TOWN OF WALES
LOCAL LAW 2026-5
Local Law Entitled
Regulation of Battery Energy Storage Systems (BESS)

97A LOCAL LAW, TO AMEND LOCAL LAW #1-1984 KNOWN AS "ADOPTION OF CODE", ADOPTED BY THE TOWN BOARD OF WALES ON DECEMBER 29, 19, BY THE ENACTMENT OF A CHAPTER ENTITLED "REGULATION OF BATTERY ENERGY STORAGE SYSTEMS"

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WALES OF A CHAPTER 197 ENTITLED "REGULATION OF BATTERY ENERGY STORAGE SYSTEMS" AS FOLLOWS:

Section 1: LEGISLATIVE INTENT

This Local Law will amend the Code by the enactment of regulations and provisions for the land use and operation and regulation of Battery Energy Storage Systems.

Section 2: Authority

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); sections 261-263 of the Town Law, and section 10 of the Municipal Home Rule Law of the State of New York, which authorize the Town of Wales to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

Section 3: CHAPTER 197

Chapter 197 shall be enacted as part of the Code of the Town of Wales entitled "Battery Energy Storage Systems".

ARTICLE I
GENERAL PROVISIONS

Section 197-1: Statement of Purpose and Intent

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 Wales 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; and

D. To create synergy between battery energy storage system development and other goals of the

Town of Wales pursuant to the Town of Wales Comprehensive Plan and the Town of Wales Agriculture and Farmland Protection Plan (AFPP).

E. To define battery storage system size and use "tiers" which shall determine the type of permitting mechanism required in the Town of Wales, and the administrative procedure required for an application, application approval, and defining any conditions which shall apply to the approved application for a battery energy storage system in the Town.

Section 197-2: Findings:

The Town Board of the Town of Wales recognizes that Battery Energy Storage Systems (BESS) are an emerging land use with characteristics that may influence the surrounding community, including potential effects on privacy, neighborhood character, and the predominantly rural, agricultural, and forested areas of the Town. The Board also acknowledges that BESS installations may offer benefits, such as increased tax revenue, the possibility of a "Payment in Lieu of Taxes" (PiLOT) agreement, and limited employment opportunities related to operations and maintenance.

Section 197-3: Definitions

The following definitions shall apply to this Chapter:

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 STORAGEMANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System (BESS) 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. Generally, Tier 1 BESS would service a residential situation, or a small commercial land use and would be considered a private system for the benefit of the landowner or business owner.

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. It is generally considered that the Tier 2 BESS are larger in scope, likely consume substantial power from the grid, and supply the grid with substantial energy during the battery discharge cycle. These systems would be considered as "grid-connected" Utility-Scale BESS and subject to additional permitting and project review.

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

COMMISSIONING: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing battery

energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

1. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
2. No other occupancy types are permitted in the building.
3. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
4. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
    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 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.

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 ofworship.

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.

UNIFORM CODE: the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

Section 197-4. USE DISTRICTS AND BATTERY ENERGY STORAGE SYSTEM (BESS) CATEGORIES & AUTHORITY:

For the Town of Wales, the following categories of use and general permitting characteristics are tabulated in the Town of Wales Zoning Chapter 200, which defines Permitted Principal and Accessory Uses for each Zoning District. For each Zoning District the Zoning Chapter 200 the permitted land use for Battery Energy Storage Systems is recited. Chapter 200 should be consulted for that information in the relevant sections for Residential (R1 & R2 & RRB), Commercial (C), or Agricultural (Ag) Zoning Districts within the Town.

Section 197-5: Applicability

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

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 unless modified or altered.

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.

Section 197-6: General Criteria and Requirements

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

B. Issuance of permits and approvals by the Wales Code Enforcement Officers, and the Wales Town Board after consideration of delegated advisory reports from the Wales Planning Board and Wales Environmental 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") as currently in effect and as hereafter amended from time to time. The Wales Town Board will act as Lead Agency during the SEQRA procedures.

