

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 East Greenbush

FILED
STATE RECORDS
JUL 28 2022

DEPARTMENT OF STATE

Local Law No. 4 of the year 2022

A local law to Issue a SEQRA Determination and to Adopt Local Law No. 4 of 2022 Enacting a
(Insert Title)
Battery Energy Storage Systems Local Law.

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

County City Town Village
(Select one.)

of East Greenbush

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. 4 of 2022 of the (County)(City)(Town)(Village) of East Greenbush was duly passed by the Town Board on July 20, 2022, 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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* 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.

* 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 1 above.

Ellen Pangburn

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

Date: 7-26-2022

(Seal)

Local Law No. 4 of 2022
Battery Energy Storage Systems

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Local Law No. 4 of 2022

Battery Energy Storage Systems

Section 1. Purpose and Legislative Intent

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 of the State of New York, which authorize the Town of East Greenbush to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

Section 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 in the Town of East Greenbush 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 natural resources; and
- (4) To create synergy between battery energy storage system development and;
 - (a) Promoting and managing new development in the Town's rural areas to protect resources and unique rural identity, create new places, and balance cost of providing public services;
 - (b) Ensuring growth occurs in a manner that preserves the quality of life and character of the community;
 - (c) Preserving and enhancing the character of existing neighborhoods and historic hamlets;
 - (d) Preserving and protecting key natural resources as well as protecting farmland and supporting an agricultural economy;
 - (e) Ensuring the availability of public facilities, infrastructure and services that adequately serve the present and future needs of East Greenbush.
 - (f) Utilize energy-efficient and renewable energy technologies and attract alternative energy solutions to reduce greenhouse gas emissions.

Section 3. Definitions

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

ANSI: American National Standards Institute

BATTERY(IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

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

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- A. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600kWh, or are comprised of more than one storage battery technology in a room or enclosed area.

BATTERY ENERGY STORAGE SYSTEM BUILDING-MOUNTED — A battery energy storage system attached to any part of a building or structure that has an occupancy permit on file with the Town, and that is either the principal structure or an accessory structure on a recorded parcel.

BATTERY ENERGY STORAGE SYSTEM GROUND-MOUNTED — A battery energy storage system that is not a building-mounted battery energy storage system.

BATTERY ENERGY STORAGE SYSTEM PERMIT — The New York State Energy Research and Development Authority (NYSERDA) model battery energy storage system permit, as it may be updated from time to time, which establishes the minimum submittal requirements for electrical and structural plan review that are necessary when permitting small battery energy storage systems.

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, inspect, 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 systems, provided the following:
 - 1) The areas do not occupy more than 10 percent 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 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 of worship.

PARTICIPATING PROPERTY: A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

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 4. Applicability

- A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general 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.
- 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 5. General Requirements

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act.
- 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.

Section 6. Permitting Requirements for Tier 1 Battery Energy Storage Systems

- A. Building-mounted and Ground-mounted Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code and the Battery Energy Storage System Permit, and exempt from site plan review.
- B. Ground-mounted Tier 1 battery energy systems are permitted as accessory structures and are subject to the following requirements:

- (1) The height of the ground-mounted Tier 1 battery energy storage system and any mounts shall not exceed 15 feet.
 - (2) The total surface area of the ground-mounted Tier 1 battery energy storage system on the lot shall not exceed 5% lot coverage.
 - (3) The ground-mounted Tier 1 battery energy storage system is not the primary use of the property.
 - (4) The ground-mounted Tier 1 battery energy storage system is located in a side or rear yard.
 - (5) The ground-mounted Tier 1 battery energy storage system shall comply with the minimum setbacks for accessory structures applicable to the zoning district in which the battery energy storage system is sited.
 - (6) The ground-mounted Tier 1 battery energy storage system shall be screened from adjacent residences through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.
- C. Where site plan approval is required in accordance with Section 4.3 of the Comprehensive Zoning Law, the site plan review shall include review of the adequacy, location, arrangement, size, design, and general site compatibility of proposed ground-mounted Tier 1 battery energy storage system.

Section 7. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 battery energy storage systems are conditionally permitted through the issuance of a special use permit within the A-R (Agriculture-Residential), R-OS (Residential-Open Space), R-B (Residential-Buffer), O (Corporate Office Only), OC (Corporate Office/Regional Commercial), OI (Corporate Office/Light Industrial District), and CI (Coastal Industrial) zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this local law and those requirements set forth in the Comprehensive Zoning Law, including Section 3.11 Special Permits and Section 4.3.1 Site Plan Review procedures. Tier 2 battery energy storage systems shall be considered a major site plan.

