accompanied by standard drawings of structural components of the Battery Energy Storage System. Drawings shall be stamped, and any necessary calculations shall be certified, in writing, by a licensed New York State professional engineer or architect to indicate that the system complies with the current New York State Building Code.

2. Where the installation or structural components vary from the standard design or specifications, proposed modifications shall be certified by a licensed New York State professional engineer for compliance with the seismic and structural design provisions of the New York State Building Code.

I. Compliance with Electrical Code.

1. Building permit applications shall be accompanied by a line drawing identifying the electrical components of the Battery Energy Storage System to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code. The application shall include a statement from a New York State licensed professional engineer or architect indicating that the electrical system conforms to sound engineering practices and complies with the National Electrical Code (NEC). This certification would normally be supplied by the manufacturer. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.

2. Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State licensed professional engineer for compliance with the requirements of the NEC and sound engineering practices.

J. Battery Energy Storage Systems requiring site plan review must submit the following information in addition to the requirements set forth in Byron Zoning Code:

1. Completed Town of Byron Battery Energy Storage System Application Form.

2. Completed Full Environmental Assessment Form.

3. Narrative description of the proposed project, including identification of all approvals sought, existing site conditions, adjacent land uses and owners.

4. Screening and Landscape Plan.

5. Lighting Plan.

6. Fencing Plan.

7. Utility Plan.

8. A three-line electrical diagram detailing the battery energy system layout, associated components, and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnects and over current devices.

9. A preliminary equipment specification sheet that documents all Battery Energy Storage System components and equipment to be installed. A final equipment specification sheet shall be submitted prior to the issuance of the building permit.

10. 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.

11. Name, address, phone number, and signature of the project applicant, as well as all the property owner(s), demonstrating their consent to the application and the use of the property for the battery energy system.

K. All Battery Energy Storage Systems shall be fully accessible to all emergency service vehicles and personnel.

6. Permitting Requirements for Tier 1 and Tier 2 Battery Energy Storage Systems

A. Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code Requirements and the Zoning Permit. Tier 1 Battery Energy Storage Systems shall be exempt from site plan review subject to the following requirements:

(1) The Application for a Building Permit must include battery replacement schedule and guarantee.

(2) The power supply cutoff device for any Tier 1 Battery Energy Storage System shall be located on the outside of the structures that support such systems, in close proximity to where the power supply enters the facility, along with twenty-four-hour emergency contact information, where it can be easily accessed by emergency personnel.

B. Tier 2 Battery Energy Storage Systems are permitted Agricultural-Residential (A-R) and Industrial (I) zoning districts as accessory structures and shall require site plan review subject to the following conditions:

(1) Design requirements:

a. All structures shall be nonreflective and painted a subtle or earth tone color.

b. Views of the Tier 2 Battery Energy Storage Systems shall be minimized from adjacent properties.

c. Tier 2 Battery Energy Storage Systems shall be located in a manner to reasonably avoid and minimize blockage of views from surrounding properties.

d. Tier 2 Battery Energy Storage Systems shall be located in a manner to reasonably avoid and minimize shading of adjacent properties.

(2) Height: The maximum height of any Battery Energy Storage Systems is 20 feet from finished grade.

(3) Setbacks: Tier 2 Battery Energy Storage Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district. All Battery Energy Storage Systems shall only be installed in rear yards in residential districts and shall not unreasonably encroach upon neighboring parcels through introduction of shade, nuisance noise, or other nuisance conditions.

(4) Lot Size: Tier 2 Battery energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

7. Permitting Requirements for Tier 3 Battery Energy Storage Systems

Tier 3 Battery Energy Storage Systems are permitted through the issuance of a Special Use Permit within the Agricultural-Residential (A-R) and Industrial (I) zoning districts, and shall be subject to the Uniform Code, Special Use Permit, and the Site Plan Application requirements set forth in this Section.