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 of Wales Code.

ARTICLE II
PERMIT REQUIREMENTS

Section 197-7: Permitting Requirements for Tier 1 Battery Energy Storage Systems (≤ 600 kWh)

Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Town of Wales Uniform Code "Battery Energy Storage System (BESS) Permit". Tier 1 BESS are less than or

equal to 600 kWh capacity, are generally exempt from site plan review, since Tier 1 systems are smaller residential or small commercial systems for homes and businesses and they are processed by the Wales BESS Permit and the related Town of Wales Building Permits. This procedure is via the Town of Wales Code Enforcement Department. It is anticipated that most, if not all, residential and commercial installations of a Tier 1 BESS will be designed, installed, and commissioned by a professional contractor which has expertise and design experience to supply suitable technical and engineering details for review by the Town of Wales staff. It is assumed that submissions will be prepared by a NYS Licensed Design Professional (Professional Engineer, Registered Architect, Professional Land Surveyor, etc.). To have the Tier 1 Application process be efficient, and non-piecemeal, submissions of Tier 1 BESS applications the submittal requirements are presented in summary below for Tier 1 installations less than or equal to 600 kWh capacity.

The submitted Applications for the installation of Tier 1 Battery Energy Storage System shall be:

1. Reviewed by the Code Enforcement Department for completeness. In some circumstances the Code Enforcement Department may make a referral to the Planning Board for a more detailed site plan review. An application shall be deemed complete when it addresses all matters listed in this Local Law including, but not necessarily limited to,
    a. Include a legend or key for the site and floor plan with equipment symbols.
    b. The site plan shall include a professional survey, signed and sealed by a licensed NYS Professional Land Surveyor, with markings to show:
        i. The location of the structure and the location where the system is to be installed.
        ii. Show conduit/cable routing of battery energy storage system.
        iii. Include underground trench detail, if applicable.
        iv. Show overhead runs, if applicable.
        v. Show method and location of required ventilation equipment (if required) for indoor installations.
    c. Identify the total number of batteries for the BESS and location on the site plan and floor plan.
    d. The floor plan shall include:
        i. New equipment for the battery energy storage system.
        ii. Existing equipment for interconnection.
        iii. Show required working clearances for all existing/new electrical equipment.
        iv. Show whether the equipment is to be installed indoors or outdoors.
        v. Show method and location of requirement ventilation equipment (if required) for indoor installations.
        vi. Show method of protection from physical damage for the battery energy storage system.
        vii. Show means of access to battery energy storage system.
        viii. Denote whether conductors are routed indoors or outdoors.
    e. Provide an elevation drawing of the system equipment and specify elevation in relation to flood plains.
        i. If the house is in a flood zone, it shall be above base flood elevation.
    f. Provide supporting documents from manufacturer if equipment is subject to physical damage.
    g. Electrical Compliance Confirmation, to include but not limited to:
        i. Installations shall be in compliance with the Battery Energy Storage

System Inspection Checklist. The Battery Energy Storage System Inspection Checklist provides an overview of common points of inspection that the applicant should be prepared to show compliance.

ii. Plans shall include a note that a plug-in type back-fed circuit breakers connected to an interconnected supply shall be secured in in accordance with (NEC 408.36(D)).

iii. Provide a permanent plaque or directory denoting all electric power sources on or in the premises, which shall be installed at the main service panel and at all locations of all electric power production sources capable of being interconnection (2017 NEC 706.11).

iv. One or Three-Line Diagram

v. Show grounding and bonding for the battery energy storage system, including the ground return path.

vi. Show method of interconnection.

vii. Show overcurrent protection method and rating when required.

viii. Include detailed wiring information for all new circuits, including:

ix. Conductor size/type

x. Number of conductors

xi. Conduit size

xii. Conduit type

xiii. Show all disconnection means.

xiv. Show ratings (voltage, ampacity, environmental, etc) for new and existing service equipment.

xv. Specifications and installation instructions

xvi. Prepackaged and pre-engineered battery energy storage systems shall be installed in accordance with their listing and the manufacturer's instructions.