- A. Applications for the installation of Tier 2 Battery Energy Storage System shall be reviewed by the Planning Board and Town Board in accordance with Section 3.11 Special Permits and Section 4.3 of the Comprehensive Zoning Law. An application shall be complete when it addresses all matters listed in this Local Law and the Comprehensive Zoning Law including, but not necessarily limited to:
- (1) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code;
 - (2) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise,

Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment; and

- (3) Section 3.11 Special Permits of the Comprehensive Zoning Law.
- B. Site plan application. In addition to the requirements set forth at Section 4.3 of the Comprehensive Zoning Law, the site plan application shall include the following information:
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) 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.
 - (5) Signage plan, screening and buffering plan, and lighting plan.
 - (6) Visual Impact Assessment. The Applicant shall provide narrative, images, renderings, maps, and other materials to assist the Planning Board in determining potential visual impacts associated with the battery energy storage system. The visual impact assessment materials shall generally conform to NYSDEC Program Policy for Assessing and Mitigating Visual Impacts, in the discretion of the Planning Board.
 - (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 Building Inspector 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, including any required vegetative screening and vegetative buffering, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- (10) Compliance with Section 3.13 Erosion and Sediment Control of the Comprehensive Zoning Law and NYSDEC requirements for stormwater management.
- (11) Prior to the issuance of final approval, 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, 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 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.

- C. **Special use permit approval standards.** In addition to the special use permit standards of Section 3.11 of the Comprehensive Zoning Law, approval of the special use permit requires that the Planning Board find that the proposed battery energy storage system:
- (1) protects adjacent land uses;
 - (2) has 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; and
 - (3) will not adversely affect the neighborhood.
- D. **Site plan review and approval standards.** In addition to the site plan review standards of Section 4.3 of the Comprehensive Zoning Law approval requires conformance to the following minimum requirements:
- (1) **Utility Lines and Electrical Circuitry.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the utility provider.
 - (2) **Signage.**
 - (a) The signage shall be in compliance with ANSI Z535, or applicable federal, state, county, and/or Town standards, 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.
 - (b) 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.
 - (3) **Lighting.** Lighting of the battery energy storage systems shall be limited to that minimally required for safety and security purposes only. The lighting design should incorporate lighting that is motion-sensor controlled, fully shielded, and downward casting, and full cut-off fixtures (Dark Sky Compliant). Use of floodlights is discouraged. Lighting of other parts of the battery energy storage systems, such as appurtenant structures, shall be limited to that only required for safety and operational purposes.
 - (4) **Vegetation and tree-cutting.** Areas on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth. Cleared areas shall be only as needed for safety, security, and operational purposes and should not exceed 10 feet on each side. 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 maximum extent practical. Clear-cutting of all native and non-invasive trees in a single contiguous area

exceeding 20,000 square feet shall be prohibited except where the tier 2 battery energy storage system is co-located with a large scale solar energy system approved to clear cut greater than 20,000 square feet. Forested sites shall not be deforested to construct a tier 2 battery energy storage system.

- (5) **Security.** Buildings must be protected from vehicle impact, including, but not limited to, protection provided by bollards.
- (6) **Secondary containment.** To the extent permitted under Uniform Code, secondary containment shall be provided to contain any release of electrolyte or other hazardous materials.
- (7) **Noise.** Noise levels from noise sources of battery energy storage systems will comply with the noise limits for substation and solar energy facilities contained in the New York Office of Renewable Energy Siting regulations at 19 NYCRR 900-6.5(b) by implementing the designed required by 19 NYCRR 900-2.8 except that the standards applicable to existing nonparticipating residences shall also be met for existing participating residences.
- (8) **Fencing requirements.** Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a fence with a minimum height of six feet and maximum height of eight feet, or of a height as otherwise required by the National Electric Code, with a selflocking gate to prevent unauthorized access unless housed in a dedicated-use building. The Type and design of fencing shall be determined during site plan review. To the maximum extent practical, fencing shall allow for wildlife passage. The requirements of this section supersede other fencing requirements contained in the Town's Comprehensive Zoning Law.
- (9) **Height.** Tier 2 battery energy storage systems shall not exceed 15 feet in height.
- (10) **Setbacks.** Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures. Tier 2 Battery Energy Storage Systems shall be prohibited from the required setback areas of large scale solar energy systems where such systems are co-located on a site.
- (11) **Lot coverage.** The battery energy storage system shall be included in calculating maximum permitted building coverage for the applicable zoning district. Lot coverage shall mean the area formed by outermost perimeter of the footprint of all of the equipment and battery storage units including the clearance spaces between the individual equipment.
- (12) **Screening and visibility.** A screening and landscaping plan prepared by a licensed landscape architect shall be provided. The screening and landscaping plan should demonstrate that the landscaped buffer will provide year-round screening so that to the maximum extent practicable the battery energy storage system is not visible from roadways and adjacent nonparticipating properties. In lieu of plantings, berms or existing vegetation may be used to satisfy all or a portion of the required landscaped screening. If the buffer utilizes vegetative planting, the plantings shall consist of

evergreen trees or bushes as recommended by the landscape architect, planted no more than eight feet apart and at least four feet tall at time of planting. The Planning Board may require financial security for the maintenance of the landscaping plantings.