A. Tier 3 Battery Energy Storage Systems are presumed to be Type 1 actions subject to SEQRA review.

B. Lot coverage: The facility area shall not exceed 33% of the total area of any tax parcel or lot. This coverage may be further reduced by the Town Board if it determines a lower coverage limit is necessary to accommodate environmental, aesthetic, or health and safety concerns.

C. Lot Size: The minimum lot size for Tier 3 Battery Energy Storage Systems is 10 acres.

D. Height: The maximum height of any Battery Energy Storage Systems is 20 feet from finished grade.

E. Setbacks. The minimum setbacks from adjacent property lines are as follows:

a. Front: 400 feet from any public road, measured from the center of the road.

b. Side and Rear: 50 feet from all adjacent property lines that are at least 400 feet from a public road, and 250 feet from all adjacent property lines that are less than 400 feet of a public road.

c. Minimum setback of 2500 feet from an occupied residence, or residential primary structure, or sensitive visual receptor, on adjoining lots measured from the nearest fence of the facility to the nearest portion of the residential structure or 1000 feet from all adjacent property lines bordering an occupied residence, or residential primary structure, or sensitive visual receptor, on adjoining lots, whichever is greater.

d. Minimum setback of 1000 feet from all property lines bordering any school, public park, or other public place that may be adversely impacted by the battery energy system.

e. Setbacks shall be measured from the nearest fence of the Facility Area.

F. Design requirements:

a. All structures shall be painted a subtle or earth tone color.

b. Vehicular paths and emergency access ways within the site shall be designed to minimize the extent of impervious materials and soil compaction. Topsoil in the same location as roads shall be stripped and stockpiled, and roads shall be capable of bearing the weight of emergency vehicles and sufficiently wide to permit access to emergency vehicles such as fire trucks and ambulances so that emergency vehicles may pass each other without leaving the road Applicants, their successors, and assigns shall be responsible for keeping all access roads clear and passable by emergency equipment at all times.

c. Signage shall not exceed 6-square-feet per sign and shall be printed on a light reflective surface. No signage other than those required in subsection (4) below are permitted.

d. Signage at the meter, facility entrances, and where access road(s) intersect with public roads shall be required that contains the following information:

i. Disconnect and emergency shut-off information as required by the National Electric Code.

ii. 24-hour emergency contact information.

iii. Owner and operator's name, address and telephone number.

iv. Facility address and project name.

v. Danger High Voltage signs.

e. Lighting. Lighting of the facility shall be limited to that minimally required for safety and operational purposes and shall be dark-sky compliant, directional and shielded from all neighboring properties and public roads.

f. Fencing. All mechanical equipment shall be enclosed by a fence at least seven feet in height with a self-locking gate. The use of barbed wire, razor wire or electric

fencing is prohibited. Fencing must be made of non-reflective material. The use of opaque fencing is encouraged to promote visual impact mitigation.

g. Screening. The Facility Area must be completely screened from all adjacent property lines. Existing vegetation on-site may be used to satisfy all or a portion of the required screening. Evergreens planted to be used as screening must be a minimum of 6-feet-tall at the time of planting. Off-site existing vegetation may not be used as part of a screening plan. A 10-foot buffer from the facility to vegetation other than groundcover must be maintained.

h. Landscaping. Landscaping used as screening must be maintained for the life of the project. Native vegetation is strongly encouraged to the extent practicable.

i. Transmission lines. All on-site utility and transmission lines shall, to the extent feasible, be placed underground.

j. Deforestation discouraged. Removal of trees and other existing vegetation shall be limited to the extent necessary for the construction and maintenance of the battery energy facility, including creation of a 10-foot buffer free of vegetation. Removal of existing trees larger than 6 inches in diameter at breast height (DBH) must be avoided to the maximum extent practicable. Mitigation is required for removal of existing tress larger than 6-inches in diameter. Mitigation may include planting of appropriately sized trees used for screening elsewhere on-site.

k. Soils. Disturbance of Prime Farmland, Prime Farmland if Drained, Farmland of Statewide Importance, and MSG 1-4 shall be avoided to the maximum extent practicable.