xvii. Provide specification sheets and installation instructions for the following equipment:

xviii. Batteries

xix. Inverter

xx. Transformer or autotransformer

xxi. Transfer switch(es)

xxii. ESS support or racking

xxiii. Converters

xxiv. Interconnecting cables and connectors

xxv. Management system, including charge controller(s)

xxvi. Panelboards

xxvii. HVAC/thermal management system

xxviii. Fire rated material

xxix. Storage batteries and battery storage systems shall comply with the following:

xxx. Storage batteries shall be listed in accordance with UL 1973

xxxi. Prepackaged and pre-engineered battery energy storage systems shall be listed in accordance with UL 9540. Exception: Lead-acid batteries are not required to be listed

xxxii. An approved energy management system shall be provided for battery technologies other than lead-acid and nickel cadmium for monitoring and balancing cell voltages, currents, and temperatures within the manufacturer's specifications. The system shall transmit an alarm signal to an approved location if potentially hazardous temperatures or other conditions such as short circuits, over voltage or under voltage are detected.

h. Structural Requirement Compliance:

i. If the battery energy storage system is wall mounted and its weight is more than 200 pounds, provide structural details in the drawings and calculations as a separate document (Uniform Code).

ii. If multiple battery energy storage systems are installed and the combined weight is 400 pounds or more, provide structural details in the drawings and calculations as a separate document (Uniform Code).

2. 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, especially in the case of residential or commercial sites which require new or upgraded infrastructure from the serving utility. Exceptions are allowed for the main disconnect, if any, at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

3. Signage. No permanent BESS signage at the road or in or near the roadway right of way is permitted, with the exception of temporary promotional advertisement for the project contractor during, or immediately following the site's commissioning. The presence of any promotional sign is limited to 60 days after approval and closeout of the Town of Wales permits.

Section 197-8: Permitting Requirements for Tier 2 Battery Energy Storage Systems (> 600kWh)

Tier 2 Battery Energy Storage Systems are permitted only through the issuance of a Special Use Permit and may only be considered within the Agricultural (Ag) zoning district. Tier 2 BESS projects are larger, potentially Utility-Scale Systems, and shall be subject to the Uniform Code and the rigorous site plan review and application requirements set forth in this Section. Tier 2 applications via Special Use Permits, must be in full compliance with all submission requirements before they shall be considered a "complete application" by the reviewing agencies in Wales.

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

1. Reviewed by the Code Enforcement Department, the Wales Planning Board, and the Wales Environmental Board for completeness. An application shall be deemed complete when it addresses all matters listed in this Local Law including, but not necessarily limited to,

(a) Supply of a professional land survey, showing all parcels involved with the project with nearby adjoining parcels indicated clearing showing the location of buildings and dwellings on those adjoining parcels. The survey must be signed and sealed by a NYS licensed Professional Land Surveyor.

(b) Compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code confirmed by a NYS Licensed design professional, such as a Professional Engineer, a Registered Architect, or a

Professional Land Surveyor.

(c) Matters relating to the proposed battery energy storage system characteristics,

(d) Floodplain,

(e) Utility Lines,

(f) Electrical Circuitry,

(g) Signage,

(h) Lighting,

(i) Vegetation and Tree cutting,

(j) Noise,

(k) Vehicles plan with entry and egress provisions clearly shown,

(l) Traffic Assessment, including Prediction studies for Traffic Volume and Traffic Vehicle Size, as determined to be necessary by the Town.

(m) Decommissioning Plan including submission of a bond in an amount adequate to fully cover decommissioning costs, including remediation and restoration of land to the pre-BESS condition(s). The value of the bond evaluated every 5 years for covering estimated costs and the amount of the bond must be adjusted in the event that the bond value no longer covers a realistic decommissioning/remediation cost going forward in time The bond must be in a form and means acceptable to the Wales Town Attorney, including provisions defined for liquidation of the bond by the Town when necessary.