- E. The Tier 2 battery energy storage system approval shall include appropriate conditions to mitigate adverse impacts of the battery energy storage system, including, but not limited to:
- (1) Prior to the issuance of a building permit, the operator shall provide a copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility.
 - (2) The operator shall identify a responsible person with contact information for public inquiries from the commencement of construction of the battery energy storage system until the completion of the decommissioning plan.
 - (3) The operator is responsible to provide the Town of Caledonia with a current written list of all chemicals used for maintenance and operation of the battery energy storage system (e.g., pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals.
 - (4) The operator shall secure and maintain public liability insurance from the commencement of construction of the battery energy storage system until the completion of the decommissioning plan, subject to the approval of the Town Attorney.

Section 8. First Responder Training.

In the discretion of the responding fire district, prior to issuance of a building permit, funding sufficient to provide training from an industry-recognized trainer or firm specializing in first response to battery energy storage system emergencies and other events requiring response by fire district, police, and/or other first responders, as may be determined by the Town, shall be provided in a form acceptable to the Town. The Town may, from time to time, require training of new personnel, and funding, or other mechanism to cause such training to be provided, as determined by the Town, shall be provided by the Facility Owner upon request by the responding fire district.

Section 9. 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 Building Inspector 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 Building Inspector 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 Building Inspector 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.

Section 10. Decommissioning

- A. **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:
- (1) A narrative description of the activities to be accomplished, including who and/or what entity 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;
 - (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - (3) The anticipated life of the battery energy storage system;
 - (4) The estimated decommissioning costs and how said estimate was determined;
 - (5) The method of ensuring that funds will be available for decommissioning and restoration;
 - (6) The method by which the decommissioning cost will be kept current;
 - (7) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
 - (8) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- B. **Decommissioning Security.** The owner and/or operator of the battery energy storage system, shall continuously maintain a fund or bond payable to the Town, 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, for the period of the life of the facility.
- (1) All costs of the financial security shall be borne by the applicant. The owner shall place with the Town an acceptable letter of credit, performance bond, or other form of security reasonably acceptable to the Town Attorney and Engineer that is sufficient to cover the cost of implementing the approved decommissioning plan. The amount of the letter of credit or other security shall be in the amount of 150% of the estimated cost of implementing the decommissioning plan. The estimated cost of implementing the decommissioning plan will be certified by a licensed professional engineer and reviewed by the Town Engineer. The salvage value of the battery energy storage system equipment shall not be accounted for in the estimated cost of implementing the decommissioning plan. The financial security shall be updated every fifth year thereafter specifying changes to the estimated cost of implementing the decommissioning plan.

- (2) The Town shall use this surety to assure the faithful performance of the decommissioning plan. The full amount of the bond or security shall remain in full force and effect until the decommissioning plan has been fully implemented.
 - (3) The surety for implementing the decommissioning plan shall not be released until the Town Engineer has confirmed that the approved decommissioning plan has been fully implemented.
- C. The decommissioning plan shall run to the benefit of the Town of East Greenbush and be executed by the operator as well as the owners, and such signatures shall be notarized in a format that allows the plan to be recorded at the Rensselaer County Clerk. This document shall be recorded as an irrevocable deed restriction indexed against the property upon which the battery energy storage system is to be constructed.

Section 11. 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) or approved equivalent, 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 (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 responding fire department and, if the Tier 2 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 or other applicable standards, codes, and requirements.
- D. Emergency action plan. A copy of the approved emergency operations plan shall be given to the owner, the responding fire department(s), and Building Inspector. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency first responders. The owner and operator are responsible for ensuring any updates to the approved Emergency Operations Plan are provided to the above holders of the Emergency Operations Plan, and for providing, and paying for, initial and

annual training drills with the responding fire department(s) and other emergency first responders, in the discretion of the Town.

Section 12. Permit Timeframes and Abandonment

- A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction, in its discretion. If the owner and/or operator fails to commence construction and receive a building permit after 48 months, the approvals shall expire. If the owner fails to perform, the Town may notify the owner to implement the decommissioning plan. In such instance, the decommissioning plan must be completed within 150 days of notification by the Town.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. A report of system operational characteristics for the prior calendar year must be provided to the Building Inspector within 30 days of the end of each calendar year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.
- C. With the consent of the owner of the real property on which the installation in question is located, the Building Inspector along with the Town Engineer and the Planning Board may allow the owner to implement the decommissioning plan while allowing the landscaping to remain.