l. Agricultural lands. Applicants must adhere to the NYS Department of Agriculture and Markets (NYSAGM) Guidelines for Battery energy Projects-Construction Mitigation for Agriculture Lands. Applicants are required to implement dual-use strategies to the maximum extent practicable or otherwise offset any loss of agricultural activity. Incorporation of sheep grazing into the vegetation management plan is encouraged.

m. Noise. Once in operation, sound pressure level at the exterior of any residence or nonparticipating property line, expressed in terms of dBA Leq-8hr, shall not exceed existing background ambient noise, expressed in dBA Leq-8hr as measured by a qualified acoustician, by more than 6dB.

n. Landscaping. Landscaping used as screening must be maintained for the life of the project. Native vegetation is strongly encouraged to the extent practicable.

G. Decommissioning.

1. Battery Energy Storage Systems that have been abandoned and/or not producing or

storing electricity for a period of one year shall be removed at the owner and/or operator's expense.

2. Security.

   a. The deposit, execution, or filing with the Town Clerk of cash or a letter of credit shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the state or local permit and provide for the removal and restorations of the site subsequent to removal. The amount of the letter of credit or cash escrow payment shall be 125% of the cost of removal of the Tier 3 Battery Energy Storage Systems and restoration of the property in accordance with any state or local permit conditions, with an escalator of 2% annually, or by a percentage equal to annual inflation rate as calculated using the Consumer Price Index published by the Labor Department's Bureau of Labor Statistics for the previous calendar year, whichever is greater, for the life of the battery energy system, except in any year where the decommissioning cost is recalculated as set forth below.

   b. The initial decommissioning cost calculation and subsequent updates shall be completed and stamped by a third-party New York State Licensed Professional Engineer with applicable battery energy storage facility experience, agreeable to both the facility owner and the Town of Byron. Such calculation shall also include a reasonable percentage allocated to possible soil remediation as a result of the install and/or operation of the Battery Energy Storage Systems.

   c. Beginning on the second anniversary of completion of construction, and every fifth year thereafter until decommissioning is completed, a qualified and independent third-party assessor or other consultant agreeable to both the facility owner and the Town will recalculate the projected cost of decommissioning over the next five-year period, and the applicant shall adjust the amount of the letter of credit to match 125% of the recalculated decommissioning cost.

   d. Change in ownership. The obligation to maintain a decommissioning security letter of credit or cash escrow benefitting the Town of Byron is a continuing obligation that may not be transferred without written consent of the Town of Byron, which consent shall not be unreasonably withheld.

   e. In the event the applicant is in default of its obligations to decommission the facility under any applicable law or permit, and after proper notice and expiration of any cure periods, the cash deposit, letter of credit, or security shall be forfeited to the Town which shall be entitled to maintain an action thereon. The cash deposit, letter of credit, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

3. In the event of default under this section or the conditions of any permit for construction and operation of the battery energy system, or abandonment of the battery energy system, the battery energy system shall be decommissioned as set forth herein.

H. Application Requirements

1. Special Use Permit Application.
   a. Accurate Real Property Survey.

   b. Completed Site Plan Application as set forth below.

   c. Aerial site plan showing the location of relevant utility poles and lines, trees and structures, and the names of all adjacent property owners.

   d. Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming, and insurance coverage. Preventative maintenance inspections shall be included in the Operations and maintenance Plan at designated intervals and after severe weather events. Quarterly inspections of the security systems and annual safety inspection of the Solar Energy System. All reports are to be submitted in a timely manner to the Town.

   e. Visual Impact Assessment (VIA). At a minimum, the VIA must include:
      (1) A line-of sight profile analysis.
      (2) Photographic simulations of the facility area showing visual conditions with proposed landscaping at the following Intervals: installation, 2-year anniversary after installation, and 5-year anniversary after installation.

   f. Tree Inventory for trees with a minimum 6-inch DBH within the facility area.

   g. Tree Clearing Mitigation Plan.