(n) Site Plan during Development,

(o) Site Plan at completion Post-Commissioning,

(p) Special Use Permit Compliance,

(q) Development Schedule of Project Milestones,

(r) Ownership Changes as applicable or planned,

(s) Safety,

(t) Permit Time Frame for project start and completion,

(u) Abandonment and Contingency Plans.

Applicants shall be advised within 45 business days of the completeness of their application, or of any deficiencies that must be addressed prior to substantive review.

2. Be subject to a public hearing to hear all comments for and against the application. The Town Board of the Town of Wales shall have a notice printed in a newspaper of general circulation in the Town at least 10 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 1,000 feet of the property at least 14 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.
3. Referral to the Erie County Department of Environment and Planning pursuant to General Municipal Law § 239-m.
4. Upon closing of the public hearing, the Town Board shall take action on the application within

62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and the Applicant.

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.

C. BESS 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.

E. Vegetation and tree-cutting. Areas within 50 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. Removal of trees should be minimized to the extent possible.

F. Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 60 dBA as measured at the property line / boundary line of any non-participating residence or occupied community building adjoining or adjacent parcel. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance and a NYS Licensed Professional Engineer certification is supplied which indicates that the manufacturer's ratings are technically valid and applicable for the specific site plan of the BESS project. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the parcel's perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. 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 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 storagesystem;

(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) The Plan shall illustrate that the decommissioning costs are properly covered in the applications submission of a bond in an amount adequate to fully cover decommissioning costs, including remediation and restoration of land to the pre-BESS condition(s). The value of the bond evaluated every 5 years for covering estimated costs and the amount of the bond must be adjusted in the event that the bond value no longer covers a realistic decommissioning/remediation cost going forward in time The bond must be in a form and means acceptable to the Wales Town Attorney, including provisions defined for liquidation of the bond by the Town when necessary.

2. Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town of Wales, in a form approved by the Town for the removal of the battery energy storage system, in an amount to be determined by the Town of Wales, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

H. Site plan application. All Tier 2 Battery Energy Storage Systems shall require a Special Use Permit, and site plan approval shall be required, relevant submissions under NYS SEQRA, and including submission of any and all supplemental data, design details, and drawings which are requested by the Town of Wales Planning Board, the Wales's Town Engineer, or the Wales Town Board before an application is deemed complete and ready for ultimate action by the Town Board. Any site plan application shall include, as a minimum, the following information:

1. Property lines and physical features, including roads, for the project site on a survey produced, signed and sealed, by a licensed NYS licensed Registered Professional Land Surveyor (RPLS).
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
3. A three-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
4. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of 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.
7. Zoning district designation for the parcel(s) of land comprising the project site.
8. Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State(NYS) Licensed Professional Engineer (P.E.) 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 Wales Code Enforcement Department and Wales Planning Board for advisory recommendations and conditions prior to action by the Wales Town Board prior to final inspection and approval. The report shall be submitted to the Town and an identical copy maintained at an approved on-site location.
9. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code. The Plan should clearly indicate compliance with all provision of the NFPA, including methods and means for the supply of adequate water for potential fire suppression of the structure itself, adjoining equipment, and other combustible materials such as grasslands, forested areas, and non-battery materials needed by Wales First Responders and the Wales Fire Company. Full compliance with the requirements, procedures, and documentation in accordance with NYS Uniform Fire NFPA 855 shall be included in the plan.
10. 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.
11. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
12. Prior to the issuance of the building permit or final approval by the Wales Town Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
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. The emergency operations plan shall include the following information:
    (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

(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, de-energizing 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 of Wales 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.

I. Special Use Permit Standards.

1. Setbacks. Tier 2 Battery Energy Storage Systems are only permitted in Ag-Zoning districts and shall have a front setback no less than 300' from the edge of the road frontage Right of Way. The side boundary setbacks shall be no less than 50' from the side yard boundary lines. The rear yard setback shall be no less than 100' from the parcel's rear boundary line. For all situations the site plan shall take into account neighboring dwellings and/or commercial structures which are considered by this Chapter as non-participating entities. The distance from the applicant's BESS structure(s) to the nearest non-participating entity on all nearby parcels shall always meet a structure-to-structure distance of at least a 200 feet.