Section 13. 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 or land use regulations of Town.

Section 14. 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.




The Town of East Greenbush

STATE OF NEW YORK
COUNTY OF RENSSELAER
TOWN OF EAST GREENBUSH

I, **Ellen Pangburn**, Town Clerk of the Town of East Greenbush, Rensselaer County, and State of New York do hereby certify that the foregoing is a true and correct copy of the resolution 171-2022. Whereas, the East Greenbush Town Board has adopted said resolution on July 20, 2022, Adopting Local Law No. 4 of 2022 to Issue a SEQRA Determination and to Adopt Local Law No. 4 of 2022 Enacting a Battery Energy Storage Systems Local Law.

I **FURTHER CERTIFY**, that such Resolution was adopted in full compliance with the laws of the State of New York.

IN TESTIMONY WHEREOF, I have here unto set my hand and affixed the seal of the Town of East Greenbush, this 26th day of July, 2022.



Ellen Pangburn
Town Clerk
Town of East Greenbush
Rensselaer County, New York

Town of East Greenbush

171-2022 A Resolution to Issue a SEQRA Determination and to Adopt Local Law No. 4 of 2022 Enacting a Battery Energy Storage Systems Local Law

WHEREAS, in the context of an increase in development of renewable energy sources, including the development of Large-Scale Solar Energy Systems, the Town Board finds that Battery Energy Storage Systems (BESS) installations are likely to become a more frequent component of the electrical grid located in and serving the Town and its residents; and

WHEREAS, in this context, and given this finding, the Town Board also desires to balance the need for Battery Energy Storage Systems development with other dimensions of the public interest, including Battery Energy Storage Systems safety, land use, first responder training, and decommissioning, with respect to potential development of Battery Energy Storage Systems in the Town; and

WHEREAS, the text of a proposed local law providing requirements for Battery Energy Storage Systems was introduced to the Town Board on May 20, 2022 (the “battery energy storage systems local law”); and

WHEREAS, a Full EAF has been prepared for this type 1 SEQRA application and the Director of Planning and Zoning, on behalf of the Town Board, initiated a coordinated review, indicating that the Town Board declare its intent to be lead agency, which the Town Board acknowledged on May 18, 2022 (resolution 132 of 2022), and has coordinated the lead agency status, receiving no responses to the contrary, and has sought comments from other involved and interested agencies; and

WHEREAS, the Town Board held a duly noticed public hearing on June 8, 2022 to accept public comment on the proposed Battery Energy Storage Systems Local Law; and

WHEREAS, the Town Board considered all comments of the public both for and against the proposed Battery Energy Storage Systems Local Law expressed during the public hearing on June 8, 2022; and

WHEREAS, the proposed Battery Energy Storage Systems Local Law was circulated to the Town Planning Board to allow the Planning Board with an opportunity to provide an advisory report in accordance with Section 4.4.1.B of the CZL concerning the proposed amendment to the CZL; and

WHEREAS, the Planning Board at its meeting of May 27, 2022 recommended that the Town Board adopt the proposed Battery Energy Storage Systems Local Law; and

WHEREAS, the proposed Battery Energy Storage Systems Local Law and accompanying documentation was provided to Rensselaer County Economic Development and Planning (RCEDP) for its review pursuant to the requirements of the NYS General Municipal Law and the RCEDP responded by recommending that local consideration shall prevail; and

WHEREAS, the Town Board took into consideration the recommendation of the Town Planning Board and RCEDP; and

WHEREAS, the Town Comptroller confirms that this resolution will not have a material impact on the Town’s finances;

now, therefore, be it

RESOLVED, that the Town Board as SEQRA lead agency for the review of this type 1 action has carefully reviewed the SEQRA documents including the EAF Part 1, 2 and 3, and has considered the SEQRA criteria of significance set forth at 6 NYCRR 617.7 (c) and hereby

determines to issue a negative declaration of environmental significance, finding that no EIS will be prepared for this project because the action will not have a significant adverse impact on the environment;

and be it further

RESOLVED, that the Town Board hereby approves Local Law No. 4 of 2022 enacting a Battery Energy Storage Systems Local Law; and

and be it further

RESOLVED, that Local Law No. 4 of 2022 be filed by the Town Clerk in accordance with applicable provisions of law.

The foregoing resolution was duly moved by Councilor Tierney and seconded by Councilor Fritz and brought to a vote resulting as follows:

Councilor T. Tierney	VOTED: YES
Councilor B. Fritz	VOTED: YES
Supervisor J. Conway	VOTED: YES
Councilor H. Kennedy	VOTED: YES
Councilor E. Nestler	VOTED: YES

Approved: July 20, 2022