   h. Engineer's Report including:
      (1) SWPPP and Erosion Control Plan
      (2) Preconstruction Baseline Noise Analysis
      (3) Preconstruction Baseline Soil Sampling Plan
      (4) Drainage Plan
      (5) Clearing and Grading Plan, and
      (6) Wetland Delineation.

   i. Agricultural Resource Mitigation Plan

   j. Emergency Response Plan.

   k. Proposed Decommissioning Plan, including:
      (1) Anticipated life of the project
      (2) Restoration plan
      (3) Projected cost of removing BESS if decommissioning is required during the first five years after construction is complete
      (4) Time required to decommission and remove the BESS and ancillary structures

(5) Time required for site restoration after removal of the BESS and ancillary structures
(6) Proposed form of security

1. Proposed PILOT and Host Community Agreements.

2. Site plan application. For a Tier 3 Battery Energy Storage System requiring a Special Use Permit, Site Plan approval shall be required. Any Site Plan application shall include the following information:

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

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

c) A one-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

d) Truck trip data, truck/hauling routes, and size/location of staging and parking areas.

e) A Highway Use Agreement on a form approved by the Byron Highway Superintendent and Byron Town Board.

f) A final equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed.

g) 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.

h) 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.

i) Zoning district designation for the parcel(s) of land comprising the project site.

j) 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 Code Enforcement Officer prior to final inspection and approval and maintained at an approved on-site location. The Applicant shall submit a commissioning plan to the Town Board

prior to issuance of a building permit or commencement of any construction, whichever occurs sooner

h) 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. The Applicant shall submit a Fire Safety Compliance Plan to the Town Board prior to issuance of a building permit or commencement of any construction, whichever occurs sooner.

I. 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, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Code Enforcement Officer 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 Code Enforcement Officer 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 Code Enforcement Officer 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.

J. Applicant must obtain all necessary permits and approvals from applicable federal, state and county agencies having jurisdiction over any portion of the proposed battery energy system.

K. Applications for a Special Use Permit shall be subject to a public hearing before the Planning Board may act to approve or deny the requested permit.

L. The Special Use Permit must be renewed annually.

M. After completion of construction, the Applicant shall provide post-construction certification from a licensed New York State professional engineer that indicates that the project complies with all applicable codes and industry practices and has been constructed and is operating in accordance with the approved Special Use Permit.

N. Any post-construction changes or alterations to a Type 3 battery energy system shall be undertaken only by amendment to the special use permit (and site plan approval, if required), subject to all requirements of this chapter.

O. Fees and Deposits.

(1) The fees for a Special Use Permit, Site Plan Review, and Building Permit for a Battery energy System shall be set from time to time by Town Board Resolution.

(2) The applicant for a Special Use Permit shall deliver to the Town Clerk, along with its application for a Special Use Permit, an amount equal to one percent

(1%) of the estimated cost of the project (the "Initial Deposit") to be held in escrow by the Town for use by the Town to pay consultants and attorneys engaged by the Town to assist in review of all applications for the proposed battery energy system. If the amount held in escrow is depleted prior to grant or denial of all applications associated with the battery energy system, the Applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants. Following approval or denial of the required applications, any excess remaining in escrow shall be returned to the Applicant within 30 days. The Town Board may enter into an escrow agreement with the Applicant at its discretion.

8. Safety

A. System Certification required prior to start of operation. 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) 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.

B. 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.

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.

9. Permit Time Frame, Revocation and Abandonment

A. 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 of Byron 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. The applicant may request one (1) 2-year extension if such extension is required based on the class year study with the NYISO.

B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Byron may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 3 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

C. Violations of any of the conditions of the special use permit, site plan approval or any other local, state or federal laws, rules or regulations shall be grounds for the revocation of the special use permit or site plan approval. Revocation may occur after the applicant is notified, in writing, of the violations and the Town of Byron Town Board holds a hearing on same.

10. Enforcement

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning law of The Town of Byron.

11. 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.