   During the Town of Wales's Site Plan review process, based upon unique project site layouts, the Planning Board advisory recommendations, and the Town Board's action(s) may require additional setback distances for justifications related to the parcel geometry, nearby neighbors, conflicting land use, nearby dwellings or structures, and other relevant factors, including, but not limited to, noise criteria. In all cases the predicted and measured noise level at the parcel's boundary lines shall meet the dB requirements of this Chapter.

2. Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying Ag-Zoning district.

3. Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high security fence with a self-locking gate to prevent unauthorized access, unless housed in a dedicated-use building with a structure and design so as to not interfere with ventilation or exhaust ports required for safe operations.

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 the BESS infrastructure for ventilation and cooling or heating exhaust ports.
5. A Visual Impact Assessment, prepared by a NYS Licensed Professional Engineer, shall be supplied to indicate the impact of the BESS to adjacent parcels as well as from traffic and pedestrian use of the roadway.

J. 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 Wales Code Enforcement Department 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 Department and Wales Town Clerk 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 of Wales in the required timeframe or manner. Reinstatement of a void special use permit will be subject to the same review and approval processes for an initial new application under this Local Law.

Section 197-9: Safety Requirements

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) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

   i. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
   ii. UL 1642 (Standard for Lithium Batteries),
   iii. UL 1741 or UL 62109 (Inverters and Power Converters),
   iv. Certified under the applicable electrical, building, and fire prevention codes as required.
   v. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

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 Wales Fire Company and other First Responders. Additionally, for Tier 2 Battery Energy Storage System site access shall be subject to the requirements of the Town of Wales EMS Service as well as the County of Erie EMS crews located at the Wales Fire Company site. Periodic inspections by the EMS forces shall be performed to confirm compliance with their needs.

C. Annual Special Use Permit Inspections. The Town of Wales, during the annual period of Special Use Permit inspections, shall access the site and perform an annual site inspection to confirm that all provisions of the applicable Special Use Permit are in compliance. The results of the annual inspection will be reviewed and either approved or if non-compliance was identified not-approved by the Wales Town Board. In the event of non-approval, based upon inspection results or other factors, the Town will give the Applicant formal notice with a specific timeframe defined for correction of any items of non-compliance with the Special Use Permit provisions. A reinspection will be done after remedial action is taken and approved. Lack of remedial action by the applicant shall be grounds for revocation of the Special Use Permit per procedural mechanisms.

D. 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 NFPA70 as currently in effect and as hereafter amended from time to time.

E. Hazardous Materials Management, Spill Prevention, and Containment

(a) Hazardous Materials Management Plan Required

The Applicant shall submit a Hazardous Materials Management Plan prepared by a qualified professional identifying all hazardous materials associated with the Battery Energy Storage System (BESS) facility, including but not limited to batteries, electrolytes, coolants, transformer oils, fire suppression agents, and any ancillary hazardous substances.

The Plan shall include:

i. Identification and quantities of hazardous materials to be stored on-site;

ii. Safety Data Sheets (SDS) for applicable materials;

iii. Storage methods and containment measures;

iv. Spill prevention procedures;

v. Emergency notification procedures; and

vi. Procedures for handling, cleanup, transport, and disposal of contaminated materials.

(b) Spill Prevention and Secondary Containment

The BESS facility shall be designed, constructed, and operated to prevent the release of hazardous materials to the environment.

Where hazardous liquids are present, secondary containment shall be provided in accordance with applicable federal, state, and local requirements and shall be designed to contain not less than one hundred ten percent (110%) of the volume of the largest individual vessel or container, unless otherwise approved by the applicable regulatory authority.

(c) Firefighting Water and Contaminated Runoff Management

The Applicant shall demonstrate measures to prevent contaminated runoff, fire suppression water, battery electrolyte, or debris resulting from equipment failure, thermal events, or emergency response activities from entering:

i. Surface waters;

ii. Wetlands;

iii. Stormwater conveyance systems;

iv. Groundwater; and

v. Adjacent properties.

Containment methods may include grading controls, berms, containment basins, shutoff valves, isolation structures, or other equivalent engineering measures acceptable to the Town.

(d) Emergency Response Coordination

The Applicant shall provide documentation demonstrating coordination with the applicable fire department and emergency responders regarding emergency procedures addressing:

i. Thermal runaway events;

ii. Fire suppression;

iii. Hazardous material releases;

iv. Off-gassing events; and

v. Site access and emergency response protocols.

(e) Regulatory Compliance

The facility shall comply with all applicable federal, state, and local regulations governing hazardous materials management, spill prevention, environmental protection, and emergency response, including any applicable Spill Prevention, Control, and Countermeasure (SPCC) requirements.

(f) Decommissioning

The Decommissioning Plan shall address removal, transport, recycling, disposal, and lawful management of batteries, electrolytes, contaminated materials, and any associated hazardous substances.

Section 197-10: Permit Time Frame and Abandonment

A. The Building Permit associated with 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 construction is commenced. In the event construction is not completed in accordance with the final site plan and schedules, as may have been amended and approved, as required by the Wales Town Board, within 24-months after approval, the Town Board, at their discretion, may extend the time to complete construction for up to 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 is no longer capable of the storage and delivery of energy to the grid for a period of 12 consecutive months. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Wales may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and the full restoration of the site in

accordance with the decommissioning plan.

C. Conditions in a Wales BESS Special Use Permit shall include a provision which requires an annual inspection by Town of Wales Officials during the Annual Scheduled SUP Inspection Day. Advance notification of the inspection will be provided by the Town Clerk's Office via notice addressed to the designated official for the Tier 2 BESS Site.

ARTICLE III
FEES

Section 197-11. Fees

For a Tier 1 BESS, a non-refundable Town of Wales "Battery Energy Storage System (BESS) Permit" application fee, and a Building Permit Fee shall be due for Tier 1 Battery Energy Storage System developments. The fees shall be as determined by the Town of Wales's fee and fines schedule, as updated from time to time by the Town Board, with all fees paid by the Applicant. The Code Enforcement Department and/or the Town Clerk's office should be consulted by the Applicant to inspect the current Fines and Fees schedule adopted by the Town Board.

For a Tier 2 BESS, a non-refundable application fee, a non-refundable Special Use Permit Fee, an annual Special Use Permit Inspection fee, and a Building Permit Fee shall be due for Battery Energy Storage System developments. The fees shall be as determined by the Town of Wales's fee schedule, as updated from time to time by the Town Board, with all fees paid by the Applicant. The Code Enforcement Department and/or the Town Clerk's office should be consulted by the Applicant to inspect the current Fines and Fees schedule adopted by the Town Board. Due to the complexity and the specialty skills involved in a Tier 2 BESS, it is presumed that the Town will employ certain professional services during review of the applicant's Special Use Permit and Building Permit submissions. Since those Professional Engineering and Specialized Consultant activities cannot well defined in advance, the recovery of costs for those services will be in accordance with the Time and Materials municipal billing rates of the engaged professional. It is also anticipated that there may be disbursements or other direct costs for the review of applicant submissions by these professionals. Both of these costs will be invoiced to the applicant, and reimbursed to the Town by the Applicant, within 60 days.

ARTICLE IV
ENFORCEMENT AND PENALTIES FOR OFFENSES

Section 197-12: Enforcement

Any violation of this Battery Energy Storage System (BESS) Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Wales, and/or if applicable, the relevant regulations of the County of Erie or the State of New York.

ARTICLE V
SEVERABILITY AND EFFECTIVE DATE

Section 197-13: Severability and Effective Date

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 filing with the Secretary of State of New York.

INITIAL DRAFT